



## 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 concerning the water resources of its respective region. Most regional board action is subject to State Board review or approval.

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

WRCB also administers California's water rights laws through licensing 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.

On February 17, Governor Wilson appointed James M. Stubchaer to WRCB; prior to his appointment, Stubchaer was

manager of the Santa Barbara County Flood Control and Water Conservation District for thirty years. He has also served on the California Water Commission, served as a member and chair of the Central Coast Regional Water Quality Control Board, and operated a consulting business. Stubchaer was confirmed by the Senate on March 4.

## MAJOR PROJECTS

**Wilson Abandons Interim Standards: Bay/Delta Left in Federal Hands.** At an April 1 news conference in Washington, D.C., Governor Wilson announced that he had ordered WRCB to stop working on interim water quality standards aimed at protecting the San Francisco Bay/Sacramento-San Joaquin Delta Estuary. Interrupting a massive proceeding begun in 1987 to establish permanent water quality and flow standards to protect all beneficial uses in the Bay/Delta Estuary, WRCB had issued the draft interim standards, known as Water Rights Decision 1630, last December in response to Wilson's April 1992 "battle cry" for standards designed to halt the precipitous decline of fish and wildlife in the estuary and ensure that the available water supply is reasonably used. Wilson's April 1992 demand followed the U.S. Environmental Protection Agency's (EPA) December 1991 rejection of WRCB's May 1991 Water Quality Plan for Salinity (a predecessor to Decision 1630), and EPA's decision to begin formulating federal standards to preserve fish habitat in the Bay/Delta. In response to Wilson's pledge to develop adequate interim standards, EPA took no action in 1992. [13:1 CRLR 107-08; 12:4 CRLR 187; 12:2&3 CRLR 214-15]

However, on March 4, the U.S. Fish and Wildlife Service (USFWS) formally granted special protection to the Delta smelt, a tiny fish found only in the Delta whose population has been steadily decreasing due to mismanagement of the region. (See agency report on DEPARTMENT OF FISH AND GAME for related discussion.) Because USFWS listed the Delta smelt as a threatened species under the federal Endangered Species Act, all government agencies and private parties must consult with USFWS before taking any action that might affect the fish's survival. In announcing his new decision, Wilson contended that this federal action has made WRCB's interim standards "irrelevant" and moot because federal agencies "for all practical purposes, have set interim standards under the authority of the Endangered Species Act." However, Wilson's action was seen by many as part

of his campaign to dilute the federal Endangered Species Act, which he says does not adequately balance economic consequences against the threat to wildlife, and as a political move to assist his 1994 reelection campaign by aiding San Joaquin Valley farmers, who oppose Decision 1630's proposed restrictions on water pumped from the Delta for irrigation.

On April 15, the Sierra Club Defense Fund and eighteen other environmental groups filed suit in U.S. District Court in Sacramento against EPA, seeking to force the federal agency to write water quality standards for the Bay/Delta; the lawsuit alleges that EPA has violated the federal Clean Water Act by failing to issue its own standards after it declared WRCB's standards too weak in 1991. An EPA spokesperson called the environmentalists' lawsuit "unnecessary," since EPA has been working for months on salinity and flow standards that will protect the estuary, and expects to issue Bay/Delta standards later this year.

**The Drought is Officially Over.** Following a month of torrential rainstorms which resulted in disaster-area declarations in twenty California counties, Governor Wilson declared an official end to California's six-year drought, the most severe in state history, on February 24. California's water problems are not over, however; even with normal water levels, there is not enough water to go around, so conservation is very important. As a result, Wilson also announced that the Department of Water Resources' Drought Information Center, formed in 1988, is being converted into a Water Conservation Center.

At the end of the 1991-92 water year, the state's 155 main reservoirs contained only 57% of normal levels. [13:1 CRLR 109] On May 1, reservoir storage was estimated at 95% of normal levels. With the generous snowpack, most reservoirs are expected to be in the normal storage range—or even slightly above—by early summer.

