

A COMPILATION OF STORMWATER AND OTHER RELATED WATER NEWS

By S. Wayne Rosenbaum & Aiko Osugi, Foley & Lardner LLP

NATIONAL NEWS

A Bird's-eye View

Utilities, agencies devise water-tight plans to battle spread of avian flu.

(BC Water News Exclusive) [Health experts generally agree that it's not "if" but "when" an influenza pandemic will strike, and the highly pathogenic avian flu could be the next deadly strain that leads to a global health crisis. But U.S. water and wastewater utilities aren't waiting for a verdict: They're taking pre-emptive measures so that basic operations will continue if a pandemic does occur.](#)

Wanted: A Better Water Quality Test

'Crude and rude' methods mean delays, inaccuracies, scientists say.

(SD Union-Tribune) [Regulators are monitoring the water quality of more U.S. beaches than ever before, but nagging questions remain about the accuracy and timeliness of the testing procedures.](#)

Endocrine Disruptors – Congress Takes Interest in Potomac Fish –

(Water Quality News Flash, October 23, 2006) U.S. EPA told a Congressional committee that it would speed up its efforts to regulate endocrine disruptors. Endocrine disruptors include a wide variety of substances including pharmaceuticals and other currently unregulated substances that can affect the hormone balance in waterway organisms. The hearing was called after USGS issued a report finding egg-bearing male smallmouth bass in the Potomac River. The Potomac provides much of the drinking water for the metropolitan Washington, D.C. area. The USGS has also found similar "intersex" fish in many other locations throughout the country.

Posted: <http://reform.house.gov/GovReform/News/DocumentSingle.aspx?DocumentID=51221>

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.

- **S. Wayne Rosenbaum**
Foley & Lardner LLP
402 West Broadway
Suite 2300
San Diego, CA 92101
Phone: 619.685.6413
Fax: 619.234.3510
rosenbaum@foley.com
- **Aiko Osugi**
Foley & Lardner LLP
402 West Broadway
Suite 2300
San Diego, CA 92101
Phone: 619.685.4622
Fax: 619.234.3510
aosugi@foley.com

To learn more about how Foley can help your company visit our website at Foley.com.

To receive other e-mail newsletters like this one that cover topics that are important to you and your business, please join the [Foley & Lardner newsletter distribution list](#).

Court to Vacate Federal Regulation Excluding Ballast Water Discharges from Clean Water Act Permit Requirements

(Environmental News, October 4, 2006) In a case with potentially dramatic impacts on the shipping industry, the U.S. District Court for the Northern District of California last month ruled that it will vacate a long-standing federal regulation that exempts ballast water discharges from vessels from Clean Water Act ("CWA") permit requirements on September 30, 2008. The Court's ruling follows its 2005 decision that found that ballast water discharges are not exempt from CWA permit requirements. An appeal to the Ninth Circuit is likely. [FULL ARTICLE »](#)

RECLAIM AND DESAL

Desal Panel Raises Red Flag Over Moss Landing Plant

Environmental concerns persist

(Monterey Herald) [A proposed pilot desalination plant at Moss Landing raises "substantial" environmental issues, the California Coastal Commission ruled Thursday, and ordered more hearings of an appeal of the plant's permit.](#)

Santa Cruz Wins State Approval for Desal Testing:

Construction of a desal plant could begin on the westside by year's end.

(SC Sentinel) [The California Coastal Commission on Wednesday unanimously approved a coastal permit for the city Water Department to build a \\$4 million pilot desalination facility at UC Santa Cruz's Long Marine Lab.](#)

Public Input Sought for Monterey Desal Project

Peninsula: Meetings to decide what to include in desalination plant EIR.

(Monterey Herald) [A desalination plant that pumps out up to 25,000 acre-feet of fresh water a year into the Monterey Peninsula's water system is bound to have an impact. Just what, and how much, that will be is what the state Public Utilities Commission is asking residents of California American Water's Monterey service area this week.](#)

CALIFORNIA NEWS

Sediment Quality Objectives – *Additional Hearing*

(Water Quality News Flash, October 30, 2006) As discussed in *NewsFlash 06-42*, the SWRCB is developing standards for contaminated sediment. The Board has scheduled an additional hearing – in Sacramento on November 28 – and has also extended the comment deadline until this date.

