

Legal News™

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Legal News is part of our ongoing commitment to providing legal insight to our environmental stormwater clients and colleagues.

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A Compilation of Stormwater and Other Related Water News

National News

Bush Seeks to Override Federal Judge's Injunction to Protect Marine Mammals

(*Los Angeles Times*, January 17, 2008) On January 3, 2008, a federal judge ordered tough restrictions on the United States Navy's use of mid-frequency sonar off the Southern California coast to protect whales and other marine mammals from underwater sonar blasts. About two weeks after the injunction was issued, in an attempt to free the military from the court-ordered restrictions aimed at protecting marine mammals, President Bush moved to exempt Navy sonar training missions conducted off of Southern California from complying with the Coastal Zone Management Act (CZMA) and the National Environmental Policy Act (NEPA). The district court judge, in granting the injunction, called the Navy's plans "grossly inadequate to protect marine mammals from debilitating levels of sonar exposure." But the Navy says it is doing enough to protect those marine mammals from the harmful effects of the sonar. In President Bush's memo justifying his action, he stated that his decision would "enable the Navy to train effectively" for activities "which are essential to national security" and "in the paramount interest of the United States."

Last year, the United States Department of Defense tried to circumvent the suit by exempting the Navy's sonar training from the Marine Mammal Protection Act. However, the suit went forward under the CZMA and NEPA, eventually leading the injunction. The CZMA, designed to protect coastal and marine resources, has a provision that allows the president to exempt certain federal activities; however, NEPA does not provide for such power to the president. Since President Bush does not have authority to override a federal court order, United States Department of Justice attorneys asked the federal courts to remove the order.

The Ninth Circuit Court of Appeals sent the case back to district court Judge Cooper. The following day, Judge Cooper temporarily set aside some of the restrictions on upcoming

naval exercises, but Judge Cooper did not completely defer to President Bush; she granted only two concessions. While some of the preliminary injunction's safeguards remain in effect, the requirements to shut down sonar if marine mammals venture within 2,200 yards of a sonar device, and to reduce sonar power under certain sea conditions that allow powerful sonar blasts to travel farther than normal have been temporarily set aside.

The plaintiffs in the case will still have a chance to make their legal arguments regarding the president's power. The Natural Resources Defense Council states that it remains optimistic that it will prevail in opposing the waivers. Meanwhile, on January 22, 2008, the California Coastal Commission argued before the federal judge that President Bush violated the U.S. Constitution's separation of powers doctrine by trying to overturn the court order.

Posted (free registration required): <http://www.latimes.com/news/local/la-me-sonar17jan17,0,738138.story?coll=la-home-local>; <http://www.latimes.com/news/local/la-me-sonar18jan18,1,6061478.story?coll=la-headlines-california>; <http://www.latimes.com/news/local/la-me-sonar23jan23,1,4357534.story>

Energy Independence and Security Act Includes Stormwater Runoff Requirements

(United States Environmental Protection Agency) The Energy Independence and Security Act of 2007 requires that development projects that involve a federal facility with a footprint greater than 5,000 square feet use "site planning, design, construction, and maintenance strategies for the property to maintain or restore, to the maximum extent technically feasible, the predevelopment hydrology of the property with regard to the temperature, rate, volume, and duration of flow." To see a summary of the major provisions for the Energy Independence and Security Act, see <http://energy.senate.gov/public/files/RL342941.pdf>.

Posted (free registration required): <http://www.epa.gov/watershed/news.html#14>

California News

Zebra Mussel Found in Hollister Reservoir

(*Los Angeles Times*, January 16, 2008) While officials do not know how the zebra mussel traveled west of the Rockies and into California, the fact is that dozens of zebra mussels have turned up in the Hollister reservoir, which serves San Benito County. County officials now worry that the zebra mussel will clog irrigation lines and pumps. The zebra mussel, similar to the quagga mussel, can alter food chains and cause declines in fish populations. Officials do not know how to eradicate the zebra mussel or the quagga mussel. The mussels can spawn up to one million eggs in a single season.