**State Budget Cuts Impact Board.** On January 8, Governor Wilson released his proposed 1993-94 budget; among other things, the budget requests \$792.5 million in general fund allocation to Cal-EPA for 1993-94, which represents a 0.4% decrease from 1992-93 funding. Although Cal-EPA receives only 6.6% of its total funding from the general fund, the impact of the reductions on programs funded from that source are expected to be significant. The Governor's budget proposes a total of \$231 million for the general support of WRCB and the regional boards in 1993-94; of this amount, \$32 million is proposed from the general fund, \$22 mil-



lion from various regulatory fees, and \$177 million from federal funds, reimbursements, state bonds, and other funds.

In its Analysis of the 1993-94 Budget Bill, the Legislative Analyst's Office (LAO) suggested that legislation be enacted requiring WRCB's fees to be adjusted to a level that will generate sufficient revenues to cover the costs of the Board's regulatory programs. According to LAO, fees are an appropriate way of financing programs that prevent the use or degradation of public resources by private activities.

LAO also addressed WRCB's water rights program, through which the Board evaluates requests to appropriate waters and issues permits setting the terms and conditions for the use of these waters; investigates and enforces water rights laws and permit conditions; manages information submitted by certain water users; and assists the courts in adjudicating water disputes. LAO noted that, despite the breadth and importance of these responsibilities, there has been a decline in real dollars budgeted for the program; as a result, WRCB has developed significant backlogs in its water rights program. According to LAO, these backlogs reduce the Board's ability to ensure that water is properly used without harm to other users and the environment; for example, the Board estimates that its current staffing level will enable it to inspect each permitted water rights project only once every 40 years. Furthermore, the backlog in the issuance of permits can slow business development of new projects or projects requiring permit modifications. LAO recommended that WRCB's annual water rights fees be revised such that revenues are sufficient to maintain the water rights program and address program backlogs.

**California Submits Formal Subtitle D Application.** In February, California became the first of the western states to submit its formal application under Subtitle D, the new federal EPA regulations for municipal solid waste landfills (MSW) under the Resource Conservation and Recovery Act (RCRA). [12:1 CRLR 146] The application, prepared jointly by WRCB and the California Integrated Waste Management Board (CIWMB), seeks EPA approval of California's existing criteria for MSW landfills. Although California's program for regulating MSW landfills is not identical to all provisions of Subtitle D, WRCB believes its regulations and those of CIWMB ensure adequate protection of public health and the environment. Since federal law requires EPA to review and, if necessary, revise its regulations periodically, California has re-

quested changes in provisions pertaining to daily cover, groundwater monitoring, liners, and flexibility for small MSW facilities. Based upon EPA's response to the draft application submitted last year, existing CIWMB and WRCB regulations are expected to sufficiently satisfy most federal standards.

EPA's Region IX staff, however, have expressed concerns with certain provisions of California's requirements, including standards for some aspects of landfill design, including liners, and exemptions from daily cover for small rural landfills and for burning waste on offshore islands.

Owners and operators of MSW landfills are currently required to comply with federal standards and anyone may seek enforcement by filing a legal action in a federal court. A two-year phase-in period, ending October 9, 1995, is allowed for state statutes and regulations to be brought into full compliance with federal regulations.

**WRCB/CIWMB Release Joint Report.** In April, WRCB and CIWMB released a joint report entitled *Reforming the California Solid Waste Disposal Regulatory Process*; pursuant to AB 3348 (Eastin) (Chapter 1218, Statutes of 1992), the boards were required to submit a report and recommended legislation to the Governor and the legislature by March 1. [12:4 CRLR 178] The report was required to describe the boards' regulatory programs and activities relating to solid waste disposal sites and identify areas of regulatory overlap, duplication, and conflict; AB 3348 required the recommended legislation to propose a method for streamlining regulatory authority over solid waste disposal sites between the boards and, where appropriate, between the local enforcement agencies (LEAs) and the boards. Among the recommendations contained in the report are the following:

-CIWMB, WRCB, and the regional boards should retain their existing statutory authority over solid waste disposal facilities, except that a clear and concise division of authority should be established (requiring revisions to both statute and regulations) to remove all areas of overlap, duplication, and conflict. WRCB and the RWQCBs should be the sole agencies regulating landfills for the purpose of protecting the waters of the state, and CIWMB and the LEAs should regulate all other aspects of solid waste landfill operations within their regulatory authority.

