



# REGULATORY AGENCY ACTION

**Control Board and Regional Water Quality Control Board, Central Valley Region** is a state court action to determine—among other things—whether the Central Valley RWQCB was acting in its regulatory capacity when it participated in construction and operation of the impoundments on the Mine Run 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 the Penn Mine facility; whether the RWQCB was authorized to grant the East Bay Municipal Utility Department 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 a December 1994 ruling on the Committee's motion for partial summary judgment, the court found that the state had a duty to apply for the NPDES permit. [15:2&3 CRLR 156; 15:1 CRLR 141] The parties recently agreed to stay these proceedings for eighteen months; at this writing, a hearing is scheduled for August 18, 1997.

**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), state prosecutors contend that Unocal Corporation engaged in long-term discharges of diluent, a petroleum-based thinner used by Unocal to thin crude

oil still in the ground to facilitate its recovery at the company's Guadalupe Oil Field. In October 1994, the court overruled Unocal's demurrer. [15:2&3 CRLR 156; 15:1 CRLR 141; 14:4 CRLR 165] On September 14, the parties attended a settlement conference which resulted in the postponement of the jury trial, previously scheduled to commence on October 2; at this writing, the matter is off calendar and no new trial date has been scheduled.

**United States and California v. City of San Diego,** No. 88-1101-B (U.S.D.C., S.D. Cal.), is an action initiated by EPA more than eight years ago to force the City of San Diego to comply with Clean Water Act standards for sewage treatment. The City has argued 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. [15:2&3 CRLR 157; 15:1 CRLR 142; 14:4 CRLR 165] On November 10, EPA issued San Diego a five-year renewable waiver from federal sewage-treatment standards, and announced its intent to drop the part of its lawsuit accusing San Diego of inadequately treating its sewage.

## ■ RECENT MEETINGS

At its October 11 meeting, WRCB presented an update on the Water Quality Protection Program (WQPP) for the Monterey Bay National Marine Sanctuary. The WQPP is an interagency effort to protect and enhance the valuable resources of the Sanctuary and its watershed. Currently, 27

federal, state, and local agencies are working together to develop a comprehensive program to address a variety of water quality issues, including urban and agricultural runoff, marina and boating activities, point sources of pollution, and water management. WRCB, as well as the San Francisco Bay and Central Coast RWQCBs, are represented on the WQPP committees.

The Sanctuary plan is being developed using "integrated coastal management," a process that creates a consensus among the region's resource managers, scientists, landowners, businesses, environmental groups, and the public. A key goal of the WQPP is to improve coordination between over 170 existing water quality management and monitoring programs already operating in the region. The agencies participating in the WQPP are in the process of finalizing a detailed action plan for addressing urban runoff; among the strategies recommended in this action plan are programs for comprehensive storm water management, education, technical training, and storm drain inspections. Over the next year, the WQPP will work with local jurisdictions to assist in the implementation of the urban runoff plan, and will also help develop action plans on additional water quality issues.

## ■ FUTURE MEETINGS

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



# RESOURCES AGENCY



## CALIFORNIA COASTAL COMMISSION

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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 Develop-

ment 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, 84 (66%) have received certification from the Commission at this writing. The first submittal of the City of Encinitas' LCP was heard by the Commission at its November 1994 meeting in San Diego, and was certified with suggested modifications. [15:1 CRLR 143] The modified LCP was then sent back to Encinitas, approved by the City, reheard by the Commission for a final time at its May meeting in Huntington Beach, and effectively certified; the City took over permit authority as of May 15.

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).

On May 22, the Senate Rules Committee appointed Rusty Areias, a Democrat and dairy farmer from Monterey County, to fill the seat on the Coastal Commission vacated by Lilly Cervantes. Areias served in the Assembly for twelve years until 1990; in 1994, he lost the Democratic primary for the office of state Controller.

## ■ MAJOR PROJECTS

**Commission Deadlocks on Edison's Proposal to Scale Back San Onofre Mitigation Conditions.** At its November meeting, the Coastal Commission entertained a proposal by Southern California Edison (SCE) to relax several conditions

of a mitigation order relating to SCE's management of San Onofre Nuclear Generating Station's (SONGS) Units 2 and 3; the 1991 Commission order was stipulated to by SCE, and was intended to mitigate for the substantial adverse marine environmental impacts caused by the operation of the nuclear powerplant in the coastal zone.

By way of background information, the Commission finally approved SCE's application for a CDP to construct SONGS Units 2 and 3 in 1974; the approval came after an initial rejection of the CDP in 1973 and the filing of a lawsuit by SCE, and carried with it extensive conditions intended to mitigate for the project's many known and unknown adverse environmental impacts. The approval required SCE to immediately mitigate for known adverse impacts, and called for the study and future mitigation by SCE of then-unknown potential impacts. SCE agreed to these conditions, the most significant of which called for a comprehensive and continuing study of SONGS' impact on the marine environment by an independent group of scientists, the Marine Review Committee (MRC). The conditions required that if the MRC identified substantial adverse environmental effects, SCE must mitigate those impacts.

