



conomic poisons. This two-year bill is pending in the Assembly Agriculture Committee.

## RECENT MEETINGS

The devastating infestation of the poinsettia strain of the sweet potato whitefly was one of various topics discussed at the November meeting of DPR's Pesticide Advisory Committee. This strain of whitefly has been found in Arizona, Texas, Georgia, Florida, Mexico, and California. However, no effective pesticides currently registered adequately control the pest. One possible method to eradicate the fly is through the use of "beneficials" such as predator insects and fungi, which will eat the pest targeted for extermination. The problem with this method is that common chemical application may kill the beneficials. The Committee noted that this problem could be overcome by applying chemicals at night, if the beneficials are known to feed during the day.

Current efforts to find a solution to the whitefly problem include Governor Wilson's formation of a Blue Ribbon Task Force to examine the issues and summarize the current status of the problem and possible resolutions. The task force is funded by, among others, grower groups and chemical companies. In addition, various California universities are researching the matter and Coachella Valley has formed a whitefly management committee which plans to work with growers to organize a cyclical crop planting plan to disrupt the whitefly's breeding pattern. The plan involves growers planting each crop in a different cycle; between cycles, the whitefly would have nowhere to breed because all crops would be harvested. Because no relief from the infestation is expected in the near future, DPR fears that the whitefly may eventually move into the San Joaquin Valley.

## FUTURE MEETINGS:

DPR's Pesticide Advisory Committee and Pesticide Registration Evaluation Committee regularly meet to discuss issues of practice and policy with other public agencies; both committees meet in the annex of the Food and Agriculture Building in Sacramento. The Pesticide Advisory Committee, which meets every other month, is scheduled to meet on May 17, July 17, September 18, and November 20. The Pesticide Registration Evaluation Committee is scheduled to meet on April 17, May 15, June 19, July 17, August 21, September 18, October 16, November 20, and December 18.

## WATER RESOURCES CONTROL BOARD

*Executive Director: Walt Pettit*  
*Chair: W. Don Maughan*  
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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 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 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.

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

The Board continues to operate with only four members, following the December 1990 resignation of Darlene Ruiz, an attorney. At this writing, Governor Wilson has not yet named a replacement to fill the vacant position.

## MAJOR PROJECTS:

**Drought Update.** October 1 marked the start of the new water year as California entered its sixth consecutive year of drought. In November, the Legislative Analyst's Office (LAO) released an issue paper entitled *A Perspective on the Drought in California*. The report states that the amount of water stored in 155 of the state's major reservoirs is only 61% of the average amount stored; this equals the amount stored one year ago, despite heavy rains in March 1991. Consequently, California continues to face drought conditions similar to the previous water year, during which strict conservation measures were imposed in some areas and significant reductions in water supplies were experienced by many agricultural users. (See *supra* agency report on LAO for related discussion.)

According to LAO's report, the most important source of California's water in a normal year is surface water projects—diversions of water from rivers and streams which provide California with 75% of its water. These surface water projects are operated by local governments, the federal government, and the state. Approximately 80% of the water from surface projects is used by agriculture; 16% is used by the municipal and industrial sectors; and 4% is used for wildlife, recreation, and energy production. The most important federal and state projects in California are the Central Valley Project (CVP) and the State Water Project (SWP), which bring water from northern California through the San Francisco Bay/Sacramento-San Joaquin Delta Estuary to the San Joaquin Valley and southern California.

In response to the drought, Governor Wilson proposed a \$53.4 million legislative package in the spring of 1991, targeting most of the funding at increasing fire suppression activities and reducing the drought's impact on fish. The Governor also established a water bank to purchase water, primarily from farmers, in order to sell and transfer water to the cities, districts, and individuals most severely affected by the drought. Only those municipal areas receiving less than 75% of their normal water supplies and agricultural areas suffering potentially permanent loss of production are eligible for allocations from the water bank. With initial funding of \$10 million (loaned by the State Water Project), the water bank purchased approximately 835,000 acre-feet of water (one acre-foot is about the amount of water needed to supply a family of five for one year). As of Oc-



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tober 24, the administration had allocated approximately 435,000 acre-feet; approximately 50% of that amount was purchased by the Metropolitan Water District of Southern California primarily for residential, commercial, and industrial usage.

Despite innovations such as the water bank, the drought caused SWP to suspend water deliveries to agriculture and reduce deliveries to cities by 50%, and the federal Bureau of Reclamation reduced water deliveries by an average of 60%. Unfortunately for farmers, the federal crop insurance program does not cover losses due to reduced water deliveries, and the Department of Water Resources (DWR) estimates that as a result of water bank sales, 150,000 acres of farmland will have to be taken out of production.

