



matter to the Department of Commerce to develop sufficient justification for the emergency action.

■ FUTURE MEETINGS

January 4 in Sacramento.
February 3-4 in Sacramento.
March 3-4 in San Diego.
April 7-8 in Long Beach.
April 28 in Sacramento.

BOARD OF FORESTRY

Executive Officer:
Dean Cromwell
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The Board of Forestry is a nine-member Board appointed to administer the Z'berg-Nejedly Forest Practice Act (FPA) of 1973, Public Resources Code (PRC) section 4511 *et seq.* The Board, established in PRC section 730 *et seq.*, serves to protect California's timber resources and to promote responsible timber harvesting. The Board adopts the Forest Practice Rules (FPR), codified in Division 1.5, Title 14 of the California Code of Regulations (CCR), and provides the California Department of Forestry and Fire Protection (CDF) with policymaking guidance. Additionally, the Board oversees the administration of California's forest system and wildland fire protection system, sets minimum statewide fire safe standards, and reviews safety elements of county general plans. The Board's current members are:

Public: Franklin L. "Woody" Barnes, James W. Culver, Robert C. Heald, and Bonnie Neely.

Forest Products Industry: Thomas C. Nelson, Tharon O'Dell, and Joseph Russ IV.

Range Livestock Industry: Robert J. Kerstiens (Chair).

The FPA requires careful planning of every timber harvesting operation by a registered professional forester (RPF). Before logging operations begin, each logging company must retain an RPF to prepare a timber harvesting plan (THP). Each THP must describe the land upon which work is proposed, silvicultural methods to be applied, erosion controls to be used, and other environmental protections required by the Forest Practice Rules. All THPs must be inspected by a forester on the staff of the Department of Forestry and, where deemed necessary, by experts from the Department of Fish and Game, the regional water quality control boards, other state agencies, and/or local governments as appropriate.

For the purpose of promulgating Forest Practice Rules, the state is divided into three geographic districts—southern, northern, and coastal. In each of these districts, a District Technical Advisory Committee (DTAC) is appointed. The various DTACs consult with the Board in the establishment and revision of district forest practice rules. Each DTAC is in turn required to consult with and evaluate the recommendations of CDF, federal, state, and local agencies, educational institutions, public interest organizations, and private individuals. DTAC members are appointed by the Board and receive no compensation for their service.

In June, Governor Wilson appointed former Board Chair Terry Barlin Gorton as Assistant Secretary of the Resources Agency, and named two new public members of the Board. Bonnie Neely is a Humboldt County supervisor who is a longtime supporter of the timber industry. Tharon O'Dell is a resources manager for Simpson Timber Company. At this writing, one public member seat on the Board is vacant.

■ MAJOR PROJECTS

OAL Rejects Proposed Permanent Rules. On July 30, the Office of Administrative Law (OAL) rejected the Board's proposed permanent adoption of three major rulemaking packages which have occupied almost all of its time since the fall of 1991. [13:1 CRLR 122-23; 12:4 CRLR 211-12; 12:2&3 CRLR 242-43]

• *Silvicultural Methods with a Sustained Yield Objective.* OAL rejected the Board's adoption of sections 1091.1-1091.14 and amendments to sections 895.1-953.11 (nonconsecutive), Title 14 of the CCR, which set new standards pertaining to evenage and unevenage silviculture prescriptions, establish a definition of the goal of maximum sustained production (MSP), and set up a regulatory procedure for the optional filing by timberland owners of long-term sustained yield plans (SYPs). OAL found that the regulations finally adopted by the Board (after numerous public hearings and revisions) contained a number of substantial changes to the originally-proposed text; however, OAL found that the Board did not provide notice of these changes and did not make the final revisions available for public comment. OAL also found several sections to be unclear and that the Board improperly referred to a publication called *A Guide to the California Wildlife Habitat Relationships System* without complying with OAL's rules for incorporation of materials in a regulation by reference.

• *Sensitive Watersheds.* OAL found five defects with the Board's rulemaking file on its proposed adoption of sections 916.8 (936.8, 956.8), 916.9 (936.9, 956.9), 916.10 (936.10, 956.10), and 1032.10, Title 14 of the CCR, which create a public process to assess watersheds and identify those which warrant classification as "sensitive" to further timber operations, establish requirements for the protection of domestic supplies, and require those submitting THPs to provide notice to downstream landowners and others: (1) the text of the regulations adopted by the Board and submitted to OAL contained changes from the last version of the text made available to the public; the Board's final statement of reasons failed to include a summary and response to all comments received during all the public comment periods; the regulation text contained some unclear provisions; the requirements for incorporation by reference were not met; and the rulemaking file did not contain all documents relied upon by the Board in adopting the proposed rules.

