



issue tolerance revocation proposals; final decisions on revocations would be due eighteen months thereafter.

- Two years after court approval of the settlement, EPA would decide which of the approximately 80 raw food tolerances involving 36 chemicals associated with existing or needed processed food tolerances that may violate the Delaney Clause are subject to revocation under the coordination policy; final decisions would have to be issued five years after the agreement is approved.

- Within five years of the agreement, EPA would review any carcinogenicity and processing studies already submitted to the agency but not yet reviewed to determine if additional processed and raw food tolerances are subject to the Delaney Clause and must be revoked.

The proposed settlement agreement was submitted to the district court on December 2. On December 22, several industry groups—including the American Crop Protection Association, NFPA, the American Frozen Food Institute, the American Soybean Association, the National Cotton Council of America, and the Western Agricultural Chemicals Association—filed objections to the proposed settlement; among other things, the groups claimed that the settlement agreement would waste EPA's resources by committing the agency to take regulatory action on pesticides that pose little if any risk to the public.

At this writing, the district court has not yet announced its decision regarding the proposed settlement agreement.

RECENT MEETINGS

At PAC's November 18 meeting, the Committee heard from Dr. William Pease regarding the series of reports on pesticides being published by the Environmental Health Policy Program of the University of California at Berkeley. Among other things, Dr. Pease explained that the Program's goal is to prevent the environmental impacts of different kinds of toxic chemical use. The Program has published impact assessment reports on farmworkers, urban pesticide uses, and the evidence of the ecological impact of pesticide use in California; the Program is currently drafting a report on groundwater contamination in California.

At PMAC's December 14 meeting, the Committee discussed various IPM methods for controlling pest problems associated with strawberry crops. Among other things, the Committee discussed IPM tools such as covering cropping for weed and soil-borne pathogen suppression; timing and growing season manipulation for disease and insect management; weed abatement; biocontrols for management of mite

problems; and companion plantings and beneficial insect habitat.

FUTURE MEETINGS

DPR's PAC, PREC, and PMAC meet regularly to discuss issues of practice and policy with other public agencies; the committees meet at 1020 N Street in Sacramento.

WATER RESOURCES CONTROL BOARD

Executive Director: Walt Pettit
Chair: John Caffrey
(916) 657-1247

The state Water Resources Control Board (WRCB) is established in Water Code section 174 *et seq.* The Board administers the Porter-Cologne Water Quality Control Act, Water Code section 13000 *et seq.*, and Division 2 of the Water Code, with respect to the allocation of rights to surface waters. The Board, located within the California Environmental Protection Agency (Cal-EPA), consists of five full-time members appointed for four-year terms. The statutory appointment categories for the five positions ensure that the Board collectively has experience in fields which include water quality and rights, civil and sanitary engineering, agricultural irrigation, and law.

Board activity in California operates at regional and state levels. The state is divided into nine regions, each with a regional water quality control board (RWQCB or "regional board") composed of nine members appointed for four-year terms. Each regional board adopts Water Quality Control Plans (Basin Plans) for its area and performs any other function concerning the water resources of its respective region. Most regional board action is subject to State Board review or approval.

The State Board has quasi-legislative powers to adopt, amend, and repeal administrative regulations for itself and the regional boards. WRCB's regulations are codified in Divisions 3 and 4, Title 23 of the California Code of Regulations (CCR). Water quality regulatory activity also includes issuance of waste discharge orders, surveillance and monitoring of discharges and enforcement of effluent limitations. The Board and its staff of approximately 450 provide technical assistance ranging from agricultural pollution control and waste water reclamation to discharge impacts on the marine environment. Construction loans from state and federal sources are allocated for projects such as waste water treatment facilities.

WRCB also administers California's water rights laws through licensing appropriative rights and adjudicating disputed rights. The Board may exercise its investigative and enforcement powers to prevent illegal diversions, wasteful use of water, and violations of license terms.

MAJOR PROJECTS

WRCB, EPA Promulgate Water Quality Standards to Protect Bay/Delta Region, Guarantee Supplies for Urban and Agricultural Users. In an agreement heralded by Governor Wilson, U.S. Department of the Interior Secretary Bruce Babbitt, urban and agricultural water users, and environmentalists as an end to California's water wars, federal and state officials signed on December 15 the *Principles for Agreement on Bay/Delta Standards Between the State of California and the Federal Government*, a document outlining water quality standards and user guarantees for water in the Bay/Delta region.

