

A COMPILATION OF STORMWATER AND OTHER RELATED WATER NEWS

By S. Wayne Rosenbaum, Foley & Lardner LLP

NATIONAL NEWS

A Close Call for the Clean Water Act

(San Jose Mercury, 6/22) **OPINION.** ["The most alarming aspect of Monday's U.S. Supreme Court decision on the Clean Water Act is that four justices were ready to put one of the nation's most successful environmental laws through the paper shredder."](#)

Justices Muddied Waters with Wetlands Ruling

(MSNBC, 6/21) ["After fighting the federal government for more than 18 years, Keith Carabell is resigned to more uncertainty now that the U.S. Supreme Court ordered another look at his plan to build condominiums in a wetland area."](#)

Court Splits over Wetlands

(Ventura County Star, 6/21) **EDITORIAL.** ["The Supreme Court has waded into the Clean Water Act and left the waters much muddied. In a wildly divided decision — five separate opinions — the court came up one justice short of severely rolling back the Army Corps of Engineers' authority to protect wetlands under the 1972 Clean Water Act."](#)

House Legislation Would Exempt Homebuilders from Stormwater Permits

(This Week in Washington, June 16, 2006) Congressman John Duncan (R-TN), Chair of the House Subcommittee on Water Resources, introduced legislation that would exempt residential home builders from seeking permits to discharge stormwater from construction sites into a city or town sanitary sewer system. The Stormwater Enforcement and Permitting Act of 2006, H.R. 5558, would streamline existing permitting procedures for residential developers by removing the requirement for a stormwater permit if the developer discharges into a municipal system that already has a Clean Water Act permit. If enacted, the legislation would potentially affect 70,000 builders and developers who are members of the National Association of Home Builders (NAHB), which strongly supports the bill. The bill has thirteen Republican and five Democratic co-sponsors. The bill is aimed primarily at easing the concerns of residential developers, who spend between \$1,500 and \$4,500 per acre to comply with federal stormwater regulations, according to a 2005 survey of NAHB members. Currently,

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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developers who disturb an acre of land or more and operators of municipal stormwater sanitary sewer systems are both required to obtain National Pollutant Discharge Elimination System permits for stormwater runoff under rules adopted by the Environmental Protection Agency in 2003. The bill would also exempt from permitting requirements developers building on sites that are deemed to have a minimal potential for soil erosion, calculated using a "universal soil loss equation" developed by the Department of Agriculture. (PS)

New EPA effort aims to flush out water wasters

(SD Union Tribune, 6/13) ["The U.S. Environmental Protection Agency yesterday rolled out a nationwide program designed to help consumers save water with every purchase of toilets, faucets and irrigation equipment."](#)

EPA's BMPs – Revised menu

(Water Quality News Flash, June 12, 2006) U.S. EPA has revised its National Menu BMPs. This listing uses a broad definition of BMPs and the listed BMPs range from pollution prevention to illicit discharge detection and elimination. The new *Menu* now includes a comment feature so that readers can provide suggestions, new data, and additional references.

Posted: www.epa.gov/npdes/menuofbmps

Final Rule for Storm Water Discharges Associated with Oil and Gas Field Operations

(NPDES News - June 08, 2006) EPA has finalized changes to its storm water regulations as they apply to field operations, including construction activities, at oil and gas exploration, production, processing or treatment operations or transmission facilities. This final action codifies changes resulting from Clean Water Act amendments in the Energy Policy Act of 2005 signed by the President on August 8, 2005. The Administrator of EPA signed the final rule on June 7, 2006 which was published in the Federal Register, and is effective on June 12, 2006. You can view the rule and a descriptive Fact Sheet at <http://www.epa.gov/npdes/stormwater/oilgas>.