• *Old-Growth Forest, Late-Seral Stage Forest, and Wildlife Protection Regulations.* OAL also rejected the Board's adoption of sections 919.16(a) (939.16(a), 959.16(a)), and its amendment of section 895.1, Title 14 of the CCR, which establish additional reporting and mitigation requirements for timber harvesting in late succession forest stands and provide protection for wildlife residing in these stands. OAL found several of the provisions to be unclear and also found that the Board failed to release the last version to the public and properly respond to public comments received during earlier comment periods.

On August 19, the Board released its final version of these three regulatory packages for a public comment period ending on September 7. In this version, the Board attempted to clarify the sections OAL found to be unclear and correct the other technical errors identified. At this writing, the Board is scheduled to hold another public hearing on these proposed regulatory changes at its October 5 meeting.

Board Considers Changes to "Exempt Conversion" Rules. At its September 7 meeting, the Board held the first of two public hearings on its proposal to permanently amend sections 1038 and 1104.1, Title 14 of the CCR. Section 1104.1(a) currently provides for what is commonly called a "minor conversion" or an "exempt conversion." This section allows a landowner a single conversion of an area less than three acres to a non-timber-growing use of timberland, exempt from obtaining a THP and from the com-



pletion report requirement, the stocking report requirement, the timberland conversion permit requirement, and the stocking standards of the Forest Practice Act. Section 1038(c) exempts timber operations conducted on ownerships of timberland of less than three acres in size from the THP, completion report, and stocking report requirements.

However, CDF has recently observed increased abuse of the exemption process, and has received numerous complaints from citizens and RPFs concerning these abuses. The number of exemption requests submitted to CDF has greatly increased, largely due to record high log prices. CDF believes that many landowners are submitting section 1104.1(a) exemptions without a bona fide intent to convert the land to other uses, which is outside the intent of the conversion rules. The area is then clearcut and no conversion takes place. Although the potential for abuse exists statewide, CDF believes it has been especially prevalent in the southern subdistrict. CDF has also observed landowners submitting a section 1104.1(a) exempt conversion for three acres, followed by a section 1038(c) exemption (non-conversion) for an additional three acres. This is technically permissible since the first three acres are now considered converted to non-timberland. This process has had the effect of raising the contiguous acreage operated under exemption authority to six acres.

These and other loopholes in sections 1104.1 and 1038 have resulted in CDF's recommendation that the Board amend the two sections. At its September 7 hearing, the Board received public comments on CDF's proposed regulatory changes, and issued a modified version of the regulatory proposal on September 17 for further consideration at its October 5 meeting. As modified on September 17, the two sections would be amended as follows:

- Section 1104.1(a) would be amended to require all conversions to be bona fide; the submitter must certify the intended use of the land to be converted and a certification that the intended conversion is bona fide. New subsection (a)(3) would be added to prohibit the use of heavy equipment within a watercourse and lake protection zone (WLPZ) or within 50 feet of a watercourse except on existing roads; longlining may be used within a WLPZ. New subsection (a)(5) would be added to provide the CDF Director with a ten-working-day period from the postmarked date of the exemption in which to review the exemption, require the landowner to post a copy of the exemption on the ownership in a location visible to the public

during the ten-working-day period, require the landowner to notify the Director of the completion of timber operations within 30 days of their cessation, and prohibit timber operations pursuant to an exemption during the winter period unless the requirements of section 914.7(c) (934.7(c), 954.7(c)), Title 14 of the CCR, are met.

- Section 1038 would be amended to provide the CDF Director with a ten-working-day period from the postmarked date of the exemption in which to review the exemption, require the landowner to post a copy of the exemption on the ownership in a location visible to the public during the ten-working-day period, require the landowner to notify the Director of the completion of timber operations within 30 days of their cessation, and prohibit timber operations pursuant to an exemption during the winter period unless the requirements of section 914.7(c) (934.7(c), 954.7(c)), Title 14 of the CCR, are met. The amendments also prohibit the use of heavy equipment within a WLPZ or within 50 feet of a watercourse except on existing roads; longlining may be used within a WLPZ. Previous language disallowing an exemption under this section on the same contiguous ownership with a prior section 1104.1(a) exemption was deleted in the September 17 version.

