



## REGULATORY AGENCY ACTION

prevent a public harm without giving rise to a compensation claim. If the court decides in favor of Lucas, compensation may have to be paid property owners whose land is regulated for numerous objectives, including wetlands preservation, endangered species protection, public open space expansion, scenic river and view corridors, land use planning and zoning laws, and growth management plans. This would severely inhibit government efforts to preserve the environment, particularly in coastal zones where property tends to be valuable.

In addition to *Lucas*, the U.S. Supreme Court has agreed to review several additional cases concerning property and economic rights this term. This group of cases is particularly significant in light of recent changes in the Supreme Court's composition. In two 1987 cases rejecting regulatory taking claims, now-retired Justices William Brennan and Thurgood Marshall cast key votes that served to dampen further development of such actions. Since then, Anthony Kennedy, David Souter, and Clarence Thomas have been added to the Supreme Court. Little is known of Kennedy's and Souter's views on property rights. By contrast, the Court's newest member, Justice Thomas, wrote extensively in support of property rights before he became a federal appellate judge.

Settlement negotiations continue to drag on in *Sierra Club, et al. v. California Coastal Commission*, No. 637550 (San Diego County Superior Court), in which the Sierra Club and the Buena Vista Audubon Society challenge the Commission's approval of a proposal to dredge the Batiquitos Lagoon in Carlsbad. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 176; Vol. 11, No. 3 (Summer 1991) p. 166; and Vol. 11, No. 2 (Spring 1991) pp. 151-53 for extensive background information on this case.) Although the City of Carlsbad subsequently agreed to pursue a less environmentally damaging option than the one approved by the Commission over the objections of its staff, the Sierra Club plans to continue the lawsuit.

### RECENT MEETINGS:

At its November meeting in San Diego, the Commission approved a \$6 million plan to renovate the deteriorating canals of Venice, California. The canals were built by Abbot Kinney in just one year early in the century; his plan was to create an "American Venice," complete with canals and gondoliers. At that time, the canals were home to "hippies" and artists, but today

a wide mix of people reside in the area. For the last three decades, residents along the six waterways located between Washington and Venice boulevards have attempted to come up with a plan for saving the polluted waterways. The Commission approved a proposal that will line the crumbling banks with vertical, porous concrete-block walls. The canals will be emptied of stagnant waters and a flushing system will be installed. Sidewalks so unsafe that they were closed to the public in 1942 will be repaired, wooden footbridges will be rebuilt, and even duck ramps will be constructed. If all goes as expected, construction will begin in March and be finished in 1994.

On October 10, San Diego's Sea World won the Commission's approval to add several new facilities, including a beer-tasting area, a restaurant, a catering kitchen, and a structure that will house six of the famous Anheuser-Busch Clydesdale horses. The 6-2 vote authorized nearly 60,000 square feet of new buildings. Sea World spokesman Dan LeBlanc said this project is just one portion of the plans Sea World hopes to accomplish during 1992. The proposed additions are also subject to various city approvals.

At its November meeting, the Commission approved a permit for a temporary entertainment/support complex for America's Cup participants located in San Diego's Mission Bay Park. The facilities, which will be in operation from mid-January to late May 1992, include three large outdoor tents to be used for exhibit space, food service and beer gardens for the nearby yacht syndicates (Japanese, French, Australian and Swedish), a studio and floating platform for media interviews with race participants, a lounge for syndicate receptions and gatherings, tourist information booths, and a VIP trailer. In addition, two entertainment programs were approved to take place within the support facility. One weekend each month, a temporary stage and seating will be erected for opening and closing ceremonies and musical reviews conducted by the different countries involved. These improvements will be removed each month as events occur, and the area will be ultimately restored to pre-project condition by Memorial Day weekend.

### FUTURE MEETINGS:

April 7-10 in San Rafael.

May 12-15 in Marina del Rey.

### CALIFORNIA ENERGY COMMISSION

*Executive Director: Stephen Rhoads*  
*Chairperson: Charles R. Imbrecht*  
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In 1974, the legislature enacted the Warren-Alquist State Energy Resources Conservation and Development Act, Public Resources Code section 25000 *et seq.*, and established the State Energy Resources Conservation and Development Commission—better known as the California Energy Commission (CEC)—to implement it. The Commission's major regulatory function is the siting of powerplants. It is also generally charged with assessing trends in energy consumption and energy resources available to the state; reducing wasteful, unnecessary uses of energy; conducting research and development of alternative energy sources; and developing contingency plans to deal with possible fuel or electrical energy shortages. CEC is empowered to adopt regulations to implement its enabling legislation; these regulations are codified in Division 2, Title 20 of the California Code of Regulations (CCR).

