



sented a report of the Alternatives Task Force; Flint explained that the Task Force is attempting to identify when California agriculture will be without specific alternatives to certain pesticides, in order to direct research and/or regulatory action so as to prevent a lack of appropriate alternatives in the future. [12:4 CRLR 186] Flint noted that about 120 pesticide/crop combinations have been identified as being in jeopardy. The Task Force noted that although it would like to look at nonchemical, long-range alternatives (such as nutritional factors and biological control) rather than substitute chemical pesticides that may have registration problems in the future, it does not have the resources to take such action at this time.

DPR Director Jim Wells suggested that the Task Force explore the concept of pest management systems for crops which use several threatened pesticides for which there are no alternatives. Wells also noted that information from the Task Force should be shared with other interested parties such as EPA, the U.S. Department of Agriculture, commodity groups, and other potential funding sources. He further noted that the California Environmental Technology Partnership is interested in identifying activities which could spin off into businesses which would benefit California. One committee member expressed concern that small acreage crops with few chemicals registered for them would be very hard hit by the loss of a chemical, but would not attract research or funding; another committee member responded that state colleges are often looking for research projects for graduate students, and the Infrastructure Task Force is interested in finding ways to disseminate information on research needs of this kind.

At the same October 8 meeting, PMAC member George Gowgani presented a report of the Infrastructure Task Force; among other things, Gowgani explained the Task Force's proposal to establish educational requirements for pest control advisors (PCAs). The proposal calls for a bachelor's degree in agricultural sciences, biological sciences, or pest management; six months of technical experience as an assistant to a licensed PCA, or equivalent experience; and completion of a curriculum which includes core courses in physical and biological sciences, crop health, management systems, and production systems. Following Gowgani's report, PMAC discussed various aspects of PCA training and preparation, including DPR's system of evaluating PCA applications, the need for the system to remain flexible enough to accommodate PCAs who receive their education outside California, assurance

that PCAs obtain a certain number of continuing education courses in biological areas, and the need for training in integrated pest management (IPM) to be incorporated into basic PCA preparation curricula as opposed to creation of a separate IPM PCA license category.

Also at the October 8 meeting, Elin Miller presented a report of the Pest Management Systems Task Force; Miller detailed a proposed process for identifying and developing pest management systems, as well as the development and approval of a pest management plan. The Task Force is now exploring incentives for adopting systems approaches to pest management. Miller also invited comments on a draft letter from the Task Force to EPA on the subject of fertilizers and soil amendments which should be exempted from federal registration under the Federal Insecticide, Fungicide, and Rodenticide Act because of pesticidal claims.

■ 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 DPR's headquarters in Sacramento.

WATER RESOURCES CONTROL BOARD

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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 concern-

ing 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 appropriate 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

EPA Issues Bay/Delta Standards. On December 15, a federal task force consisting of representatives from the U.S. Environmental Protection Agency (EPA), U.S. Bureau of Reclamation (USBR), U.S. Fish and Wildlife Service (FWS), and the National Marine Fisheries Service (NMFS) released a package of proposed standards to protect declining wildlife in the San Francisco Bay/Sacramento-San Joaquin Delta Estuary; coordinated by EPA, the four federal agencies worked together to draft standards for the Bay/Delta region after the state failed to do so and pursuant to the settlement of a lawsuit filed by the Sierra Club Legal Defense Fund and several other environmental groups. [13:4 CRLR 163]

EPA proposes three different sets of water quality criteria: salinity criteria of two parts per thousand in Suisun Bay, the productive nursery of the estuary; survival indices to protect migrating young chinook salmon; and salinity criteria to protect striped bass spawning on the lower San Joaquin River. According to EPA, each set of criteria is intended to protect a particular designated use or set of uses in the Bay/Delta Estuary. Additionally, FWS proposes to list the California population of the California splittail as threatened under the federal Endangered Species Act; identify critical habitat for the Delta smelt, which has been listed as threatened [13:2&3 CRLR 177, 189]; and, during



1994, allocate 800,000 acre-feet of Central Valley Project water for fish and wildlife use under the Central Valley Project Improvement Act. Also, NMFS is announcing final action to reclassify the Sacramento River winter-run chinook salmon from "threatened" to "endangered."

According to EPA, its proposed salinity standards are designed to reflect the natural hydrological variability of the Delta; the length of time that the standards must be met at each location depends on whether it is a wet or dry year. The proposal requires that in wet years, the standard be met further downstream in Suisun Bay and for longer periods; in contrast, the standard for drier years would be maintained further upstream and for shorter periods.

As expected, the federal proposal will increase the amount of freshwater which must be retained in the Delta during certain times of the year, thus decreasing the amount available for export to farms and cities. The federal task force estimated that its proposal would reduce the amount of Delta water available for farms and cities by an average of 9% per year (220,000 acre-feet) in average years, and by up to 21% (1.5 million acre-feet) in drought years.