At this writing, the Board is scheduled to further consider this proposal on October 5.

Other Board Rulemaking. The following is a status update on other rulemaking proceedings conducted by the Board in recent months and covered in detail in previous issues of the *Reporter*:

- **Certified Rangeland Manager Specialty.** At its June 9, August 4, and September 8 meetings, the Board held public hearings on its proposed adoption of new section 1651 and amendments to sections 1600, 1602, and 1650, Title 14 of the CCR, which would establish a Certified Rangeland Manager Specialty and outline the specific requirements of that specialty. The Board's new specialty certification is proposed to conform to a certification program sponsored by the private Society for Range Management. [13:2&3 CRLR 195]

On July 15 and August 12, the Board released modified versions of this proposal for consideration at the September meeting. Although the changes are largely semantic (e.g., the term "forestland" would be replaced with the defined term "forested landscapes" throughout the rules), they tend to clarify the scope of practice of this new specialty and have thus attracted controversy. At its September meeting, the Board agreed to postpone

consideration of this regulatory proposal to its January meeting to resolve several definitional problems and to enable its committees to look at the proposal more closely.

- **Regulatory Relief for Small, Non-Industrial Timberland Owners.** On July 6, OAL approved the Board's April 6 adoption of new sections 1051, 1051.1, 1051.2, and 1051.3, Title 14 of the CCR, which provide some relief from the THP submission requirements applicable on timberland ownerships of 100 acres or less. [13:2&3 CRLR 194]

- **Santa Cruz County Timber Operations.** On August 10, OAL approved the Board's adoption of new section 926.21, Title 14 of the CCR. Under the new rule, the CDF Director will notify Santa Cruz County of proposed timber operations on County ownerships of less than three acres and give the County an opportunity to determine whether the plan conforms to its local ordinances before issuing a notice of exemption. [13:2&3 CRLR 195; 13:1 CRLR 124]

- **Protection for the Pacific Yew.** At its January 1993 meeting, the Board adopted emergency regulations implementing AB 3756 (Sher) (Chapter 756, Statutes of 1992) to assist in the location and protection of Pacific yew trees. [13:2&3 CRLR 195] The Pacific yew tree contains taxol, a chemical with powerful cancer-fighting qualities. Those emergency rules lapsed on May 21, and the Board has decided not to adopt them on a permanent basis. At this writing, the Board is not expected to place the issue on its agenda until early 1994.

LEGISLATION

SB 1094 (Killea). Existing law provides for the registration of RPFs and for certified specialists and qualified but exempt certificants to perform specified services pertaining to forestry. As amended July 8, this bill redefines the term "forestry" for these purposes to, among other things, include the science and practice of managing forested landscapes, as defined, and the treatment of forest cover. The bill prescribes related matters.

Existing law establishes the qualifications for programs, by federal agencies, to certify persons considered as qualified but exempt from registration for activities on federal lands. This bill deletes those provisions providing for qualified but exempt certificants.

Under existing law, the Board of Forestry's licenses and specialty certificates expire on July 1 of each year. This bill makes the licenses and specialty certificates valid for two years and makes related changes. This bill was signed by



REGULATORY AGENCY ACTION

the Governor on October 3 (Chapter 784, Statutes of 1993).

SB 1121 (Thompson). Existing law, in effect until January 1, 1994, authorizes the effective period of a THP on which work has been commenced but not completed to be extended, as specified. Existing law requires a timber owner or owner's agent to file a report, as specified, with CDF within one month after completion of the work described in the THP or nonindustrial timber harvest notice, excluding specified work, and provides, until January 1, 1994, that a report on a portion of the area covered by the plan which has been completed may be filed annually, if all the work described in the plan has not been completed. Until January 1, 1994, the CDF Director is required, within six months of the receipt of the work completion report, to determine by inspection whether the work described in the report, excluding specified work, has been properly completed, as prescribed, and requires that a timber owner or owner's agent file a stocking report within five years after completion of timber operations on an area identified in a work completion report. As introduced March 5, this bill extends those provisions indefinitely and makes clarifying and technical changes in those provisions. This bill was signed by the Governor on October 1 (Chapter 706, Statutes of 1993).