Since 1987, WRCB has been engaged in a marathon proceeding to adopt adequate water quality standards for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay/Delta). However, Wilson halted the proceeding in April 1993 after the U.S. Fish and Wildlife Service (USFWS) listed the Delta smelt as threatened under the federal Endangered Species Act (ESA), thus requiring all government agencies and private parties to consult with USFWS before taking any action which might affect the species' survival. [13:2&3 CRLR 177] With no state or federal standards in place, environmental groups sued the U.S. Environmental Protection Agency (EPA) to compel it to draft standards for the Bay/Delta; to settle the lawsuit, EPA proposed water quality standards in December 1993 which protected declining wildlife in the Bay/Delta by increasing the amount of fresh water retained in the Delta and thus decreasing the amount available to farms and cities. [14:1 CRLR 135; 13:4 CRLR 163] Governor Wilson criticized the standards and claimed that the EPA lacked jurisdiction to promulgate them. The state and federal governments came to a truce in March 1994; WRCB agreed to develop a permanent water quality control plan for the Bay/Delta by December 15, and the EPA agreed to hold off on imposing its standards until that date to give WRCB a chance to come up with adequate standards. [14:2&3 CRLR 173-74] In June 1994, WRCB and EPA signed a framework agreement, laying the groundwork for the principles set forth in December. [14:4 CRLR 159]



The December 15 declaration of principles was signed by Babbitt; EPA Administrator Carol Browner; Douglas Wheeler, Secretary of the California Resources Agency; Cal-EPA Secretary James Strock; Stephen Hall, Association of California Water Agencies; John Krautkraemer, Environmental Defense Fund; John Wodraska, Metropolitan Water District of Southern California; and other representatives of water districts and environmental interests. The highlights of the plan include the following:

- The agreement establishes new rules on how much fresh river water must be left in the Delta for environmental needs, including the habitat of the endangered chinook salmon and Delta smelt. In a normal year, the amount will be 400,000 acre-feet; in severe drought years, the total will be 1.1 million acre-feet.

- The parties agreed that no new species in the Bay/Delta will be listed as threatened or endangered under the ESA for three years. If a new listing becomes necessary and requires the diversion of more water for habitat protection, the water will be acquired and paid for by the federal government. The agreement is designed to provide habitat protection sufficient for currently-listed threatened and endangered species and to create conditions in the Bay/Delta Estuary that avoid the need for any additional listings during the next three years. The agreement provides that, due to unforeseen circumstances in the Estuary, additional listings may be required, but protection of these species shall result in no additional water costs relative to the Bay/Delta protections embodied in the plan; additional water needs will be provided by the federal government on a willing seller basis financed by federal funds, not through additional regulatory reallocations of water within the Bay/Delta.

- The plan also provides for lesser curbs on water for the Metropolitan Water Department (MWD) of Southern California during drought years. Under the accord, MWD will lose no more than 5% of its total water supply in severely dry years. The southern water users also agreed to spend \$10 million per year for three years to finance conservation programs, such as providing fish screens to keep farming irrigation systems that tap the Sacramento River and the Delta from killing thousands of salmon and smelt.

- The agreement establishes new salinity standards for the Delta and Suisun Bay, the nation's largest brackish marsh and nursery for many of the Estuary's 120 species of fish.

- Exports of water during February will be no greater than 35% of Delta inflow in years when the January river index is

greater than 1.5 million acre-feet (MAF). If the index is less than 1 MAF, the allowable exports will be 45% of Delta inflow. During March through June, exports shall be no greater than 35% of Delta inflow. During July through January, exports shall be no greater than 65% of Delta inflow.

- The parties will take immediate action, as appropriate, to resolve the biological concerns related to adequate transport of fisheries.

- The California Water Policy Council and Federal Ecosystem Directorate (CalFED), a consortium of state and federal officials which will oversee implementation of the agreement, will "develop information allowing better decisions to be made about managing the estuary and its watershed."

- Water quality conditions shall be maintained to achieve a doubling of production of chinook salmon, consistent with the mandates of state and federal law.

- Decisions regarding ESA implementation will be made utilizing the CalFED process, which requires that initial deliberations and decisions occur in the "Ops Group," a CalFED subcommittee. Ops Group deliberations will be conducted in consultation with water users, environmental, and fishery representatives. If the Ops Group disagrees on a particular issue, or if an Ops Group action requires additional water that cannot be made up within existing requirements, the issue will be decided by CalFED.