-To effectuate this clear division of authority, CIWMB and WRCB should jointly develop a consolidated set of regulations in one title, where ideally all landfill regulations would be codified. In ad-

dition, there should be one consolidated permit application and one required technical reporting document.

-The process and timeframe for review and approval of permit applications should be revised to allow for concurrent development and review of the waste discharge requirements and the solid waste facilities permit, requiring possible changes to statutes and regulations.

-Wherever practicable, an annual joint inspection should be conducted of facilities by CIWMB and the appropriate RWQCB and LEA.

-The closure/postclosure requirements of CIWMB and WRCB for solid waste landfills should be combined into one set of regulations in the new consolidated title; WRCB should be responsible for those regulatory requirements governing water quality protection during closure/postclosure, and CIWMB should be responsible for other closure/postclosure requirements.

-CIWMB's role in permitting and compliance should be limited to providing technical assistance and support to the LEAs, and reviewing permits and other items prepared by the LEAs for CIWMB's concurrence.

-The LEA program should not be altered at this time; CIWMB has just completed the first round of LEA certifications and has the authority under existing law to pursue decertification of an LEA if there is inadequate performance. According to the report, it would be premature at this time to consider significant alterations to this process.

-The Solid Waste Disposal Site Cleanup and Maintenance Account should be consolidated with the Integrated Waste Management Account and a rate established for the combined account which provides adequate funding for all statutory obligations which are agreed to be funded from the new joint account. Also, CIWMB's present authority to raise the tipping fee should be removed from statute and the fiscal year 1993-94 tipping fee should be set in legislation at \$1.20 per ton.

-According to the report, the Solid Waste Assessment Test program administered by WRCB, which has reviewed many of the large active landfills in the state and will be centering on small to medium-sized landfills, has been invaluable in identifying leaking solid waste landfills; the boards recommended that this program continue operating until all of the ranked solid waste disposal sites are reviewed.

-The responsibility for establishing and enforcing financial responsibility re-



quirements for landfills should be consolidated into one title in regulations administered by CIWMB.

**Board to Amend its Conflict of Interest Code.** On March 19, WRCB published notice of its intent to amend its conflict of interest code, which designates employees who must disclose certain investments, income, interests in real property, and business positions, and who must disqualify themselves from making, or participating in the making, of governmental decisions affecting those interests. The proposed amendments, for the most part, rename certain positions within WRCB and its regional boards, and add or eliminate responsibilities from certain positions without changing the designated disclosure requirements. The Board was scheduled to receive public comments from March 19 until June 2; at this writing, no public hearing has been scheduled.

**Underground Storage of Hazardous Substance Regulations.** On April 2, WRCB published notice of its intent to amend sections 2610, 2611, 2621, 2630, 2631, 2632, 2634, 2636, 2641, 2644, 2646.1, 2650, 2652, 2660, 2661, 2662, 2664, 2670, and 2672, Title 23 of the CCR, regarding the regulation of underground storage tanks. During 1992, WRCB proposed to make similar changes; however, WRCB has redrafted the regulatory package in light of public response proposing sweeping changes to the regulations, as well as the Board's desire to address new issues within the regulations. [13:1 CRLR 109]

