

A COMPILATION OF STORMWATER AND OTHER RELATED WATER NEWS

By S. Wayne Rosenbaum, Foley & Lardner LLP

NATIONAL NEWS

A Hot Case

Supreme Court will consider perhaps most important environmental case in recent history If you thought only wonks in Birkenstocks cared about global warming, think again. Last week a coalition of green activists, states and cities, religious groups, energy companies and even a ski resort filed briefs before the U.S. Supreme Court arguing that the Environmental Protection Agency should regulate greenhouse gases like carbon dioxide. (Newsweek)

U.S. Fish and Wildlife Service Must Decide Whether to Delist Bald Eagles by February 2007

(Martin Law Group, September 13, 2006) Ruling in favor of a private land developer, a federal district court last month ordered the U.S. Fish and Wildlife Service ("USFWS") to make a final determination by February of next year on a six-year old proposed rule to delist the bald eagle as a "threatened" species under the Endangered Species Act ("ESA"). *Contoski v. Scarlett*, No. 05-2528, 2006 WL 2331180 (D. Minn. Aug. 10, 2006). [FULL ARTICLE »](#)

Funding for Retrofits – FHWA Issues Guidance –

(Water Quality News Flash, September 11, 2006) The Federal Highway Administration posted guidance in August regarding the expanded eligibility of federal highway funds for use on stormwater and other environmental restoration projects. The new provisions are mainly directed at impacts of highway facilities built prior to the current stormwater requirements. These stormwater measures may be implemented under two basic scenarios:

- As a stand-alone project - one that is developed solely to address stormwater concerns and is not associated with a transportation project that is being developed or is under construction; or
- In conjunction with a project that is currently being developed for the reconstruction, rehabilitation, resurfacing, or restoration of a transportation facility. In this case, the costs for environmental restoration and pollution abatement may not exceed 20 percent of the total cost of the project.

More information: <http://www.fhwa.dot.gov/hep/envrestore.htm>

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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Lead – USGS Estimates Loading from Tire Weights –

(Water Quality News Flash, September 11, 2006) *NewsFlash 05-36* reported on EPA's denial of a petition to control (and maybe ban) lead weights used to balance car tires. The petition was brought under Section 2605 of the Toxic Substances Control Act (TSCA) by the Ecology Center of Ann Arbor and supported by the states of Maine and Minnesota. Lead is one of the pollutants in roadway runoff that often exceeds water quality standards at the point of discharge and is also targeted by some TMDLs in California.

A recent U.S. Geological Survey (USGS) study estimates that roughly 2,000 tons of lead are lost from vehicles annually via tire weights that come loose. At least some of these weights are abraded by traffic or may also be pushed or swept into drainage systems. The European Union is implementing a ban on lead tire weights and reportedly some U.S. car manufacturers are moving toward other materials such as zinc and steel. Unfortunately, zinc is also a significant pollutant of concern in urban runoff. Other sources of lead near roadways include residual lead from the years when leaded gasoline was in use.

<http://pubs.acs.org/subscribe/journals/esthag/40/i15/html/080106news4.html>

State Water Board Awards \$75 Million for Clean Water Projects

(SWRCB, September 7, 2006) SACRAMENTO-The State Water Resources Control Board has awarded approximately \$75 million in grants for a variety of water management and pollution prevention projects. The locally proposed projects focus on watershed management and diffuse sources of pollution referred to as "nonpoint source" problems.

The competitively awarded grants are funded by the state through bonds approved by voters in Propositions 13, 40 and 50. Additional funding may be provided from the federal government's Clean Water Act appropriations.

State Water Board Chair Tam Doduc said after the board approved the grants, "We are making good on the state's promise to protect water in all parts of California. These grants range from the Trinity in the north to the Tijuana River on the Mexican border. We are focused on such diverse environmental challenges as improving Lake Tahoe's watershed to tackling the problem of salinity in the Chino Basin. These projects will make a difference Californians can see."

The State Water Board administers a number of grant and loan programs that help protect human health and the environment by guarding water bodies, improving drinking water and wastewater treatment and cleaning up California's beaches, shores and ocean.

Several additional projects were given provisional approval for funding if any projects fail to use their funding or if more money is available.

DESAL AND RECYCLING

Water Recycling: The Wave of the Future

Serrano's dual-plumbed water system is the first of its kind in the area. Treated water is piped directly to the taps for drinking, to use in

swimming pools and other household uses, while a second set of pipes channels recycled water for all outside irrigation needs. (EDH Telegraph)

CALIFORNIA NEWS

The Comment Period for "Statewide Policy for Once-Through Cooling (CWA 316(b))" Has Been Extended to September 25, 2006 at 5 p.m.