The Governor appoints the five members of the Commission to five-year terms, and every two years selects a chairperson from among the members. Commissioners represent the fields of engineering or physical science, administrative law, environmental protection, economics, and the public at large. The Governor also appoints a Public Adviser, whose job is to ensure that the general public and interested groups are adequately represented at all Commission proceedings.

There are five divisions within the Energy Commission: (1) Administrative Services; (2) Energy Forecasting and Planning; (3) Energy Efficiency and Local Assistance; (4) Energy Facilities Siting and Environmental Protection; and (5) Energy Technology Development.

CEC publishes *Energy Watch*, a summary of energy production and use trends in California. The publication provides the latest available information about the state's energy picture. *Energy Watch*, published every two months, is available from the CEC, MS-22, 1516 Ninth Street, Sacramento, CA 95814.

On November 25, Governor Wilson named Tracey Buck-Walsh as the new CEC Public Adviser. Buck-Walsh, who practiced law for four years prior to her appointment as public adviser, is a former member of the Humboldt County Energy Commission.



## MAJOR PROJECTS:

**Appliance Efficiency Rulemaking Approved.** In early 1991, the Office of Administrative Law (OAL) rejected CEC's proposed amendments to its appliance efficiency regulations in sections 1601-1608, Title 20 of the CCR. The regulations establish energy efficiency standards, test methods, certification requirements, identification requirements, and enforcement requirements for various appliances. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 179 and Vol. 11, No. 3 (Summer 1991) p. 156 for background information.) CEC submitted a revised version of the proposed amendments to OAL in October; OAL approved the amendments on November 6.

In a related action, on October 25, CEC published notice of its intent to amend section 1604, Title 20 of the CCR. In 1989, CEC adopted new efficiency standards for certain types of large, commercial-size water heaters. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 200 and Vol. 10, No. 1 (Winter 1990) pp. 145-46 for background information.) CEC now proposes to amend section 1604 to change the effective date of those standards from January 1, 1992 to January 1, 1993. On December 18, the Commission conducted a public hearing on this proposal; at this writing, the amendment awaits review and approval by OAL.

**Amendments to Building Efficiency Standards Approved.** Last May, CEC proposed extensive amendments to its building energy efficiency standards in sections 5301-5363, Part 2, Chapter 2-53, Title 24 of the CCR. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 178; Vol. 11, No. 2 (Spring 1991) p. 144; and Vol. 11, No. 1 (Winter 1991) pp. 138-39 for background information.) The amendments apply to both residential and non-residential structures and establish, among other things, new standardized window and duct testing, appliance performance standards, and insulation requirements. CEC submitted the amendments to the Building Standards Commission, which approved them at an October 15 hearing; the new rules are scheduled to take effect on July 1.

**Codification of Intervenor Funding Program Guidelines.** In 1991, CEC assembled a proposed regulatory package to codify its existing Intervenor Funding Program (IFP) guidelines as regulations and to implement SB 2211 (Rosenthal) (Chapter 1661, Statutes of 1990). The IFP is intended to encourage public participation in certain CEC proceedings by awarding financial reimbursement to eligible organizations and

individuals who make a compensable contribution to those proceedings. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 156; Vol. 11, No. 2 (Spring 1991) p. 142; and Vol. 9, No. 4 (Fall 1989) p. 128 for background information.) The package was drafted by former CEC Public Adviser Tom Maddock before he left the Commission for the Department of Consumer Affairs. CEC was unable to complete the rulemaking process before Maddock's move and put the regulations on hold pending the arrival of his replacement. New Public Adviser Tracey Buck-Walsh intends to review and refine the regulations before seeking final approval from CEC and OAL. Buck-Walsh was expected to have completed her review by the end of January.

**Proposed Amendments to Conflict of Interest Code.** In September, CEC published notice of its intent to amend its conflict of interest code as authorized by the Political Reform Act, Government Code section 81000 *et seq.* CEC's proposed amendments to sections 2401 and 2402, Title 20 of the CCR, create eight categories of CEC employees for purposes of making personal financial disclosures. Existing rules require full disclosure only by high-level employees. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 179 for background information.)