Among other things, the new amendments would define the terms "bladder system," "decommissioned tank," "hazardous substance," "leak threshold," "operator," and "statistical inventory reconciliation"; repeal a provision requiring owners of certain exempt tanks to close those tanks according to requirements appropriate only to regulated tanks; establish requirements regarding the installation, calibration, operation, and maintenance of new tanks; prohibit the storage of non-petroleum hazardous substances in partial secondary containment systems; require owners and operators of new tanks to cease implementation of a monitoring program if they suspect a release; require owners to demonstrate to the local agency that the system will detect a release from the primary container before it can escape from the leak interception and detection system; require owners or operators to prepare a written monitoring procedure for leak interception and detection systems; require monitoring programs for existing tanks to be in writing; require a tank integrity test only if necessary to deter-

mine if the underground storage tank is leaking; require that product be delivered to a tank through a drop tube; provide that monthly non-visual monitoring is equivalent to an annual tightness test; specify that a tank that has had an unauthorized release may be lined once; and require, as of December 22, 1998, automatic line leak detectors to automatically shut off the pump when a leak occurs.

The Board's public comment period ended on May 17; at this writing, no public hearing is scheduled.

**Fully Appropriated Streams.** On April 7, the Office of Administrative Law approved WRCB's adoption of new Article 23 (sections 870-874), Title 23 of the CCR, which sets forth WRCB's procedures for (1) revoking or revising the status of stream systems declared to be fully appropriated, (2) adding stream systems to the initial or any revised declaration by WRCB, and (3) public participation in the process through which a "fully appropriated" declaration is changed. The procedures allow the Board, upon its own motion or upon petition from any interested person, to revoke or revise a declaration; any person is allowed to petition the Board to revoke or revise the fully appropriated status of a stream. [13:1 CRLR 109; 12:4 CRLR 188-89]

**Changes in Point of Diversion, Place of Use, and Purpose of Use; Changes Due to Transfer of Water or Waters Rights.** In late May, WRCB released modified language regarding its proposed amendments to sections 791-93, 795-96, and 799, and the proposed repeal of section 794, Article 15, Title 23 of the CCR, pertaining to changes in point of diversion, place of use, or purpose of use of water; amendments to sections 801-02, the repeal of sections 800 and 803, and the adoption of section 804, Article 16, pertaining to temporary changes due to transfers of water or water rights; the adoption of sections 805 and 806, Article 16.5, relating to petitions for temporary urgency changes; and the amendment of sections 811, 812, 814, 815, and 816 and the repeal of section 813, Article 17, regarding changes involving a long-term transfer of water. [13:1 CRLR 109] At this writing, WRCB is scheduled to discuss the proposed changes at a June 3 workshop, and consider adoption of the rulemaking package at its June 17 meeting.

## LEGISLATION

**AB 385 (Hannigan).** Existing law requires WRCB to establish annual fees applicable to all point and nonpoint dischargers who discharge into enclosed bays, estuaries, or any adjacent waters in

the contiguous zone or the ocean. As amended March 15, this bill would prohibit the Board from imposing these fees on dischargers who discharge from lands managed primarily to provide habitat for waterfowl and other water-dependent wildlife. [S. T&PSM]

**AB 697 (Bowen).** The Carpenter-Preley-Tanner Hazardous Substance Account Act requires the Department of Toxic Substances Control or a California regional board to prepare or approve remedial action plans, which specify, among other things, removal and remedial actions selected for the clean-up of all hazardous substance release sites identified and categorized pursuant to a specified procedure. Existing law requires the Department and WRCB to each develop, by July 1, 1992, policies and procedures to be used by each agency in overseeing the investigation and taking of removal and remedial actions at hazardous substance release sites, in the case of the Department, and in overseeing the investigation of, and cleaning up or abating the effects of, discharges of a hazardous substance, in the case of WRCB. As amended April 15, this bill would instead require the Department and WRCB to concurrently establish consistent policies and procedures to be used by each agency in overseeing the investigation and taking of removal and remedial actions at hazardous substance release sites, and in overseeing the investigation of, and cleaning up or abating the effects of, discharges of a hazardous substance. The bill would require the Department and WRCB to jointly review the policies and procedures established prior to the enactment of this bill and to jointly develop, and send to the legislature, recommendations for revisions to make consistent the hazardous substance release cleanup policies and procedures followed by the Department, WRCB, and the regional boards. [A. Floor]