For more information of the above topic, please visit our website at: <http://www.waterboards.ca.gov/npdes/cwa316.html>

Numeric Effluent Limits – Comments on Blue Ribbon Panel Report Posted –

(Water Quality News Flash, September 18, 2006) The *Storm Water Panel of Experts* met in September 2005 and issued their recommendations earlier this year. The comments submitted for the September public meetings as well as the comments submitted on the report are now posted. Nearly 100 comments were submitted altogether including those by Caltrans. Those commenting ranged from industries to Regional Boards.

The San Francisco Bay Area Regional Board, for example, concurred that numeric effluent limits based on pollutant concentration were infeasible for municipal storm water discharges but suggested that alternative forms of numeric measures could be used. The Board proposed tracking the amounts of new impervious surface created and treatment provided, the amount of impervious surfaces retrofitted with treatment, and the dry weather flows diverted to sewage treatment plants. Blue Ribbon report posted: <http://www.waterboards.ca.gov/stormwtr/numericcom.html>

In related news, representatives from the California Stormwater Quality Association (CASQA) met in Los Angeles with representative from environmental groups to discuss CASQA's proposed 4-stage process for bringing storm water into compliance with water quality standards.

Posted: http://www.casqa.org/CASQA%20Progressive%20Approach_09-01-06.pdf

Tortoises and Culverts – *Smoothed Riprap Eases Travel* -

(Water Quality News Flash, September 18, 2006) Several Caltrans projects are featured on the FHWA website showing simple projects that aid wildlife. One of these involved smoothing riprap with gravel to make it easier and safer for Desert Tortoises to access culverts. <http://www.fhwa.dot.gov/environment/wildlifeprotection/>

Feinstein Urges Defeat of Oil-Drilling Legislation

(Calcoast News, September 12, 2006) The Deep Ocean Energy Act, sponsored by GOP Rep. Richard W. Pombo, poses too big of a threat to California's coastal waters, the senator says. <http://www.calcoast.org/news/coast.htm>

Offshore Terminal's Onshore Effect Debated

(Calcoast News, September 12, 2006) Building a floating liquefied natural gas terminal 14 miles off the Ventura County coast may be safer than putting it on shore, but the proposed \$800-million project has triggered intense opposition over its effect on air quality in smoggy Southern California. <http://www.calcoast.org/news/coast.htm>

Marine Sanctuary Idea Bobs Up Again

(Calcoast News, September 12, 2006) WASHINGTON -- Renewed worries about offshore oil drilling and effluent dumping are reviving hopes of extending the southern boundary of the Monterey Bay National Marine Sanctuary to protect waters off the Central California coast. <http://www.calcoast.org/news/coast.htm>

State Proposes Limit for Perchlorate in Drinking Water

(Calcoast News, September 12, 2006) Perchlorate, a toxic ingredient of solid rocket fuel that is contaminating hundreds of wells throughout Southern California, would be limited in drinking water under a new state standard proposed Monday.

<http://www.calcoast.org/news/waterq.htm>

Trashing the Beach a Growing Problem

(Calcoast News, September 12, 2006) Visitors to California's coastline are leaving behind more than temporary footprints in the sand. They're dumping a record amount of garbage and other debris. <http://www.calcoast.org/news/beachrest.htm>

Enforcement – Central Valley Board Takes Action on Construction Runoff –

(Water Quality News Flash, September 11, 2006) The Board Executive Officer issued Administrative Civil Liability Complaints to three developers for violations of a construction storm water permit. The proposed penalties range from \$100,000 to \$900,000. The violations include discharge of sediment-laden storm water to creeks or vernal pools. BMP maintenance problems were also observed at each location. See *Water News*: <http://www.swrcb.ca.gov/rwqcb5/>

Measure Promotes Waterless Urinals, Low-flush Toilets: Governor Has Until End of the Month to Decide Whether to Give Support to AB2496, Which Would Slash State's Water Usage

(Contra Costa Times, September 7, 2006) SACRAMENTO - Gov. Arnold Schwarzenegger soon will decide if he wants to save millions of gallons of water annually by using even lower-flush home and public toilets, and a new military favorite that's reminiscent of portable potties -- waterless, no-flush urinals in public buildings.

Legislation, which involved an 11th-hour deal between labor and manufacturers to clear the way for non-water urinals, slipped around the public spotlight during lawmakers' end-of-session rush.