The plan will be in force for three years, after which the standards will be reexamined and revised. Although EPA has promulgated its own standards for the region (the draft standards were published in the *Federal Register* on January 6, 1994 and promulgated on December 15, 1994), EPA will withdraw those standards when WRCB adopts a final plan consistent with the *Principles for Agreement*. WRCB is responsible for finalizing the plan and thereafter will initiate water right proceedings to assign responsibility among the water rights holders in the watershed for meeting flow requirements in the Bay/Delta Estuary. At this writing, WRCB is expected to promulgate final standards by March 31.

WRCB Takes First Step Toward Adopting New Statewide Water Quality Control Plans. On December 12, WRCB held an organizational meeting to establish task forces to advise the Board and staff on issues relevant to the adoption of a new Inland Surface Waters Plan (ISWP) and a new Enclosed Bays and Estuaries Plan (EBEP), the statewide water quality control plans. Advisory task forces will be meeting over the next six months to gather information on acute and chronic toxicity

objectives; aquatic life and human health chemical specific numeric objectives; permit and compliance issues; effluent dependent ecosystems; agricultural waters (constructed and natural); and site-specific objectives policy. The task forces will convene monthly, with each task force comprised of a representative from the following interest categories: publicly-owned treatment works, stormwater, industry, agriculture, water supply, environmental organizations, public health agencies, EPA staff, fish and wildlife agencies, regional water quality control board staff, and WRCB staff.

WRCB is authorized by the California Water Code to adopt water quality control plans for waters under Clean Water Act jurisdiction. In April 1991, WRCB adopted a statewide ISWP and EBEP which included water quality objectives for toxic pollutants for all inland surface waters and enclosed bays and estuaries, as required by the Clean Water Act. However, the ISWP and EBEP were challenged in court soon after their adoption. [11:3 CRLR 177-78] In March 1994, a superior court concluded that the plans were not adopted pursuant to California law, and its final judgment issued in July 1994 directed WRCB to rescind the plans. [14:4 CRLR 164-65] With the September 22 rescission of the plans, California was left without statewide water quality objectives for toxic pollutants. EPA is required to promulgate standards for any state that has not complied with the CWA requirements on toxic pollutants; with the loss of the ISWP and EBEP and the water quality objectives contained in those plans, EPA has initiated the process of promulgating toxic pollutant standards for California, which will remain in effect until WRCB adopts its own plans.

WRCB organized the task forces in December to ensure that all feasible alternatives are fully explored and considered in creating the new ISWP and EBEP. Task force recommendations will be considered by WRCB staff in preparing draft plans; task force meetings are open to the public and will include a 30-minute public forum. The proposed adoption schedule for the ISWP/EBEP plans is as follows: public participation activities are to be held through June 1995; the draft plans are to be completed by December 1995; public hearings are to be held in February 1996; workshops and Board meetings on the revised plans are to be held by December 1996; workshops and Board meetings to adopt the plans are to be held by January 1997; the administrative record is to be prepared and submitted to the Office of Administrative Law (OAL) in February 1997; and the final plans are to be submitted to EPA Region IX in June 1997.



Protracted Mono Lake Conflict Reaches Historic Finale. Nearly two decades of litigation and debate over one of California's most unusual and scenic locations recently came to a close as a result of WRCB's decision to amend Los Angeles' right to divert water from Mono Lake tributaries. [14:4 CRLR 160-61; 14:2&3 CRLR 174; 14:1 CRLR 136]

On September 28, the ten-year anniversary of the enactment of legislation designating Mono Lake as a scenic area, the Board unanimously adopted an order significantly modifying Los Angeles' water rights licenses in order to protect public trust resources at Mono Lake and in the Mono Basin. Prior to the meeting, the City's Department of Water and Power (DWP) had agreed not to appeal WRCB's decision.

Many diverse and prominent speakers addressed the Board, including Cal-EPA Secretary James Strock and Mono Lake Committee attorney Bruce Dodge, who urged the Board to adopt the proposed order which addresses the following principal concerns:

• **Protection of Instream Flows and Fisheries.** The order establishes diversion criteria governing Los Angeles' export of water from the Mono Basin, and specifies instream flows for each of the four streams tributary to Mono Lake: Lee Vining Creek, Walker Creek, Parker Creek, and Rush Creek. These criteria are expected to ensure that sufficient flows remain in the tributaries for fishery protection and provision of water needed to increase the level of the lake.