One key issue which must be resolved relates to how the proposed standards will be implemented. According to EPA, the federal agencies must depend on the state to implement the standards, since the federal agencies' authority is limited to state and federal water projects. According to EPA, if all water users contribute, the impact of the federal proposal would be distributed more equitably, reducing water cuts from 9% to 4% in an average year and from 21% to 12% in a drought period; however, this plan requires the state's cooperation with implementation.

Although many environmental groups praised the federal proposal, Governor Wilson criticized it, claiming that it is too costly in terms of both water and jobs for the state; within hours after the federal agencies announced their proposal, Wilson called the standards "unbalanced and ill-considered." Wilson complained that the proposed standards are too rigid and will have the effect of driving business and jobs away from the state because of uncertainty about a steady water supply. Wilson directed WRCB—the same agency he ordered to abandon its five-year effort to establish interim Bay/Delta standards last April [13:2&3 CRLR 177]—to meet with the federal agencies in order to draft a new regulatory proposal. Responding to the Governor's quick criticism of the proposed standards, EPA emphasized that the

proposals are only a draft and that input by state and local interests is encouraged. Environmentalists are concerned that Wilson's opposition to the proposed federal standards will cause delays in their implementation, leading to even further deterioration of the water quality in the Bay/Delta.

At this writing, the federal agencies are scheduled to hold public hearings on the proposed standards during the week of February 21 in Fresno, Sacramento, and San Francisco; all written comments must be submitted by March 11.

Mono Lake Update. During October through December, WRCB held several days of evidentiary hearings in Los Angeles, Mammoth Lake, and Sacramento to receive comments and recommendations to assist it in developing amendments to water rights licenses held by the City of Los Angeles for the Mono Lake Basin. For more than 50 years, the City of Los Angeles has diverted water from creeks which flow from the snowy eastern Sierra Nevada into Mono Lake. The diversions have caused a decline in the Lake's surface elevation by 40 feet and in the Lake's surface area by 25%, resulted in increased salinity and alkalinity levels in the Lake, resulted in the formation of a land bridge to an island on which birds nest (leaving the nests open to predators), and resulted in severe dust storms caused when the wind blows up sand and particles from the dried-out portion of the lake bed. A draft environmental impact report (EIR) issued by the Board in May 1993 was entered into evidence at the hearings; the draft EIR evaluates several alternative criteria which could be used in amending the City of Los Angeles' water rights licenses and evaluates mitigation measures for adverse environmental effects related to past water diversions and future changes in water diversion. [13:4 CRLR 163] WRCB held the water rights hearings to provide interested parties with an opportunity to submit additional evidence to the Board regarding the diversions and appropriate amendments to Los Angeles' water rights licenses in the Mono Lake Basin. According to a court order, the state's deadline to amend the City of Los Angeles' licenses is September 1994. [13:4 CRLR 164]

During the course of the public hearings, the Board received a substantial number of public comments, which were overwhelmingly in favor of amending Los Angeles' water rights licenses to allow the Lake's elevation to rise to 6,390 feet—fifteen feet above its current level, and the level determined by the U.S. Fish and Wildlife Service, U.S. Forest Service, California Department of Fish and Game, and

the Mono Lake Committee—a group formed in 1978 to protect and preserve Mono Lake—to be necessary to protect the Lake's wildlife habitat; the 6,390-foot level is also the level that WRCB's draft EIR tentatively recommends for restoring the Lake's habitat. Supporters of the 6,390-foot Lake level include several state residents, who submitted written comments to the Board encouraging the action, and the Wilson administration.

During the hearings, only a few groups or individuals voiced opposition to so amending the City of Los Angeles' water right licenses. The most vocal opponent was the Los Angeles Department of Water and Power (LADWP), which objects to the 6,390-foot level; among other things, LADWP complained that while thousands of people are getting involved in the Mono Basin water rights debate, many of them will not be affected by any change in the water rights licenses. LADWP proposes an average lake elevation of 6,377.7 feet, with fluctuations from 6,374.6 feet to 6,385.3 feet; according to LADWP, this plan "will provide more than enough water to protect Mono Lake." According to LADWP, the 6,390-foot elevation proposal "does not adequately balance the needs of the ecosystem with the needs of Los Angeles, and does not consider environmental harm to areas where alternative water supplies will have to be obtained." The Los Angeles Area Chamber of Commerce (LAACC) also expressed reservations about the proposed elevation level, stressing that Los Angeles needs a steady supply of water to attract business; LAACC suggested that Los Angeles' water diversion from the Mono Basin be restricted only as replacement water becomes available through water transfers or water recycling.