**AB 2091 (Takasugi).** Existing law requires WRCB and the regional boards to issue waste discharge requirements and dredge or fill material permits as required or authorized by the Federal Water Pollution Control Act with any more stringent effluent standards or limitations than are needed to prevent nuisance, protect beneficial uses, or implement water quality control plans. As amended April 27, this bill would require WRCB's Executive Director to consult with the Office of Oil Spill Prevention and Response Administrator and develop a pre-incident procedure or general permit for authorizing discharges, other than dispersants, that are related to the response, containment, and clean-up of an oil spill conducted in accor-



## REGULATORY AGENCY ACTION

dance with specified provisions of existing law, and for which the usual permitting process is not feasible.

The bill would provide that the pre-incident procedure or general permit would supersede prescribed waste discharge requirements, but would require the procedure or permit to be consistent with those requirements to protect state water quality and beneficial uses, and to expedite efficient oil spill response. The bill would provide that regional boards shall continue to consult with the Administrator for Oil Spill Response through the state inter-agency oil spill committee in accordance with specified provisions of existing law. [A. W&M]

**AB 2167 (Areias)**, as amended May 19, would require WRCB and each regional board to develop a small business unit in each respective 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 May 4, would create the Bay-Delta Fish and Wildlife Advisory Committee and the Bay-Delta Fish and Wildlife Mitigation and Monitoring Trust Fund. This bill would direct the Fund to be used to meet the state's share of costs for environmental restoration projects under the Federal Central Valley Project Improvement Act [13:1 CRLR 108-09], to purchase water to meet environmental mitigation requirements by state or federal agencies, and for related monitoring activities. The bill would also direct the Committee to prepare a proposed budget for use of the Fund, and consult with the Governor's Bay-Delta Oversight Council, the Department of Fish and Game, and relevant federal agencies over the management and disposition of the Fund. This bill does not authorize any state agency to impose mitigation and monitoring fees, and (at this writing) sets forth no other source of financing for the Fund. [A. Floor]

**SB 417 (Marks)**, as amended April 27, would enact the Shellfish Protection Act of 1993. The bill would require the regional boards, if a commercial shellfish growing area is determined to be threatened, to form a technical advisory com-

mittee with prescribed membership to advise and assist that board in developing an investigation and remediation strategy in accordance with specified law to reduce pollution affecting that area. The bill would require the regional boards to develop water quality investigation projects for affected areas if the technical advisory committee makes a specified determination, and to undertake appropriate remedial action to abate the pollution affecting the commercial shellfish growing area. The bill would require WRCB and the regional boards, when rating specified project proposals, to give timely notice to the local shellfish growers association in affected commercial shellfish growing areas and to provide shellfish growers with the opportunity to comment on specified proposals. [S. Floor]

**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 April 28, 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, by a prescribed date, to identify, by a specified priority ranking basis subject to review and revision, those waterbody segments for which further actions are required in order to protect or restore beneficial uses; require WRCB to establish and implement appropriate control strategies or measures for those identified waterbody segments, and make available a progress report to the public; require that certain existing high water quality be maintained, as prescribed, and require certain activities involving waste to meet waste discharge requirements or other regulatory controls; 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 duties of WRCB and the regional boards under this bill; require WRCB, upon appropriation by the legislature, to allocate \$200,000, generated from the adjustment in the prescribed fees, to the Office of Environmental Health Hazard Assessment to carry out the aquatic pollution health risk assessment program; require that the remaining funds generated by the adjustment be used for other purposes; make it a misdemeanor to fail to pay a fee when so requested by WRCB or the State Board of Equalization; and authorize WRCB to enter into an agreement with the State Board of Equalization in order to collect the additional fees. [S. Appr]