• **Raising Lake Levels.** As part of the diversion criteria, the Board order prohibits any water appropriation should the lake level drop below 6,377 feet; the order also requires Los Angeles' diversion quantities to be consistent with increasing the lake to a long-term average of 6,392 feet. Such a level is deemed necessary for several ecological and aesthetic purposes: to submerge the landbridge to Negit Island in order to protect island nesting birds from predators, reduce the severity of dust storms, and increase the proportion of water-based tufa (statuesque formations of calcium and carbon which flourish in the lake and contribute to its unique appearance).

• **Restoration.** The order requires Los Angeles to prepare and submit to WRCB a plan for the restoration of the public trust resources adversely affected by the water diversions; the plan will address such matters as waterfowl and stream restoration. It is estimated that restoration of the Mono Lake area to its prediversion ecological state could take up to 25 years.

Furthermore, the Board decision designates Mono Lake as an Outstanding National Resource Water—a classification afforded under the federal Clean Water Act (CWA) which firmly limits degradation. In the case of Mono Lake, this will result in the establishment of a maximum salinity standard; such a designation also manifests recognition of the outstanding and unique characteristics of the water body. The designation of Mono Lake as an Outstanding National Resource Water represents only the second in CWA history (Lake Tahoe also bears this designation).

External Program Review. Pursuant to Governor Wilson's request that WRCB review government efficiencies and operations, the Board completed its final External Program Review report in June 1994. The report includes approximately 200 recommendations concerning regulatory reforms, administrative operations, and prioritization of strategic program goals in light of current and future resources; the document also addresses budgetary and statutory changes and their impact on WRCB water quality mandates. [14:4 CRLR 161-62]

As a continuation of this comprehensive evaluation of water quality regulation, the Board has contracted with the Warner Group, a management consulting firm, in order to develop a strategic plan for WRCB and the nine RWQCBs. The ultimate goal of the plan is to identify and address issues that will enable the state and regional boards to become more efficient and better able to serve their consumers. The Board estimates that such a plan can be adequately developed and completed by June 1995, at an estimated cost of \$265,000.

At this writing, a public workshop is scheduled for January 23, in order for the Warner Group to receive suggestions and criticisms from interested parties and to discuss strengths and weaknesses of the water rights programs and identify suggestions for improvement. Some of the areas to be discussed include licenses, compliance and enforcement, and public trust issues and environmental review.

Nonpoint Source Pollution Management Program Reports Released. In February 1994, WRCB began a year-long review of nonpoint source (NPS) pollution in California; nine technical advisory committees (TACs) have met periodically to evaluate the effectiveness of the existing NPS program and to examine the impact of various sources of NPS pollution, including pesticide management, confined animal facilities, irrigation, agriculture, abandoned mines, and recreational boating/marinas. [14:4 CRLR 163]

In October, the TACs released reports identifying the major categories of NPS pollution and suggesting mitigation solutions and implementation strategies. TAC recommendations will be analyzed by a Coordinating Committee comprised of representatives from WRCB, the RWQCBs, the Coastal Commission, and EPA. The analysis will focus on the legal, technical, fiscal, and policy implications of NPS pollution. At this writing, TAC members will present their reports with recommendations at a WRCB workshop scheduled for January 24-25.

WRCB Adopts Amendments to Underground Storage Tank Cleanup Fund Program. At its November 17 meeting, WRCB adopted amendments to Chapter 18, Division 3, Title 23 of the CCR, regarding its Underground Storage Tank (UST) Cleanup Fund Program; the regulations and their enabling act establish a UST Cleanup Fund and system of reimbursement to UST owners and operators who are responsible for damages to third parties for bodily injury and property damage caused by unauthorized releases of petroleum from USTs. The regulations also define requirements for submitting claims against the Fund for corrective action and third party damages. Amendment of the regulations is necessary to incorporate changes made pursuant to AB 3188 (Hauser) (Chapter 1290, Statutes of 1992) and AB 1061 (Costa) (Chapter 432, Statutes of 1993) to Chapter 6.74 of the Health and Safety Code. The amendments require WRCB to adopt a priority ranking for awarding claims at least once per year instead of twice per year; clarify the legislative intent that residential tank owners are eligible for funding; provide that the second priority ranking for awarding claims will include a city, county, district, or nonprofit organization that has total annual revenues of less than \$7 million; include in the third ranking a city, county, district, or nonprofit organization that employs fewer than 500 full-time and part-time employees; and allow claimants who meet specific criteria to request a waiver of the criteria for complying with the permit requirements. Chapter 6.75 of the Health and Safety Code also authorizes WRCB to adopt these amendments as emergency regulations. [14:4 CRLR 163]

On December 27, WRCB filed these emergency regulations with OAL. At this writing, WRCB staff is preparing the rule-making file on the permanent adoption of the amendments for review and approval by OAL.