AB 790 (Sher). Under existing law, timber from state forests may not be sold to any primary manufacturer, or to any person for resale to a primary manufacturer, who makes use of the timber at any plant not located within the United States, unless it is sawn on four sides to dimensions not greater than four inches by twelve inches. As amended August 17, this bill also prohibits such a sale to a primary manufacturer who, within one year prior to the bid date and one year after the termination of the contract, sells unprocessed timber which is harvested from private timberlands and is exported into foreign commerce from this state. The bill also imposes similar restrictions on the sale by the State Lands Commission of timber harvested from lands under the jurisdiction of the Commission pursuant to the Commission's authority to harvest timber at the same time as the orderly harvesting of surrounding or adjacent federal-owned or state-owned timber. This bill was signed by the Governor on October 9 (Chapter 964, Statutes of 1993).

AB 118 (Sher). Under existing law, CDF is authorized to pay a reward of up to \$5,000 for information leading to the arrest and conviction or commitment of any person who willfully and maliciously

sets, or attempts to set, fire to any property within any established state responsibility area, and up to \$10,000 if the fire or the attempt results in death or great bodily injury to anyone, including fire protection personnel, or if the fire causes substantial structural damage. As amended April 20, this bill increases the maximum amount of those rewards to \$10,000 and \$25,000, respectively. This bill was signed by the Governor on May 21 (Chapter 15, Statutes of 1993).

SB 825 (Hayden). Under the FPA, no person may conduct timber operations on timberland unless a THP has been prepared by an RPF, submitted to CDF, and approved by the CDF Director or the Board. As amended April 12, this bill would require all harvests within ancient forests, as defined, to meet specified requirements. The bill would require timber operations in ancient forests to be conducted in a manner that maintains a canopy structure similar to that existing prior to harvest, that maintains at least 60% of the overstory canopy closure, and which provides corridors and connectivity for wildlife which meet criteria developed by the Department of Fish and Game (DFG). [S. NR&W]

SB 824 (Hayden). Existing law requires CDF, upon receipt of a THP, to place the THP (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 California regional water quality control board (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 to adopt any mitigation measures that are proposed by DFG or a RWQCB unless CDF demonstrates that its own proposed mitigation measures would result in greater protection for water and wildlife resources.

Under the FPA, the Director of Fish and Game or the state Water Resources Control Board (WRCB) is authorized to file an appeal with the Board on the approval of a THP by the CDF Director under specified circumstances. This bill would authorize the appropriate RWQCB to so appeal, rather than WRCB, and make related changes.

Under the FPA, the Board is required to adopt Forest Practice Rules. This bill would require the Board to review recommendations for any rule changes that are submitted to it by DFG or a RWQCB at least twice each calendar year and to act

on those recommendations within 120 days.

The California Environmental Quality Act (CEQA) authorizes a plan or other written documentation, prepared under a regulatory program of a state agency, board, or commission, to be submitted in lieu of an environmental impact report. The Act requires the regulatory program to be certified by the Secretary of the Resources Agency. The Board's THP program has been so certified by the Secretary. This bill would require the Board's THP program and other certified regulatory programs to be reviewed by the Secretary at least once every five years from the date of initial certification to determine whether the program continues to comply with applicable provisions of the Act. CEQA also requires a public agency to adopt a reporting or monitoring program for the changes to a project which it has adopted or made a condition of project approval in connection with the certification of an environmental impact report or the adoption of a negative declaration. This bill would require a public agency to also adopt the reporting or monitoring program when approving a project authorized under a certified regulatory program. [S. NR&W]

SB 1062 (Thompson). Under the FPA, a nonindustrial tree farmer may not own 2,500 or more acres of timberland. As introduced March 5, this bill would instead limit the definition of a nonindustrial tree farmer to an owner of timberland who harvests not more than an unspecified amount of board feet per year.

Existing law, until January 1, 1996, requires a nonindustrial timber management plan to include a description of the known locations of any stands of the species *Taxus brevifolia* (Pacific yew) larger than a specified size and requires that plans and nonindustrial timber harvest notices indicate the planned disposition or use of any such trees to be cut or removed as a result of timber operations. This bill would extend the operation of those provisions until January 1, 1997. [S. NR&W]

SB 122 (McCorquodale), as amended July 12, would prohibit a member of the Board from soliciting or accepting campaign contributions for the benefit of his/her appointing authority (which, in this case, is the Governor), and from donating, soliciting, or accepting campaign contributions from persons under specified circumstances. SB 122 would also specify special conflict-of-interest rules for members of the Board of Forestry; it would prohibit a Board member from participating in any Board action or attempting to influence any decision involving the



member or specified other people, and further prohibit a Board member from participating in a Board decision in which the member has a direct personal financial interest. The bill would also prohibit a Board member or any person, with specified exceptions, who intends to influence the decision of a Board member on a matter before the Board, from conducting an ex parte communication, as defined, unless the member notifies the person that a full disclosure of the ex parte communication will be entered into the Board's record. [A. W&M]