The final rule specifies that storm water discharges from oil and gas-related construction activities are exempt from NPDES permit coverage, except in very limited instances. EPA interprets this exclusion to apply to construction of drilling sites, waste management pits, and access roads, as well as construction of the transportation and treatment infrastructure such as pipelines, natural gas treatment plants, natural gas pipeline compressor stations, and crude oil pumping stations. Construction activities that result in a discharge of a reportable quantity release or that contribute pollutants (other than non-contaminated sediment from construction) to a violation of a water quality standard are still subject to permit coverage. This final action also adds complementary text encouraging operators of oil and gas field activities or operations to implement and maintain Best Management Practices (BMPs) to minimize erosion and control sediment during and after construction activities to help ensure protection of surface water quality during storm events. This rulemaking applies to all States, Federal

lands and Indian Country regardless of whether EPA or a State is the NPDES permitting authority. However, this rule is not intended to interfere with the States' authority to regulate any discharges, pursuant to state law, through a non-NPDES permit program.

EPA Nonpoint Source News-Notes – Focus on Stormwater Issues –

(Water Quality News Flash, June 19, 2006) This regular newsletter addresses topics of interest to storm water managers. Current topics include EPA's *Handbook for Developing Watershed Plans to Restore and Protect Our Waters* and Portland's efforts to capture and infiltrate as much stormwater as possible. One technique is roadside "rain gardens" fed by runoff draining through curb cuts.

Posted at: <http://www.epa.gov/owow/info/NewsNotes/issue78/78issue.pdf>

Rule Proposed on Effluent from Animal Feedlots

(EPA, 6/22) **NEWS RELEASE.** "[Concentrated animal feeding operations \(CAFOs\), such as large pig, veal and poultry, beef and dairy farms, would continue to be required to properly manage the manure they generate under a rule proposed today by the Environmental Protection Agency.](#)"

CALIFORNIA NEWS

SWRCB Blue Ribbon Panel Evaluates Feasibility of Numeric Effluent Limitations for Stormwater Discharges.

(Stormwater News, June 22, 2006) On June 19, the Storm Water Panel published its recommendations to the State Water Board on the Feasibility of Numeric Effluent Limits Applicable to Storm Water Discharges –

The Panel concluded:

- It is not feasible at this time to set enforceable numeric effluent criteria for municipal BMPs and in particular urban discharges
- Active treatment technologies makes numeric limits feasible for TSS and turbidity associated with storm water discharges at larger construction sites.
- Numeric limits are feasible for some industrial categories.

Final Report is now available on our website at <http://www.waterboards.ca.gov/stormwtr/index.html#news> under "Hot News."

The State Water Board is very interested in hearing comments from interested parties on the recommendations regarding numeric effluent limits from the Storm Water Panel. The State Water Board is most interested in hearing comments focused on the future direction of policies, plans and regulatory measures adopted by the California Water Boards as opposed to the panel's report.

There will be two public meetings (tentatively set for July 21, 2006 in Sacramento and July 28, 2006 in Southern California) where oral comments will be accepted. In addition, the State Water Board will accept written comments received via regular or electronic mail.

Comments should be directed to:

Ms. Song Her, Clerk to the Board
Executive Office
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100.
(Fax: 916-341-5620 or email: commentletters@waterboards.ca.gov)

Stream and Wetlands Policy – Water Boards Post Public Comments

(Water Quality News Flash, June 12, 2006) As discussed in *NewsFlash 06-15*, the San Francisco Bay and North Coast Boards are developing Basin Plan amendments to provide protections for stream and wetlands systems, including riparian areas and floodplains. The two boards will propose a single policy intended to be a “model” for other Regional Boards. The public comments from the first workshop held by the SF Board are now posted:

<http://www.waterboards.ca.gov/sanfranciscobay/streamandwetlands.htm> Concerns included: impervious surfaces and flash runoff and effectiveness of best management practices (BMPs). Comments from the North Coast Board’s recent public workshop are also posted: <http://www.waterboards.ca.gov/northcoast/programs/basinplan/swspp.html>

Water Quality Board Cracks Down on Farmers

(Sacramento Bee, 6/23) "[Water-quality enforcers acted Thursday to ensure the state will be able to identify farmers who discharge water into Central Valley streams, saying a network of voluntary coalitions were not adequately reporting membership or pollution data.](#)"