On December 13, Los Angeles Mayor Richard Riordan and Governor Wilson jointly announced that LADWP and the Mono Lake Committee had reached an agreement to reduce the City's diversions from Mono Lake by building a \$50 million water reclamation facility in the San Fernando Valley. The agreement reached between Los Angeles and the Mono Lake Committee will result in the release of funds created by AB 444 (Isenberg) (Chapter 715, Statutes of 1989), the Environmental Water Act of 1989, which was designed in part to preserve Mono Lake; the Act authorized \$60 million in state funds for specified restoration projects and reserved—until June 30, 1994—\$36 million for projects to protect and preserve the Mono Lake Basin, benefit and enhance the Lake's ecosystem, and contribute to permanent protection of the Mono Lake



Basin environment, including nesting and migratory bird populations, air quality, fish, and other wildlife, as well as provide replacement water and power to the City of Los Angeles. [9:4 CRLR 124] However, the law requires that Los Angeles and the Committee agree on the projects for which the funds will be used; the December agreement marks the first time the City and Committee have come to such an agreement since the Act was passed. Under the agreement, Los Angeles will permanently stop diverting one-third of the water it had historically diverted from the Lake before a court injunction stopped all diversions pending WRCB amendments to the City's water rights licenses. [13:4 CRLR 164] In return, the City will have access to funds created by the Act to construct a wastewater reclamation facility, which is scheduled to be completed in 1998 and is expected to create an alternative water supply for industrial and irrigation purposes; total funding for the reclamation facility will come from the state, the federal government, and the City of Los Angeles. The plant is expected to reduce LADWP's diversion of Mono Lake tributary water by 35,000 acre-feet per year.

Notwithstanding the agreement, WRCB's proceeding to amend Los Angeles' water rights licenses pursuant to the court order continues; the 6,390-foot elevation level tentatively recommended by the draft EIR and endorsed by many environmentalist and state officials, would likely force Los Angeles to reduce its diversions by far greater than one-third. LADWP, which for years has been unwilling to admit it can afford to lose any of the water it has diverted from Mono Lake, may have suddenly become willing to work with the Mono Lake Committee out of economic practicality: The Environmental Water Act prohibits the expenditure of any state money to replace water or power supplies lost by the City of Los Angeles because of a final court judgment or final WRCB order regarding the Mono Lake Basin and, after June 30, all funds reserved by the Act may be used either to protect and preserve the Mono Lake Basin or for other specified programs and projects.

At this writing, WRCB is expected to conclude its series of hearings in January; a draft order is projected to be ready for WRCB adoption in the spring.

WRCB Begins Programmatic Review. Last July, Governor Wilson asked WRCB to undertake an external programmatic review of its mandates and programs and those of the nine RWQCBs, in order to identify how the boards can best meet their mandates to protect Cali-

fornia's water resources while removing unnecessary red tape. [13:4 CRLR 165] The Board's efforts will focus on four major programmatic areas—regional board consistency, groundwater protection, permit reform, and water resources. WRCB has assigned a task force to investigate each program area; each task force will conduct a detailed review of the legal mandates, policies, and program activities related to its assigned program area.

On December 2, the Regional Board Consistency Task Force met and prioritized the areas it would be examining. Specifically, the Task Force agreed to consider the following issues: consistency of regional boards with respect to process, uniform enforcement, water quality monitoring, privatization, and regional board boundaries. At this writing, the Task Force is scheduled to meet again for two days beginning on January 20, to hear testimony regarding the five task force issues plus any additional issues raised by the public.

On December 7, the Permit Reform Task Force met and divided its focus into four categories: permit reform, fees, general permits, and watershed management. Furthermore, the Task Force agreed that Cal-EPA is not an appropriate body to handle water quality permitting in California, and that issuance of water quality permits is an appropriate function of WRCB and its regional boards.

The Water Resources Task Force met on December 13 to begin its review; at the meeting, the Task Force members decided to focus its review in two areas. The first area is coastal water quality protection from nonpoint source pollution; this will include a review of current funding levels for program development and implementation and review of WRCB staff's proposal for evaluating the statewide nonpoint source program. The second area is water reclamation; in this area, the Task Force adopted as its goal the promotion of water reclamation. To determine how the state can promote water reclamation, the Task Force plans to examine funding support for state and local agencies' water reclamation activities and projects; existing water reclamation loans and requirements; conversion of 1988 bond law loans to revolving loans; redundancy or duplication of regulations; and live stream/federal surface water quality standards. The Task Force plans to release specific issue papers in these areas; in doing so, it will define all necessary legislative, regulatory, and program changes as well as address how the state and regional boards' regulatory responsibilities should be prioritized and modified to reflect recent

budgetary and statutory changes. The Task Force plans to conduct four public meetings, scheduled for January 13 and 14, February 25, and March 16.