**SB 1084 (Calderon)**, as amended April 12, would delete the January 1, 1994 repeal date on a provision which requires WRCB to impose annual fees applicable to all point and nonpoint dischargers who discharge into enclosed bays, estuaries, or any adjacent waters in the contiguous zone or the ocean, as defined. The bill would require WRCB to contract with the University of California at Los Angeles to conduct a study to determine the adverse health effects of urban runoff on swimmers at urban beaches. [S. T&PSM]

**SB 1185 (Bergeson)**, as amended May 12, would require the Cal-EPA Secretary to adopt, by July 1, 1994, regulations establishing a consolidated permit process



which may be used for projects that require two or more permits from two or more offices, boards, and departments within the Agency or specified implementing local or regional agencies. The bill would require the Secretary, by February 1, 1994, to submit to the legislature recommendations for legislation codifying a consolidated permit appeal process. The bill would require the Cal-EPA Secretary to adopt, by July 1, 1994, regulations establishing an expedited appeals process through which an applicant can appeal a determination of application incompleteness or any failure to take timely action by an office, a board, or a department within the Agency or specified implementing local or regional agencies.

Under existing law, a regional board may not delegate to its executive officer the issuance, modification, or revocation of waste discharge requirements. This bill would delete that prohibition except under specified circumstances. [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 April 1, this bill would authorize those public agencies to transfer water, for use outside the agency, 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. The bill would 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. The bill would require the water supplier to either approve or deny the transfer request. The bill would 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.

The bill would repeal these provisions on January 1, 1998, unless a later enacted statute deletes or extends that date, except that the bill would provide that contracts entered into pursuant to these provisions prior to that date would remain subject to

these provisions as they read immediately prior to that date. [A. *W&M*]

**AB 898 (Costa).** The Porter-Cologne Water Quality Control Act authorizes the issuance of various enforcement orders for prescribed violations of that Act. As amended April 28, this bill would prohibit, under certain circumstances, the issuance of those orders to a local public entity that owns or operates, pursuant to a national pollutant discharge elimination system (NPDES) permit, any waste treatment works or collection system. The bill would provide that a California regional board may issue a prescribed cease and desist order or clean-up and abatement order to a discharger who is discharging, or has discharged, waste into a waste treatment works or collection system. [A. *W&M*]

**AB 2054 (Cortese).** Existing law requires a California regional board to cause a condition of pollution or nuisance resulting from a nonoperating industrial or business location to be abated if local public entities do not abate the condition within a reasonable time. As amended April 12, this bill would instead authorize a regional board to cause the condition to be abated. The bill would also authorize a regional board 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. The bill would extend that authority to WRCB under certain circumstances.

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 validly 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.

Existing law requires WRCB to establish policies and procedures to follow in overseeing and supervising activities undertaken in connection with the investiga-

tion of, and cleaning up or abating the effects of, certain discharges of hazardous substances. This bill would provide that WRCB and the regional boards are not liable for certain injuries to property or natural resource damage occurring in the clean-up of a waste which has been discharged into the waters of the state. The bill would provide that WRCB and the regional boards are not liable for limiting the scope of, or failing to undertake, certain remedial actions to clean up a waste which has been discharged into the waters of the state. [A. *W&M*]

**SB 235 (Ayala).** Existing law, which is to be repealed on January 1, 1994, requires the registration of an appropriation of water for a small domestic use and requires WRCB to submit a prescribed report, by January 1, 1993, to the Governor and the legislature. As introduced February 8, this bill would delete the reporting provision and the repeal date. [A. *W&M*]

**SB 7 (Kelley),** as amended March 22, would provide that described water suppliers may acquire, store, provide, sell, and deliver reclaimed water for any beneficial use, including but not limited to municipal, industrial, domestic, and irrigation uses, if the water use is in accordance with specified statewide reclamation criteria and regulations. [A. *WP&W*]