More information: <http://www.waterboards.ca.gov/bptcp/sediment.html>

Newsletter – “The California Runoff Rundown”

This newsletter is funded by the State Water Board, and focuses on nonpoint source pollution. Among other topics, the current issue discusses the impacts of forest fires. It notes that storm water runoff from burned forested areas contains high concentrations of manganese, lead, phosphorus, mercury, total organic carbon and uranium.

Most recent issue: <http://www.waterboards.ca.gov/nps/docs/runoffrundown2006fall.pdf>

2006 303(d) List – Draft Final Posted

(Water Quality Newsflash, October 9, 2006) Section 303(d) of the Clean Water Act requires states to identify the pollutants causing environmental impairment of specific waterways. These waterbody/pollutant combinations are included on the 303(d) list. (For listing purposes, some waterways are divided into segments with one or more pollutants associated with each listed segment.) Once listed, the state (or EPA in the absence of state action) prepares a *total maximum daily load* (TMDL) for the listed waterbody/pollutant. A TMDL is a calculation of the maximum amount of a pollutant a waterbody can receive from all sources and still meet water quality standards. This “safe” loading of pollutants is then allocated to dischargers and other sources. Caltrans is a participant in the development and implementation of many TMDLs throughout the state.

The State Water Resources Control Board has now released the draft final list which is an update to the 2002 303(d) list. This new list is based on the listing/delisting criteria adopted by the Board in 2004. The list is supposed to be updated every two years, however, the large amount of water quality data submitted to the Board required significant review time. An earlier draft of this list was released last year with comments accepted through January 2006. The proposed list adds 365 water body-pollutant combinations to the 1883 on the 2002 list and recommends delisting 193. The San Diego Region had a net gain of 104 listings. The Los Angeles Region, which had been aggressive in previous listing efforts, had a net loss of 34. Comments are due Oct. 20, 2006.

Draft final list: http://www.waterboards.ca.gov/tmdl/303d_lists2006.html

Listing policy - http://www.waterboards.ca.gov/tmdl/docs/ffed_303d_listingpolicy093004.pdf

State Board Proposes Changing Rules for a Appeal of Regional Board Decisions



Rulemaking_CCR
title 23, div. 3, chap.

Lead – Soil Contamination Threshold May Decrease

(Water Quality News Flash, October 23, 2006) The Department of Toxic Substances Control (DTSC) is considering draft regulations to revise the *total threshold limit concentration* (TTLC) for lead. The intent is to update the threshold and improve the protection of the general population, including children, from direct exposure to lead containing wastes. Lead wastes are

sometimes associated with highways due to the past use of lead as a gasoline additive and the current use of lead tire weights (see *NewsFlash 06-37*).

A waste whose total lead concentration exceeds the TTLC is considered hazardous and subject to the management and disposal requirements of the Health and Safety Code. Currently, the TTLC for lead is 1,000 mg/kg. Other criteria used independently to classify wastes as hazardous include the federal *toxicity characterization leaching procedure* (TCLP) and the State's *soluble threshold limit concentration* (STLC) - 5 mg/l for lead. The proposed lowering of the TTLC may mean that more wastes, including treatment residues from highway runoff, may be classified as hazardous. However, the STLC threshold rather than the TTLC is typically the limit that results in wastes being classified as hazardous.

In assessing cleanup goals for contaminated soils (as opposed to classifying wastes), the DTSC uses *Leadsread 7*, a program which predicts lead concentration in children and adults from an applied lead dose resulting from inputs from soil and dust, water, air and food. Leadsread 7 results in cleanup goals less than the current TTLC. The State's proposal is to use Leadsread 7 and default assumptions to set the new TTLC. The percentage of children with elevated blood lead levels has declined dramatically over the last several decades. Currently, most exposure is from house paint. Comments on the DTSC documents are due October 31.

DTSC site: http://www.dtsc.ca.gov/LawsRegsPolicies/Regs/Lead_Threshold.cfm.

More discussion: <http://www.members.aol.com/annejee/swnews99.pdf>

Green and Greener in the Contest for Governor

(CBIA News, October 17, 2006) When the California League of Conservation Voters began contemplating its endorsement in the race for governor this year, the environmental group's leaders realized that they might be in a position to make history by choosing Gov. Arnold Schwarzenegger as the first Republican candidate for that office to get the league's seal of approval.

More Information: <http://www.sacbee.com/110/story/40405.html>

Salton Sea's Salvation?

10 plans to revive lake emerge after two years of study.