After fifteen years of study, the MRC released its findings in September 1989. Among other things, the MRC concluded that the operation of SONGS Units 2 and 3 had caused some environmental damage, including a loss of 20 tons of fish and fish eggs per year into the plant's water intake system, and a 16% reduction in the amount of natural light in the water as a result of sediment stirred up by the plant's water discharge system; the reduced light was found to harm specific species as well as offshore kelp beds. The MRC recommended the construction of artificial reefs to reduce the effects of the discharge system; upgrading the plant's water cooling system to keep fish out of the intake pipes; a reduction in the volume of water taken in by the plant at peak operation times; modification of the schedule of plant operation around fish-hatching periods; and commencement of work to restore damaged local wetlands. [9:4 CRLR 115]

Based on the results of the MRC's study, Commission staff crafted a mitigation plan with extensive input from SCE. The proposed mitigation plan, which was agreed to by SCE, was approved by the Commission in 1991. Among other things, the mitigation plan required SCE to restore 150 acres of southern California wetlands, install fish barrier devices at the powerplant, construct a 300-acre kelp reef,

and finance the independent monitoring of the mitigation package by a small monitoring program staff under the direction of the Commission's Executive Director. [11:4 CRLR 176-77] In 1993, the Commission required SCE to partially fund an experimental white seabass hatchery as an additional mitigation measure.

Recently, SCE proposed extensive amendments to four of the six mitigation conditions to which it had already agreed. These amendments include extending permit deadlines which have been missed, eliminating the 300-acre kelp reef requirement in favor of a 12-acre experimental kelp reef, shortening the 30-year mitigation monitoring period to ten years, eliminating the independent monitoring of the mitigation project, and removal of SCE's obligation to install fish barriers in the plant's coolant intake systems which kill 20-50 tons of fish and four billion fish eggs and larvae each year.

PRC section 13166(a)(1) provides that an application for an amendment to a CDP shall be rejected if, in the opinion of the Executive Director, the proposed amendment would lessen or avoid the intended effect of a conditioned permit, unless the applicant presents newly discovered material information which could not have been produced before the permit was granted. In this case, Commission Executive Director Peter Douglas determined that each of the proposed amendments would eliminate major portions of the mitigation package, and thus would lessen or avoid the intended effect of SCE's permit.

In addition, Douglas determined that the fact that mitigation costs exceed previous estimates does not constitute "newly discovered information" sufficient to allow a permit amendment. The original estimated cost of the mitigation project was \$29 million; last year, the cost was estimated at over \$100 million. According to Douglas, the increase in cost estimates is also not material to the decision to impose the mitigation project, because the \$100 million project is far cheaper than the \$500 million-\$2 billion cooling tower alternative which was proposed in prior years.

In sum, Douglas determined that SCE's proposals did not meet the legal standard for accepting a permit amendment, and that SCE's proposals were merely an attempt to shirk the commitments to which it had agreed in 1991. Accordingly, he rejected SCE's permit amendments.

SCE requested a public hearing on its proposed amendments, and made several arguments in support of its petition. SCE contended that the requirement of independent monitoring is inconsistent with Commission practice on other projects.



# REGULATORY AGENCY ACTION

However, both SCE and the Commission acknowledged that the SONGS project is unique from other Commission projects; therefore, this is neither "new" or "material" information.

With respect to the kelp reef requirement, SCE contended that its studies show that the powerplant does not adversely affect the kelp bed in the area. According to Douglas, this information is not "new" because fluctuations in the productivity of the kelp bed were anticipated after the MRC studies.

With respect to the wetland restoration requirement, SCE proposed to lessen or avoid the intended effect of the permit conditions by reducing the scope of the project and relieving itself of the monitoring requirement after ten years; however, no "newly discovered material information" was submitted to support this amendment.

At the Commission's November 15 meeting in Los Angeles, SCE urged the Commission to overrule Douglas' decision and accept the amendments offered for consideration. Many environmental groups, municipalities, and Commissioners voiced opinions in support of Douglas' decision, arguing that SCE's environmental impact studies were untrustworthy because they had not been subjected to peer review, unlike the MRC's studies. Sara Wan of the League for Coastal Protection argued that the Commission should interpret its rules strictly against SCE, because to do otherwise would open the floodgates for other applicants to seek reconsideration of their permit conditions without meritorious information. The environmentalists' theme was "a deal is a deal"—SCE should honor its end of the agreement. Commissioner Giacomini accused SCE of attempting to exploit a lack of institutional memory, referring to SCE's proposals as a "bait and switch trick."