Posted (free registration required): <http://www.latimes.com/news/local/la-me-mussel16jan16,0,2607608.story?coll=la-home-center>

Proposed Inland Empire Distribution Center Delayed Due to Potentially Inadequate Water Supply

(*Los Angeles Times*, January 15, 2008) The Eastern Municipal Water District (EMWD) has decided to delay approval of a water supply assessment for the proposed Skechers U.S.A, Inc., distribution facility in Rancho Belago in the Inland Empire because it could not promise to deliver water to serve the proposed development.

Senate Bill 610 requires water districts to assess the water demands of large projects and ensure that water supplies are available for existing and new customers for the next 20 years. Until now, EMWD has approved 82 water supply assessments since the requirements came into effect in 2002. However, with a record-low snowpack in the Sierra Nevada, an eight-year drought in the Colorado Basin, record-dry weather at home, and a recent federal court decision protecting the endangered delta smelt by limiting water deliveries from the Sacramento-San Joaquin Bay Delta, which will reduce deliveries to Southern California by up to 30 percent, EMWD was forced to reconsider the reality of its water supplies.

With EMWD's decision, other water agencies may follow in deciding to delay approval of required water supply assessments. The city of Moreno Valley's planning department, however, has stated that this is not a long-term delay. The planning department appears confident that the issue will be resolved as early as March 2008.

EMWD's delayed approval of the water supply assessment also may be an indication of the implications of *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova*, 40 Cal.4th 412 (2007), in which the California Supreme Court set forth more specific guidelines for complying with the water supply assessment requirement.

Posted (free registration required): <http://www.latimes.com/news/local/la-me-skechers14jan14,1,307066.story?coll=la-headlines-california&ctrack=1&cset=true>

Local Agency Formation Commission Denies Annexation Citing Inadequate Water Supply

(*San Luis Obispo Tribune*, January 17, 2008) The San Luis Obispo Local Area Formation Commission (LAFCO) tentatively told City of Pismo Beach officials that it may not annex 182 acres of land where a school, senior housing, and 252 single-family homes have been proposed, citing a lack of adequate water supplies. The LAFCO determined that the underground aquifer in the proposed annexation area does not have enough water to sustain future water demand. Under LAFCO rules, a water supply "has to be adequate, reliable and sustainable," before an annexation can be permitted. However, the LAFCO suggested there may be other alternatives such as extending the Nacimiento pipeline to the project site. Either way, the City of Pismo Beach will need to show some additional source — in addition to the underground aquifer — to the LAFCO before the city can get its annexation approved.

Posted: <http://www.sanluisobispo.com/183/story/249867.html>

Southern California

Orange County Sewer-to-Drinking Water System Begins Operation

(*OC Register*, January 10, 2008) The Orange County Water District/Orange County Sanitation District's \$480 million system that converts sewer water into drinking water began operation on January 10, 2008. The system began sending up to 35-million gallons per day to an underground barrier that prevents seawater from seeping into the Orange County's drinking-water aquifer. Before the next step of sending another 35-million gallons per day to settling ponds to percolate into the aquifer, the districts must obtain approval from state health officials. Once that approval is received, the remaining 35-million gallons per day produced by the system will be piped to the percolation settling ponds. Officials anticipate that in six months to one year, the water can be mixed with other water deep in the aquifer, drawn out by wells, and consumed by customers.

Posted: <http://www.ocregister.com/science-technology/water-million-system-1957540-aquifer-county>

Orange County Water Agencies Worry About Water Supply

(*OC Register*, January 13, 2008) Protecting the delta smelt may result in as much as one-third less water sent from the delta to Southern California. That fact, coupled with a persistent drought, a reduced Sierra snowpack, and a shrinking share of Colorado River water all lead to less imported water flowing into Southern California from almost all of the traditional sources. In response, Orange County Water District officials have been meeting more often with legislators. Board members believe that the last water bond approved by voters in 2006 preferentially directed money to projects in Northern California. In addition to additional state water-bond money, Southern California water agencies say they also are looking to increased conservation and new ways to generate supply

such as the Orange County Water District and Orange County Sanitation District Groundwater Replenishment System, which will purify sewer water and pump it to settling ponds so it can percolate into the drinking-water aquifer.