(Desert Sun) [Two years after plunging into the murky science and politics of the Salton Sea, the state of California finally emerged with an evaluation of 10 proposals to revive the troubled lake. The Department of Water Resources today is set to unveil a 3,000-page draft report looking at proposals it estimates will cost \\$2.3 billion to \\$5.9 billion to revitalize the state's largest lake.](#)

E. coli Found in Area Waters

Farmers will meet to tackle pollution of two sloughs, canal and Merced River.

(Fresno Bee) [Tests have revealed high levels of E. coli and a common pesticide in Merced and Madera county waterways, forcing nearly 1,000 farmers to grapple with potentially expensive cleanup efforts.](#)

Sediment Quality Objectives – Meetings Scheduled for New Standards

(Water Quality News Flash, October 30, 2006 Water Quality News Flash, October 16, 2006) Sediment quality objectives function in a similar fashion to water quality objectives and are used to address contaminated sediment sites. Many of these sites are presumed to be contaminated by past or ongoing municipal runoff and so municipal storm water programs are likely to be affected.

The State Board already has sediment guidelines which are used for 303(d) listing purposes. These existing guidelines are based on available studies and guidelines used by others where there is evidence that the guidelines are predictive of sediment toxicity. The new sediment objectives take a more sophisticated approach and are based on multiple lines of evidence. (See NewsFlash 06-35) Future sediment monitoring programs will need to conform to the adopted approach for sediment evaluation.

The purpose of these meetings is to seek input on the scope and content of the environmental information to be included in the draft environmental document prepared to support the proposed sediment quality objectives and implementation policy. Meetings are scheduled for Oct. 23, in San Diego, and Nov. 8, in Oakland. The comment deadline is Nov. 16.

More Information: <http://www.waterboards.ca.gov/bptcp/sediment.html>

Sediment Master Plan – Status Report Posted

(Water Quality News Flash, October 30, 2006) Sediment (the non-contaminated kind) is important for maintaining coastal beaches, however, the amount of sediment reaching the coast has decreased due to dams and in some cases due to development. (Development can cause short-term increases and long-term declines in sediment loading.) A recent report by USGS indicates that two thirds of California's beaches are eroding with Central California showing the highest percentage of erosion.

USGS Study: <http://pubs.usgs.gov/of/2006/1219/>

In other areas, however, sediment is too abundant due to construction projects on or near the coast. The purpose of the California Coastal Sediment Master Plan (CSMP) is to manage the sediment as a resource by developing a "Regional Sediment Management" approach. In this approach, excess sediment from construction projects could be used for beach or shoreline replenishment.

CSMP report: http://www.dbw.ca.gov/csmw/PDF/SMPSR_status_report.pdf

Law To Reduce Lead Content in Water Fixtures Overcomes Opposition

(CBIA News, October 2, 2006) A law written by a Bay Area assemblywoman that aims at reducing the amount of lead in household plumbing fixtures and water lines was enacted recently by Gov. Arnold Schwarzenegger. "I signed this bill to reduce the amount of lead exposure in California's drinking water," said Schwarzenegger, who was referring to AB 1953, introduced by

Wilma Chan, D-Alameda. "We need to make sure that the water we consume is safe for everyone especially our children," the governor said. Ingestion of lead particles occurs naturally because of its presence as a mineral in air, dirt, dust, food, and pottery. Lead ingestion can also occur via drinking water, though the water itself is typically not the source of the lead. According to published reports, lead can enter drinking water through corroded plumbing fixtures and water distribution pipes.

More Information: <http://cbs5.com/localwire/localnews/bcn/2006/10/01/n/HeadlineNews/LEAD-LAW>

SOUTHERN CALIFORNIA

Los Angeles Storm Water Permit – Appeals Court Requires Environmental Documentation

(Water Quality News Flash, October 30, 2006) The long-running litigation brought by 32 LA area cities, the county, and others against the MS4 storm water permit may be nearing an end. A California Appeals Court ruled against the challengers on most points but did require the Los Angeles Regional Board to set aside the 2001 permit and conduct a limited California Environmental Quality Act review.

Decision: <http://www.courtinfo.ca.gov/opinions/documents/B184034.PDF>

Court Rules in State's Favor

Cities must obey stormwater rules.

(LA Daily News) [A state appeals court has ruled that Santa Clarita and other cities must follow the state's strict rules for stormwater runoff, despite the cities' claims that the standards are excessive.](#)

Los Angeles – IRP Includes Storm Water –

(Water Quality News Flash, October 30, 2006) The *Integrated Resources Plan* addresses the future wastewater (sewage), recycled water and urban runoff needs of Los Angeles. A draft and final EIR have been prepared. The program-level EIR includes alternatives for dry weather runoff diversion to the sanitary sewer system as well as dry weather diversion to Urban Runoff Plants (URP) or to constructed wetlands. These diversions would cease automatically during wet weather. The typical URP treatment process includes coarse screening, grit removal, dissolved air flotation, microfiltration, and UV disinfection.

