

A COMPILATION OF STORMWATER AND OTHER RELATED WATER NEWS

By S. Wayne Rosenbaum, Foley & Lardner LLP

NATIONAL NEWS

Wetlands: New Revisions Proposed for Mitigation

(Land Development Today, April 2006) The EPA and USACE have just announced proposed revisions for compensatory mitigation to meet Section 404 of the Clean Water Act. [Full Story](#)

Erosion Prevention Begins with Protection and Stabilization

(Land Development Today, May 2006) Waterways are especially susceptible to being major causes of erosion. Protecting and stabilizing river and stream banks can take, and often requires, many forms. [Full story](#)

New Rule to Offer Greater Protection to Marine Life

(EPA, 6/2) **NEWS RELEASE.** ["EPA announced a final rule, established under the Clean Water Act, which will provide increased protection to fish, shellfish and other aquatic life. This action sets standards for cooling water intake structures at new oil and gas extraction facilities either at offshore or coastal locations."](#)

CALIFORNIA NEWS

Governor Arnold Schwarzenegger Announces the Appointments to the California Coastal Commission

(California Water Quality Control Board) **NEWS RELEASE.** Khatchik Achadjian, 54, of San Luis Obispo, has been appointed to the California Coastal Commission. He is the chair of the San Luis Obispo County Board of Supervisors and has served as a San Luis Obispo County Supervisor since 1998. Achadjian is a cofounder and director of Santa Lucia Bank and the owner of three service stations in the City of Arroyo Grande. As a member of the Board of Supervisors, he has served as a member of the San Luis Obispo County Air Pollution Control District, Council of Governments and Regional Transit Authority. This position does not require Senate confirmation and the compensation is \$100 per diem. Achadjian is a Republican.

Dan Secord, M.D., 69, of Santa Barbara, has been appointed an alternate member to the California Coastal Commission. He served as a member of the Coastal Commission from 2004 to January 2006 and was a member of the Santa Barbara City Council from 1997 to January 2006. During Secord's tenure on the City Council, he served as mayor pro-tempore and was a

For more information on the matters discussed in this issue of the **Stormwater News** please contact the following Foley & Lardner LLP professional, or the member of the firm who normally handles your legal matters.

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member of the Environmental Quality Committee for the League of California Cities and the Santa Barbara County Air Pollution Control District Board. From 1969 to 2000, Secord was a physician in private practice. This position does not require Senate confirmation and the compensation is \$100 per diem. Secord is a Republican.

Inland Empire Receives \$17.3 MM for Recycled Water

(California Water Quality Control Board) **NEWS RELEASE.** ONTARIO State Water Resources Control Board member Arthur G Baggett, Jr., presented a check today for \$17.3 million for phase two of the Inland Empire Utilities Agency Regional Recycled Water Distribution System. The phase two project is expected to begin construction in August 2006. When finished, the project will deliver an additional 9,184 acre-feet per year of recycled water that would otherwise literally wash down the drain.

"This is an excellent example of taxpayer-approved funds being used to promote the use of recycled water throughout the state," said Baggett. "The objective of the State Water Board's Water Recycling Funding Program is to replace potable water supplies, where possible, with recycled water for purposes such as industrial use, landscape irrigation and recharging groundwater."

The \$17.3 million dollar check delivered by Baggett represents \$4 million from a Proposition 50 Water Recycling Program grant along with a \$13.3 million loan from the State Revolving Funding program. Phase one of the Inland Empire Utilities Agency Recycled Water Distribution System received a \$5 million grant and \$15.2 million loan from the State Water Board and is already delivering more than 10,000 acre-feet per year of recycled water. Customers include the Etiwanda Avenue Electrical Generating Facility, Empire Lakes Golf Course and Kaiser Permanente.

State Water Board Representative Celebrate East by Mud Recycled Water Authority

(California Water Quality Control Board) **NEWS RELEASE.** PLEASANTON State Water Board representatives also joined in the kickoff celebration today for the Dublin-San Ramon East Bay Municipal Utility District Recycled Water Authority (DERWA) San Ramon Valley Water Recycled Program. The event was held at the newly completed state-of-the-art treatment plant, which will produce recycled water for large irrigation customers in the San Ramon Valley.