CEC approved the amendments at an October 23 hearing and submitted them for review to the Fair Political Practices Commission (FPPC). The FPPC, in turn, approved the regulations in December and returned them to CEC. CEC expected to complete the rulemaking file and submit the amendments to OAL for review and approval by mid-February.

**CEC Releases Second Quarter Oil Report.** In November, CEC released its Quarterly Oil Report for the second quarter of 1991. According to the report, the total amount of petroleum fuels supplied to California continued to decline in the second quarter, down 3% from 1990 and down 2% from the first quarter of 1991. Bucking the trend, unleaded gasoline volume was up slightly over 1990 and .3% from the first quarter of 1991.

Price trends were mixed, with the average international crude oil price at \$16.53 per barrel, which is 10.3% lower than the first quarter of 1991 but 14.6% higher than in 1990. Self-serve retail gasoline prices were lower than the first quarter of 1991 and the previous year.

Meanwhile, oil company revenues increased an average of 11% from 1990, but profits decreased 29.2%. This anomaly was attributed to a variety of

causes including gasoline price wars and oversupply.

**CEC Adopts Global Climate Change Report.** Pursuant to AB 4420 (Sher) (Chapter 1506, Statutes of 1988), CEC was required to conduct a study and report its findings to the legislature and Governor on the effect of global warming trends on California's energy supply and demand, economy, environment, agriculture, and water supplies. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 178 and Vol. 11, No. 3 (Summer 1991) p. 157 for background information.) On November 20, CEC formally adopted the report, which consists of six sections discussing the theories supporting global warming predictions; the potential impacts of global warming on California; California and worldwide contribution to greenhouse emissions; California's policies on greenhouse gas emissions in consideration of regional and worldwide effects; methods to reduce carbon dioxide, methane, and chlorofluorocarbon emissions; and plans for adaptation to potential climate change.

**CEC Adopts California Energy Plan.** In July, the CEC Biennial Report Committee released a final draft of CEC's 1991 Biennial Report, *California's Energy Plan*. The Energy Plan, California's principal energy planning and policy document, identifies emerging trends in energy supply and demand. Once approved by CEC, the Plan forms the basis for action by the legislature, the Governor, other government agencies, utilities, and the private sector to meet California's future energy needs. Once approved by the Governor, the Plan becomes the state's official energy policy. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 178 for background information.) On November 3, CEC formally adopted the 1991 Biennial Report, *California's Energy Plan*.

**CALBO Submits Petition for Rulemaking.** On December 9, California Building Officials (CALBO) formally petitioned CEC to amend section 2-5352(a), Title 24 of the CCR, which currently requires builders who construct residential building additions needing water heaters to comply with specified energy efficiency requirements as set forth in section 2-5352(a)2B, Title 24 of the CCR. CALBO claims that section 2-5352(a) imposes undue hardship on residential addition builders because compliance requirements are complex, restrictive, and expensive. The proposed amendment would make compliance with certain provisions of section 2-5352(a)2B optional for residential building additions. CEC was scheduled to



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decide whether to pursue the requested amendments on February 9.

### LEGISLATION:

**SB 1216 (Rosenthal)**, as amended May 23, would enact the Energy Security and Clean Fuels Act of 1992, which would authorize, for purposes of financing a specified energy security and clean fuels program, the issuance of bonds in the amount of \$100 million. This two-year bill is pending in the Senate Appropriations Committee.

**AB 920 (Hayden)**, as amended September 11, would require CEC, if funds are appropriated, to develop and deliver to the appropriate policy committees of the legislature by May 1, 1994, a plan to reduce greenhouse gas emissions. This two-year bill is pending in the Senate Appropriations Committee.

**AB 1064 (Sher)**, as amended July 1, would require CEC to include in its biennial report recommendations relative to practicable and cost-effective conservation and energy efficiency improvements for investor-owned and publicly-owned utilities. It would also require CEC, in conjunction with the PUC and investor-owned and municipal utilities, to establish a comprehensive demand-side data monitoring and evaluation system to provide detailed and reliable statistics on actual energy savings from all classes of demand-side management programs. This two-year bill is pending in the Senate Committee on Energy and Public Utilities.

**AB 1586 (Moore)**, as amended May 30, would require CEC, on or before January 1, 1993, to certify home energy conservation rating systems and procedures that calculate energy and utility bill savings to be expected from conservation measures. This two-year bill is pending in the Senate Committee on Energy and Public Utilities.