For wet weather runoff, the EIR discusses three options: (1) recharge with non-urban runoff at spreading grounds in the San Fernando Valley; (2) onsite management, including storage-and-percolation and storage-and-use (cisterns ranging in size from 1,000 to 10,000 gal.); and, (3) runoff treatment plants to be implemented if nonstructural and local structural measures are found inadequate in meeting the Santa Monica Bay Wet Weather Bacteria TMDL. Three wet weather URPs would be needed with a combined capacity of 160 mgd and would be constructed near the coasts. Each would have a storage basin to accommodate approximately 3.4 million cubic feet. The EIR does not appear to discuss other TMDLs, such as the trash and metals TMDLs. It is also not clear whether the wet weather URPs would be compatible with the smaller local treatment facilities currently being build to address these other TMDLs. IRP: <http://www.lacity.org/SAN/irp/>

LA River Trash TMDL – Another Postponement

(Water Quality News Flash, October 30, 2006) The LA Regional Board has again postponed the re-adoption of the TMDL in order to address new environmental issues. This TMDL was set aside earlier this year in order to bring it into compliance with the environmental documentation requirements of CEQA (see *NewsFlash 06-22*).

More Information: http://www.waterboards.ca.gov/losangeles/html/meetings/agenda/2006/06_1024_Removal.pdf

San Diego Storm Water – Board Wants More Municipal Dry-Weather Follow-up

(Water Quality News Flash, October 23, 2006) The San Diego Regional Board issued a Notice of Violation to the City of San Diego for failure to conduct follow-up investigations of dry weather monitoring and failure to prioritize industrial sites.

NOV: <http://www.waterboards.ca.gov/sandiego/misc/R9-2006-0046/R9-2006-0046.html>

Article: <http://www.signonsandiego.com/news/metro/20061005-9999-7m5violate.html>

Malibu Beach Bacteria – County to Use DNA to Identify Sources

(Water Quality News Flash, October 9, 2006) LA County staff intend to test the Malibu area shoreline and runoff to determine if septic tanks are contributing to high bacteria levels at area beaches. DNA testing can determine if bacteria come from birds, wild animals, dogs, humans, or other sources. (Birds are often found to be a major contributor to bacteria contamination in waterways – see *NewsFlash 05-18*)

Malibu is not connected to the county sewer system and homes and businesses rely on septic tanks or small treatment facilities. Runoff from much of this area passes under the Pacific Coast Highway and is discharged at the shoreline. This runoff, possibly including septic tank leakage, is suspected as the cause of elevated bacteria readings on the local beaches. Trancas Beach, for example, is 303(d)-listed for beach closures and high coliform count.

An additional factor is the Laguna Point to Latigo Point Area of Special Biological Significance (ASBS) which covers a portion of the shoreline. Proposed requirements for ASBS would prohibit all dry weather flow to ASBS as well as limiting wet weather bacteria loadings in runoff to the loading of a stream in an unimpacted watershed.

Article: <http://www.lasvegassun.com/sunbin/stories/nat-gen/2006/oct/04/100408664.html>

Officials Detail \$1 Million Malibu Beach Pollution Plan

Authorities plan to focus the tests on the Ramirez Canyon and Escondido Creek areas

(L.A. Daily News) [Amid a growing debate over whether waste from Hollywood stars is fouling Malibu beaches, Los Angeles County officials announced Thursday a \\$1 million campaign to identify and eliminate the sources of the pollution.](#)

Study: Los Angeles County Has State's Worst Beach Water

Santa Monica-based clean water group releases its annual end-of-summer beach report card.

(AP) [A study released Tuesday found that once again Los Angeles County has the state's most polluted beaches, but this time a new city has been anointed as the county's biggest loser - Long Beach.](#)

Mission Bay Landfill Passes Muster After a Long Study

Toxins don't pose 'significant risk.'

(SD Union-Tribune) [Mission Bay's retired landfill poses little environmental or health threat but still should be treated with caution, according to a years-long study released yesterday.](#)

Salton Sea Authority Says EIR Cites Old Info

Draft EIR released by DWR outlines 10 alternatives.