**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*]

**SB 990 (Kelley).** The Porter-Cologne Water Quality Control Act requires WRCB to classify wastes and disposal sites to ensure protection of water quality; the Board is required to adopt standards and regulations for waste disposal sites. WRCB's existing regulations define the term "designated waste." As amended April 13, this bill would, instead, statutorily define the term "designated waste." [A. *EnvS&ToxM*]

**AB 1641 (Cortese).** Existing law authorizes a local or regional public agency



authorized by law to serve water to sell, lease, exchange, or transfer, for use outside the agency, water that is surplus to the needs of the water users of the agency. As introduced March 4, this bill would, in addition, authorize the local or regional public agency to sell, lease, exchange, or 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. [A. Floor]

**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. [A. W&M]

**AB 173 (V. Brown),** as amended April 28, would limit the amount of salary paid to the chair and each member of WRCB 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. [A. Floor]

## ■ LITIGATION

In *State Water Resources Control Board and the Regional Water Quality Control Board, San Francisco Region v. Office of Administrative Law (San Francisco Bay Planning Coalition, Real Party in Interest)*, No. A054559, the parties were disputing whether WRCB's San Francisco Bay wetlands policies are regulations within the meaning of the Administrative Procedure Act (APA). [13:1 CRLR 110] On January 20, the First Dis-

trict Court of Appeal affirmed the trial court's holding, rejecting the boards' contention that the legislature intended to define WRCB's quasi-legislative water quality control plans as something other than regulations. According to the court, "if it looks like a regulation, reads like a regulation, and acts like a regulation, it will be treated as a regulation whether or not the agency in question so labeled it." Further, the court found that the water quality control plans are "neither expressly nor impliedly exempt from the provisions of the APA" and that, accordingly, "their adoption had to comport with the requirements of the APA."

In *Earth Island Institute v. Southern California Edison*, No. 90-1535 (U.S. D.C., S.D. Cal.), Earth Island alleged that Southern California Edison (SCE), as operator of the San Onofre Nuclear Generating Station, is violating federal water pollution laws by discharging cooling water into the ocean. [13:1 CRLR 192] Both the federal EPA and WRCB declined to join Earth Island Institute in its case against SCE; so, Earth Island used a section of the Clean Water Act that allows private parties to seek damages in cases in which it can be proven that regulatory agencies are failing to protect the environment. On January 26, SCE agreed to settle for a total of \$17 million: \$7.5 million will be spent to restore 30-40 acres of wetlands in north San Diego County; \$2 million will go to wetlands research at San Diego State University; \$5.5 million will be used to develop a marine education center near Redondo Beach, with a priority on teaching inner-city youths about the environment; and \$2 million will pay plaintiff's legal fees. (See agency report on CALIFORNIA COASTAL COMMISSION for related discussion.)

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 allowing the City of San Diego to build only a part of the huge sewer project it agreed to build in a previous consent agreement with EPA. [13:1 CRLR 110] According to the City's attorney, resolution of the appeal by the U.S. Ninth Circuit Court of Appeals is unlikely until fall, at the earliest.

On January 21, the California Supreme Court denied WRCB's petition for review of a September 22 superior court decision granting Golden Gate Audubon Society's discovery motion in *Golden Gate Audubon Society, et al. v. State Water Resources Control Board*, No. S029975. In this case, environmentalists allege that the WRCB's May 1991 Water Quality Control Plan for Salinity does not satisfy the

Board's mandate under the Porter-Cologne Act and the Clean Water Act to set flow standards necessary to reduce salinity and protect fish and other wildlife. [13:1 CRLR 110; 12:4 CRLR 191-92] The superior court decision allows the introduction of evidence not included in the administrative record, including information environmentalists believe should have been considered in drafting the plan. In addition, the decision will allow discovery regarding allegedly improper ex parte contacts between water export interests and former WRCB member Darlene Ruiz.