Annual Fee Schedule Regulation. On December 30, WRCB published notice of its intent to adopt emergency amendments



to section 2200, Title 23 of the CCR, which contains its annual fee schedule. The proposed amendments would amend the \$1,000 fee currently charged for either a general National Pollutant Discharge Elimination System (NPDES) permit or general Waste Discharge Requirements (WDRs); the fee is to be paid annually pursuant to Water Code section 13260. The annual fee for persons whose discharges are regulated by a general NPDES permit or general WDRs issued by WRCB or a RWQCB (excluding stormwater permits) must be based on the threat to water quality and complexity of the discharge; all discharges that are subject to a given general permit must be assessed the same fee. The proposed rulemaking would also expand the definition of the term "general permits" to include general WDRs as well as general NPDES permits. At this writing, no public hearing is scheduled; WRCB will receive public comments until February 13.

LEGISLATION

H.R. 5176 (Filner) is federal legislation which grants a 180-day extension period for the City of San Diego in which to apply for an exemption from specified requirements of the Clean Water Act (*see* LITIGATION). Any application for exemption submitted by the City would have to include a commitment to implement a wastewater reclamation program that, at a minimum, will achieve a system capacity of 45 million gallons of reclaimed wastewater per day by January 1, 2010, and result in a reduction in the quantity of suspended solids discharged by the applicant into the marine environment during the period of the exemption. The legislation further provides that the EPA Administrator may not grant an exemption unless he/she determines that doing so would result in removal of not less than 58% of the biological oxygen demand (on an annual average) and not less than 80% percent of total suspended solids (on a monthly average) in the discharge to which the application applies. This bill was signed by President Clinton on October 31 (Public Law 103-431).

AB 120 (Katz), as introduced January 12, would declare that, upon the completion of the terms of an agreement to transfer water, or the right to the use of water that is available as a result of specified conservation efforts, the right to the use of that water shall revert to the possessor of the water right as if no change in the point of diversion, place of use, or purpose of use had occurred. [*A. WP&W*]

SB 6 (Hayden), as introduced December 5, would prescribe procedures by which any person or entity may bring an

action for civil penalties, declaratory relief, or equitable relief to enforce certain provisions of the Porter-Cologne Water Quality Control Act involving state ocean and coastal waters and enclosed bays and estuaries. The bill would authorize a court to award a prevailing plaintiff his/her costs, including expert witness and reasonable attorneys' fees. Furthermore, if an action is brought by a person or entity other than WRCB or a RWQCB, the bill would prohibit the boards from commencing proceedings for the imposition of civil liability or equitable relief pursuant to specified provisions of existing law without first obtaining the written consent of the person or entity bringing the action. [*S. NR&W, Jud*]

LITIGATION

On September 22, in compliance with the final judgment in *County of Sacramento, et al. v. State Water Resources Control Board; City of San Jose v. State Water Resources Control Board; City of Sunnyvale v. State Water Resources Control Board; Simpson Paper Company v. State Water Resources Control Board, and City of Stockton v. State Water Resources Control Board*, WRCB rescinded Resolution 91-33, the 1991 decision by which it adopted the Inland Surface Waters Plan and the Enclosed Bays and Estuaries Plan. [*11:3 CRLR 177-78*] The July 1994 judgment invalidated the plans on the grounds that they were not adopted pursuant to the Administrative Procedure Act, the California Environmental Quality Act, and the Porter-Cologne Water Act. [*14:4 CRLR 164-65*] Because the ruling invalidated the state's water quality standards plans, EPA is in the process of drafting water quality standards for the state. At this writing, EPA plans to publish draft standards in the *Federal Register* in July 1995, with a notice of proposed rulemaking to be published prior to that. In the interim, regional water quality control plans that were in effect before the statewide plans were adopted have been reinstated. In December, WRCB began the process of adopting new statewide plans (*see* MAJOR PROJECTS).