**SB 1203 (Committee on Energy and Public Utilities)** would abolish CEC and create the California Energy Resources Board, and authorize the Board to succeed to all powers, authority, responsibilities, and programs of CEC. This two-year bill is pending in the Senate Committee on Energy and Public Utilities.

**SB 1204 (Committee on Energy and Public Utilities)** would return, effective January 1, 1993, CEC's authority to certify new powerplant sites and facilities to cities and counties for projects utilizing non-nuclear energy. Cities and counties would be authorized to refer an application for such certification to CEC. This two-year bill is pending in the Senate Committee on Energy and Public Utilities.

**SB 1205 (Committee on Energy and Public Utilities)**, as amended September 13, would require CEC, on or before December 31, 1994, to determine whether any appliances that are currently not subject to a CEC standard should be regulated and, for any such appliance, to adopt standards in accordance with prescribed procedures. This two-year bill is pending in the Senate inactive file.

**SB 1207 (Committee on Energy and Public Utilities)** would amend existing law which requires CEC to adopt, by June 30, 1992, home energy rating and labeling guidelines that may be used by homeowners to make cost-effective decisions regarding the energy efficiency of their homes. The bill would require CEC to adopt a single, consistent method for rating the energy efficiency of both new and existing homes by January 1, 1993. This two-year bill is pending in the Assembly Natural Resources Committee.

**SB 1208 (Committee on Energy and Public Utilities)**, as amended September 13, would require CEC, as part of its biennial report, to establish priority technologies for research, development, and demonstration; establish specific performance goals for these priority technologies; and develop research, development, and demonstration programs which pursue these technologies. This two-year bill is pending on the Assembly floor.

**AB 2130 (Brown)**, as amended May 7, would direct CEC to prescribe, by regulation, standards for minimum levels of operating efficiency, maximum energy consumption, or efficiency design requirements, based on a reasonable use pattern, for appliances whose use, as determined by CEC, requires a significant amount of energy on a statewide basis; and require CEC, by January 1, 1993, to adopt energy conservation measures that are cost-effective and feasible for privately-owned residential buildings. This two-year bill is pending in the Assembly Ways and Means Committee.

### LITIGATION:

In *CEC v. Department of Water and Power, City of Los Angeles*, No. B-055524, CEC sought review of a Los Angeles County Superior Court decision that the Los Angeles Department of Water and Power's Harbor Generating Project is not subject to CEC's jurisdiction. The superior court held the Repowering Project is not subject to CEC's jurisdiction as it cannot be considered a "modification of an existing facility" under Public Resources Code section

25123 or a "construction of any facility" under section 25110. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 159; Vol. 11, No. 1 (Winter 1991) p. 140; and Vol. 10, No. 4 (Fall 1990) pp. 167-68 for detailed background information on this case.) On December 31, the Second District Court of Appeal affirmed the trial court's holding, finding that CEC has neither construction nor modification authority over the Repowering Project and CEC improperly sought to assert its jurisdiction over the Project. CEC filed a petition for rehearing with the appellate court; the court was expected to rule on it by January 30. If its petition is denied, CEC is expected to file a petition for review with the California Supreme Court.

### FUTURE MEETINGS:

CEC meets every other Wednesday in Sacramento.

### DEPARTMENT OF FISH AND GAME

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The Department of Fish and Game (DFG), created pursuant to Fish and Game Code section 700 *et seq.*, manages California's fish and wildlife resources (both animal and plant). Created in 1951 as part of the state Resources Agency, DFG regulates recreational activities such as sport fishing, hunting, guide services, and hunting club operations. The Department also controls commercial fishing, fish processing, trapping, mining, and gamebird breeding.

In addition, DFG serves an informational function. The Department procures and evaluates biological data to monitor the health of wildlife populations and habitats. The Department uses this information to formulate proposed legislation as well as the regulations which are presented to the Fish and Game Commission.

The Fish and Game Commission (FGC), created in section 20 of Article IV of the California Constitution, is the policymaking board of DFG. The five-member body promulgates policies and regulations consistent with the powers and obligations conferred by state legislation in Fish and Game Code section 101 *et seq.* These regulations concern the taking and possession of birds, mammals, amphibians, reptiles, and fish. Each member is appointed to a six-year term. FGC's regulations are codified in Division 1, Title 14 of the California Code of Regulations (CCR).