SCE, San Diego Gas and Electric Company, and other Commissioners argued that Douglas' decision should be overruled by vote and the merits of "new" information should be considered at a future public hearing. SCE argued that its proposals would achieve the intended mitigation effect; only the means of achieving that end have changed. In addition, SCE argued that the data provided is "new and material" and deserves the careful consideration of the Commission and the public, not just the Executive Director. Commissioner Wright opined that the SONGS project is unique and the decision to accept the amendments for future consideration would not set an adverse precedent; he also argued that the Commission's decision should consider the social benefits

of SONGS, such as low-cost electrical power and job creation.

The final vote on the matter was tied, with six Commissioners in support of accepting the application for amendment and six voting against it. Without a majority vote on the issue, Douglas' decision to reject the amendment application stands.

**Commission Approves Solana Beach Grade Separation Project.** At its October 10 meeting in San Diego, the Commission unanimously approved the Solana Beach Grade Separation Project. The issue had been postponed by the Commission at its September meeting due to concerns regarding the project's impacts on water quality and to allow increased public participation.

The applicants, North County Transit Development Board and the City of Solana Beach, propose a project with three major components:

- First, the applicants would depress the at-grade railroad crossing below the existing street level at Lomas Santa Fe Drive, construct the Lomas Santa Fe Drive Bridge over the railroad, and complete other associated road improvements. This grade separation would lower a 1.4-mile segment of the existing railroad track approximately 30 feet below the existing grade. The depressed track would be contained in an open cut trench that would parallel Highway 101. The new trench would accommodate the new depressed main track and passenger platform, and would allow room for the future installation of a second track and platform.

- Second, the applicants would relocate and upgrade the existing storm drain and outfall structure at Fletcher Cove from 36 to 60 inches in diameter. The existing storm drain is of insufficient size to accommodate 100-year storm flows, and the proposed improvements would remedy this problem. The drain would discharge into an energy dissipation device on Fletcher Cove beach. The proposed energy dissipator would be a rectangular concrete structure located on the sand against an existing bluff. A flat, concrete apron would extend from the dissipator to further protect the beach from erosion.

- Finally, a maximum of approximately 225,000 cubic yards of graded material excavated from the grade separation site would be deposited onto the beach in the Fletcher Cove area. Approximately 315,000 cubic yards of material would be excavated as part of the grade separation project. Although the total amount of excavated material suitable for beach replenishment has not yet been determined, approximately 225,000 cubic yards of beach quality sand is anticipated. The sand would

be deposited onto Fletcher Cove beach between October 1996 and 1997 to avoid interrupting summer tourism.

On the issue of traffic and public access, Commission staff's report indicates that the proposed project should have a positive impact on transportation because the grade separation would facilitate the efficient operation of motor and rail transportation. Staff also noted that the project would have a minimal impact on parking in the area. In addition, staff opined that the project would provide better coastal access by enhancing traffic flows. In this regard, the project is consistent with PRC section 30252, which states that the location and amount of new development should maintain and enhance public access to the coast.

PRC section 30253 provides that new development shall minimize the risk to life and property in areas of high flood hazard; the upgrade of the existing storm drain is an effort to conform with that provision. That section also provides that new development must neither create nor contribute significantly to the erosion or geologic instability of a surrounding area; therefore, the applicants proposed constructing the energy dissipator, which would reduce the velocity of water discharge onto the beach.

PRC section 30251 states that the scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. The large, concrete energy dissipator, which would double as a lookout platform, may violate this provision. Reduction of the size of the dissipator was deemed infeasible by Commission staff because it would cause flooding upstream. Another alternative proposed in staff's report would be an ocean outfall pipe which would be buried beneath the sand and discharge directly into the ocean approximately 300 feet offshore. This alternative would eliminate the negative visual impacts as well as beach erosion, but the applicants indicated that such an alternative is not feasible at this point because an outfall would cost approximately \$900,000 more than the \$35,000 dissipator. Another alternative proposed would be to place the dissipator within a nearby bluff face, where it would not obstruct public views. This alternative was also deemed infeasible because it would contribute significantly to the geologic instability of the bluff face, in violation of PRC section 30253. Commission staff found that the project as submitted is the least environmentally damaging feasible alternative.

PRC sections 30230 and 30231 require protection of the quality of coastal waters



and human health. According to staff's report, the only water quality studies performed in the area focused on bacteriological contamination and did not consider other sources of water pollution such as oils, grease, heavy metals, other toxic chemicals, and floatables. While water flows may increase marginally, the quality of water in the area should remain relatively constant because the addition of more rail track is not expected to increase rail traffic.