Even so, the measure praised as "making California a national leader" in yet another area, drew a few chuckles from lawmakers and bystanders who are already coping with low-flush toilets and were trying to imagine waterless urinals.

A Schwarzenegger spokeswoman said Wednesday: "The governor has not taken a position on the bill." He has until the end of the month to do so.

AB2496 by Assemblyman John Laird, D-Santa Cruz, is aimed at further conserving water in California by reducing average toilet flushes in homes, schools, office buildings and other structures from 1.6 gallons to 1.3 gallons.

Under the bill, co-authored by Democratic Assembly members Loni Hancock of Berkeley and Gene Mullin of San Mateo, urinal flushes would have to be cut back from a gallon to a half-gallon.

Various state regulatory agencies would phase-in the new rules for bathroom and restroom equipment installed beginning Jan. 1, 2009. California is now operating under flush standards adopted in 1992.

"Upgrading flush-volume standards will save billions of gallons of water and make California a national leader in water conservation," Laird said.

Since toilets account for a third of indoor water use daily by Californians, the bill would save about 200 million gallons the first year alone -- enough to fill 300 Olympic-sized swimming pools.

By the 10th year, savings would amount to more than 8 billion gallons annually. That's more than the total amount of bottled water Americans consumed last year.

Through 11th-hour amendments, the bill also "resolved a long-standing dispute between the California Pipe Trades Council and Falcon WaterFree Technologies, a manufacturer of waterless urinals," said Laird.

The measure requires the state Building Standards Commission to ponder how to include the non-water urinals in the state's plumbing codes.

Falcon representatives say waterless urinals are better than the old flush models, where the combination of urine and water causes the smell of ammonia oxide.

The Falcon fixture is nonporous so it "funnels virtually every drop of urine" down through a biodegradable liquid sealant layer in a cartridge and down the drain, the company says. The cartridge liquid is lighter than urine so it blocks smell.

The military, in particular, has embraced the new technology.

The Army Times reported last month that "waterless urinals are the wave of the future, and in the Defense Department, the Army is leading the way."

The U.S. Senate Appropriations Committee, noting the Army's use of the urinals, has ordered the Defense Department to submit a report on how the military can more widely follow suit.

SOUTHERN CALIFORNIA

Halaco Sells Polluted Oxnard Beach Site

Buyer hopes to clean it up, then sell for housing Halaco melted and recycled metal at Oxnard's Ormond Beach for more than 40 years, until it shut down in 2003. For most of that time, it dumped its heaviest metal waste, known as slag, on a pile behind the smelting plant. The ash-gray slag pile now stands 40 feet high in some places. (Ventura County Star)

Cities Face Fines for Dirty Beach Water

Regional water officials vote to fine cities surrounding Santa Monica Bay. Local government must meet "total maximum daily loads" or limits on these pollutants that make their way into the county's numerous watersheds. Setting and enforcing bacteria limits is the first of about 100 of the pollutant limits that conservationists hope will eventually be enforced. (Monterey Herald)

Escondido Water Fine Settlement Delayed

San Diego regional water quality board rejects proposed settlement Most of the fines arose from a breakdown of the plant in the summer of 2004, possibly caused by the illegal dumping of toxic chemicals, and wet weather-related discharges of treated waste into Escondido Creek and the Pacific Ocean in January and February 2005. (NC Times)

Bolsa Chica Wetlands Fix-up May Have Downside

Eucalyptus trees are dying along the edge. The recent restoration of the Bolsa Chica wetlands may be killing off a grove of eucalyptus trees that appears to be under attack by seawater that has been allowed to flow back into a far corner of the marshlands. (LA Times)

Shoring Up Fletcher Cove

Army Corps of Engineers examines high-tech ways to fight beach erosion. What nature takes away, humans can always try to snatch back with high-tech devices. That appears to be the scenario at Fletcher Cove in Solana Beach, where the U.S. Army Corps of Engineers is studying how to keep sand on the beach by beating back marauding waves. (SD Union-Tribune)

Pollution Concerns May Lower the Boom on Offshore Fireworks

(Calcoast News, September 12, 2006) SeaWorld San Diego has suspended its shows and plans to seek a discharge permit. Beach cities fear additional costs of more regulations. <http://www.calcoast.org/news/waterq.htm>

Federal Agencies, O.C. Plan Aliso Creek Cleanup

(Calcoast News, September 12, 2006) Describing it as a major step toward cleansing one of Orange County's most noxious urban waterways, politicians and government officials announced Wednesday an agreement between two federal agencies to aid cleanup of Aliso Creek. <http://www.calcoast.org/news/waterq.htm>