Although the March 1991 rains alleviated severe water shortages in some areas, LAO predicts that there will be a continued need for strict measures and innovative new ideas in order to bring water supplies and demand in balance as California enters its sixth consecutive year of drought. One popular idea for increasing accessibility to already existing water supplies is to establish a water market, in which water could be transferred freely among users and prices for water would be set by the market. Current law allows voluntary transfers of water and water rights, and directs state water agencies to encourage them. Transfers that involve changes in purpose or place of use require the approval of WRCB. In recent years, the legislature has passed several measures clarifying the ability of water rights holders to negotiate or enter into transfer agreements without fear of losing their rights. (See CRLR Vol. 9, No. 1 (Winter 1989) p. 1 for extensive background information on water transfers.)

LAO notes that the ability of an individual water user to transfer water obtained through SWP or CVP is limited because the individual must obtain approval from two intermediaries in addition to WRCB. This is because the water rights are held not by individuals, but by the project operators (either DWR or the federal Bureau of Reclamation) and water wholesalers (generally special districts) which contract for the water from SWP and CVP. As introduced last year, AB 2090 (Katz) would have allowed consumers of SWP water to engage in water transfers and participate in the state water bank without obtaining these approvals, but the Senate Committee on Agriculture and Water Resources killed that version of the bill at the behest of banking inter-

ests. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 170 for detailed background information.) While many legal and practical obstacles prevent an instant transformation into a market system, some experts believe that a gradual transition toward a market system would promote efficiency by offering incentives for conserving water and compensation to those willing to transfer the amount they conserve. In addition, LAO notes that a market system may provide incentives to develop new innovative arrangements.

**Board Adopts Discharge Fees to Fund Bay Protection and Toxic Clean-up Program.** At its October 24 meeting, WRCB adopted proposed regulations establishing a new schedule of fees for the Bay Protection and Toxic Clean-up Program, which will be codified at section 2236, Division 3, Title 23 of the CCR. Under section 2236, fees are to be paid annually by point and nonpoint dischargers who discharge directly into enclosed bays, estuaries, and the ocean. The new fee schedule is in addition to existing discharger fees established pursuant to Water Code section 13260 and codified at section 2200, Title 23 of the CCR.

California's bays and estuaries serve as crucial habitat to both marine and freshwater aquatic resources. Some of these water bodies, such as San Francisco Bay, also receive considerable volumes of waste discharge and act as transportation corridors for a large percentage of goods entering and leaving California. The highly sensitive biological nature of these waters, coupled with the potentially high degree of exposure to pollutants, has created special concern for the quality and vitality of these water bodies.

WRCB initiated the Program in 1990 to control toxic pollutants which threaten the protection or propagation of fish, shellfish, or wildlife and to prevent the threat to the public from exposure to contaminated aquatic organisms or wildlife found in bays and estuaries. To achieve these goals, WRCB must administer a comprehensive program which identifies and characterizes toxic hot spots; plan for clean-up, remediation, or mitigation of polluted sites; and amend water quality control plans and policies to incorporate strategies which prevent the creation of new toxic hot spots or the further pollution of existing hot spots.

To provide funding for the Program, the legislature enacted SB 1845 (Torres) (Chapter 1294, Statutes of 1990), which added section 13396.5 to the Water Code; that provision requires WRCB to

establish fees applicable to all point and nonpoint dischargers who discharge into enclosed bays, estuaries, or any adjacent water in the contiguous zone or the ocean. Section 13396.5 also specifies that the fees are to be collected annually and may not exceed \$4 million per year or \$30,000 per discharger. The collected fees are deposited into the Bay Protection and Toxic Clean-up Fund and used by WRCB to fulfill the mandates of Water Code Chapter 5.6.

By adopting section 2236, WRCB intends to create a fee system which will generate sufficient revenue to fund the Program; equitably apportion the costs of the Program among point and nonpoint dischargers to the water bodies affected by the Program; and minimize administrative costs. OAL approved the new section on December 2.

**Interagency Laboratory Services Agreement for the Bay Protection and Toxic Clean-Up Program.** At its November 19 meeting, the Board adopted a resolution authorizing its Executive Director to negotiate and execute a \$5.5 million Interagency Laboratory Services Agreement with the California Department of Fish and Game (DFG) to support the activities of the Bay Protection and Toxic Clean-up Program. As required by the Water Code, the Program is beginning to develop monitoring and surveillance programs for the bays and estuaries of the state. The main purpose of the monitoring programs is to identify toxic hot spots that may exist within these areas; such programs require significant field and laboratory support.

Under the terms of its contract with WRCB, DFG will be responsible for the collection of all Program field samples; provide toxicity measurements for sediment and water samples collected from marine, estuarine, and freshwater locations; perform chemical analyses on bulk sediments and water samples to determine the concentration of pollutants present; analyze tissue from selected test species to determine the presence and uptake of pollutants; measure biomarkers at the molecular, biochemical, or cellular level to determine if test animals have been exposed to pollutants and the individuals' response to the pollutants; analyze biological samples to examine the structure and composition of benthic communities in the areas of investigation; and submit reports to WRCB providing all laboratory data collected each year and a preliminary discussion of the results of the various tests performed.