As noted, the Commission unanimously approved the project, subject to several special conditions. These conditions included approval from the U.S. Army Corps of Engineers regarding the amount and quality of excavated material to be deposited onto the beach area, restrictions on the timing of beach sand deposition and dissipator construction to minimize the impact on peak summer tourism, stockpiling of all excavated material which is not suitable for beach deposition, provisions for detailed traffic control plans, maintenance of a two-foot-deep layer of sand over the concrete apron extending from the dissipator, and provisions for the maintenance of a water quality and urban runoff control and monitoring plan which requires the applicants to submit reports to the state Water Resources Control Board (WRCB). If excessive toxins are detected in the discharged water, as determined by WRCB, the applicants are required to submit a proposal for an ocean outfall, low-flow diverters, or other remedial measures to the Commission.

**Problems Continue for Unocal at Guadalupe Beach.** Although Unocal has completed the cleanup phase of its diluent oil spill at Guadalupe Beach in San Luis Obispo County, its problems in the area continue. Unocal's project included the installation of a high-density polyethylene (HDPE) retaining wall in the beach sand to prevent wave action from impacting the cleanup area and to block the flow of diluent into the marine environment. However, in the past few months, the mouth of the Santa Maria River has migrated northward to within 40 feet of the unsecured plastic HDPE wall. [15:2&3 CRLR 161-62] According to Commission staff, due to storm activity, there is an 80% chance that the river mouth will continue to migrate northward and threaten the temporary HDPE wall this winter. At least 500,000 gallons of diluent are still in the area and, if the HDPE wall fails, the diluent from the area would migrate seaward and recontaminate the cleaned beach area and ocean.

In April, Unocal informed the Commission that a river management plan would be its primary emphasis for protec-

tion of the temporary HDPE wall. In October, Unocal submitted only a basic overview of a river management plan, but did provide a complete review of a plan to construct a 370-foot sheet pile protection wall on the beach. The river management plan failed to consider environmental impacts to the area, and was not submitted to the local government for review. As a result, the Commission has substantial information regarding a sheet pile wall, but little information on the promised river management plan. Accordingly, in November, after the Commission displayed its discontent with Unocal for taking such a "band-aid" approach to the problem, Executive Director Douglas issued an emergency permit to Unocal to construct the sheet pile wall. However, the emergency permit contained the condition that Unocal submit an application for a CDP, including a detailed river management plan, within 60 days of the issuance of the emergency permit.

**Torrey Pines LCP Amendment Postponed Again.** At its October meeting in San Diego, the Commission considered the City of San Diego's proposed amendment to the Torrey Pines segment of its LCP. This agenda item was originally scheduled to be heard by the Commission at its May 1995 meeting, but was postponed to July; at the July meeting, the Commission again postponed consideration of the proposed amendments due to the absence of an environmental impact report (EIR) on the anticipated effects of the amendments. The Torrey Pines LCP amendment consists of several components:

- **Sorrento Valley Road Transportation Project.** To improve safety conditions, one transportation project in the Torrey Pines plan is the realignment of Sorrento Valley Road. The northern part of Sorrento Valley Road is a two-lane, winding road with no parking lanes, bicycle lanes, or sidewalks. The City proposes to upgrade the road by removing the deep curves and widening the road to provide one traffic lane, bicycle lane, and emergency parking lane in each direction, a median, and a sidewalk on the west side of the road. However, since the road is wedged between the Los Peñasquitos Lagoon and the Interstate 5 right of way, the bulk of any realignment or additional travel lanes would encroach into Los Peñasquitos Lagoon. A preliminary draft EIR indicates that the road improvements proposed by the City would have permanent negative lagoon impacts of at least 2.1 acres.

The Torrey Pines wetlands are protected from encroachment by a variety of stat-

utes. PRC section 30233 provides that the altering of wetlands shall be permitted when there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided. Section 30240 provides that environmentally sensitive habitat areas shall be protected from significant disruption, and development adjacent to these areas shall be designed to prevent impacts which would significantly degrade those areas. The 1981 Torrey Pines LCP provides that widening or relocation of roads on the lagoon perimeter should not encroach into the lagoon. The 1985 Torrey Pines LCP provides that the relocation of Sorrento Valley Road shall consider the use of piers or pilings for support in wetlands. However, if this is demonstrated to be economically infeasible, then a minimum amount of earthen fill necessary may be used, provided the City has committed to a mitigation program. The lagoon is further protected by the City's own Sensitive Coastal Resource Overlay Zone, which is part of the City's certified LCP implementation package. This overlay provides for a 100-foot buffer around each wetland.

Prior to the Commission's October meeting, the City had not demonstrated that its proposal is the least environmentally damaging alternative pursuant to section 30233 of the Coastal Act, nor had it proposed mitigation measures for Commission staff to review. Accordingly, in its report, staff recommended that the Commission reject the LCP amendments as submitted. Staff recommended a variety of alternatives to enhance traffic safety which do not impact the lagoon, including lowering the posted speed limit, widening surrounding roads to alleviate traffic on Sorrento Valley Road, and installing a barrier in the center of the road.