Using recycled water to keep the communities green will save fresh water for purposes such as drinking, fulfilling a need that will be increasingly important during times of drought and as water demand grows.

The State Water Board provided a \$5 million Proposition 13 Water Recycling Program grant and a \$24 million Water Recycling Construction loan from Proposition 13 and 1984 Bonds for the San Ramon Valley Water Recycled Program project.

Treatment BMPs: Caltrans Report Summarizes Technology Review

(Water Quality News Flash, June 5, 2006) The technologies assessed include the latest innovations in permanent storm water treatment and control, as well as existing technologies currently in use by municipalities and Departments of Transportation in

other states. Technologies range from below-grade infiltration to drain inserts. The report includes 127 technology fact sheets. In addition to new technologies, these include past and ongoing pilot technologies as well as approved technologies currently in the Caltrans Storm Water Management Plan (SWMP). Favorable evaluations of new technologies can lead to Caltrans pilot studies to gather cost and performance data. Successfully piloted technologies may then be approved and added to the Department's SWMP for use throughout the state.

Posted: <http://www.mastep.net/documents/caltrans%20treatment%20bmp%20technology%20report.pdf>

Lake Tahoe TMDL: Model Produces Revised Pollutant Budget

(Water Quality News Flash, May 30, 2006) This TMDL for sediment and nutrients uses very detailed source modeling to identify targets for reductions. A recent TMDL presentation described the modeling approach and summarized the results. Source categories include groundwater, stream channel erosion, shoreline erosion, atmospheric deposition and upland (general watershed contributions). The upland category contributes the majority of the phosphorous and fines (fines are small particles that cause most of the reduction in clarity). Interestingly, contributions from atmospheric deposition are also significant: 51% of nitrogen, 16% of phosphorous and 9% of total fines. The majority of deposited air pollutants are assumed to be generated in the Tahoe basin.

Posted: [very large file!] http://www.pathway2007.org/assets/APRIL_MAY_06/TMDL.pdf

Proposed Vehicle Legislation: Bills Intended to Help Fund Programs –

(Water Quality News Flash, May 30, 2006)

- *Fees from vehicle registration* - Assembly Bill 2838 (Pavley) would give 20 coastal and Bay Area counties the option of increasing vehicle registration fees by up to \$6 per vehicle to fund specified clean water projects and programs. A similar bill last year was vetoed.

New bill: http://www.leginfo.ca.gov/pub/bill/asm/ab_2801-2850/ab_2838_bill_20060417_amended_asm.html

- *Fees from brake pad sales* – AB 2996 (Levine) would add a one dollar tax to brake pads to generate a fund to be used to address water quality problems caused by brake pad residues. The findings in the bill state: "Automobile brake pads contribute to nonpoint source pollution and environmental degradation, through the release of copper and other contaminants." The accumulated funds would be used to address the adverse impacts of automobile brake pads. Interestingly, the legislation does not propose the use of alternatives for copper in brake pads.

Posted: http://www.leginfo.ca.gov/pub/bill/asm/ab_2951-3000/ab_2996_bill_20060406_amended_asm.html

CIWQS: State Board's Integrated Data System

(Water Quality News Flash, May 30, 2006) The *California Integrated Water Quality System* (CIWQS) is a new computer system for the State and Regional Water Boards to track information on water quality and manage permits, inspections, violations and enforcement activities. CIWQS also includes an electronic Self Monitoring Report (eSMR) for submission of monitoring reports. It is being phased in by Region.