In *Committee to Save the Mokelumne River v. East Bay Municipal Utility, et al.*, 13 F.3d 305 (9th Cir. 1993), the U.S. Supreme Court denied defendants' petition for writ of certiorari on October 3. The East Bay Municipal Utility Department (EBMUD) and the Central Valley RWQCB requested review in July 1994 after the U.S. Ninth Circuit Court of Appeals affirmed an order of the U.S. District Court for the Eastern District of California, granting partial summary judgment in favor of

the Committee to Save the Mokelumne River. The court found that the defendants own and operate the Penn Mine facility and that acid mine drainage from the abandoned mine site had, from time to time, passed into the Mokelumne River and Camanche Reservoir, conclusively establishing that defendants "discharged a pollutant" from the Penn Mine facility within the meaning of the Clean Water Act, making them subject to the Act's permit requirements. [*14:4 CRLR 165; 14:2&3 CRLR 179*] In March 1994, EBMUD and RWQCB jointly applied to WRCB for an NPDES permit in response to the court's decision. WRCB is expected to issue a draft NPDES permit in the upcoming months.

Committee to Save the Mokelumne River, et al. v. State Water Resources Control Board and Regional Water Quality Control Board, Central Valley Region is a state court action based on the facts in the case described above but regarding issues of state law, including whether the RWQCB was acting in its regulatory capacity when it participated in construction and operation of the impoundments on the dam; whether Mine Run Dam Reservoir is a point source of pollution subject to an NPDES permit; whether the RWQCB should be held liable as a discharger at Penn Mine; whether the RWQCB was authorized to grant EBMUD an exemption from the Toxic Pits Cleanup Act (TPCA); and whether the Committee should be required to exhaust administrative remedies before bringing suit in connection with other impoundments at Penn Mine. [*14:4 CRLR 165*] In December, the Committee's motion for partial summary judgment—asking the court through collateral estoppel to adopt the federal court's determination and require an NPDES permit for the mine discharges—was denied in part and granted in part. The court found that the state had a duty to apply for the NPDES permit; the rest of the issues will proceed to trial. At this writing, the Committee plans to conduct additional discovery.

In *People of the State of California, Department of Fish and Game and the Regional Water Quality Control Board, Central Coast Region, et al. v. Unocal*, No. CV75194 (San Luis Obispo County Superior Court, filed Mar. 23, 1994), state prosecutors contend that Unocal Corporation engaged in long-term discharges of diluent, a petroleum-based thinner used by Unocal to thin the crude oil still in the ground to facilitate its recovery at the company's Guadalupe Oil Field. [*14:4 CRLR 165; 14:2&3 CRLR 179*] In October, the court overruled Unocal's demurrer; at this writing, Unocal is expected to file an answer by January 19.



Backcountry Against Dumps v. Water Resources Control Board, et al., No. 952871 (San Francisco Superior Court), and **County of San Diego v. Water Resources Control Board**, No. 665874 (San Diego County Superior Court), were filed in June 1993 to challenge the state's finding that a landfill on the Campo Indian Reservation in San Diego County meets California's environmental standards. [14:2&3 CRLR 179] Both cases are pending while the landfill permitting process is completed by WRCB and the California Integrated Waste Management and Recycling Board. If the permits to operate the landfill are granted, the case will proceed; both cases were filed in the meantime to meet statutes of limitation requirements. [14:4 CRLR 165]

Tahoe Keys Property Owners' Association v. State Water Resources Control Board, 23 Cal. App. 4th 149 (March 30, 1994), is an action by which Tahoe Keys Property Owners' Association (TKPOA) seeks relief from a mitigation fee charged as a condition for obtaining building permits for land around Lake Tahoe. TKPOA lost its suit to obtain a preliminary injunction against the further collection of mitigation fees and against the expenditure of funds created by mitigation fees previously collected by WRCB, the Lahontan Regional Water Quality Control Board, and the Resources Agency. After the California Supreme Court declined to review the decision denying that injunction [14:4 CRLR 165], the Secretary of the Resources Agency allocated \$670,000 for the restoration of rivers and wetlands impacted by the Tahoe Keys project. TKPOA then filed a second lawsuit to enjoin the allocation and, in the alternative, to stop the continued collection of the fees. After WRCB's motion to consolidate the two suits was granted, WRCB filed its opposition to TKPOA's petition for writ of mandamus; the petition was argued on December 23, and—at this writing—the court has not yet issued its final decision.

City of San Diego v. California Regional Water Quality Control Board, San Diego Region, and State Water Resources Control Board, No. 00673979 (San Diego County Superior Court), concerns an \$830,000 assessment against the City of San Diego for failure to report sewage spills in a timely or accurate manner. The City is seeking to stay the assessment of civil liability and rescind the RWQCB's assessment order. [14:4 CRLR 165; 14:2&3 CRLR 179] On December 16, the trial court issues a tentative ruling remanding the case to RWQCB for rehearing on the grounds that it made inadequate findings linking the liability assessment to

the incidents of violation; at this writing, the final ruling has not yet been issued.