In furtherance of this effort, WRCB also entered into a one-year cooperative agreement with the National Oceanic



and Atmospheric Administration to investigate the biological effects associated with pollutants in southern California marine sediments.

**Board Approves Controversial Money-for-Services Agreement.** On November 6, by a 3-1 vote, WRCB adopted a resolution authorizing its Executive Director to execute a contract among El Dorado County Water Agency (EDCWA), El Dorado Irrigation District (EDID), and WRCB, whereby EDCWA and EDID will give WRCB up to \$200,000 over a three-year period to enable the Board to hire extra workers and expedite the processing of El Dorado's application to buy water from Pacific Gas and Electric Company. With the additional staff, WRCB hopes to cut the time it takes to process a water rights application from the usual four years to two years. This agreement is similar to agreements which WRCB made earlier in 1991, under which water agencies in Orange and Contra Costa counties agreed to pay WRCB \$371,471 and \$200,000, respectively, in return for WRCB's hiring of extra staff to expedite the counties' applications for water rights changes and clean-up of contaminated groundwater.

This controversial type of agreement is the result of WRCB's current understaffing and an increased demand on WRCB to make water rights decisions during California's sixth consecutive year of drought. Although it is authorized by the legislature to hire 1,310 employees, WRCB has only 986 employees on its staff due to funding shortages; as a result, the Board is falling behind in making decisions on water rights issues, one of its major tasks. Currently, there is an estimated two-year backlog on water rights applications.

Critics have charged that these special agreements give the public the impression that WRCB is giving special preferences to the wealthy, and that anyone with enough money may simply purchase government approval of a water rights application. Officially, the compensation provided under the agreements is not to be contingent upon WRCB's approval of the water rights applications, and WRCB is not supposed to overlook or delay applications from other parties which are not privy to such agreements. However, many question whether water agencies that put up money will get quicker and more favorable decisions from WRCB than those that do not; according to WRCB Executive Director Walt Pettit, the Board is "very sensitive to this issue." Planning and Conservation League Director

Gerald Meral acknowledged that it makes sense for users of WRCB's services to pay the bills, but noted that workers hired under the special deals should be prohibited from accepting future employment with the water contractors involved.

**Board Allocates \$500,000 for Pollution Clean-Up Due to Failure of Penn Mine.** On December 12, WRCB adopted a resolution to allocate up to \$500,000 from the Water Pollution Clean-up and Abatement Account for planning and implementing short-term remediation work at Penn Mine, an abandoned copper mine located on the Mokelumne River. Numerous fish kills have been caused by acid mine drainage from the mine; despite years of enforcement actions by the regional board, the mine owner, New Penn Mine, Inc., has done nothing to mitigate this problem. New Penn Mine is now insolvent and will not address the imminent threat of a release of toxic acid mine drainage to the nearby Camanche Reservoir.

Because of the failure of New Penn Mine to address this problem, the East Bay Municipal Utility District (EBMUD), in a cooperative effort with DFG and the Central Valley Regional Water Quality Control Board, constructed the Mine Run Dam Reservoir (MRDR) in 1978 in order to contain and control the discharge of polluted water from Penn Mine. However, MRDR only partially mitigated the impact of acid mine drainage from the Penn Mine into the Camanche Reservoir.

WRCB's allocation is limited to the amount of expenditure that EBMUD can equally match, up to a maximum of \$500,000. WRCB will work with EBMUD and regional board staff to identify appropriate short-term remediation work to prevent the release of toxic acid mine drainage at the mine site, while they establish long-term remediation goals. EBMUD and the regional board, in turn, will present a progress report on the short-term remediation at a WRCB workshop meeting within the first ninety days of its implementation.

In a related action on December 12, WRCB adopted an order exempting MRDR from the Toxic Pits Clean-up Act (TPCA), Health and Safety Code section 25200 *et seq.* Because New Penn Mine failed to address its own ecological disaster, EBMUD designed MRDR to serve as a surface impoundment which would intercept acid mine drainage from the Penn Mine site. As a consequence, hazardous levels of wastes are now present in MRDR. After the Central Val-

ley Regional Board determined that MRDR is subject to TPCA, EBMUD applied for an exemption from the TPCA under Health and Safety Code section 25208.20. The regional board granted the exemption, but petitioners—the Committee to Save the Mokelumne and California Sportfishing Protection Alliance—challenged the exemption. WRCB held a hearing on this matter on October 22.