Posted: <http://www.ocregister.com/science-technology/water-county-california-1958363-orange-district>

Southern California Water District to Invest in Reservoir Near Mexico Border

(*San Diego Union Tribune*, January 13, 2008) Arizona plans to invest approximately \$30 million in a new reservoir at the end of the Colorado River on the California side of the Mexico border. Once constructed, the reservoir would capture water that now flows unused into Mexico. The Metropolitan Water District of Southern California is expected to buy an equal share in the reservoir for \$28.7 million.

Posted: <http://www.signonsandiego.com/news/metro/20080113-9999-1n13region.html>

Environmental Groups Challenge Coastal Commission Approval of Desalination Plant

(*San Diego Union Tribune*, January 15, 2008) The Surfrider Foundation and the Planning and Conservation League filed suit in San Diego Superior Court alleging that the California Coastal Commission's approval of an ocean-water desalination plant in Carlsbad would harm marine life in Agua Hedionda Lagoon, the plant's water source. The complaint also alleges that the Coastal Commission did not have the necessary findings to approve the project. The project in question proposes a 500-million gallon per day desalination plant on the Encina Power Station, in Carlsbad. Coastal Commission staff recommended not approving the project. However, the Coastal Commission overrode that recommendation and approved the coastal development permit, with over 20 conditions attached, on November 15, 2008 by a nine-to-three vote.

Posted: <http://www.signonsandiego.com/news/northcounty/20080115-9999-1m15desal.html>

Federal Government Addressing Option to Improve Treatment of Sewage Flowing From Tijuana Into San Diego

(*San Diego Union Tribune*, January 23, 2008) The International Boundary and Water Commission has joined with state regulators, environmental groups, and Bajagua LLC in U.S. District Court to review progress on two main upgrade proposals. The two alternatives are enhancing the commission's existing sewage facility in San Ysidro or building a new plant in Tijuana with the help of Bajagua. The State of California and the Surfrider Foundation had sued the Commission to stop ongoing pollution at the San Ysidro Plant, which has not met U.S. Clean Water Act standards since the late 1990s. Congress agreed to spend \$66 million to address the problem, but questions still remain on how that money should be spent and who makes that decision.

Posted: <http://www.signonsandiego.com/news/mexico/tijuana/20080123-9999-1m23bajagua.html>

Homeowners Collecting and Reusing Stormwater

(*Los Angeles Times*, January 17, 2008) Southern California municipalities are sponsoring grant programs to help residents renovate their homes, and designers are offering their services to provide solutions for capturing and retaining stormwater to irrigate gardens or to divert it from running down the block. By capturing rainwater before it hits the streets and becomes polluted, homeowners can use it for onsite landscaping. With the added incentive of a grant from the City of Santa Monica covering \$2,500 of the \$5,000 cost, a Santa Monica couple designed a water management system that holds up to 45 gallons of rainwater. Any rainwater that hits their roof moves through downspouts and is collected in drainpipes leading to the in-ground collection system.

Posted (free registration required): <http://www.latimes.com/features/home/la-hm-rain17jan17,1,1488970.story>

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City of Poway Declares Stage One Water Condition

(NBC San Diego, January 9, 2008) Poway city officials have declared a Stage One Water Condition. Due to decreased imported water supplies, city officials decided that now is a good time to start conserving water. Council members are asking residents to check their plumbing for leaks, limit their shower times, use professional car washes (which use recycled water), reduce lawn watering, and not to hose off their driveways.

Posted: <http://www.nbcsandiego.com/news/15016682/detail.html>

Announcements

Water Reuse Foundation Seeks Preproposals for Funding Consideration

The Water Reuse Foundation seeks preproposals for funding consideration under its 2008 Unsolicited Research Program. The foundation has \$408,382 approved for its 2008 Unsolicited Research Program projects. The foundation anticipates that it will fund two to four projects with a maximum funding level of \$175,000 each. Preproposals are due March 3, 2008. To view the Request for Preproposals, including complete instructions for submittal, visit http://www.watereuse.org/Foundation/documents/WRF_2008_Unsolicited_RFPP.pdf.