

# Legal News<sup>SM</sup>

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FOLEY & LARDNER LLP

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

If you have any questions about this alert or would like to discuss these topics further, please contact your Foley attorney or:

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## A Compilation of Stormwater and Other Related Water News

### National News

#### House Committee Proposes Green Transportation Infrastructure Research and Technology Act

(*BNA Environmental Reporter*, February 29, 2008) On February 27, 2008, the House Committee on Science and Technology approved legislation that would provide \$6 million for transportation research centers to reduce water pollution, control stormwater, and adopt "green" technology. The proposed Green Transportation Infrastructure Research and Technology Transfer Act (H.R. 5161) would authorize funds for fiscal years 2009 and 2010 to establish a grant program for transportation research centers. The Federal Highway Administration would be authorized to include "green" infrastructure and construction training in the National Highway Institute's curriculum. Green infrastructure is defined by the proposed legislation as infrastructure that preserves and restores natural processes and landforms, uses natural design techniques to manage stormwater, and minimizes energy consumption and air pollution. A comparable measure has not yet been introduced in the Senate and the administration has not stated a position on it.

Posted:

<http://pubs.bna.com/NWSSTND/IP/BNA/enr.nsf/SearchAllView/C5E2B1E7CC89F954852573FE000F34C3?Open&highlight=WATER>

#### Ninth Circuit Affirms Navy Sonar Safeguards

(*Los Angeles Times*, March 2, 2008) The United States Court of Appeals for the Ninth Circuit affirmed district court Judge Cooper's order that imposed extensive safeguards to protect whales and dolphins from sonic blasts during U.S. Navy sonar training. The Bush administration had attempted to exempt the Navy sonar training from the Coastal Zone Management Act (CZMA) and the National Environmental Policy Act (NEPA). Despite that ruling, the Ninth Circuit provided the Navy with a 30-day reprieve from the most far-reaching protections so that it could conduct training missions this month and to give it time to appeal the decision to the U.S. Supreme Court.

Posted (free registration required): <http://www.latimes.com/news/science/environment/la-me-sonar2mar02,1,5759442.story>

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## California News

### State Lawmakers Talk About Water

(*Sacramento Bee*, February 22, 2008) On February 21, 2008, Sen. Dianne Feinstein and Governor Arnold Schwarzenegger met privately with state lawmakers to discuss the state water bond negotiations. Sen. Feinstein and Governor Schwarzenegger are pressing for a legislative deal to get a measure on the water bond on the November ballot. Sen. Feinstein has pushed for state money for dams, while other leading Democrats have opposed the use of public money to pay for surface water storage. In response, she has called for a solution that would include money for dams and groundwater storage and for repairs to the Sacramento-San Joaquin Delta.

Posted: <http://www.sacbee.com/111/story/730558.html>

### City's Discharges Into Quarry Pit Next to Russian River Subject to the Clean Water Act

(*The Press Democrat*, February 22, 2008) The U.S. Supreme Court has declined to review a Ninth Circuit Court of Appeals ruling that determined that the City of Healdsburg's wastewater discharges into a quarry pit next to the Russian River are subject to the Clean Water Act. Under the Clean Water Act, Healdsburg is subject to a higher standard of treatment to discharge into the pond and may not discharge in the summer. To comply with these requirements, the city will construct a \$32 million treatment plant to increase its treatment level and plans to spend \$10 million to \$14 million to irrigate city parks.

Posted:

<http://www1.pressdemocrat.com/article/20080222/NEWS/802220321/1033/NEWS01>

### Proposed Bills Would Require Governor Approval Prior to Pesticide Sprays

(*San Francisco Chronicle*, February 23, 2008) On February 21, 2008, Democratic Assembly members Loni Hancock, John Laird, Mark Leno, and Jared Huffman introduced four bills aimed at protecting cities from future pesticide spraying programs. The bills were inspired by a plan to spray a synthetic moth pheromone to eradicate the light brown apple moth. Agricultural officials say that the larvae of the exotic pest could result in significant damage to farms, nurseries, and gardens and that the pheromone spray is safe for humans. The pheromone has

already been sprayed over Santa Cruz and Monterey counties and is scheduled in August to be sprayed over San Francisco, San Mateo, Marin, Alameda, and Contra Costa counties. Currently, the California Department of Food and Agriculture can declare a state of emergency for a pest infestation; under the new bill, that authority would be shifted to the governor.