In **United States and California v. City of San Diego**, No. 88-1101-B (U.S.D.C., S.D. Cal.), EPA is seeking to force the City of San Diego to comply with the Clean Water Act's standards for sewage treatment. In October, Congress passed legislation allowing the City to apply to the EPA Administrator for an exemption from the federal sewage treatment standards required under the Act (*see* LEGISLATION). The City argues that the standards are unnecessarily stringent, because they were developed for discharges into lakes and inland waterways rather than for ocean discharges, such as those made by the City. [14:4 CRLR 165] At this writing, the City has until April 1995 to submit the waiver application to EPA.

RECENT MEETINGS

At its October meeting, WRCB agreed to submit 16 projects on NPS pollution problems to EPA for grant funding; California is expected to receive \$2.6 million for such projects, and the state must match 40% of the federal grants. Among the groups slated for funding are the Klamath River Basin/Fisheries Task Force for Klamath Basin Watershed Restoration; the Los Molinas Unified School District for the Lassen Range Watershed Project; the California Coastal Conservancy for Eel River Animal Waste Pollution Reduction; the Marin County Reclamation District for Dairy Waste Reclamation; and the Southern Sonoma County Reclamation District for Sonoma Creek Vineyard Management Practices.

At its November 17 meeting, WRCB approved two wetlands resolutions from the San Francisco Bay Regional Water Quality Control Board: the Policy on the Use of Wastewater to Create, Restore and/or Enhance Wetlands (Resolution No. 94-086) and the Policy on the Use of Constructed Wetlands for Urban Runoff Pollution Control (Resolution 94-102). The Water Quality Control Plan for the San Francisco Basin prohibits a potentially harmful discharge of wastewater into a beneficially used water body without a minimum dilution of ten to one. Exceptions to this prohibition may be allowed if "net environmental benefits will be derived as a result of the discharge." Resolution No. 94-086 provides the policy framework necessary to grant exceptions to the discharge prohibition on the basis of the "net environmental benefit" of using wastewater to create, restore, and/or enhance wetland projects, as long as wastewater is not used to restore or enhance existing wetlands; the project does not

cause toxicity or bioaccumulation problems for wildlife; and applicants are prohibited from using the same portion of a wetlands project to satisfy the exceptions from waste discharge prohibition as well as the compensatory mitigation requirement under section 404 of the Clean Water Act and other permits.

Policy No. 94-102 allows for the use of constructed wetlands for urban runoff treatment systems; urban runoff, a significant source of point and nonpoint pollution, consists of stormwater and other discharges from urban sources. The policy includes seven provisions to be followed by the RWQCB in its determination of whether to approve projects involving the use of constructed wetlands to treat urban runoff. Under the policy, wetlands for urban runoff treatment must be a constructed system, with no existing wetlands to be used; constructed wetland systems must not cause or contribute to violations of applicable water quality standards of receiving waters; wetlands constructed for urban runoff treatment must be constructed separate from the receiving water; a wetland system constructed instream will be a water of the United States and not subject to this policy; the proponent of such a project is required to show that the constructed wetland will be managed to avoid adverse impacts to wildlife and to control vectors and other nuisance factors; and constructed wetlands used for urban runoff treatment may not be used to satisfy mitigation requirements pursuant to sections 401 and 404 of the Clean Water Act or any other regional or local jurisdiction.

Also at its November 17 meeting, the Board approved funding totalling over \$1 million for eleven water quality management planning programs, including the Sacramento Regional County Sanitation District for metal transport in the Sacramento River; the Association of Monterey Bay Area Governments for NPS pollution in coastal harbors and sloughs; and the San Diego Bay Interagency Panel to develop a San Diego Bay waste load model. The Board also approved six projects for submittal to EPA for funding to protect and restore publicly-owned freshwater lakes, including Guajome Lake, El Estero Lake, Middle Creek/Lake County Flood Control, Lake Elsinore, Lake Merced, and Clear Lake; the EPA funding level for this program is not known.