Posted: <http://www.swrcb.ca.gov/ciwqs/index.html>

Notice of Opportunity For Public Comment On A Proposed Amendment to the Water Quality Control Plan For The Central Coast Region to Incorporate a Total Maximum Daily Load (TMDL) For Nitrate-Nitrogen in San Luis Bispo Creek

The State Water Resources Control Board (State Water Board) will now accept comments on an amendment to the Water Quality Control Plan (Basin Plan) for the Central Coast Region that would establish a TMDL for Nitrate-Nitrogen in San Luis Obispo Creek. The proposed amendment and the State Water Board item language and draft resolution are available on the State Water Board's Web site at <http://www.waterboards.ca.gov/tmdl/tmdl.html> or by request. The proposed amendment was adopted by the Central Coast Regional Water Quality Control Board (Central Coast Water Board) on September 9, 2005. The State Water Board expects to consider the proposed amendment at a future meeting. Notice of that meeting will be published separately.

San Luis Obispo Creek is not meeting standards due to elevated nitrate-nitrogen concentrations. These elevated concentrations are impairing the designated beneficial use of the municipal and domestic supply (MUN) of water. This TMDL addresses the impairment of MUN and articulates an implementation plan to meet water quality standards by the year 2012. Over 90 percent of the nitrate-nitrogen loading in the watershed has been found to be caused by croplands and discharge from the San Luis Obispo Water Reclamation Facility (WRF). The TMDL sets a numeric target of 10 mg/L, which is equivalent to the existing Basin Plan objective of nitrate-nitrogen for protecting the MUN beneficial use.

An effluent limit for the WRF discharge will be added to the existing National Pollutant Discharge Elimination System permit regulating this discharge. At the time of the permit renewal, staff will recommend that the Central Coast Water Board issue the WRF a Cease and Desist Order that includes a time schedule to meet the effluent limit. The limit will be incorporated at the next permit renewal, scheduled for 2007.

Parties responsible for irrigated agriculture will be required to meet the conditions set forth in the Conditional Waiver of Waste Discharge Requirements for Discharges to Irrigated Lands. Meeting the provisions of the conditional waiver will result in achieving the allocations assigned to the cropland source.

Bacteria at the Beach? Not Always a Sign

(LA Times, 6/5) "[UCLA researchers have found that the wet sand of some enclosed, family-friendly beaches in Southern California may harbor higher levels of certain bacteria — and by extension certain pathogens — than unsheltered beaches with better water circulation.](#)"

Company Fined Over CWA in Santa Maria

(SLO Tribune, 6/3) "[Greka Energy has agreed to pay the U.S. Environmental Protection Agency \\$127,500 for alleged violations of the federal Safe Drinking Water Act, officials said.](#)"

Cargill Fined Over Toxic Spill

(San Jose Mercury, 6/1) "[State water officials have fined Cargill Salt \\$71,000 after the Newark firm spilled thousands of gallons of toxic brine last year along the eastern shore of San Francisco Bay.](#)"

Coastal Panel Urged to Say No

(Calcoast Update, June 6, 2006) The staff of the state Coastal Commission on Friday recommended that the panel reject a controversial proposal by a company part-owned by actor Clint Eastwood to develop parts of the Del Monte Forest in Pebble Beach.

Posted: <http://www.calcoast.org/news/coast.htm>

SOUTHERN CALIFORNIA

Los Angeles Trash TMDL: Temporary Set-aside

(Water Quality News Flash, May 30, 2006) Earlier this year, the California Court of Appeals declared the trash TMDL for the LA River void and ordered the Water Boards to set aside the TMDL and not implement it until it had been brought into compliance with the California Environmental Quality Act (see *NewsFlash 06-06*). This TMDL has substantial requirements on storm water runoff: the numeric goal is zero trash and the implementation plan requires a 10 percent reduction in trash loading per year. The Board is following up on the Court decision with a formal resolution temporarily setting aside the TMDL. The hearing will be June 8; comments are due June 1.