State Raises Stakes in Effort to Regulate Runoff

(Contra Costa Times, 6/22) "[State regulators on Thursday extended by five years a highly controversial program designed to rein in historically unregulated pesticides and other pollutants that wash off millions of acres of California farms.](#)"

Water Runoff Program Gains Five More Years

(Stockton Record, 6/23) "[Water officials extended a controversial farm water monitoring program Thursday after pleas from Valley residents who say their water's too dirty to drink.](#)"

Bond Measure Gets on Fall Ballot

(SD Union Tribune, 6/14) "[Another bond measure has joined an already crowded November ballot, this one asking voters to approve spending \\$5.4 billion on water, parks and coastal protection.](#)"

Ocean Protection, Clean Beaches – State Board to Fund Projects for \$12 Million

(Water Quality News Flash, July 19, 2006) At least \$10 million of the \$43.1 million in Proposition 50 funding is reserved for ocean protection projects. Several of the five projects currently proposed for approval are related to stormwater:

- La Jolla Shores ASBS Dry Weather Flow and Pollution Control Program \$3.6M
- Epidemiology Study of Swimmer Health Risk from Nonpoint Sources of Bacteria \$3M.
- North Coast Stormwater Coalition's Non-Point Source Pollution Prevention Prog.\$0.4M
- Implementation of rapid indicator methodology for measuring fecal bacteria Statewide \$1.5M
- Monitoring and mitigation to address fecal pathogen pollution along California coast \$1.5M.

In addition, the Board is proposing to fund two projects as part of the Clean Beaches Initiative Grant Program,:

- Poche Beach Ultraviolet Light Bacteria Disinfection System (Orange Co.) \$1.5M
- Alta Vista Park Diversion and Re-Use Project (City of Redondo Beach) \$0.8M

All described on the Board's meeting agenda: <http://www.swrcb.ca.gov/agendas/2006/june/062106mtg.html> Grant and Loan Program: <http://www.swrcb.ca.gov/funding/index.html>

Areas of Special Biological Significance (ASBS) – *State Issues Draft of Proposed Special Protections*

(Water Quality News Flash, July 19, 2006) The proposal addresses permitted storm water discharges and nonpoint source discharges, including discharges resulting from habitat modification. These special protections would apply to the dischargers who submitted applications for an exception to the Ocean Plan's ban on discharges to ASBS. Staff level stakeholder meetings will be held in late July: http://www.swrcb.ca.gov/plnspols/oplans/docs/special_protections_jun142006_draft.pdf

Lawsuit: Stop Dumping Wastewater in Deer Creek

(Stockton Record, 6/16) "[An environmental group and a fishing group this week filed a lawsuit to stop treated wastewater - that potentially could hurt federally protected fish - from being dumped into a tributary of the Consumnes River and the Delta.](#)"

More Seaside Golf Before Panel

(CalCoast Update, June 14, 2006) The state Coastal Commission plans to review a proposed course at Pebble Beach. Agency staffers call for rejecting the project. <http://www.calcoast.org/news/coast.htm>

Speaker Assailed for Coastal Panel Appointments Before Golf Plan Vote

(CalCoast Update, June 14, 2006) SACRAMENTO – Assembly Speaker Fabian Núñez appointed four people as alternates to the California Coastal Commission yesterday, a move the Sierra Club and at least one commissioner said he had no authority to do. <http://www.calcoast.org/news/coast.htm>

San Francisco Bay Spill Nets Record Fine

(San Jose Mercury News, 6/8) "[State water regulators have slapped South San Francisco with a \\$516,000 fine -- the largest water pollution fine ever levied against a Bay Area city -- for repeatedly spilling raw sewage into San Francisco Bay over the past three years.](#)"

Sewage Overflow Bars Alameda Beach Access

(Oakland Tribune, 6/8) "[About 2,000 to 3,000 gallons of sewage have spilled into the water off Robert W. Crown Memorial State Beach, causing officials to limit public access to the area after an overflow from a manhole at Alameda Towne Centre was detected Tuesday.](#)"

