

September 1, 2009

The Honorable Fran Pavley, Chair and Members
Senate Natural Resources and Water Committee
State Capitol, Room 4035
Sacramento, CA 95814

RE: Amendments to AB 1570 – OPPOSE

Dear Chair Pavley and Committee Members:

On behalf of the undersigned organizations representing hundreds of thousands of Californians who care deeply about full implementation of environmental laws and a transparent regulatory process, we must regretfully write in opposition to the recent, substantial amendments proposed for AB 1570. These amendments would directly supersede the authority of an environmental regulatory agency – in this case, the California Coastal Commission – to implement and enforce its mandates to protect the health of California’s environment.

Until last week, AB 1570, originally by the Committee on Veteran’s Affairs, had addressed various protections for veterans. The bill as amended this week would now move far afield from that original intent to provide a special, individually-tailored exception to the regular administration of the California Coastal Act.¹ Though its language would be applicable to only one coastal development permittee, the bill’s precedential effect could undermine the review authority delegated to not only the Coastal Commission, but any administrative agency actions on environmental issues that a regulated entity might seek to avoid.

Specifically, the bill as amended would legislatively extend automatically the lifespan of an existing coastal development permit. This would allow a single applicant to go around the agency responsible for administering the law by appealing to the Legislature for a special exception. There is a public process for the instant agency to allow an extension of a Coastal Development Permit should the need arise.² Ironically, the applicant in this particular case has *already* applied for such an extension as a precaution in case it missed a deadline it agreed to in its original permit. This existing extension application has the effect of tolling the expiration date of the CDP, so the permit appears in fact to be in no current danger of expiring.

However, this bill would foreclose that agency process before it has even started. This is not just an issue for the permit holder that is the subject of this bill, or for the California Coastal Commission. This bill unfortunately presents a clear instance of Legislative support for skirting mandated environmental public processes.

As explained in more detail in the attached summary of the circumstances surrounding the proposed language, these amendments in essence would place the Legislature in the role of an executive agency. It cannot be overstated that the implementation and enforcement of existing environmental laws should be applied fairly and equally to all, that the Legislature has delegated

¹ Title 14, Div 5.5, Section 13169 *et seq.*

² *Id.*

that enforcement authority to the administrative agencies such as the Coastal Commission, and that the direct interjection of the Legislature – especially in light of the fact that the Commission has already received an application for the desired permit extension – undermines administrative agency authority and the justifiable public reliance on fair and consistent enforcement of environmental laws.

We respectfully request this Committee turn this matter back to the Coastal Commission and the entity seeking permit extensions for the proper administrative review and hearing, and to vote “no” on the amended AB 1570. Thank you.

Best regards,

Linda Sheehan
Executive Director
California Coastkeeper Alliance

Jim Metropulos
Legislative Representative
Sierra Club California

Zeke Grader
Executive Director
Pacific Coast Federation of Fisherman’s
Associations

Sara Wan
Executive Director
Vote the Coast

Susan Jordan
Director
California Coastal Protection Network

Mark Gold, D. Env.
President
Heal the Bay

Mark Schlosberg
Western Regional Director
Food & Water Watch

Jim Curland
Marine Program Associate
Defenders of Wildlife

Jennifer Clary
Water Policy Analyst
Clean Water Action

Joe Geever
Regional Manager
Surfrider Foundation

Charlotte Hodde
Water Program Manager
Planning and Conservation League

Karen Garrison
Co-Director, Oceans Program
Natural Resources Defense Council

Dan Jacobsen
Legislative Director
Environment California

Debbie Davis
Legislative Analyst
Environmental Justice Coalition for Water

Conner Everts
*Executive Director, Southern California Watershed
Alliance*
Co-Chair, Desal Response Group

Bruce Reznik
Executive Director
San Diego Coastkeeper

Daniel Cooper
Partner
Lawyers for Clean Water, Inc.

Luke Breit
Chair
Environmental Caucus, California Democratic Party

Tom Ford
Executive Director
Santa Monica Baykeeper

Laura Hunter
Director Clean Bay Campaign
Environmental Health Coalition

Warner Chabot
CEO
California League of Conservation Voters

Scott Greacen
Executive Director
Environmental Protection Information Center

Serge Dedina, Ph.D.
Executive Director
WILD COAST

Jess Morton
Treasurer
Palos Verdes/South Bay Audubon Society

Douglas Ardley
Member Organizer
Surfers' Environmental Alliance (SEA)