The Groundwater Protection Task Force held its first meeting on December 13. The Task Force agreed to investigate the following five specific areas: remediation issues, remediation responsibilities, responsible party issues, private sector issues, and protection and prevention issues. Within these areas, the Task Force plans to examine effective mechanisms to promote clean-up and still make properties saleable, and the use of the private sector to process Underground Storage Tank Clean-up Fund claims.

WRCB also formed a Program Review Committee, which will include the chair and vice-chair of each task force, as well as selected members of the legislature. The Program Review Committee, which first met on December 10, will be responsible for the timely development and submittal to the Governor of the individual task force reports, as well as its own report identifying major areas of concern and overlapping issues. The Review Committee and the four task force recommendations are expected to serve as the basis for possible program changes to be proposed by WRCB, Cal-EPA, and the Governor for legislative action.

Governor Declares Sewage Flow Emergency in San Diego. A large volume of highly concentrated wastewater flowing down the Tijuana River from Mexico through the cities of San Diego and Imperial Beach and into the Pacific Ocean prompted Governor Wilson to declare a state of emergency in San Diego County in September. As much as 15 million gallons of contaminants and raw sewage are flowing daily across the international border onto south San Diego beaches; the sewage is generated by the increase in Tijuana's population, coupled with insufficient collection and treatment systems to address the increased sewage flow. In his declaration, the Governor stressed the serious threat to the region's health, environmental, and economic well-being posed by the sewage flow; the Governor's emergency declaration is expected to facilitate requests for federal assistance and federal cost-sharing.

On October 6, the International Boundary and Water Committee (IBWC) held a public meeting in Imperial Beach to receive public comment regarding proposals for interim treatment facilities for sewage flowing across the border. In December, EPA agreed with the IBWC to allow construction of a nearby San Ysidro plant that could treat up to 75 million gallons of



Mexican sewage daily; the plan calls for a sewage treatment plant that would provide advanced primary treatment by 1995, to be upgraded to secondary treatment by 1997 (advanced primary plants use chemicals and treat sewage to a slightly lesser degree than a secondary treatment plant, but can be built more quickly than secondary treatment plants).

San Diego and federal officials note that one remaining problem with the proposal is what to do with the treated sewage; although an ocean outfall tunnel is expected to be built, it will not be in place until 1997 or 1998. According to Ann Sasaki, senior civil engineer for the City of San Diego, EPA and the IBWC are discussing several disposal options until an outfall tunnel can be completed, such as discharging the treated wastewater into the Tijuana River, returning the effluent to Mexico, pumping the treated sewage to the Point Loma Wastewater Treatment Plant, or using the treated wastewater for irrigation and other land uses.

WRCB Considers Site-Specific Water Quality Objectives for San Francisco Bay Basin. On October 7, WRCB held a workshop regarding proposed amendments to the water quality control plan for the San Francisco Bay Basin, which would establish a site-specific water quality objective and plan of implementation for copper and confirm the existing water quality objective for nickel; the amendments were adopted by the San Francisco Bay Regional Water Quality Board, but require WRCB approval because they are Bay Basin plans. EPA has designated the South San Francisco Bay, the region affected by the resolutions, a toxic hot spot under Clean Water Act section 304(l) because of heavy metal accumulation; the goal of the regional board's action is to reduce mass copper discharges from stormwater by 20%, and from riverine sources by 25%, by 2003.

WRCB received over forty requests to speak on the regional board's action at the October 7 workshop; while environmentalists accepted the regional board's standards as minimally protective of the Bay's aquatic life, many Bay Area representatives objected to the standards as overly strict. Opponents contended that the new standards, when enforced, will have devastating effects on existing industries, as well as turn potential new industries away from the Bay Area because the cost of doing business in the region will become too high. San Jose Mayor Susan Hammer, who testified at the workshop, claimed that San Jose is committed to protecting the Bay, but opined that the proposed standards "create an unnecessary risk to the

business climate." Other speakers representing business interests raised fears that the technology does not exist to enable certain industries to comply with the new standards; dischargers noted that some of the main riverine sources of copper are abandoned mines, and thus questioned whether the new standards for discharges would produce an overall benefit in water quality in the Bay when weighed against the costs to industry. At this writing, WRCB plans to hold an additional public hearing in 1994 before making a decision on whether to adopt the regional board's resolutions.