In *Sayles Hydro Association, et al. v. Maughn, et al., Water Resources Control Board, Intervenor*, 985 F.2d 451 (Feb. 1, 1993), the U.S. Ninth Circuit Court of Appeals considered the scope of federal preemption of state regulatory authority under the Federal Power Act. In affirming the district court's decision to grant summary judgment to Sayles, the Ninth Circuit held that the Federal Energy Regulatory Commission occupies the field with respect to licensing hydropower projects, and WRCB's role is limited to determining whether operation of a hydropower project will affect any prior water rights in the watershed.

## ■ RECENT MEETINGS

At WRCB's January 21 meeting, the Board approved three clean water program clean-up and abatement funding requests; up to \$50,000 was approved for the Dolly Creek Stabilization project; almost \$16,000 was approved to perform various tasks at Geothermal Incorporated, Butts Canyon Road Facility; and funds were disbursed to the North Coast Regional Board's clean-up and abatement activities.

At its March 18 meeting, WRCB approved five loans and three grants concerning clean water programs. The Union Sanitary District received a \$20 million loan for upgrading its Alvarado Wastewater Treatment Plant; the City and County of San Francisco received a \$10 million loan for the construction of the Oceanside Water Pollution Control Plant and another \$10 million loan for the Islais Creek Transport/Storage Facilities; the Los Angeles County Sanitation District received \$3.8 million for a reclamation plant outfall; and the Moulton Niguel Water District received an \$11.5 million loan for its water reclamation project. WRCB awarded community grants to Gerber/Las Flores Community Services District, Spanish Flat Water District, and Santa Clara County for the community of Lake Canyon.

At its April 27 meeting, the Board approved six clean water program loans. The



Western Riverside County Regional Wastewater Authority received a \$570,000 loan for construction of the Home Gardens Trunk Sewer; the East Bay Municipal Utility District received a \$15.1 million loan for the San Antonio Creek Wet Weather Treatment Facility and a \$4.9 million loan for the Chevron Water Reclamation Project; the City of Livermore received a \$14 million loan for a sewage treatment plant expansion; the City of Santa Cruz received a \$20 million loan for a wastewater treatment plant upgrade; and the City of Oceanside received \$13.4 million for the construction of improvements to the San Luis Rey Wastewater Treatment Plant.

At the same meeting, the Board approved amendments to the Water Quality Control Plan for the San Francisco Bay Basin, and approved a resolution declaring that the Draft Tribal Permit for the Campo Indian Reservation Solid Waste Landfill provides adequate water quality protection.

#### ■ FUTURE MEETINGS

Workshop meetings are generally held the first Wednesday and Thursday of each month in Sacramento. Contact Maureen Marché at (916) 657-0990 for information.



## RESOURCES AGENCY

### CALIFORNIA COASTAL COMMISSION

*Executive Director:*

*Peter Douglas*

*Chair: Thomas Gwyn*

*(415) 904-5200*

The California Coastal Commission was established by the California Coastal Act of 1976, Public Resources Code (PRC) section 30000 *et seq.*, to regulate conservation and development in the coastal zone. The coastal zone, as defined in the Coastal Act, extends three miles seaward and generally 1,000 yards inland. 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 ordi-

nances. 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, 80 (64%) have received certification from the Commission as of January 1, 1993.

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 line 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 January, Assembly Speaker Willie Brown appointed Leon Williams of San Diego to a Commission seat formerly held by David Malcolm. Williams is currently in his third term as a San Diego County Supervisor.

#### ■ MAJOR PROJECTS

**Commission Approves Chevron's Petition to Ship Oil by Tanker From Point Arguello.** A dizzying series of contentious public hearings, rehearings, and Coastal Commission actions during the first half of 1993 has resulted in the Commission's approval of a controversial permit allowing Chevron to ship up to 2.2 million gallons of crude oil per day by tanker from its Point Arguello oil project off Santa Barbara to Los Angeles until January 1, 1996. [13:1 CRLR 113; 12:4 CRLR 195]