Merry Winslow
President of Board of Directors
Coastal Land Trust

Rochelle Becker
Executive Director
Alliance for Nuclear Responsibility

Steve Shimek
Executive Director
Monterey Coastkeeper

Colin Kelly
Legal and Legislative Aide
Orange County Coastkeeper

Marcia Hanscom
Managing Director
Coastal Law Enforcement Action Network ~
CLEAN

Rachel Binah
Chair Emeritus Environmental Caucus, California
Democratic Party; Democratic National
Committeewoman representing California

Kaitilin Gaffney
Pacific Ecosystem Protection Program Director
Ocean Conservancy

Merrill Bobele
Chair, Coastal Issues Committee
Loma Prieta Chapter, Sierra Club

Dan Silver
Executive Director
Endangered Habitats League

Janet Santos Cobb
President
California Oak Foundation

Alan Levine
Director
Coast Action Group

Fran Gibson
President
Coastwalk California

Lynn Barris
Water Policy Analyst
Butte Environmental Council

Jan D. Vandersloot, MD
Director
Ocean Outfall Group

Claire Schlotterbeck
Executive Director
Hills For Everyone

David Scholz
Project Manager, Senior Advisor
Redwood Coast Land Conservancy

Lola Terrell
Outreach Coordinator
Ballona Institute

Robert van de Hoek
Conservation Biologist
Wetlands Defense Fund

John McNab
President
Save Our NTC

Autumn DeWoody
Program Director
Inland Empire Waterkeeper

Pete Nichols
Executive Director, Humboldt Baykeeper
President, Northwest Environmental Center

Cindy Benner
President
La Jolla Friends of the Seals

Vince Taylor
Executive Director
Dharma Cloud Foundation

Bill Rihn
President
South Laguna Civic Association

Maya Craig
Program Coordinator
Strategic Energy Innovations

Janeann Erickson
President
Madrone Audubon Society

Steve Ray
President
Watershed Coordinating Council

Scott Andrews
President
Save Everyone's Access (SEA)

Morgan Rafferty
Executive Director
Environmental Center of San Luis Obispo
County

Steve Freedman
Treasurer
Sierra Club-Angelus Chapter
Ballona Wetlands Restoration Committee

Paola Bouley
Conservation Director
Salmon Protection And Watershed Network
(SPAWN)

David Carlberg
President
Amigos de Bolsa Chica

Jennifer Kalt
Conservation Chair
North Coast Chapter
California Native Plant Society

Ray Chandos
Secretary/Treasurer
Rural Canyons Conservation Fund

Catherine Rich
Executive Officer
The Urban Wildlands Group

Dennis Huckabay
President
Buena Vista Audubon Society

Frank Egger
President
North Coast Rivers Alliance

Barbara Bass Evans
Community Advocate
Save Our Waterfront Committee of Monterey

Cynthia Hawley
President
LandWatch

Al Sanders
President
Ormond Beach Observers

Harvey Cohon
President
San Luis Obispo City Democratic Club

Debra Bianco
President
Remy O'Neill,
Vice President
Cornucopia Foundation

Joel Wells Schreck
Member
Committee for Green Foothills

Lillian Light
President
Environmental Priorities Network

David De Lange, PhD
Executive Director
Coalition to Save the Marina

Rixanne Wehren
Chair Coastal Committee
Sierra Club, Mendocino Group

Margaret Briare
Representative
Bodega Bay Concerned Citizens

Jean H. Watt
President
Friends of Harbors, Beaches and Parks

Jodi Frediani
Director
Central Coast Forest Watch

Chris Bunyan
President and Founder
Banning Ranch Defenders

Carolyn Krammer
Chairperson
Citizens for the Preservation of Parks &
Beaches

David Barish,
Co-Director
We ARE Marina del Rey

Shelly Backlar
Executive Director
Friends of the Los Angeles River

Merle Moshiri
President
Larry Porter
Vice President
Residents for Responsible Desalination

Jack Eidt
Founder
Wild Heritage Planners

Janet Santos Cobb
President
California Oak Foundation

Patt Healy
Co-Founder
Malibu Coalition for Slow Growth

John Holland
President
Friends of the Gualala River

Peter Y. Dobbins
Executive Director
Friends of the Garcia River

Aldo Giacchino
Chair
Sierra Club, Santa Cruz County Group

Don McEnhill
Executive Director
Russian Riverkeeper

Additional Signatures Received 9-2-09

John B. Murdock
President
Save Our Coast/Malibu Dolphin Watch

Peter Scott
Representative
The Campaign for Sensible Transportation

Bill Jenings
Executive Director
California Sportfishing Protection Alliance
(CSPA)