AB 49 (Sher), as amended August 31, would delete a January 1, 1994 sunset date on provisions of the FPA requiring, within one month after completion of work described in a THP, that a report be filed with CDF stating that all work has been completed; requiring, within six months of filing the work completion report, an inspection to be conducted and, if the work has been completed, the CDF Director must issue a report of work satisfactorily completed; requiring, within five years after the work completion report, a stocking report to be filed for those areas that meet stocking requirements; specifying that a THP is effective for three years unless extended for two one-year extensions pursuant to specified provisions of law; and permitting amendments to the original THP upon meeting certain requirements. [S. Inactive File]

SB 891 (Leslie), as introduced March 4, would authorize a THP submitter to address issues of sustained timber production and wildlife and watershed impacts by preparing a sustained yield plan (SYP) for a management unit. The SYP would be effective for ten years, with two one-year extensions permitted. The bill would provide that, to the extent that these issues are addressed in a SYP approved by the CDF Director, they need not be addressed in the THP. Among other things, SB 891 would specify the contents of a SYP; require that a SYP be prepared by a RPF; permit CDF to conduct periodic confidential audits of an owner's inventory, growth, and harvest projections as related to the plan for sustained timber production; require the CDF Director to review and approve or reject the SYP, with that decision based on whether the SYP meets the requirements of the law and, in the case of watershed and wildlife issues, whether the SYP identifies potentially significant adverse impacts and adopts feasible measures to mitigate or avoid those effects; and permit the CDF Director to approve a SYP even when significant adverse impacts are not substantially mitigated, if its benefits outweigh its unavoidable adverse environmental effects. [S. NR&W]

SB 892 (Leslie). The Surface Mining and Reclamation Act of 1975 exempts certain activities from its provisions, including excavations and grading conducted for farming and other specified activities. As amended May 18, this bill would also exempt from the Act onsite excavations or grading for the exclusive purpose of obtaining materials for roadbed construction and maintenance conducted in connection with timber operations and watershed protection. [A. NatRes]

AB 325 (Sher). Under existing law, a timber yield tax is imposed on every timber owner who harvests timber, and certain other persons, at the rate of 6% of the total immediate harvest value of the timber or at an adjusted rate as prescribed. As introduced February 4, this bill would impose a timber yield tax surcharge at an unspecified rate on any person or entity who harvests timber or owns felled or downed timber, as specified, to be deposited in the Forest Practice Regulatory Fund, which the bill would create. [A. W&M]

AB 1185 (Cortese). Existing law provides for the registration of professional foresters by the state Board of Forestry, but permits a person to be registered as a certified specialist in one or more fields of forestry instead of being registered as a professional forester. As amended July 6, this bill would delete the provision authorizing certification as a specialist as an alternative to registration as a professional forester and would delete related provisions. The bill would prohibit the Board from licensing the activities of resource professionals (such as certified rangeland managers; see MAJOR PROJECTS) which it did not license prior to July 1, 1993.

Under existing law, RPF licenses expire on July 1 of each year. This bill would make the licenses valid for two years and would make related changes.

Under existing law, forestry refers, among other things, to the science which treats of wildland resources. This bill would redefine forestry for these purposes to refer to that science which treats of timberland resources and would revise related legislative declarations as to the purpose of the licensing requirements. [S. NR&W]

AB 48 (Sher), as amended August 30, is no longer relevant to the Board of Forestry.

LITIGATION

Redwood Coast Watershed Alliance v. California State Board of Forestry, No. 932123 (San Francisco Superior Court), is still pending. RCWA alleges that the

Board and CDF's regulation of timber operations on private land violates certain provisions of the California Environmental Quality Act (CEQA), and that the THP process administered by CDF and the Board is not functionally equivalent to the environmental impact report process required by CEQA. [12:4 CRLR 214; 12:1 CRLR 176] As the Board has recently revamped its regulations to define the term "sustained yield" and provide for THP review in the context of that definition (see MAJOR PROJECTS), the court is waiting for the Board's implementation of those new rules.

FUTURE MEETINGS

January 4-5 in Sacramento.
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