Posted: <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2008/02/23/MN9RV77NK.DTL>

### California Cities Consider Garbage-to-Energy Options

(*Sacramento Bee*, March 5, 2008) Some California cities are seeking garbage-to-energy proposals to address energy, landfill, and global warming concerns. Such technologies include a super-heating process that converts rubbish into synthetic fuel and fermentation of organic wastes into ethanol. Currently, one company is negotiating exclusively with the City of Sacramento and proposes a type of thermal conversion called plasma gasification. The process would recover heat to make steam for generating electricity and could reduce the \$8 million annual cost of hauling municipal waste. Los Angeles County also is looking toward gasification to dispose of its municipal solid waste, currently sent to the Puente Hills Landfill, which is scheduled to close in approximately five years. Unlike waste-to-energy incinerators, gasification plants use extremely high temperatures to disintegrate the waste into vapors and liquids instead of burning or combusting the waste.

Posted: <http://www.sacbee.com/101/story/761237.html>

## Southern California

### Fallbrook Wastewater Treatment Plant Starts Turning Sludge Into Fertilizer

(*San Diego Union Tribune*, February 28, 2008) The Fallbrook Public Utility District recently started operating a new processing system that filters out wastewater, treats the sludge, and then bakes the sludge to a final product that is a crumbly, dry fertilizer that can be bagged and sold to growers. The new system, which produces a class-A biosolid that contains no pathogens, provides a solution to the problem of sludge disposal. Fallbrook Utility District representatives state that the project will pay for itself through shipping cost savings by 2014.

Posted:

<http://www.signonsandiego.com/news/northcounty/20080228-9999-1mc28sludge.html>

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### **Judge Orders New Environmental Impact Report Be Prepared for Long Beach Home Depot**

(*Los Angeles Times*, February 22, 2008) A Los Angeles District Court judge has ruled that an environmental impact report (EIR) approved by the Long Beach City Council in 2006 is inadequate. The court invalidated city permits and ordered a halt to construction of the proposed Home Depot project until a new EIR is prepared. The new EIR must include an analysis to determine whether the proposed project site contains wetlands and also must include more studies on potential effects to burrowing owls, air quality, noise, and lighting.

Posted (free registration required): <http://www.latimes.com/news/science/environment/la-me-depot22feb22,1,6239990.story>

### **San Diego County Grand Jury Reports Calls for Water Use Restrictions**

(*BNA Environmental Reporter*, February 22, 2008) On February 13, 2008, the San Diego County grand jury released a report that called for the City of San Diego to impose immediate restrictions on water use, tie rates to consumption, and increase reclaimed water use. The report also called for an increased price of reclaimed water to pay for piping and to reduce an existing "bottleneck" that prevents new customer access to the line. The mayor, city council, and city water department must each respond to the grand jury report recommendations by May 2008. Their responses must detail plans for implementation of the grand jury's recommendations, or provide reasons for failing to implement those recommendations.

Posted:

<http://pubs.bna.com/NWSSTND/IP/BNA/enr.nsf/SearchAllView/355FC75DFEFB39B0852573F7000A850C?Open&highlight=WATER>

## Announcements

### **La Jolla Shores Integrated Coastal Watershed Management Plan Available**

The La Jolla Shores Integrated Coastal Watershed Management Plan is complete and can be viewed on the Scripps Institution of Oceanography's Coastal Observing Research and Development Center Web site at <http://cordc.ucsd.edu/projects/asbs/documents>.

### **CAFO Supplemental Proposed Rulemaking**

The United States Environmental Protection Agency (EPA) is seeking comment on additional options for inclusion in the rulemaking to respond to the changes required by the United States Court of Appeals for the Second Circuit decision in *Waterkeeper Alliance et al. v. EPA*. This action supplements the June 2006 proposal to revise the National Pollutant Discharge Elimination System (NPDES) permitting requirements and Effluent Limitations Guidelines (ELGs) for Concentrated Animal Feeding Operations (CAFOs). The 2008 supplemental proposal will be open for public comment for 30 days. The administrator signed the CAFO Supplemental Notice of Proposed Rulemaking on March 3, 2008. For more information on this supplemental proposal, including how to submit comments, please visit [www.epa.gov/npdes/afo/reviseerule](http://www.epa.gov/npdes/afo/reviseerule).