Larry Wan
Executive Director
Western Alliance for Nature

Larry Hanson
Manager
Northern California River Watch

Rob Cozens
Director
Resighini Rancheria Environmental
Protection Authority

Joe Gillespie
President
Friends of Del Norte

Barbara T. Livingston
President
Carmel Residents Association

Ann Denison
President
Los Cerritos Wetlands Land Trust

David De Lange, PhD
President
Los Angeles Audubon

Sandy Lejeune
Chair
Surfrider Santa Barbara Chapter

Marco Gonzalez
Interim Executive Director
Coastal Environmental Rights Foundation

Dana M. Kimsey, Scott Boyd
Co-chairs
San Mateo County League for Coastsides Protection

James A. Peugh
Conservation Chair
San Diego Audubon Society

Linda Perkins
Chair, Steering Committee
Albion River Watershed Protection Association

George Cattermole
Executive Director
Coastside Habitat Coalition

Ron Bottorff
President
Friends of the Santa Clara River

Monique Sonoquie
Director of Cultural Programming
Indigenous Youth Foundation of Santa Barbara

Peter Brastow
Founding Director
Nature in the City

Peter Drekmeier
Bay Area Program Director
Tuolumne River Trust

Individuals

Melvin McKinney
North Group of Sierra Club
Arcata, California

Michael Dawson
Monterey, California

Alan Harper
Founder and past Board Vice President
Terra Peninsular
Oakland, CA

Lennie DeCaro
San Juan Capistrano, CA

Robert and Nancy Scarola
Former Planning Commissioners
Santa Rosa, CA

Stephanie Pacheco
Fountain Valley, CA

Eileen Murphy
Huntington Beach, CA

John Fischer
Pacific Grove, CA

Helen Shane
Former City Planning Commissioner
Sebastopol Planning Commission
Sebastopol, CA

Debby Koken
Costa Mesa, CA

Grant Weseman
Santa Cruz, CA

Kathryn Burton
San Diego, CA

Kristen Bender
Huntington Beach, CA

Claire Pennoyer Chouinard
Co-Owner, Board Member, Designer
Patagonia Inc. and Lost Arrow Corp.
Ventura, CA

Kimberly Burr, Esq.
Forestville, CA

Susanne Amira
Summerland, CA

Janet Haley
Crescent City, CA

Cat Waters
Downey, CA

Lauraine Effress
Oxnard, CA

Dan B. Underhill
Pacifica, CA

Sarah Dixon
Malibu, CA

Patricia Einstein
Oxnard, CA

Ken Palley
Executive Committee
Surfrider Foundation
Santa Barbara Chapter

John Roberts
Board Member, Atascadero Green Valley
Watershed Council
Sebastopol, CA

Bill Miley
Ojai, CA

Sandra J. Bush,
Docent Coordinator, Harbor Seal
Docent Program on The Sea Ranch

Deane Plaister
Excecutive Committee Member
Surfrider Foundation, Santa Barbara Chapter

Roxanne Rothafel
Treasurer for Save Our Agricultural Land
Santa Cruz, CA

Jeri Flinn
Pacifica's Environmental Family
Board Secretary
Pacifica, CA

Celia Scott
Friends of the North Coast
Santa Cruz, CA

Adrea Stoker
Long Beach, CA

Amy Parkko
Pacifica, CA

Lola Terrell,
Playa del Rey, CA

Attachment:

SUMMARY OF COASTAL DEVELOPMENT PERMIT CIRCUMSTANCES AT ISSUE IN
DEVELOPMENT OF AB 1570 AMENDMENTS

**ATTACHMENT:
SUMMARY OF COASTAL DEVELOPMENT PERMIT CIRCUMSTANCES AT ISSUE
IN DEVELOPMENT OF AB 1570 AMENDMENTS**

AB 1570, as amended, would only apply to one applicant for a Coastal Development Permit (CDP) to construct an ocean desalination facility. As is often the case, the applicant worked with the Coastal Commission to craft numerous “conditions” on the permit. One condition is that the applicant begin construction of the project within two years of the CDP approval – in other words, “vest their rights” within a reasonable timeframe.

Because the applicant took the unusual step of applying for the CDP before the normal sequence of getting permits/leases from the Regional Water Quality Control Board and State Lands Commission, the two-year deadline for beginning construction could potentially expire. It is not yet certain the deadline will expire; nonetheless, the applicant has applied for an extension. The application for the extension itself tolls the deadline and makes an immediate extension unneeded.

The applicant has already taken steps to protect its vested rights in the CDP. The request for an “urgent” bill to supersede the normal regulatory process of extending the deadline in the permit would not change its rights in the project.