- **Carmel Valley Road Transportation Project.** The Torrey Pines transportation plan also includes a proposal to add lanes to North Torrey Pines Road from Torrey Pines Park to Carmel Valley Road. However, that intersection lies outside San Diego's jurisdiction; only the City of Del Mar has the ability to alter the lanes which lead into that intersection. Accordingly, Commission staff recommended that the City of San Diego either delete this provision or alter the language of the provision to indicate that no improvements will take place without the approval of the City of Del Mar.

- **Density Bonuses.** Government Code section 65915 requires local governments to provide residential density increases of at least 25% to developers who agree to develop low-income and senior housing. The Torrey Pines Community Plan ad-



# REGULATORY AGENCY ACTION

dressess the requirements of this section by stating that a density bonus of up to 25% is available to developers who agree to rent units to low-income households for 20 years.

PRC section 30250 provides that new residential development shall be located in areas where it will not have significant adverse effects on coastal resources. The density bonus policy of the Torrey Pines plan could be interpreted to allow otherwise prohibited fill of wetlands for purposes of accommodating a 25% increase in residential density. According to Commission Chief Counsel Ralph Faust, to conform with the Coastal Act, an LCP must contain provisions which harmonize the requirements of the Government Code and the Coastal Act by implementing the mandatory provisions of the Government Code while implementing the discretionary provisions of the Code after taking protection of coastal resources into account. The Torrey Pines plan does not accomplish this harmonization, and Commission staff recommended denial of the project until such harmonization standards are provided by the City of San Diego.

The City and the Department of Housing and Community Development (DHCD) disagreed with the legal analysis provided by Faust. PRC section 30007 provides that nothing in the Coastal Act shall be construed to exempt governments from meeting the requirements of state and federal law with respect to low-income housing or any other obligation related to housing imposed by any law enacted after the Coastal Act. The City and DHCD argued that this provision limits the power of the Commission to require the City to attempt to harmonize the Government Code and the Coastal Act because the Public Resources Code prohibits the Coastal Act from restricting the Government Code, which was enacted after the Coastal Act.

As noted previously, the findings of the Commission staff regarding the Sorrento Valley Road transportation project are based upon a preliminary draft EIR. Upon the recommendation of Commissioner (and San Diego Vice-Mayor) Juan Vargas, the Commission agreed to postpone consideration of the Torrey Pines LCP amendments until its February meeting in San Diego. At that time, a final EIR should be available.

**Coastal Nonpoint Source Pollution Program.** Section 6217 of the 1990 federal Coastal Zone Act Reauthorization Amendments required the Coastal Commission and WRCB to prepare and submit to the U.S. Environmental Protection Agency (EPA) and the National Oceanic

and Atmospheric Administration (NOAA), by September 30, 1995, a plan to reduce significant sources of nonpoint source (NPS) pollution into coastal waters. NPS pollution, also called runoff, is that which originates from diffuse sources such as farms, dairies, and forests; these sources are much more difficult to trace than those caused by an industrial plant or wastewater treatment facility.

In order to meet the deadline, WRCB and the Commission commenced work on its Coastal Nonpoint Pollution Control Program (CNPCP) in 1992. At that time, it became clear that California already has an array of programs that appear to be implementing most aspects of the EPA-required management measures. Thus, a large part of this several-year effort included a compilation and evaluation of existing NPS pollution programs, which are embodied not only in the plans, policies, and regulations of the Commission and WRCB but are spread throughout many agencies, such as local Resource Conservation Districts, local special districts, city and county planning, public works, engineering, and health departments, and state agencies such as the Department of Transportation, the Department of Pesticide Regulation, the State Coastal Conservancy, and the Department of Fish and Game.

In order to evaluate existing NPS pollution programs, WRCB and the Commission established an elaborate technical advisory committee (TAC) process. Ten separate TACs were established for various sources of NPS pollution, including irrigated agriculture, pesticides, nutrients, confined animal facilities, grazing, abandoned mines, urban runoff, marinas, hydromodification, wetlands, and onsite sewage disposal systems. The volunteer members of the TACs were recruited from government, academia, environmental groups, industry, and individual landowners. The staff of the Commission, WRCB, and WRCB's regional water quality control boards provided support for the TACs; Commission staff worked closely with the TACs studying urban runoff, marinas, and hydromodification. The TACs met from March to October 1994, and produced their reports in November 1994.