Encinitas, Del Mar, Solana Beach to Get Area's First Tsunami Warning Signs

(Calcoast News, September 12, 2006) ENCINITAS ---- Blue-and-white signs warning people that they are in a tsunami hazard zone will be posted in the beach areas of Encinitas, Del Mar and Solana Beach within the next month or so, authorities said Thursday. <http://www.calcoast.org/news/coast.htm>

Believe it! Work's Set to Start on San Dieguito Lagoon"

(Calcoast News, September 12, 2006) DEL MAR – After 15 years of planning and two years waiting for a passel of local, state and federal agencies to issue the dozens of permits required – not to mention the nesting birds that couldn't be disturbed – work is set to begin on an \$86 million overhaul of the San Dieguito Lagoon. <http://www.calcoast.org/news/wetrest.htm>

San Diegans Could Face More Sewage Hikes

San Diego and other wastewater agencies in the county may have to upgrade Point Loma sewage treatment plant. After swallowing four recent sewer-rate increases, San Diegans probably will face a fifth round of hefty hikes if city officials have to retrofit the Point Loma Wastewater Treatment Plant to meet federal pollution standards. (San Diego Union-Tribune)

ANNOUNCEMENTS

CASQA – Second Annual Conference –

Sept. 25 – 27; Sacramento; one day of workshops, 2 days of presentations; more information:
<http://stormwaterconference.com/theme/>

SF Regional Board Field Trip

Water quality effects of urbanization, watershed science, and stream protection (re: Stream and Wetlands System Protection Policy - see *NewsFlash 06-27*) Oct. 5, 9:30 - 12:30; contact Ben Livsey at (510) 622-2308 or BLivsey@waterboards.ca.gov Information on proposed policy: <http://www.waterboards.ca.gov/sanfranciscobay/streamandwetlands.htm>.

Webcasts

Alternative Practices for Highway Stormwater Management: Design, Construction and Maintenance, Parts I and II –

Izaak Walton League, Thursday, October 26 & Thursday, December 7, (this is a change) Register:
<http://www.iwla.org/index.php?id=169>

Developing an Effective Municipal Stormwater IDDE Program (101)

Jennifer Zielinski, of the Center for Watershed Protection, and Nikos Singelis, of EPA, will discuss the basic components of an effective municipal Illicit Discharge Detection and Elimination (IDDE) program. Based on the comprehensive manual developed

for Phase II municipalities by the Center, this webcast will discuss auditing existing resources establishing legal authority determining illicit discharge potential developing program goals searching for illicit discharges eliminating and preventing illicit discharges and evaluating program effectiveness. Guest speaker Darrin Peine, of the City of Charlotte, North Carolina, will discuss his city's experiences in putting together an effective IDDE program.

To register for this free webcast, please visit www.epa.gov/npdes/training and follow the registration instructions.

Introduction to Groundwater and Watershed Hydrology: Monitoring, Assessment and Protection

Date: October 2-3, 2006

Location: Hilton Hotel · Glendale, CA

Co-Sponsored by: University of California Cooperative Extension Groundwater Hydrology Program

13 Hours MCLE Approved

Registration Forms - <http://www.grac.org/hydroreg.htm>

Hotel Information - <http://www.grac.org/hydrohotel.pdf>

The Deadline for Hotel Reservations at the GRA Course rate is September 11, 2006

LEGISLATION

CA SB 475

Author: Runner G (R)

Title: Drinking Water: Water Softeners: Santa Clara River

Introduced: 02/18/2005

Last Amend: 08/07/2006

Location: Enrolled

Summary: Provides the Santa Clara Valley Sanitation District may by ordinance require the removal of all installed residential self-regenerating water softeners that discharge to the community sewer system, if the district makes specified findings. Requires the district to make available to owners of residential self-regenerating water softeners a voluntary program to compensate the resident for 100% of the reasonable value of the removed appliance and to provide for 75% of those costs at a later time.

Status: 09/07/2006 Enrolled.



s475e.pdf (88 KB)

CA SB 1733

Author: Aanestad (R)

Title: Water Quality

Introduced: 02/24/2006

Last Amend: 08/10/2006

Location: Enrolled

Summary: Amends the Porter-Cologne Water Quality Control Act. Requires the state board to provide guidance to regional boards relating to water quality, to undertake review and to report to the Legislature. Provides for annual training to regional board members. Requires improved adjudication procedures at the regional level. Provides penalties. Authorizes the state board to allow a publicly owned treatment works to spend an equivalent fine amount toward a compliance project.

Status: 09/07/2006 Enrolled.



s1733e.pdf (104 KB)

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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