Health and Safety Code section 25208.20 imposes four requirements before WRCB may grant an exemption from the TPCA: (1) the surface impoundment was used or constructed at the direction of WRCB or a regional board to clean up or abate a condition of pollution or nuisance resulting from discharges of mining waste to surface waters from a mine which ceased operations prior to January 1, 1988; (2) the environmental benefit of discharging to the surface impoundment as a remedial measure outweighs any threat to water quality posed by the surface impoundment; (3) the regional board issued waste discharge requirements for operation of the surface impoundment, or waived the issuance of waste discharge requirements; and (4) the owner of the impoundment must submit an application and a technical report by July 1, 1989, which contains sufficient information for the regional board to determine if the surface impoundment is polluting or threatening to pollute waters of the state, and if hazardous waste constituents are migrating from the surface impoundment. After considering all four requirements, WRCB determined that EBMUD's use of MRDR as a surface impoundment complied with Health and Safety Code section 25208.20, and, on December 12, adopted the proposed exemption from the TPCA.

**Board Validates Temporary Water Diversion Permit Issued to Delta Wetlands.** On December 12, WRCB adopted an order validating a temporary permit which had been issued to Delta Wetlands for diversion of water from Holland Cut in Contra Costa County.

For the purpose of water quality evaluation, Delta Wetlands filed an application on October 30 for a temporary permit to divert up to 900 acre-feet of water between November 15 and May 2 from Holland Cut tributary to Old River in Contra Costa County. Delta Wetlands planned to fill an existing demonstration pond in order to study potential organic loading and dilution that might occur on Delta Wetlands project islands as a result of storage operations under proposed Delta Wetlands pending applications. WRCB staff reviewed the



application and gave notice to prior vested water right holders and interested parties.

In the interest of protecting the Delta smelt, an endangered species, from the adverse impacts of this diversion, the U.S. Fish and Wildlife Service (USFWS) filed a written objection, requesting that Delta Wetlands be required to design and implement a Board-approved monitoring program for Delta smelt, that Delta Wetlands be required to monitor intake and discharge water quality, and that diversions be permitted only when the Delta is "measurably out of balance" with respect to required water quality standards and conditions. Also in the interest of protecting the endangered Delta smelt, as well as the endangered winter-run salmon and Sacramento splittail, DFG filed a written objection, requesting that diversions be permitted only when the Delta Cross Channel gates near Walnut Grove are closed and the Delta is "out of balance." DFG further requested that Delta Wetlands be required to install acceptable fish screens and that diversions be prohibited during the period of February to June for the protection of Delta smelt unless and until an acceptable diversion scenario is negotiated.

On November 14, WRCB Executive Director Walt Pettit authorized the temporary permit. In response to the filed objections, Pettit included terms which provide, among other stipulations, that diversion of water between February 1 and May 2 is prohibited without the approval of DFG and USFWS. Delta Wetlands is also prohibited from diverting water when the Delta Cross Channel gates are open, and Delta Wetlands may divert water only if it installs fish screens deemed adequate by DFG.

Pursuant to Water Code section 1425(d), WRCB had thirty days to review and validate the temporary permit. Delta Wetlands had to demonstrate that the following conditions exist in order to obtain WRCB's final approval of the order validating the temporary permit: (1) there is an urgent need for the diversion and use of water; (2) the water may be diverted without injury to other lawful users of water; (3) there are no unreasonable effects on fish, wildlife, or other instream uses; and (4) the proposed diversion is in the public interest. WRCB determined that Delta Wetlands had satisfied the four prerequisites and, on December 12, adopted the final order validating the temporary permit.

**Bay/Delta Water Quality Proceedings Update.** In September, the U.S. Environmental Protection Agency (EPA) substantially rejected WRCB's

Water Quality Control Plan for Salinity, which the Board adopted in May as part of its lengthy San Francisco Bay/Sacramento-San Joaquin Delta Estuary proceedings. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 167; Vol. 11, No. 3 (Summer 91) pp. 177-78; and Vol. 11, No. 2 (Spring 1991) p. 163 for background information.) According to EPA, the plan's numerical objectives for temperature and salt levels are insufficient to protect the ecological health of the estuary; EPA gave the state until December 4 to establish stricter standards. However, in November, EPA revised the timeline and gave California until December 1992 to formulate a new plan; if California fails to meet that deadline, EPA is expected to issue its own stricter standards. According to Harry Seraydarian, water division director for EPA's Regional 9 headquarters in San Francisco, the December 4 deadline was unrealistic; however, many critics believe that the state will be unable to develop acceptable standards by December 1992, as it has been unable to do so since 1985.

On November 5, the state Senate held the first of three legislative hearings aimed at developing standards which preserve the Delta's fragile environment. At that hearing, Seraydarian stated that EPA would prefer that the state adopt acceptable standards without federal government intervention; Seraydarian added that EPA's standards would probably be much more protective of the Delta's fish and wildlife than rules the state would devise for itself. (See *infra* LITIGATION for related discussion.)