Rulemaking Update. The following is a status update on other rulemaking proceedings initiated by WRCB and described in detail in previous issues of the *Reporter*:

• **Water Rights Change Petitions.** On December 13, the Office of Administrative Law (OAL) approved WRCB's proposed changes to Articles 15, 16, and 17, and its addition of Article 16.5 to Title 23 of the CCR; these regulations pertain to urgent, temporary, and long-term changes in water rights resulting from transfers of rights and changes in the point of diversion, place of use, and purpose of use. [13:4 CRLR 166; 13:2&3 CRLR 179; 13:1 CRLR 109]

• **Underground Storage Tank Regulations.** On November 18, WRCB adopted numerous proposed changes to Articles 1-10, Chapter 16, Division 3, Title 23 of the CCR, pertaining to the regulation of underground storage tanks (UST). [13:4 CRLR 166; 13:2&3 CRLR 179] The revisions reflect procedural and equipment requirement changes in current UST regulations. Among other things, the regulations would allow tank owners to use statistical inventory reconciliation as a monitoring option; exempt all hydraulic lift tanks from the UST regulations, and farm and heating oil tanks after they have been taken out of service; require tank owners to apply for temporary or permanent closure of their tanks within 90 days after they cease using the tanks and to close the tanks within a timeframe set by the local agency; allow a tank to be repaired by lining, but prohibit the relining of the same tank in order to repair it; provide that owners do not have to fill their tanks to 95% of capacity in order to test their tanks; and require all owners of USTs to have written monitoring and response plans for existing facilities.

According to WRCB, its UST program will give tank owners some assurances that their tanks will be tested properly and accurately; this will be accomplished through engineering staff review of third-

party evaluations of all tank testing equipment and procedures before they are used in California, including engineering staff visits to local agencies to ensure that each agency has a procedure for notifying tank owners of state and local requirements. At this writing, WRCB expects to submit these amendments to OAL in March or April.

• **Underground Storage Tank Testers.** On November 18, WRCB adopted changes to Articles 1-8, Chapter 17, Division 3, Title 23 of the CCR, regarding the regulation of underground storage tank testers. [13:4 CRLR 166] Among other things, the amendments would require applicants for tank tester licenses to have completed six months of qualifying experience during which at least 50 USTs were tested. At this writing, the amendments have not been forwarded to OAL for review and approval.

• **Annual Fees for the Regulation of Discharges of Waste.** At its November 18 meeting in Sacramento, WRCB approved emergency amendments to section 2200, Title 23 of the CCR, which establish a schedule of annual fees payable by all persons subject to regulated waste discharge requirements. [13:4 CRLR 166] If approved, the amendments would have an immediate effect on three permittees in Orange, Riverside, and Contra Costa counties and would reduce funding for the state and regional boards' core regulatory programs by \$15,000; in comparison to the \$7.35 million in fees collected for these programs, this loss in revenue is expected to have minimal effect on the boards' ability to meet program objectives. No public hearing was requested; the public comment period for this rulemaking proposal ended on November 1. At this writing, the amendments have not been submitted to OAL for review and approval.

• **Wastewater Treatment Plan Classification and Operator Certification Program.** At this writing, WRCB is scheduled to consider the adoption of its proposed amendments to Articles 1, 4, 5, 7, and 8, Title 23 of the CCR, pertaining to wastewater treatment plant operators, and proposed adoption of new Article 10, Title 23 of the CCR, establishing a registration program for wastewater treatment plant contract operators, at its January meeting. [13:4 CRLR 165]

• **Conflict of Interest Code.** At this writing, the Fair Political Practices Commission is reviewing WRCB's proposed amendments to its conflict of interest code, which designates employees who must disclose certain investments, income, interests in real property and busi-



ness positions, and who must disqualify themselves from making, or participating in the making, of governmental decisions affecting those interests. [13:4 CRLR 166]

LEGISLATION

AB 1222 (Cortese). The California Wildlife Protection Act of 1990 created the Habitat Conservation Fund, which is required to be used for, among other purposes, the acquisition, restoration, or enhancement of aquatic habitat for spawning and rearing anadromous salmonids and trout resources. The Act generally requires a four-fifths vote of the legislature for amendment, which amendment is required to be consistent with and further the purposes of the Act. As amended July 15, this bill would include the purchase of water to augment streamflows as a means of acquisition, restoration, or enhancement.

Existing law requires the beneficial use of water, including, under specific circumstances, the reservation of water to instream uses to preserve and enhance fish and wildlife resources. Existing law requires the Department of Fish and Game (DFG), in consultation with specified persons, to prepare proposed streamflow requirements for each stream or watercourse for which minimum flow levels need to be established to protect stream-related fish and wildlife resources. Existing law authorizes WRCB to approve any change associated with a water transfer only if WRCB finds that the change may be made without unreasonably affecting, among other things, fish, wildlife, or other instream beneficial uses. The bill would require WRCB to establish and maintain a Registry of Instream Flow Reservations and Dedications to list all instream reservations and dedications; require WRCB to establish a procedure to allow any interested party to challenge the Board's determination to make, or fail to make, an entry into the Registry; and require DFG, in developing the requirements for each stream or watercourse, and WRCB, in making a finding whether a water transfer will unreasonably affect fish, wildlife, or other instream beneficial uses, to take into account the sufficiency of streamflow for each stream or watercourse as reflected in the Registry. [S. *Appr*]