Posted: http://www.waterboards.ca.gov/losangeles/html/bpaRes/bpa_td/bpa_49_New_td.html

LA MS4 Permit – Changes Proposed to Implement Dry Weather Bacteria TMDL

(Water Quality News Flash, June 5, 2006) The staff of Los Angeles Regional Board is proposing that the Board “consider reopening the County of Los Angeles Municipal Storm Water Discharge Permit to include a dry weather prohibition on flows

containing bacteria to the Santa Monica Bay." The intent is to support implementation of the Santa Monica Bay Beaches Dry-Weather TMDL by including the waste load allocations from the TMDL. As restrictive as it sounds, the actual prohibition is that the discharges result in sampling showing shoreline exceedances in excess of those specified in the TMDL.

The waste load allocations include the following: 1) During summer dry weather (April 1 to October 31), discharges shall not cause an exceedance of the single sample bacteria objectives (from the Ocean Plan); 2) During winter dry weather (November 1 to March 31), discharges shall not cause exceedance of the lesser of exceedance days at a designated reference site; or exceedance days based on past monitoring data. In addition, discharges are prohibited from causing exceedances of the geometric mean bacteria objectives at any time. Compliance may be difficult depending on the proximity of the monitoring stations to runoff locations. The Dry Weather TMDL is considered significantly easier to implement than the Wet Weather TMDL. Comments on the permit amendments are due June 20;

Posted: http://www.waterboards.ca.gov/losangeles/html/programs/stormwater/lams4_CAS004001.html

Once-dirty O.C. Beach Gets Clean bill of health

(LA Times, 5/27) "[Dana Point officials have spent nearly \\$20 million in recent years trying to clean the harbor and ocean, always with terrible results. Until now.](#)"

Sea Turtles Making Waves in San Diego Bay

(San Diego Union-Tribune, 5/30) "[How sea turtles came to live in San Diego Bay, far from their kin in the tropical waters off Mexico and Central America, is a mystery.](#)"

Water Rate Hike Called Disastrous to Farmers

(SD Union Tribune, 5/27) "[Farmers here face a 21.4 percent increase in water rates if the City Council approves a proposed hike next month.](#)"

Farm Agrees to Fine to Settle Environmental Suit

(SD Union Tribune, 5/27) "[The city filed a complaint after inspectors found multiple violations by Leslie Farms involving its storage of petroleum products on the farm, located off Black Mountain Road.](#)"

Carlsbad Algae to be Eradicated Within Weeks

(NC Times, 6/2) "[The state Department of Fish and Game is expected to declare within the next six weeks that the long battle to remove invasive algae from the Agua Hedionda Lagoon in Carlsbad is finally over.](#)"

Imperial Beach Contest Postponed Due to Sewage

(SD Union Tribune, 6/1) "[A body boarding contest is rescheduled for Saturday after sewage kept beachgoers out of the water last weekend.](#)"

No-flush Urinals Thwarted in Los Angeles

(Bloomberg, 6/1) "[Every time someone flushes the urinal in his office men's room, multimillionaire Marc Nathanson gets peeved. The gallon or more of water lost is a reminder that parched Los Angeles still prohibits waterless urinals made by his Falcon Waterfree Technologies LLC.](#)"

Coronado Ranked Among Nation's Top 10 Beaches

(Calcoast Update, June 6, 2006) Dr. Stephen P. Leatherman, or "Dr. Beach," released his annual list of the 10 best beaches in the United States recently. CalCoast member, the city of Coronado is ranked eighth. Fifty criteria are used to evaluate the beaches, including water and sand quality, as well as facilities and management. For more information about the list and the beaches, go to www.drbeach.org.

EPA: Public Comment for L.A. Biosolids Permit

(EPA, 6/6) **NEWS RELEASE.** "[The U S Environmental Protection Agency is soliciting public input on a proposed permit for injecting municipal biosolids into the ground beneath the city's Terminal Island Treatment Plant in San Pedro.](#)"

Escondido Businesses Facing Sewer Hikes

(NC Times, 6/7) "[For a typical restaurant such as Ayyash's, that means the monthly sewer tab would go up from about \\$150 a month to \\$200, nothing that would break the bank, but also no small change for restaurateurs dealing with other rising business costs.](#)"

ANNOUNCEMENTS

Clean Water Summit 2006

This is a reminder that the 2006 Clean Water Summit will be held at the University of San Diego, Joan B. Kroc Institute for Peace and Justice on Friday, June 30th. This year's program is entitled "San Diego County's Integrated Regional Water Management Plan" and will focus on the interrelatedness of water supply, water quality, and habitat protection.