As part of the Scoping and Water Rights Phase of the Bay/Delta proceedings, the Board recently held a series of workshops which resulted in the development of flow-related alternative levels of protection for Bay/Delta beneficial uses, factors to be considered in analyzing impacts of the alternatives, and the tools to be used in developing the analytical information. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 167 for background information.) At this writing, WRCB staff is analyzing the impacts of the alternatives, which will be used in the development of an environmental impact report (EIR). On October 25, WRCB staff met with DFG staff to critically review DFG's new approach to develop striped bass objectives and evaluate impacts on striped bass. After the alternatives for striped bass fishery effects are evaluated, they will be included in the draft EIR, which is expected to be completed and publicly released in the spring of 1992.

**Board Adopts Statewide Industrial Storm Water Permit.** Under the federal Clean Water Act, the discharge of pollutants to waters of the United States from any source is effectively prohibited, unless the discharge is in compliance with a National Pollutant Discharge Elimination System (NPDES) permit. The 1987 amendments to the Act established a framework for regulating municipal and industrial storm water discharges under the NPDES program. In November 1990, EPA published final regulations that establish application requirements for storm water permits; the regulations require specific categories of industrial facilities which discharge storm water associated with industrial activity (industrial storm water) to obtain an NPDES permit. Facilities which discharge industrial storm water either directly to surface waters or indirectly, through municipal separate storm sewers, must be covered by a permit; this includes the discharge of "sheet flow" through a drainage system or other conveyance. The federal regulations allow authorized states to issue general permits or individual permits to regulate industrial storm water discharges.

On November 19, WRCB adopted a statewide general permit that will apply to all discharges requiring a permit except construction and specifically exempted activities. To obtain authorization for continued and future industrial storm water discharge, owners or operators must submit a notice of intent to be covered by the permit. All dischargers participating in group applications must either obtain coverage under the statewide permit or apply for an individual permit by October 1. The statewide permit generally requires dischargers to eliminate non-storm water discharges (including illicit connections) to storm water systems; develop and implement a storm water pollution prevention plan; and perform monitoring of discharges to storm water systems.

**Board Proposes Wastewater Treatment Plant Classification and Operator Certification Regulations.** Under Chapter 9 of the Water Code, WRCB is responsible for the administration of the Wastewater Treatment Plant Classification and Operator Certification Program. On December 6, the Board published notice of its intent to amend Articles 1 and 2, repeal Articles 3 through 6, and adopt new Articles 3 through 9, Title 23 of the CCR, pertaining to the certification of wastewater treatment plant operators and the classification of wastewater treatment plants. According to WRCB, the proposed regulatory action reorganizes and clarifies existing regu-



lations and establishes application and certification procedures, examination content, and a new fee schedule for wastewater treatment plant operators; they also address, but do not significantly change, the classification of wastewater treatment plants. The Board was scheduled to hold a public hearing on the proposed regulatory action on January 22.

**Underground Storage Tank Regulations.** At its September meeting, the Board approved two versions of its proposed emergency financial responsibility regulations for the Petroleum Underground Storage Tank Clean-up Fund—one set to become effective if AB 1699 (Kelley) was enacted, and a different version if it was not. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 169 for background information on AB 1699.) The bill passed and was signed by the Governor on October 14. On December 2, OAL approved the version submitted by the Board, which adopts new sections 2803–2814.3, Chapter 18, Division 3, Title 23 of the CCR. The emergency regulations, which will be in effect until March 31, establish financial responsibility requirements for owners and operators of underground storage tanks containing petroleum. The regulations also establish an Underground Storage Tank Clean-up Fund Program and process which helps eligible owners or operators pay for corrective action and third party compensation claim costs that result from an unauthorized release of petroleum from an underground storage tank. Following OAL's approval of the regulations, WRCB began accepting applications for participation in the Fund Program. Interested owners and operators had to submit completed applications to the Board by January 17 in order to be considered for the first priority list of participants; applications received after the January 17 deadline will be considered for the second list.

At its October 24 meeting, WRCB adopted, on an emergency basis, new sections 2720–2728, Chapter 16, Division 3, Title 23 of the CCR, regarding corrective action related to underground storage tanks. Among other things, the regulations define the term "corrective action" as any activity necessary to investigate and analyze the effects of an unauthorized release; propose a cost-effective plan to adequately protect human health, safety, and the environment and to restore or protect current and potential beneficial uses of water; and implement and evaluate the effectiveness of the activities. The regulations also define the term "responsible party"

as any person who owns or operates an underground storage tank used for the storage of any hazardous substance; in the case of any underground storage tank no longer in use, any person who owned or operated the underground storage tank immediately before the discontinuation of its use; any owner of property where an unauthorized release of a hazardous substance from an underground storage tank has occurred; and any person who had or has control over an underground storage tank at the time of or following an unauthorized release of a hazardous substance. The regulations require the responsible party to take or contract for interim remedial actions, as necessary, to abate or correct the actual or potential effects of an unauthorized release, and require the responsible party to submit a workplan to the regulatory agency responsible for overseeing corrective action at the underground storage tank site, under specified conditions.