SB 824 (Hayden). Under the Z'berg-Nejedly Forest Practice Act of 1973, a person is prohibited from conducting timber operations unless a timber harvesting plan prepared by a registered professional forester has been submitted to the California Department of Forestry and Fire Protection (CDF) and reviewed by the CDF Director to determine if the plan is in conformance with the Act and the rules and regulations of the state Board of Forestry. Upon receipt of the

plan, CDF is required to place the plan, or a true copy, in a file available for public inspection in the county in which timber operations are proposed under the plan, and to transmit a copy of the plan to DFG, the appropriate RWQCB, the county planning agency, and, if within its jurisdiction, the Tahoe Regional Planning Agency, and to invite, consider, and respond in writing to any comments received from those agencies. As amended April 12, this bill would require the Board of Forestry to adopt any mitigation measures that are proposed by a RWQCB or DFG unless CDF demonstrates that its own proposed mitigation measures would result in greater protection for water and wildlife resources.

Under the Act, the Director of DFG or WRCB is authorized to file an appeal with the Board of Forestry on the approval of a plan by the CDF Director, under specified circumstances. This bill would authorize the appropriate RWQCB to so appeal, rather than WRCB, and would make related changes.

Under the Act, the Board of Forestry is required to adopt forest practice rules and regulations. This bill would require the Board to review recommendations for any rule changes that are submitted to it by RWQCBs and DFG at least twice each calendar year and to act on those recommendations within 120 days. The bill would prescribe related matters. [S. *NR&W*]

AB 2167 (Areias), as amended May 19, would require WRCB and each regional board to develop a small business unit in each region to develop and distribute information concerning the legal rights of small businesses with regard to the investigation and remediation of the discharge of hazardous substances; to provide information on cost-effective methods for site investigations and affordable technologies with regard to the investigation and remediation of those discharges; and to provide an informal resolution process, including a technical ombudsperson, by which small businesses may appeal decisions of regional boards with regard to the investigation and remediation of those discharges. [A. *W&M*]

AB 2110 (Cortese), as amended August 17, would enact the Bay-Delta Fish and Wildlife Protection Act of 1993 and create a Bay-Delta Fish and Wildlife Advisory Committee with prescribed membership; and require the Committee to consult with and advise specified state agencies with regard to the use of funds derived from the imposition of the mitigation and monitoring fees and also with regard to the implementation of the federal Central Valley Project Improvement Act. [S. *Appr*]

SB 481 (Johnston). Existing law, which is to be repealed on January 1, 1994, requires WRCB to impose fees on all point and nonpoint dischargers who discharge into enclosed bays, estuaries, or any adjacent waters in the contiguous zone or the ocean; prohibits WRCB from imposing a fee that exceeds \$30,000 per discharger; and makes any person who fails to pay the fee when requested to do so by WRCB guilty of a misdemeanor and subjects that person to civil liability. As amended April 27, this bill would delete the penalty provision, prohibit WRCB from imposing a fee on any agricultural nonpoint source discharger unless certain requirements are met, and limit the fee to not more than ten cents per acre per year. The prohibition would have retroactive effect and would require WRCB to make any necessary credits or refunds when funds are appropriated for that purpose. The bill would make the maximum fee that WRCB may impose on a local public agency that pays the fees on behalf of the agricultural nonpoint source dischargers \$30,000. The bill would provide that a local public agency that pays the fees on behalf of agricultural nonpoint source dischargers is not responsible for the quality of any of those discharges.

The North Delta Water Agency Act prescribes the powers and purposes of the North Delta Water Agency. This bill would authorize the Agency to pay the fees described above that are imposed on the agricultural nonpoint source dischargers located within the boundaries of the Agency and to impose a benefit assessment to pay for those fees and related administrative costs. The bill would prohibit the Agency from regulating the activities of persons or entities that discharge wastes into the waters of the state. [S. *Appr*]

SB 548 (Hayden). Existing law requires WRCB and the regional boards to develop and maintain a comprehensive program to identify and characterize toxic hot spots in enclosed bays, estuaries, and adjacent waters, to plan for the clean-up of the sites, and to amend water quality plans and policies relating to those sites. As amended May 27, this bill would require the Director of Environmental Health Hazard Assessment to prepare a comprehensive plan for an aquatic pollution health risk assessment program, as prescribed; require WRCB to adjust and increase the total amount of fees collected pursuant to a prescribed provision of the Water Code in order to fund the Office of Environmental Health Hazard Assessment to carry out the aquatic pollution health risk assessment program; and require WRCB, upon appropriation by the legislature, to allocate \$200,000 or an annually adjusted amount generated from the adjustment in the prescribed fees, to the Office to carry out that program. [S. *Appr*]



AB 97 (Cortese). Existing law authorizes every local or regional public agency authorized to serve water to the inhabitants of the agency to transfer, for use outside the agency, water that is surplus to the needs of the water users of the agency. As amended June 29, this bill would authorize those public agencies to transfer, for use outside the agency, water, the use of which is voluntarily foregone, during the period of the transfer, by a water user of the agency.