WRCB subsequently produced a draft of the CNPCP which does not contain any new regulatory programs for the management of NPS pollution, but instead relies upon existing regulatory and voluntary programs being implemented at the state and local level. WRCB also drafted a document entitled *Initiatives in Nonpoint Source Management*, which was approved by WRCB at its September 21 meeting for

inclusion as part of the CNPCP submittal (see agency report on WRCB for related discussion).

At the Coastal Commission's September meeting in Eureka, several members of the public spoke out against approval of WRCB's submittal. Sara Wan of the League for Coastal Protection stated that over 150 public comments were completely disregarded by WRCB, and that the water board failed to incorporate the recommendations of four out of the ten TACs into the final submittal. Executive Director Peter Douglas suggested that staff review the public comments and leave the public hearing open until the Commission's October meeting.

At the October meeting, Douglas noted that he and staff had reviewed the public comments and the *Initiatives* document. Commission staff had several serious concerns with WRCB's submittal, including that board's failure to include several significant TAC recommendations in either the CNPCP or the *Initiatives* document, the lack of adequate milestones to measure progress, and the lack of "trigger" mechanisms to effectuate enforcement. Douglas noted that, due to the September 30 deadline (which had already been extended from July 15, 1995), WRCB had already forwarded the CNPCP and the *Initiatives* document to EPA/NOAA, along with a promise that the Commission would send a separate letter after its final hearing. Douglas recommended that the Commission authorize him to transmit the CNPCP, together with a letter setting forth the Commission's concerns, to EPA/NOAA as the state's final plan.

However, the Commission heard more public comment about the inadequacy of both WRCB's submittal and Douglas' proposed response. In response to strong public commentary, the Commission rejected Douglas' recommendation and directed staff to instead submit a report identifying both the shortcomings of the CNPCP and the specific TAC recommendations which had been omitted.

**Commission Approves Navy's Plan to Homeport Nuclear Aircraft Carrier in San Diego.** At its November 16 meeting in Los Angeles, the Commission voted 9-3 to approve the Navy's plan to homeport a NIMITZ-Class nuclear aircraft carrier and associated onshore wharves, piers, support buildings, and infrastructure at the Naval Air Station at North Island (NASNI) in Coronado. The project calls for the dredging of nine million cubic yards of material from San Diego Bay to create the carrier berthing area and deepen existing navigation channels. The majority of the dredge spoils will be used as beach replenishment sand at various local beaches, with 1.2



million cubic yards of contaminated sediment used as bay fill in the carrier turning basin or disposed of at a designated ocean disposal site. Due to the loss of sensitive shallow bay habitat in the carrier turning basin, the Commission is requiring the Navy to mitigate along the west shore of NASNI.

The process of bringing the nuclear-powered carrier to San Diego was set in motion in 1993 when Congress passed the Defense Base Closure and Realignment Act. This Act directed the Navy to close Naval Air Station, Alameda and relocate ships currently located there to fleet concentrations in San Diego and the Pacific Northwest. The NIMITZ-Class aircraft carrier is one of the largest and deepest ships in the Navy, measuring 1,092 feet long, 252 feet wide on the flight deck, and 134 feet wide at the hull. In other words, the ship is the size of 3-1/2 football fields laid end to end and almost one football field wide. The nuclear-powered carrier will replace a conventionally-powered carrier historically homeported in San Diego. Traditionally, San Diego has served as a three-carrier port and, although this plan authorizes only one nuclear-powered carrier, the Navy has stated that as the two remaining conventionally-powered carriers are decommissioned they will be replaced with nuclear-powered carriers. Thus, the Commission's decision has opened the door for three nuclear reactors to be located in the heart of America's sixth largest city.

In order to accommodate this new vessel at NASNI, the Navy must perform several tasks. First, the Navy must dredge the carrier berthing area and turning basin, construct a 13.4-acre fill area to house support facilities, and excavate the 14-acre mitigation area. At this writing, these activities are scheduled to commence in February 1996 and end in May 1997. Second, an existing boathouse must be demolished and a new one constructed, as well as a new wharf and wharf facilities. These activities are scheduled to commence in February 1996 and end in October 1998. Fourth, the San Diego Bay navigation channel must be dredged. This is scheduled to begin in November 1996 and end in July 1997. Finally, a Ship Maintenance Facility (SMF) and Maintenance Support Facility (MSF) must be constructed. These will be built between November 1996 and December 1998. The SMF will house the machine tools, industrial processes, and work functions necessary to perform non-radiological maintenance on the propulsion plant. The MSF will house the primary administrative and technical staff offices supporting propulsion plant maintenance, as well as the central area for

receiving, inspecting, shipping, and storing materials. The carrier is scheduled to arrive in 1998.