Due to the enormous response, we are no longer able to accept sponsorships for this year's Summit. We would like to thank all of our sponsors at this time. A special thanks to our Platinum Level Sponsors, including Dudek, Weston Solutions, Rick Engineering Company, and the San Diego County Water Authority. Thank you also to our Gold Level Sponsors, including Bio

Clean Environmental Services, Inc., Foley & Lardner LLP, the American Public Works Association, the San Diego County Regional Airport Authority, and the University of San Diego Bio-Oceans Club.

If you have not yet registered for the Clean Water Summit, please RSVP no later than June 23, 2006 by visiting our website at www.projectcleanwater.org.

We look forward to seeing you on June 30th!

CONSTRUCTION STORM WATER COMPLIANCE AND STORM WATER POLLUTION PREVENTION PLAN (SWPPP) TRAINING SEMINAR

Date: Wednesday, June 21, 2006

Time: 8:00 AM – 12:00 PM

Location: Rick Engineering Company
5620 Friars Road
San Diego, CA 92110

Cost: \$100.00 made payable to *Rick Engineering Company*

To Register: Call Nina Duschl - (619) 688-1401

Presenters: **Jane Ledford**, Environmental Project Manager, Rick Engineering Company (former Regional Board Regulator)
Kelly Doyle, Environmental Specialist, Rick Engineering Company (former Water Quality Specialist with the Hawaii Army National Guard)

The SWPPP Training Seminar will include the following topics:

- Regulatory Framework
- Proper BMP Application and Installation
- SWPPP Implementation and Up-keep
- Sampling
- Weather Triggered Action Plans (WTAP)
- “What to do when the Regulator visits the site”
- Questions and Answer Periods
- SWPPP Quiz
- SWPPP Training Course Certification of Attendance

Webcasts – *Alternative Practices for Highway Stormwater Management*

(Water Quality News Flash, June 5, 2006) The Izaak Walton League, with support from the Federal Highway Administration and EPA, is presenting a four-part Webcast series on highway stormwater management using alternative practices such as low impact design (LID). The slides from the first introductory presentation are posted and focus on activities at the Washington State and Maryland Departments of Transportation.

http://www.iwla.org/fileadmin/template/docs/webc/hwy_strmwtr_presentations.pdf Interestingly, Maryland DOT has shifted away from infiltration due to failures at many facilities and is focusing more on swales and other BMPs. The next Webcast is June 15 and will address planning issues. To sign-up go to: <http://www.iwla.org/index.php?id=179>

Invasive Algae Forum Planned in Carlsbad

(NC Times, 5/27) "[The group that's been fighting an infestation of invasive algae in Agua Hedionda Lagoon will hold a free community forum from 6 to 8 p.m. Thursday.](#)"

Teleconference: Permits Not Needed for Transfers

(EPA, 5/31) **NEWS RELEASE.** "[Teleconference to discuss the proposed rule that permits will not be needed for water transfers, and how this benefits communities. The proposal will clarify unresolved questions from several legal cases, including one decided by the U.S. Supreme Court.](#)"

HEARINGS

CA AB 1877

Author: Nakanishi (R)

Title: Natural Community Conservation Plan

Introduced: 01/19/2006

Last Amend: 04/27/2006

Location: Assembly Appropriations Committee

Summary: Requires the Department of Fish and Game to enter into a planning agreement with the state Reclamation Board to prepare a natural community conservation plan that encompasses the Sacramento and San Joaquin Drainage District, to provide comprehensive management and conservation of multiple wildlife species. Exempts from lake or streambed alteration agreement and notice provisions of existing law, a flood control or flood management activity identified in any implementation agreement for that plan.