On December 2, OAL approved WRCB's adoption of sections 2720–2728; the emergency regulations will stay in effect until March 31.

**Emergency Waste Discharge Fees.** On December 16, OAL approved the Board's emergency amendments to section 2200, Division 3, Title 23 of the CCR, which amend the schedule of fees charged for WRCB's regulation of discharges of waste which could affect the quality of the state's waters. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 168 and Vol. 11, No. 3 (Summer 1991) p. 178 for background information.) The emergency revisions will stay in effect until April 14.

## LEGISLATION:

**S. 586 (Bradley)** is federal legislation which would enact the Reclamation Drought Act, authorizing the Secretary of the U.S. Department of the Interior to: (1) perform studies to identify opportunities to augment, make use of, or conserve water supplies available to federal reclamation projects and Indian water resource developments, and for fish and wildlife habitat, maintenance, and enhancement; (2) undertake management and conservation activities to reduce the impacts of temporary drought conditions; (3) provide information or technical assistance to willing buyers in their purchase of available water supplies from willing sellers and in the delivery of such water; (4) prepare drought contingency plans for federal reclamation projects which incorporate water conservation measures in the operations of non-federal recipients of water from federal

reclamation projects; and (5) enter into agreements with federal agencies, state and local governments, Indian tribes, and such other public and private entities and individuals as necessary to carry out this Act. This bill is pending in the Senate Subcommittee on Water and Power. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 178 for background information.)

**AB 2090 (Katz)** was substantially amended on September 11. An earlier version would have expanded the ability of water users to sell their allocation of water directly to other users through so-called "water transfers," long encouraged by environmentalists critical of current water allocation law. That version was killed in the Senate Committee on Agriculture and Water Resources on August 20. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 170 for extensive background information.) As amended September 11, AB 2090 does not attempt to broaden transfer rights or authorize individual water users to sell their allocation. Rather, the amended bill now addresses the separate concern that water transfers between agencies be approved by WRCB if they do not "unreasonably affect the environment." (Existing law requires that the transfer not unreasonably affect fish, wildlife, or other instream beneficial uses. The more general language of AB 2090 requiring "environmental" weighing would broaden, to some extent, the kinds of environmental impacts to be evaluated in approving a transfer.) In addition, as to long-term transfers, the bill would require that they not unreasonably affect the "overall economy" of the local community from which the water is being transferred. This more circumscribed bill is still pending in the Senate Committee on Agriculture and Water Resources.

**ABX 8 (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 specified conditions are met and WRCB approves the temporary change. This bill would prohibit a local water district from preventing, prohibiting, or delaying a temporary change petitioned for pursuant to these provisions. This two-year bill is pending in the Assembly Committee on Water, Parks and Wildlife.

**AB 2004 (Cortese),** as amended May 22, would enact the Water Quality and Water Conservation Bond Law of 1992 which, if adopted, would authorize the issuance of bonds in the amount of \$200 million for purposes of financing a speci-



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fied program to aid in the acquisition and construction of groundwater treatment and groundwater recharge facilities and water conservation programs. This bill is pending in the Assembly Committee on Banking, Finance and Bonded Indebtedness.

**ABX 15 (Kelley)**, as amended June 14, would authorize WRCB to make loans or grants to fund eligible water reclamation projects, as defined, in order to relieve emergency drought situations. This two-year bill is pending on the Assembly floor.

**AB 614 (Hayden)**, as amended September 6, would make legislative findings and declarations relating to marine pollution. This bill is pending in the Senate inactive file.

**AB 88 (Kelley)**, as amended May 21, would provide that the adoption or revision of state policy for water quality control and water quality control plans and guidelines, the issuance of waste discharge requirements, permits, and waivers, and the issuance or waiver of water quality certifications are exempt from the requirements of the Administrative Procedure Act. AB 88 would instead require WRCB and the regional boards to provide notice to specified persons and organizations, to prepare written responses to comments from the public, and to maintain an administrative record in connection with the adoption or revision of state policy for water quality control and water quality control plans and guidelines. AB 88 is pending in the Senate Committee on Agriculture and Water Resources.

**AB 1132 (Campbell)** would declare that it is the policy of this state to protect and preserve all reasonable and beneficial uses of the San Francisco Bay/Sacramento-San Joaquin Delta Estuary and to operate the State Water Project to mitigate the negative impacts on the Estuary from the operation of the Project. This two-year bill is pending in the Assembly Ways and Means Committee.