The dredging of San Diego Bay raises several issues regarding marine resources and environmentally sensitive habitat which the Navy attempted to address in its environmental impact statement (EIS). PRC section 30233(a) states that dredging will be permitted in open coastal waters where there is no less environmentally damaging alternative and where feasible mitigation measures have been provided to minimize adverse environmental effects. The section also states that dredging will only be allowed for certain activities, including new or expanded port and/or coastal-dependent boating facilities. Section 30233(b) states that dredge spoils suitable for beach replenishment should be transported for such purposes to appropriate beaches. The Navy maintains that the 13.4-acre fill area is the minimum necessary to support the berthing of the new carrier; further, staff reported that the fill will permit the contained disposal of existing contaminated sediment, thereby improving water quality in San Diego Bay. In addressing the beach replenishment issue, staff stated that the project represents a major benefit to recreation and protection of structures through its potential to provide millions of cubic yards of sand to local beaches; thus, the potential recreational impacts to the bay will be more than offset. Although the Navy has offered to finance a portion of the costs associated with the transport and placement of the sediment, it has not agreed to monitor the resultant deposits. However, the San Diego Association of Governments (SANDAG) is currently seeking funding for a regional shoreline monitoring plan.

The issue of environmentally sensitive habitat is covered in PRC section 30240, which provides that environmentally sensitive habitat must be protected against any significant disruption and that development of areas adjacent to sensitive areas must be designed to prevent impacts which would significantly degrade such areas. Several sensitive habitats will be disturbed by this project, including eelgrass, burrowing owls, least terns, herons, and egrets. In addition, the dredging operations may adversely affect California sea lions and harbor seals who make their homes in the navigation channel. In order to mitigate the damages, the Navy has proposed to create a 14-acre mitigation site on the west end of NASNI; this will supposedly replace the lost habitat in the turning basin and provide least terns with additional foraging area. In addition,

Navy proposes to create artificial burrows for the owls, schedule dredge operations outside the least tern breeding season, monitor water quality, and halt operations if any marine mammals are affected. Several members of the public commented on this aspect of the Navy's proposal, stating—among other things—that environmental groups did not have adequate time to review the EIS, that the Navy is practicing deception, and that the mitigation and monitoring efforts are not adequate. The Commission did not substantively address these comments.

In addition to resource/sensitive habitat issues, the Coastal Commission is required to prevent deterioration of public access to the coastal zone. The City of Coronado raised several concerns about potential adverse impacts due to increased traffic and decreased parking. Traffic impacts of development can become access/recreation impacts if they occur at peak recreational periods and preempt limited traffic capacity available to recreational users. Coronado "island" is a peninsula which is accessible only at two points, both of which are major recreational through-routes, and Coronado itself is a popular visitor destination. The City argued that Coronado's already congested traffic patterns will only become worse due to an increase in personnel from the construction project (for three years), increases in personnel for the new carrier, and the reduction of existing parking spots on the Navy base. In its reply, the Navy insisted that no mitigation is necessary and that the City's concerns are unfounded. At the public hearing, several representatives from Coronado spoke before the Commission. City planner Ann McCall expressed her concerns that the Navy's plan is not consistent with preventing deterioration of public access, that the plan does not call for any mitigation of this impact, and that the Navy has not fully disclosed all potential impacts. City councilmember Bruce Williams claimed that the Navy did not adequately consider the cumulative impacts from the project and called its report a "tragedy puppet farce." Resident Tom Miller stated that he felt Commission staff was making too many assumptions and that, as a resident, he already feared for the safety of his family from existing traffic.

In spite of these problems, staff recommended that the Commission approve the Navy's plan. In the end, the Commission voted to concur with the staff, even in the face of many possible conflicts with the Coastal Act. Commissioner Madelyn Glickfeld noted that even though the Commission lacked adequate information, it was required to approve or deny the project at



# REGULATORY AGENCY ACTION

that meeting unless the Navy waived its right to have the issue heard and allowed a continuance. The Navy declined.

**Modified Acoustic Temperature Study Moves Forward.** At its June meeting, the Commission considered a revised version of the Scripps Institute of Oceanography's proposal to conduct an undersea sound experiment in northern California ocean waters; the project would emit high-intensity, low-frequency sounds, the speed of which will be measured to assist in the determination as to whether global warming is occurring. This project, called the Acoustic Thermometry of Ocean Climate (ATOC) experiment, comes to the Commission as both a federal consistency matter, because the sound can affect the coastal zone by harming marine animals which inhabit the zone, and as a CDP application, because the sounds are emitted by a device which is connected to shore by a power cable. Numerous concerns about the project's marine resource impacts caused the Commission to delay its decision on the project at its May meeting. [15:2&3 CRLR 160]

The bottom-line problem is that very little is currently known about marine animal response to sound. In its report, staff noted that "since the only way to determine the project's impacts is to allow it to proceed in the short term and study its impacts, the authorization of a two-year initial ATOC project is warranted." Commission staff, Scripps, and environmental groups crafted several conditions and protective measures. Scripps agreed to create a Marine Mammal Research Program (MMRP), a six-month pilot study prior to the commencement of the regularly scheduled ATOC emissions. The MMRP will release its evaluation of the impact of sound on marine animals 30 days after conclusion of the pilot study; if no acute responses occur, regularly-scheduled ATOC transmissions would ensue. The MMRP monitoring studies would continue throughout all ATOC transmissions.