On December 13, the Board adopted a resolution instructing its Executive Director to develop a statewide policy addressing groundwater cleanup in order to provide clear and consistent direction to the regional boards. The policy is directed specifically at "nonattainment" areas—



RESOURCES AGENCY

CALIFORNIA COASTAL COMMISSION

Executive Director:

Peter Douglas

Chair: Carl Williams

(415) 904-5200

The California Coastal Commission was established by the California Coastal Act of 1976, Public Resources Code (PRC) section 30000 *et seq.*, to regulate conservation and development in the coastal zone. The coastal zone, as defined in the Coastal Act, extends three miles seaward and generally 1,000 yards inland. Except for the San Francisco Bay area (which is under the independent jurisdiction of the San Francisco Bay Conservation and Development Commission), this zone determines the geographical jurisdiction of the Commission. The Commission is authorized to control development of, and maintain public access to, state tidelands, public trust lands within the coastal zone, and other areas of the coastal strip through its issuance and enforcement of coastal development permits (CDPs). Except where control has been returned to local governments through the Commission's certification of a local coastal plan (LCP), virtually all development which occurs within the coastal zone must be approved by the Commission.

The Commission is also designated the state management agency for the purpose of administering the federal Coastal Zone Management Act (CZMA) in California. Under this federal statute, the Commission is authorized to review oil exploration and development in the three-mile state coastal zone, as well as federally sanctioned oil activities beyond the three-mile zone which directly affect the coastal zone. The Commission determines whether these activities are consistent with the federally certified California Coastal Management Program (CCMP). The CCMP is based upon the policies of the Coastal Act. A "consistency certification" is prepared by the proposing company and must adequately address the major issues of the Coastal Act. The Commission then either concurs with, or objects to, the certification.

A major component of the CCMP is the preparation by local governments of LCPs,

as mandated by the Coastal Act of 1976. Each LCP consists of a land use plan (LUP) and an implementation plan (IP, or zoning ordinances). Most local governments prepare these in two separate phases, but some are prepared simultaneously as a total LCP. An LCP does not become final until both phases have been formally adopted by the local government and certified by the Commission. Until an LCP has been certified, virtually all development within the coastal zone of a local area must be approved by the Commission. After certification of an LCP, the Commission's regulatory authority is transferred to the local government, subject to limited appeal to the Commission. Of the 127 certifiable local areas in California, 83 (65%) have received certification from the Commission at this writing. At its November meeting in San Diego, the Commission held a hearing on the City of Encinitas LCP, and certified it with suggested modifications. The modified LCP has gone back to Encinitas for reapproval and, once approved by the City, will be reheard by the Commission and effectively certified. At this writing, the Commission is scheduled to consider the revised Encinitas LCP at its March meeting in San Diego.

The Commission meets monthly at various coastal locations throughout the state. Its meetings typically last four consecutive days, and the Commission makes decisions on well over 100 items. The Commission is composed of fifteen members: twelve are voting members and are appointed by the Governor, the Senate Rules Committee, and the Speaker of the Assembly. Each appoints two public members and two locally elected officials representing districts within the coastal zone. The three remaining nonvoting members are the Secretaries of the Resources Agency and the Business, Transportation and Housing Agency, and the Chair of the State Lands Commission. The Commission's regulations are codified in Division 5.5, Title 14 of the California Code of Regulations (CCR).

MAJOR PROJECTS

Commission Resignations, Appointments. The resignation of Commission Chair Thomas W. Gwyn at the Coastal Commission's November 1 meeting in San Diego set off a round of turnover among Commissioners that is not yet over. In explaining his decision to step down after

those in which an inability to resolve groundwater problems exists, despite persistent efforts to decontaminate the areas. The Board set mid-April as the target date for consideration of the policy. At this writing, it appears that the policy will be incorporated into WRCB Resolution No. 92-49 ("Policies and Procedures for Investigation and Cleanup and Abatement under Section 13304 of the Water Code"); a public hearing is scheduled for March 23.

At its January 4 workshop, the Board met to receive public comment and recommendations regarding courses of action with respect to water rights issues on the Russian River; the Russian River watershed encompasses about 1,480 square miles in Mendocino and Sonoma counties and is a substantial source of development. WRCB's Division of Water Rights currently has 1,404 water right filings on record, including 1,158 permits, applications, and licenses and 17 hydropower production filings. The Division has accepted 82 new applications for water right permits on the Russian River and tributaries; these pending applications raise questions regarding the availability of water within the Russian River system. Specifically, the two principal issues concern the maintenance of water levels within the main stem and tributaries of the river, and whether additional measures are needed to protect the fishery resources, primarily Coho salmon and steelhead trout, currently being considered by federal agencies for endangered species status.

FUTURE MEETINGS

For information about upcoming workshops and meetings, contact Maureen Marché at (916) 657-0990.