**SB 685 (Calderon)**, as amended April 29, would require WRCB to adopt a fee schedule which assesses a fee on any owner or operator of a solid waste disposal site who has not submitted a complete and correct solid waste water quality assessment test to the appropriate regional board by July 1, 1991. This two-year bill is pending in the Assembly Natural Resources Committee.

**AB 13 (Kelley)** would provide that water which has not been reclaimed to meet prescribed safe drinking water standards is not deemed to constitute wastewater, but would authorize pre-

scribed agencies to limit the use of that water. This two-year bill is pending in the Assembly Committee on Water, Parks and Wildlife.

**AB 231 (Costa)**, as amended September 3, would declare that, when the holder of an appropriative right fails to use any part of that water as a result of conjunctive use of surface water and groundwater involving the substitution of an alternative supply for the unused portion of the surface water, any cessation of, or reduction in, the use of appropriated water is deemed equivalent to a reasonable, beneficial use of the water, as prescribed. Although this urgency bill has passed both the Assembly and Senate, it is pending in the Assembly inactive file.

**AB 1103 (Bates)**, as amended August 19, would, among other things, require WRCB to establish fees to be paid by dischargers to cover the costs incurred by the regional boards under this bill. This two-year bill is pending in the Senate Committee on Agriculture and Water Resources.

**AB 1737 (Campbell)** would require WRCB, DWR, and local public agencies to promote specified water practices in a prescribed order of priority, and to maximize the use of all feasible water conservation and wastewater reclamation options. This two-year bill is pending in the Assembly Committee on Water, Parks and Wildlife.

**AB 1802 (Eaves)** would require WRCB to adopt, by regulation, energy conservation standards for plumbing fittings; authorize WRCB to adopt applicable performance standards established by the American National Standards Institute for those plumbing fittings; and require WRCB to notify the legislature at least one year prior to revising any of those standards. This two-year bill is pending in the Assembly Housing and Community Development Committee.

**AB 24 (Filante)**, as amended August 26, would enact the International Border Wastewater and Toxic Clean-up Bond Law of 1992, the Water Recycling Bond Law of 1992, the Clean Water Bond Law of 1992, and the Water Quality and Water Conservation Bond Law of 1992. AB 24 is pending on the Assembly floor.

**SB 69 (Kopp)**, as amended May 6, would require WRCB, in any proceedings for the establishment of salinity standards or flow requirements applicable to the State Water Project or the federal Central Valley Project, to include independent water quality objectives and water rights permit terms and conditions specifically for protection of the beneficial uses of the water of the

San Francisco Bay. This two-year bill is pending in the Senate Appropriations Committee.

**SB 79 (Ayala)** would prohibit WRCB, in implementing water quality control plans or otherwise protecting public trust uses of the waters of the San Francisco Bay/Sacramento-San Joaquin Delta, from imposing on existing water rights permits or licenses new terms or conditions requiring Delta flows in excess of those in effect on January 1, 1991. This two-year bill is pending in the Senate inactive file.

### LITIGATION:

**State Water Resources Control Board and the Regional Quality Control Board, San Francisco Region v. Office of Administrative Law**, No. A054559, is pending in the First District Court of Appeal. WRCB is appealing the trial court's rulings that WRCB's wetlands policies at issue are regulations within the meaning of the Administrative Procedure Act (APA); the rules are not exempt from the APA; and since the rules were not adopted pursuant to the APA, they are unenforceable. WRCB expected to file its opening brief in mid-February. (See CRLR Vol. 11, No. 3 (Summer 1991) pp. 180-81; Vol. 11, No. 2 (Spring 1991) p. 165; and Vol. 11, No. 1 (Winter 1991) pp. 134-35 for detailed background information.)

Trial is scheduled to begin on February 7, rather than November 22 as earlier scheduled, in **City of Sacramento v. State Water Resources Control Board; California Regional Water Quality Control Boards for the Central Valley Region; Rice Industry Committee as Real Party in Interest**, No. 363703 (Sacramento County Superior Court). In this proceeding, plaintiff alleges that the boards violated state environmental and water quality laws when they adopted and approved a new pollution control plan in January and February 1990. The Board contends that it complied with the California Environmental Quality Act (CEQA) and the Porter-Cologne Water Quality Control Act. The parties are currently trying to negotiate a settlement. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 181; Vol. 11, No. 1 (Winter 1991) p. 134; and Vol. 10, No. 4 (Fall 1990) p. 164 for background information.)