The bill would set forth provisions relating to the transfer of water appropriated pursuant to the Water Commission Act and the Water Code and groundwater, as prescribed. The bill would authorize a water supplier to establish a water user-initiated program to enable its water users to transfer all or a portion of their water allocation for use outside the water supplier's service area; authorize a water user receiving water from a water supplier to submit to the water supplier a request to transfer all or a portion of the user's allocation of water for use outside the service area of the water supplier, as prescribed; require the water supplier to either approve or deny the transfer request; authorize the possessor of the water right to approve or deny the transfer, or approve the transfer subject to conditions, as prescribed; authorize the water supplier and the water user to enter into a specified water transfer agreement and would authorize the water user to transfer water pursuant to other provisions of law, as prescribed; and prescribe related matters and define terms.

The bill would authorize a water supplier that supplies water appropriated or diverted under appropriative rights initiated before December 19, 1914, to establish a program for the transfer of water for use outside its service area. The bill would repeal these provisions on January 1, 1999. [S. AWR]

AB 898 (Costa), as amended July 8, would prohibit WRCB or a RWQCB from subjecting the owner or operator of any publicly owned treatment works to certain enforcement actions undertaken pursuant to the Porter-Cologne Water Quality Control Act, if the waste was discharged into the publicly owned treatment works' collection system by a third party acting independently of the owner or operator of the publicly owned treatment works. [S. AWR]

AB 2054 (Cortese), as amended June 29, would authorize a RWQCB that determines there is a threatened or continuing violation of certain orders to issue an order establishing a time schedule and prescribing a civil penalty; extend that authority to WRCB under

certain circumstances; make an appropriation by requiring that the money that is raised in connection with the imposition of a civil penalty be deposited in the continuously appropriated State Water Pollution Clean-up and Abatement Account of the State Water Quality Control Fund; and authorize WRCB to apply to the clerk of the appropriate court in the county in which the civil penalty was imposed for a judgment to collect the penalty.

Existing law provides that no person may be excused from testifying or producing evidence in an investigation, inquiry, or hearing before WRCB on the ground that testimony or evidence may tend to subject the person to a penalty. This bill would repeal that provision.

Existing law prohibits the criminal prosecution of a person for any matter under investigation by WRCB, concerning which the person has been compelled to testify or to produce evidence. This bill would delete that provision and would instead authorize WRCB, in any Board proceeding, to grant immunity to a witness who is compelled to testify or to produce evidence and who invokes the privilege against self-incrimination. The bill would require WRCB, if it does not grant the immunity, to excuse the person from giving any testimony or from producing any evidence to which the privilege against self-incrimination applies, and would require WRCB to dismiss, continue, or limit the scope of the proceedings, as prescribed. [S. Floor]

AB 52 (Katz). Existing law authorizes a permittee or licensee to temporarily change the point of diversion, place of use, or purpose of use due to a transfer or exchange of water or water rights if WRCB determines that the transfer meets prescribed conditions, including that the proposed change would not unreasonably affect fish, wildlife, or other instream beneficial uses. As introduced December 15, this bill would—among other things—delete that requirement and instead require that the proposed change not unreasonably affect the environment. The bill would require WRCB, upon the receipt of notification of the proposed temporary change, to notify the appropriate county board of supervisors of the proposed transfer and other interested persons or entities. [13:1 CRLR 110] [A. WP&W]

AB 2014 (Cortese). Existing law provides that if a person entitled to the use of water fails to beneficially use all or part of the water for the purpose for which it was appropriated for five years, the unused water may revert to the public. Existing law declares that if any person entitled to the use of water under an appropriative right fails to use all or any part of the water

because of water conservation efforts, any cessation or reduction in the use of that appropriated water shall be deemed equivalent to a reasonable and beneficial use of water. As amended May 10, this bill would prohibit the forfeiture of the appropriative right to the water conserved because of the nonuse or the transfer of the conserved water in accordance with those provisions of existing law. The bill would revise the definition of "water conservation" for purposes of those provisions, to include reductions in the amount of water lost during the conveyance of water from the source to the place of use. The bill would prohibit the loss or forfeiture of any portion of an appropriative water right as a result of waste, unreasonable method of use, or unreasonable method of diversion of water if the water user undertakes subsequent conservation efforts, as specified. [S. AWR]