Status: 05/25/2006 In ASSEMBLY Committee on APPROPRIATIONS: **Heard, remains in Committee.**

CA AB 1899

Author: Wolk (D)

Title: Land Use: Flood Protection

Introduced: 01/25/2006

Last Amend: 04/27/2006

Location: Assembly Second Reading File

Summary: Requires a city or county that determines that a project will require a certain environmental document under the Environmental Quality Act and meets certain conditions, to identify all relevant flood management agencies and to require those agencies to submit a flood protection assessment. Provides the agency is not subject to civil liability in connection with the preparation of the assessment under certain circumstances Requires the filing of a flood hazard zone for the Sacramento and San Joaquin rivers.

Status: 05/25/2006 From ASSEMBLY Committee on APPROPRIATIONS: **Do pass as amended.**

CA AB 2515

Author: Ruskin (D)

Title: Water Conservation

Introduced: 02/23/2006

Last Amend: 04/17/2006

Location: Assembly Second Reading File

Summary: Requires the Energy Resources Conservation and Development Commission to establish water efficiency standards for residential and commercial water-using appliances and other water-using applications and to prepare and submit a report that sets forth recommendations regarding the utilization of water use ratings for those appliances and products. Requires the Public Utilities Commission to prepare and submit a report regarding an accounting method for water conservation and efficiency programs.

Status: 05/25/2006 From ASSEMBLY Committee on APPROPRIATIONS: **Do pass as amended.**

CA AB 2901

Author: Wolk (D)

Title: Mercury Monitoring and Remediation

Introduced: 02/24/2006

Last Amend: 05/03/2006

Location: Assembly Appropriations Committee

Summary: Enacts the Mercury Monitoring and Remediation Act. Establishes the Mercury Monitoring and Remediation Fund to be administered by the State Water Resources Control Board. Authorizes the state board to expend money in the fund, upon appropriation by the Legislature, for unspecified purposes.

Status: 05/25/2006 In ASSEMBLY Committee on APPROPRIATIONS: **Heard, remains in Committee.**

CA SB 1640

Author: Kuehl (D)

Title: Water

Introduced: 02/24/2006

Last Amend: 04/19/2006

File: 56

Location: Senate Second Reading File

Summary: Relates to a report of hydrologic conditions of water project facilities to each contractor, water diversions covered by a permit or license for small domestic or livestock stockpond uses, civil liability for failing to file a statement for a diversion or use, the State Water Plan, and coordination of an urban water management plan with utilities that provide electric or gas service. Establishes a groundwater monitoring program for the monitoring of the depth to groundwater in a particular basin.

Status: 05/25/2006 From SENATE Committee on APPROPRIATIONS: **Do pass.**

CA AB 1899

Author: Wolk (D)

Title: Land Use: Flood Protection

Introduced: 01/25/2006

Last Amend: 05/26/2006

Location: ASSEMBLY

Summary: Requires a city or county that determines a project will require a certain environmental document under the Environmental Quality Act and meets certain conditions, to identify all relevant flood management agencies and to require those agencies to submit a flood protection analysis. Provides the agency is not subject to civil liability in connection with the preparation of the analysis under certain circumstances Requires the filing of a flood hazard zone maps for the Sacramento and San Joaquin rivers.

Status: 05/31/2006 In ASSEMBLY. Read third time. **Passed ASSEMBLY. *****To SENATE.**

CA AB 2515

Author: Ruskin (D)

Title: Water Conservation

Introduced: 02/23/2006

Last Amend: 05/26/2006

Location: SENATE

Summary: Requires the Energy Commission to prescribe building and construction standards that increase the efficiency in the use of water for new residential and nonresidential buildings and water conservation design standards for such buildings. Requires the Public Utilities Commission to submit a report describing and recommending an accounting method for evaluating the direct financial costs and benefits of such conservation and efficiency programs to customers of water corporations.

Status: 05/31/2006 In ASSEMBLY. Read third time. **Passed ASSEMBLY. *****To SENATE.**

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