In **United States and California v. City of San Diego**, No. 88-1101-B (U.S.D.C., S.D. Cal.), Judge Rudi Brewster held a status conference with all parties on November 20, at which the City of San Diego described its proposed testing of a cheaper sewage treatment and reclamation process as an al-



ternative to the secondary treatment system it has agreed to implement. Judge Brewster determined that the description of the test was acceptable to all parties, and ordered the City to proceed with the testing shortly after the first of the year. The test will last approximately one year, after which a report outlining the results will be given to all parties. Judge Brewster also ordered quarterly reports and quarterly status conferences at the City's Point Loma reclamation plant to be attended by Judge Brewster and the attorneys for all parties. Judge Brewster ordered that the expert witness of the Sierra Club, an intervening party, be allowed to fully participate in the design and implementation of the proposed testing process.

This decision is part of a pending lawsuit brought by the federal and state governments against San Diego based on the City's long-term failure to comply with the federal Clean Water Act (CWA). (See CRLR Vol. 11, No. 3 (Summer 1991) p. 181; Vol. 11, No. 2 (Spring 1991) p. 165; and Vol. 11, No. 1 (Winter 1991) p. 135 for background information on this case.) Pursuant to a 1989 consent decree, the City of San Diego has agreed to upgrade its Point Loma facility to secondary treatment level and build seven new sewage water reclamation plants by 1998. However, Judge Brewster decided in June 1991 to withhold final approval of the consent decree and defer a final decision until January 1993, pending the City's completion of the testing at its Point Loma facility of a cheaper alternative treatment and reclamation process which may substantially reduce the cost of compliance with the CWA. At this writing, Judge Brewster has already fined the City \$3 million for violating the CWA; ordered the City Council to adopt a water conservation ordinance (which the Council did on November 12, requiring the retrofitting of water-saving plumbing fixtures whenever buildings are reconstructed or sold and whenever bathrooms are remodeled, effective January 1, 1992); and ordered the City to finish building a 2.5-mile extension onto its 2.2-mile underwater sewage outflow pipe by July 1, 1994. (See *infra* agency report on CALIFORNIA COASTAL COMMISSION for related discussion.) The major remaining issue is the determination of how much reclaimed water, which the seven new reclamation plants will be producing, should be beneficially used instead of simply discharged into the ocean.

A trial has been set for late 1992 in *Earth Island Institute v. Southern California Edison*, No. 90-1535 (U.S.D.C.,

S.D. Cal), in which Earth Island alleges that Southern California Edison (SCE) is operating the San Onofre Nuclear Power Plant in a manner which violates the federal CWA. Under the CWA, state boards or private citizens may bring a lawsuit alleging violations of the CWA. Earth Island filed the lawsuit in reaction to a lack of response from the Coastal Commission and the San Diego Regional Water Quality Control Board, both of which have issued SCE permits to operate the San Onofre plant, in determining whether SCE is operating the facility in violation of its permits. A condition of the Coastal Commission permit was that SCE fund an independent Marine Review Committee (MRC), consisting of three scientists, to carry out an extensive study of the marine environment and the effects of the plant on the marine environment. In 1989, following a fifteen-year study, the MRC concluded that SCE is violating regulatory requirements at the state and federal level. (See CRLR Vol. 11, No. 4 (Fall 1991) pp. 172-73; Vol. 11, No. 3 (Summer 1991) p. 181; and Vol. 11, No. 2 (Spring 1991) p. 166 for background information.)

The San Diego Regional Water Quality Board is currently in the process of holding hearings to decide whether SCE is in violation of the NPDES permit issued by the Board. At the last hearing on October 31, the Board heard testimony from SCE arguing that any violation of the permit should be determined from SCE's report of impact on the marine environment rather than from the MRC's report, because the SCE report was narrowly tailored to determine compliance with the specific NPDES permit. However, regional board staff

disagreed with SCE, stating that the testing method used by SCE "has an inherently greater chance of failing to detect a violation of the permit requirements" and noting that SCE's monitoring program is perhaps "something less than perfect."

At the hearing, the Board heard testimony from many interested parties, including officials from the Coastal Commission, a member of the MRC, and various environmental groups. The Board has not yet reached a decision and is scheduled to hold a number of additional hearings in order to receive all relevant testimony.

The May 1991 lawsuit filed by a coalition of environmental groups against WRCB over the Board's Water Quality Control Plan for Salinity was scheduled for hearing on January 15 in Sacramento County Superior Court. In *Golden Gate Audubon Society, et al. v. State Water Resources Control Board*, No. 366984, plaintiffs challenge the validity of the plan, which the Board adopted as part of its four-year-long proceeding to establish a long-range protection plan for the waters of the San Francisco Bay/Sacramento-San Joaquin Delta Estuary. (See *supra* MAJOR PROJECTS; see also CRLR Vol. 11, No. 4 (Fall 1991) pp. 37-38 and 172, and Vol. 11, No. 3 (Summer 1991) pp. 34 and 180 for background information.)

## FUTURE MEETINGS:

Workshop meetings are generally held the first Wednesday and Thursday of each month. For exact times and meeting locations, contact Maureen Marche at (916) 657-0990.



## 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,