(IV Press) [Water officials said this week that they hope people won't even notice it next month when the massive pipelines that deliver half of San Diego County's drinking water supply are shut off for 11 days.](#)

Coastkeeper Releases 2006 Clean Water Report Card

City of San Diego Scores a 'B' on 5th Annual Report Card.

(Coastkeeper Currents, October 19, 2006) On October 18, the 34th anniversary of the federal Clean Water Act, San Diego Coastkeeper released the [2006 Clean Water Report Card](#), which examines the voting record of each City Council member over the past year on issues impacting the health of local waters and coastal habitat. The City received an overall 'B' grade on the 5th Annual Report Card, with three Council members scoring 'A' grades.

The Report Card, prepared by [Strategic Community Consulting](#) and commissioned by Coastkeeper, reviewed 23 votes taken by the City Council from October 2005 through September 2006. Donna Frye scored the highest grade of any Council member, earning her an 'A+'. She is the only Councilmember to score in the 'A' range on each of the five Report Cards. Councilmember Frye was followed by Toni Atkins and Brian Mainschein, who each scored an 'A-'. Kevin Faulconer and Ben Hueso, the two newest Councilmembers, each received a 'C+', the lowest marks on the evaluation. Click here for [press release](#).

Whipsnakes Get Critical Habitat

(CBIA News, October 4, 2006) The federal government on Monday designated 155,000 acres in the Bay Area as critical habitat for Alameda whipsnakes, less than half the size of the original 2003 designation that was overturned in a lawsuit brought by developers. The territory is roughly divided evenly between Contra Costa and Alameda counties, with much smaller slices in Santa Clara and San Joaquin counties. Critical habitat is a hotly contested provision of the Endangered Species Act. Environmentalists say it is a key provision. Developers fear it, and government officials say it has little effect. Monday's

designation does not include 48,500 acres in East Contra Costa. Federal officials said that area would be better protected under a proposed "habitat conservation plan" that would protect whipsnakes and 25 other species under a negotiated plan involving government officials, developers, environmentalists and others.

More Information: <http://www.contracostatimes.com/mld/cctimes/news/local/15671180.htm>

ANNOUNCEMENTS

Webcast - International Stormwater Best Management Practices (BMP) Database:

Nov. 29; produced by the Center for Transportation and the Environment, NC State University;
<http://itre.ncsu.edu/CTE/TechTransfer/Teleconferences/2006schedule.asp#overview>

Database: <http://www.bmpdatabase.org/>

LEGISLATION

CA AB 1752

Author: Levine (D)

Title: Environmental Quality

Introduced: 03/09/2005

Last Amend: 08/30/2006

Enacted: 09/29/2006

Location: Chaptered

Chapter: 752

Summary: Provides that if a specified bill introduced in the 2005-06 Regular Session that would revise requirements relating to the determination of the State Water Resources Board of a regional board is required to make before electing to require a publicly owned treatment works (POTW) serving a small community to spend funds for a compliance project, to provide the changes would become operative on a specified date and requires the POTW to show how sufficient financing will be available in a specified time period.

Status: 09/29/2006 Signed by GOVERNOR.

09/29/2006 Chaptered by Secretary of State. Chapter No. 752



AB 1752_CH.pdf
(74 KB)

CA SB 1070

Author: Kehoe (D)

Title: Water Quality Information

Introduced: 02/22/2005

Last Amend: 06/29/2006

Enacted: 09/29/2006

Location: Chaptered

Chapter: 750

Summary: Requires the Water Resources Control Board to implement a public information program on water quality matters and that information on its Web site. Requires the Environmental Protection Agency and the Resources Agency to enter into a specified memorandum of understanding to establish the Water Quality Monitoring Council to review existing water quality monitoring and assessment and reporting efforts and to recommend funding and efforts to enhance those efforts.

Status: 09/29/2006 Signed by GOVERNOR.

09/29/2006 Chaptered by Secretary of State. Chapter No. 750



SB 1070_CH.pdf
(90 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.

Internal Revenue Service regulations generally require that, for purposes of avoiding United States federal tax penalties, a taxpayer may only rely on formal written opinions meeting specific requirements described in those regulations. This newsletter does not meet those requirements. To the extent this newsletter contains written information relating to United States federal tax issues, the written information is not intended or written to be used, and a taxpayer cannot use it, for the purpose of avoiding United States federal tax penalties, and it was not written to support the promotion or marketing of any transaction or matter discussed in the newsletter.