1) The Bill Does Not Fit the Definition of “Urgent”

In taking the extraordinary step of exempting a single project proponent from provisions of the Coastal Act, the Bill states in Section 2 that it is an “urgent action” for the safety and welfare of the public. We strongly disagree. The project in question would not necessarily be delayed by following the procedural requirement to request an extension of the Coastal Development Permit (CDP), as evidenced by the applicant’s having *already* applied for the extension which tolls the deadline.

In fact, the request for an extension became potentially necessary precisely because the applicant is not able to meet some of the deadlines agreed to by the applicant and the Coastal Commission.³ In this case, an extension of the deadlines in the CDP could easily be crafted and approved under the current regulations to allow the applicant the additional time necessary to complete the conditions of the permit. It is unnecessary for the Legislature to step into the shoes of the Coastal Commission and guarantee the extension. Creating and implementing into law a narrowly applicable exemption of existing regulations will not protect the environment or help the applicant meet the conditions of approval of the CDP in a more timely fashion.⁴

The possible need for an extension may stem from the fact that the applicant has not completed the steps for permit approval from other agencies. For example, the project’s NPDES permit, issued by the San Diego Regional Water Control Board, is currently under review by the State Water Resources Control Board for consistency with water quality law. The City of Carlsbad is

³ Coastal Development Permit, E-06-013 – Poseidon Resources (Channelside) LLC – Carlsbad Desalination Facility, Standard Condition 2, approved November 14, 2007 (“This permit will expire two years from the date on which the Commission approved the proposed project if development has not begun.”).

⁴ *Id.*

also considering local permit amendments and an addendum prepared pursuant to the California Environmental Quality Act for changes to the project itself and delivery pipelines. The City must approve these discretionary permit amendments before the applicant is able to receive the CDP.⁵ Unless the Legislature also wants to insert itself into these processes as well, the project cannot start construction without valid local permits and a discharge and intake permit – *regardless* of whether or not the applicant has to request an extension of the CDP.

Finally, it is speculative at best that the ocean desalination proposal is “urgently” needed to alleviate the *current* stresses on water supplies in the State or in the San Diego region. As stated above, the applicant still has to finalize the approval of the proposed intake and discharge of seawater. Even if the project was approved tomorrow, it would be a significant amount of time before the project could complete construction, testing and commence operations.

“Urgent” measures to address the current water supply shortage may be necessary in the area. And extraordinary actions by the Legislature may be required to streamline these urgent measures. But truly “urgent” measures would be aimed at water supply management measures (such as conservation) that can be completed within the timeframe of what would be considered the emergency conditions.

In conclusion, the applicant has sought the desired extension, is currently in productive conversations with the Coastal Commission regarding the extension, and the deadline is tolled while those discussions occur. This is not an “urgent” situation that justifies the insertion of the Legislature into regulatory procedural mandates of the Coastal Act. The applicant for an ocean desalination facility (the sole beneficiary of this bill) does not need the Legislature to take this extraordinary action, and the action will not result in expediting completion of the project.

2) The Bill Would Set Bad Legislative Precedent

Given that the extraordinary action proposed in this bill is specifically designed to resolve an issue for a single applicant before the Coastal Commission, it sends a signal to any applicant to approach their representative in the Legislature for special exemptions to the rules. Such an approach also prevents the review of any changed circumstances that might have taken place during the intervening period. Permits may be extended for years, and if circumstances have changed significantly since the original approval, no agency – not the Commission, the Water Board or a local jurisdiction - would have any recourse to deal with those changes.⁶ This would include such impacts as traffic and infrastructure constraints, water quality and quantity issues and endangered species considerations.

Further, as discussed above, this extraordinary and arguably extra-Constitutional action is not an urgent necessity and consequently relaxes the basic Constitutional framework of separation of powers unnecessarily.

Finally, there is a basic question of equity and fairness that is raised when the rules are changed for the benefit of one applicant before the Coastal Commission, yet others are denied exemptions to the rule by their representatives in the Legislature.

⁵ *Id.*, special condition 2.

⁶ *See e.g.* Title 14, Div 5.5, 13169(b).

Simply put, the precedent set by legislating narrow exemptions to the law for individuals when it is neither an emergency nor (even assuming it resolves an emergency) likely to expedite a resolution of the emergency, invites every citizen to request equal consideration. The precedent would result in undermining any reliance in fair and equal enforcement of the law – as well as a potential flood of requests for special exemptions to the law. The circumstances and facts of the applicant in this case do not warrant special legislative amendments.

3) Conclusion

We want to make it clear that our objections to the bill in no way reflect either support or opposition to the project proposal or applicant. Our opposition to the bill is based solely on our concerns that the laws of the State are enforced equally and fairly. Further, we think that it is critical the Legislature approach the limits of its authority under the Constitution sparingly and only in the most dire set of circumstances. This bill simply does not meet those standards.