Trading Pollutant Allocations – Option for Stormwater; EPA Website –

(Water Quality News Flash, June 12, 2006) CA storm water agencies may eventually have the option of trading pollutant allocations as a cost-effective method of meeting TMDL loadings, especially for when they are unable to meet the required reductions. For example, some agencies may have difficulty demonstrating the needed 50% reduction in mercury loading which has been assigned to urban runoff by the proposed San Francisco Bay Mercury TMDL. These agencies, however, may be able to “trade” or buy their assigned loading reductions by contributing to mercury reductions elsewhere such as mine cleanup projects. When the State Board remanded this TMDL back to the Regional Board (see NewsFlash 05-13), they also instructed State Board staff to develop an “offset” or trading policy to provide an alternative method for dischargers to meet mercury allocations other than eliminating more mercury from their own discharges. This policy has not yet been developed so the San Francisco Board is proposing to include a re-opener provision in the revised TMDL so that permits can be revised at a later date to incorporate offset provisions.

At a recently concluded Water Quality Trading Conference, U.S. EPA announced their goal to increase the number NPDES permits that have trading provisions by 33%. Currently 93 permits, most in the Northeastern U.S., include trading provisions. EPA also plans to issue guidance on trading for the agriculture community and a trading toolkit for permit writers. EPA site: <http://www.epa.gov/owow/watershed/trading.htm> Presentations from the conference posted at: <http://www.envtn.org/> .

Campaign Launched Against Dairy Pollution

(SD Union Tribune, 6/10) "[Robert F. Kennedy Junior joined environmental groups today to launch a campaign against huge dairies that they blame for polluted groundwater in the Central Valley.](#)"

SLO Supervisors to Review New Runoff Plan

(SLO Tribune, 6/10) "[The county Board of Supervisors on Tuesday is expected to consider an improved plan for reducing polluted storm runoff.](#)"

Resources Agency Proposes Changes to CEQA Regulations

(CBIA Monday Morning Report, June 19, 2006) The California Resources Agency is proposing to update the CEQA Guidelines ("the Guidelines") to reflect legislative changes made to CEQA over the last several years. Among the more notable issues will be updating the regulations to make them consistent with SB 610 (Costa), the law enacted in 2001 to require water supply assessments. The Guidelines will also be updated to conform to SB 1925 (Sher), legislation enacted in 2002 which was purported to provide exemptions for affordable housing in urban infill markets but which has yielded virtually no infill units, as CBIA predicted. In all, 21 Guideline sections are proposed for amendment, repeal or addition. CBIA will be submitting comments on the Guidelines, which are due by July 31. The proposal may be viewed at <http://ceres.ca.gov/ceqa/>

SOUTHERN CALIFORNIA

Hearing Delays San Diego Stormwater Permit

(NC Times, 6/22) "[San Diego County's regional water cops listened to both sides Wednesday and decided it would take at least two months longer than expected -until October or November - to create their new, tougher-than-ever stormwater regulations.](#)"

LA Trash TMDL – *Scoping Meeting*

(Water Quality News Flash, June 19, 2006) The Los Angeles Regional Water Quality Control Board has announced a scoping meeting regarding the "functionally equivalent" substitute environmental documents supporting the LA River Trash TMDL. They request information regarding several topics including how jurisdictions would comply with the TMDL and "reasonably foreseeable significant environmental impacts associated with those means of compliance." The TMDL requires storm water permittees to phase-out all trash loading to the river over a 10 year period. The meeting is scheduled for June 28, 2006 in Los Angeles.