AB 173 (V. Brown), as amended August 30, would limit the amount of salary paid to the chair and each member of WRCB, on and after July 1, 1994, to an amount no greater than the annual salary of members of the legislature, excluding the Speaker of the Assembly, President pro Tempore of the Senate, Assembly majority and minority floor leaders, and Senate majority and minority floor leaders. [S. Inactive File]

■ LITIGATION

In *United States and California v. City of San Diego*, No. 88-1101-B (U.S.D.C., S.D. Cal.), EPA is appealing Judge Rudi Brewster's decision to allow the City of San Diego to build only part of the huge sewage treatment project it agreed to build in a previous consent agreement with EPA. [13:4 CRLR 170; 13:2&3 CRLR 182; 13:1 CRLR 110] On October 6, the U.S. Ninth Circuit Court of Appeals heard oral argument from the parties and then deferred its decision after Judge Brewster agreed to review the consent decree between the parties. Review of the consent decree was scheduled for December 7; however, the review was continued until February 7. After the continuation was granted, the Ninth Circuit issued a statement indicating that any further delays would result in mandates being issued by the Ninth Circuit in an effort to resolve the litigation.

In *Browning Ferris Industries, et al. v. State Water Resources Control Board, et al.*, No. B5010549 (Los Angeles County Superior Court), Azusa Land Reclamation, Inc., a subsidiary of Browning Ferris, seeks to expand its landfills located in the San Gabriel Valley; however, WRCB issued Order No. WQ91-09, prohibiting the discharge of municipal waste at this site. Browning Ferris is seeking a writ of man-



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. This zone, except for the San Francisco Bay area (which is under the independent jurisdiction of the San Francisco Bay Conservation and Development Commission), determines the geographical jurisdiction of the Commission. The Commission has authority 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. Except where control has been returned to local governments, 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 has authority 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 local coastal programs (LCPs), mandated by the Coastal Act of 1976. Each LCP consists of a land use plan and implementing 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 are certified, formally adopted by the local government, and then "effectively 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 126 certifiable local areas in California, 82 (65%) have received certification from the Commission at this writing. In October, the Commission certified the Mendocino County LCP (minus the Town of Mendocino segment).

The Commission meets monthly at various coastal locations throughout the state. 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 of coastal districts. The three remaining nonvoting members are the Secretaries of the Resources Agency and the Business and Transportation 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).

In early December, Governor Wilson appointed Eureka Mayor Nancy Flemming to the Commission. Flemming, who will continue to serve as mayor of Eureka, previously served as an alternate to former Coastal Commissioner Bonnie Neely; Neely was moved to the Board of Forestry.

MAJOR PROJECTS

Commission Maintains That Unapproved Beach Curfews Violate the Coastal Act. At its October meeting, the Commission struck down the City of Long Beach's 10:00 p.m.-5:00 a.m. beach curfew, finding that the ban violates the public's right to beach access. The Commission ordered Long Beach to lift the curfew and make the beach accessible to the public 24 hours a day by January. According to city officials, Long Beach has closed its beach from midnight to 5:00

date requiring WRCB to vacate its Order, and to require an environmental impact report (EIR) for the proposed expansion of the landfill; alternatively, Browning Ferris seeks money damages based on a regulatory taking of property theory. Following a December 8 hearing, the superior court issued a tentative decision upholding WRCB's order on December 10; WRCB filed a proposed statement of decision and proposed judgment on December 17.

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 are coordinated actions pending in Sacramento County Superior Court, concerning the April 1991 adoption by WRCB of two statewide water quality control plans which established water quality standards for 68 priority pollutants affecting California's inland surface waters and its bays and estuaries [11:3 CRLR 177-78]; the petitioners contend that these plans are unduly stringent and were not developed in compliance with applicable laws. On October 15, Sacramento County Superior Court Judge James Long issued a tentative decision in which he ruled that the plans are invalid because WRCB failed to comply with the Administrative Procedure Act, the California Environmental Quality Act, and the Porter-Cologne Water Quality Act. On November 15, the court granted WRCB's motion for an extension of time to file objections to the tentative decision.

RECENT MEETINGS

At its September 23 meeting, WRCB approved an amendment to the Water Quality Control Plan for the Santa Ana River Basin which revised requirements and exemption criteria for use of septic tank-subsurface disposal systems on lots smaller than one-half acre. WRCB also adopted a resolution of the North Coast Regional Water Quality Board for a policy to implement the Water Quality Control Plan for the North Coast Basin by allowing an additional waiver category for waste discharge requirements for specific discharges resulting from thermal on-site treatment of soils contaminated with petroleum hydrocarbons.

FUTURE MEETINGS

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