Additional mitigation measures include (1) incorporating into ATOC a "ramp-up period" during which the sound will be turned up gradually, rather than starting at "full blast"; (2) a commitment to operate ATOC at "the minimum duty cycle necessary to support MMRP objectives and ATOC feasibility objectives"; (3) an agreement to cease the ATOC project in the event significant adverse effects occur; and (4) an agreement to limit initial ATOC operation to a two-year period.

After the Commission's June approval, Scripps began to install the equipment needed for ATOC; during installation on October 28, it apparently tested the sound source. The project's November 9 start date was postponed when three dead humpback

whales were discovered during the first week of November off the coast of San Francisco. After an investigation, the National Marine Fisheries Service determined that it is unlikely that sound had any connection with the whales' deaths. On December 1, NMFS cleared the project to begin.

## ■ LEGISLATION

**SB 787 (Mello).** as amended April 24, includes the Secretary of Trade and Commerce as a nonvoting member of the Commission, and makes a related statement of legislative intent.

The Coastal Act provides for the certification of LCPs and port master plans by the Commission, and requires that amendments to a certified LCP or port master plan be submitted to the Commission for approval. This bill specifies that, for purposes of those provisions governing certified LCPs and port master plans, "amendment of a certified local coastal program" includes, but is not limited to, any action by a local government that authorizes the use of a parcel of land other than a use that is designated in the certified LCP as a permitted use of the parcel. This bill was signed by the Governor on July 30 (Chapter 208, Statutes of 1995).

**AB 1303 (McPherson).** The California Coastal Act of 1976 allows specified individuals to appeal to the Coastal Commission any action taken by a local government on a CDP application. Existing law requires the Executive Director of the Commission to determine whether certain appeals are patently frivolous; if the Executive Director determines that the appeal is patently frivolous, the appeal may not be filed until a filing fee in the amount of \$300 is deposited with the Commission within three days. As amended July 10, this bill provides that any action taken by a local government on a CDP application is final, regardless of whether an appeal is submitted, if any required appeal filing fee is not deposited with the Commission within five days.

The bill also defines the term "minor development" for purposes of the Act and permits a local government, after certification of its local coastal program, to waive the public hearing requirement on a coastal development permit application for a minor development if specified conditions are met. This bill was signed by the Governor on October 8 (Chapter 669, Statutes of 1995).

**SB 749 (Hayden),** as introduced February 23, would enact the California Parks, Natural Resources, and Wildlife Bond Act of 1996 which, if adopted, would authorize, for purposes of financing an unspecified program for the acquisition, development, rehabilitation, enhancement, restoration, or protection of park, beach, wildlife, and nat-

ural resources, the issuance, pursuant to the State General Obligation Bond Law, of bonds in an amount of \$300 million. The bill would provide for submission of the bond act to the voters at the statewide general election to be held on March 26, 1996. [S. NR&W]

**SB 6 (Hayden),** as amended May 23, 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 violations regarding state ocean and coastal waters and enclosed bays and estuaries, as specified. The bill would authorize a court to award costs to a prevailing party, including expert witness fees and reasonable attorneys' fees. [S. Inactive File]

## ■ RECENT MEETINGS

At its September meeting in Eureka, the Commission considered the application of the City of Newport Beach and the Newport Harbor Lutheran Church for the creation of a 22-acre park including 83 parking spaces which would encroach upon .23 acre of wetland area. The project also called for approximately one acre of onsite mitigation. The staff report concluded that the encroachment upon the wetland area is inconsistent with the Coastal Act because the parking spaces could easily be moved to a nearby location which would not impact the wetlands. With several members of the public waiting to speak on the issue, the City announced it would willingly conform its proposal to the recommendations of the Commission staff. According to Sara Wan, lobbyist for the League for Coastal Protection, the City declined to argue the matter before the Commission after the League threatened to file suit against the City if the permit was granted as submitted.

## ■ FUTURE MEETINGS

January 9-12 in Los Angeles.  
February 6-9 in San Diego.  
March 12-15 in Santa Barbara.  
April 9-12 in Carmel.  
May 7-10 in Long Beach.  
June 11-14 in San Rafael.  
July 9-12 in Huntington Beach.

## FISH AND GAME COMMISSION

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**T**he Fish and Game Commission (FGC), created in section 20 of Article IV of the California Constitution, is the