Notice: http://www.waterboards.ca.gov/losangeles/html/meetings/tmdl/LARiver/06_0616/CEQA_Scoping_Meeting.pdf

Escondido Farmers Breathe Sigh of Relief

(SD Union Tribune, 6/15) "[Farmers scored a major victory last night when the City Council approved a 7 percent increase in agricultural water rates instead of a proposed 16 percent hike.](#)"

Escondido OKs Water Rate Increases

(NC Times, 6/15) "[The City Council on Wednesday attempted to help shore up a \\$3.3 million water fund deficit by increasing water and sewage rates, while at the same time not causing too large of a financial hit to area farmers.](#)"

Carlsbad to Pay Fine for Stormwater Violations

(NC Times, 6/15) "[The Regional Water Quality Control Board unanimously agreed Wednesday to settle on a \\$23,900 fine for stormwater-control violations at Carlsbad's municipal golf course construction site last fall.](#)"

SDCWA delays Decision on Water Project

(SD Union Tribune, 6/23) "[The San Diego County Water Authority board delayed a decision on whether to approve a large-scale ocean-water desalination project on the Carlsbad coast after directors said yesterday they needed more time to study the proposal.](#)"

Carlsbad Sees Two Desalination Project Plans

(SD Union Tribune, 6/21) "[Last week, the Carlsbad City Council approved an application by a private company to build a seawater desalination plant on the grounds of the Encina Power Station.](#)"

Carlsbad OKs Desalination Plant

(SD Union Tribune, 6/14) "[The City Council unanimously approved an ocean-water desalination plant last night, putting it in the forefront of a controversial technology designed to protect the city from droughts.](#)"

Carlsbad Council Approves Desal Project

(NC Times, 6/14) "[A proposal to build a nearly \\$300 million plant capable of turning saltwater into drinking water cleared its last city hurdle Tuesday night.](#)"

Casino Plans Freeze in Wake of Water Settlement

(NC Times, 6/14) "[An Indian tribe has backed off of plans to build a casino and hotel along one of the most crowded roads in central Riverside County, saying it places higher value on the water rights it is gaining in a sort of exchange.](#)"

San Diego Approves Settlement Over Sewer

(San Bernardino Sun, 6/13) "[The city of San Diego will continue to upgrade its sewage collection system over the next year under a partial legal settlement with environmentalists that was unanimously approved by the City Council yesterday.](#)"

EPA to Send Team to Halaco

(Ventura County Star, 6/10) "[Two years after metal recycling company Halaco Engineering Co. closed its doors in Oxnard, the U.S. Environmental Protection Agency is leading an investigation to determine if the site should be deemed hazardous and placed on the country's Superfund list for cleanup.](#)"

Sewage Spills near Lindbergh Field

(NC Times, 6/9) "[A sewage spill fouled a stretch of harbor coastline near Lindbergh Field Thursday, authorities reported.](#)"

ANNOUNCEMENTS

Fish Mercury Project – *First Annual Meeting*

(Water Quality News Flash, June 12, 2006) The presentation will include the latest results from extensive sampling of thousands of sport fish and biosentinel fish, discussion of progress and plans for developing and communicating consumption advice in the Central Valley – June 13 and 14 in Sacramento. Sign-up at www.sfei.org/cmr/fishmercury

Water-themed County Fair Begins at Del Mar

(NC Times, 6/9) "[The water-themed 2006 San Diego County Fair begins Saturday, and sprinkled throughout the grounds are exhibits and displays featuring Earth's precious resource.](#)"

Announcing New USD Real Estate Program

Go to ULI's website (News Section) for more information on USD's exciting new real estate certification program **geared toward busy real estate executives** or [click here](#) for more information.

HEARINGS

CA AB 1899

Author: Wolk (D)

Title: Land Use: Flood Protection

Introduced: 01/25/2006

Last Amend: 05/26/2006

Committee: Senate Local Government Committee

Hearing: 06/21/2006 9:30 am

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: 06/08/2006 To SENATE Committees on LOCAL GOVERNMENT and JUDICIARY.

Foley & Lardner LLP bulletins are intended to provide information (not advice) about important new legislation or legal developments in the Stormwater area. The great number of legal developments does not permit the issuing of an update for each one, nor does it allow the issuing of a follow-up on all subsequent developments. This newsletter is not legal advice and should not be construed as legal advice. If you need legal advice please contact your attorney.

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