



REGULATORY AGENCY ACTION

Redwood Coast Watersheds Alliance v. California State Board of Forestry, et al., No. 932123, is still pending in San Francisco County Superior Court. Through San Francisco environmental attorney Sharon Duggan, RCWA alleges that the Board and CDF are in violation of the FPA and the public trust doctrine by allowing "legalized depletion" of California's forestry resources. Specifically, RCWA alleges the Board has failed to establish adequate silvicultural standards; maintained inadequate stocking standards insufficient to fulfill maximum productivity; failed to adopt regulations ensuring the sustained production of high-quality timber products; approved THPs that deplete forest resources; failed to provide sufficient monitoring of and data for existing forest conditions; failed to protect watershed and wildlife values, fisheries, regional economic vitality, employment, and aesthetic enjoyment; failed to proceed according to law in that the Board and CDF have permitted—through lack of regulation and by using market forces as the guiding criteria for harvest levels—overharvesting, timber mining, declining utilization standards, lack of environmental protection for watersheds and species diversity, and the use of hardwoods for stocking without stocking standards for such species; and authorized timber harvesting regeneration methods that are not consistent with the biological requirements of the tree species, timber site, and soil.

On October 7, RCWA filed its second amended petition for writ of mandate and complaint for injunctive and declaratory relief. In the second amended petition, RCWA challenges the continued certification of CDF's THP process as the functional equivalent of an environmental impact report (EIR) under CEQA. RCWA alleges that "changes have occurred in the regulatory program since the initial certification by the Secretary of Resources in 1976 that require a withdrawal of the certification"; thus, RCWA seeks to set aside the June 1991 decision of the Resources Agency Secretary providing for continued certification. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 193 and Vol. 11, No. 3 (Summer 1991) p. 176 for background information.)

Specifically, in the second amended petition, RCWA alleges that CDF's regulation of timber operations on private lands violates CEQA in several ways. First, it fails to mandate evaluation of all THPs by representative members of interdisciplinary review teams. Second, it fails to provide the orderly evaluation of proposed THPs consistent with the

environmental protection purposes of the regulatory program, as evidenced by—among other things—the emphasis on market forces rather than environmental concerns. Third, changes to the FPA since certification in 1976 have eliminated certain standards which enabled evaluation consistent with environmental protection purposes, as required by CEQA, including consideration of the soil, timber site, and species present, improvement of the forest as a primary consideration, the protection of wildlife and prevention of erosion in the WLPZ, and identification of wildlife as an important and necessary component of the forest resources. Fourth, it fails to require consultation with agencies which have jurisdiction by law over resources. Fifth, since a description of alternatives to the proposed harvest and mitigation measures is not required in THPs, CEQA's requirement of such a description is violated. Sixth, amendments to the Forest Practice Act have resulted in CEQA violations by changing the required identification of the silvicultural method to presently requiring identification of the "regeneration" method; elimination of the requirement to state the provisions for protecting special treatment areas; elimination of the requirement to provide information about the methods of avoiding excessive acceleration of erosion in WLPZ; and the addition of rules to permit "consideration" of alternatives and mitigation without providing written description of the alternatives and mitigation measures. Seventh, CDF's

THP process violates CEQA's provision for public review of the plan, because it permits inclusion of required written documentation after the close of the public comment period and review by other public agencies. Finally, changes in the FPA violate CEQA provisions which provide the public and other agencies with review of all required written documentation, insofar as close of public comment is now permitted before submission of required information from the plan submitter.

As a result of the amended allegations, RCWA seeks "a judicial determination and declaration that [the Board and CDF] are in violation of [CEQA] and that the certification of the regulation of timber harvest operations must be withdrawn due to changes in the Forest Practice Act, the rules and regulations of the Board of Forestry, [and] the contents of the timber harvesting plan which materially change the environmental protection and opportunities for public review provided at the time of the 1976 certification." Additionally, RCWA seeks "a judicial determination and declaration that [the Board and CDF] are in violation of [CEQA] in that they are carrying out the regulation of timber operations on private lands in a manner that is not consistent with or in compliance with the standards set forth in CEQA for functional equivalents."

FUTURE MEETINGS:

April 7–8 in Sacramento.

May 5–6 in Sacramento.



INDEPENDENTS

AUCTIONEER COMMISSION

Executive Officer: Karen Wyant
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The Auctioneer and Auction Licensing Act, Business and Professions Code section 5700 *et seq.*, was enacted in 1982 and establishes the California Auctioneer Commission to regulate auctioneers and auction businesses in California.

The Act is designed to protect the public from various forms of deceptive and fraudulent sales practices by establishing minimal requirements for the licensure of auctioneers and auction businesses and prohibiting certain types of conduct.

Section 5715 of the Act provides for the appointment of a seven-member Board of Governors, which is authorized to adopt and enforce regulations to carry out the provisions of the Act. The Board's regulations are codified in Division 35, Title 16 of the California Code of Regulations (CCR). The Board, which is composed of four public members and three auctioneers, is responsible for enforcing the provisions of the Act and administering the activities of the Commission. Members of the Board are appointed by the Governor for four-year terms. Each member must be at least 21 years old and a California resident for at least five years prior to appointment. In addition, the three indus-



try members must have a minimum of five years' experience in auctioneering and be of recognized standing in the trade.

The Act provides assistance to the Board of Governors in the form of a council of advisers appointed by the Board for one-year terms. In September 1987, the Board disbanded the council of advisers and replaced it with a new Advisory Council (see CRLR Vol. 7, No. 4 (Fall 1987) p. 99 for background information).

MAJOR PROJECTS:

Board Again Refuses to Address Owner Bidding Abuses. At the Board's November 22 meeting, Executive Officer Karen Wyant again raised several unresolved issues related to bidding by item owners at auctions, which—if undisclosed to other bidders—has the effect of unnecessarily and improperly driving up the price of the item. Wyant has previously raised these issues on numerous occasions with limited success; the farthest the Board has been willing to go in preventing deceptive owner and agent-of-owner (shill) bidding is to concur with existing law. Business and Professions Code section 5776(o) provides that it is unprofessional conduct for an auctioneer to permit an owner, consignor, or agent thereof of any item(s) to bid on the item(s) without disclosing to the audience that the owner, consignor, or agent thereof has reserved the right to so bid. This "protection" is almost meaningless, however, as an auctioneer can fulfill his/her obligation under section 5776(o) by simply posting a sign which states: "The owner, consignor, or agent thereof has reserved the right to bid." The precise identification of the item(s) upon which the owner has reserved the right to bid, and/or of the owner, consignor, or agent thereof, is not required.

At previous meetings, Wyant has implored the Board to explore whether implementing regulations to flesh out section 5776(o) are necessary. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 135; Vol. 9, No. 4 (Fall 1989) p. 126; and Vol. 9, No. 1 (Winter 1989) p. 97 for background information.) At the November meeting, Wyant again outlined the remaining unresolved issues relating to owner bidding, and urged the Board to discuss whether the currently required statement is sufficient to protect the public from undisclosed competitive bidding. However, the Board of Governors approved a motion by auctioneer member Steve Grove to end all discussion of this matter, because—in Grove's words—the Board

"has done everything possible regarding this issue."

Board Questions Proposed Reserve Fund Transfer. At its November 22 meeting, the Board of Governors continued its discussion of the 1991-92 Budget Act provision which will require the transfer of much of the Commission's reserve fund to the state's general fund on June 30. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 194 for background information.) On November 8, Board President Howard Hall wrote to Department of Finance (DOF) Director Thomas Hayes, stating that "[s]ection 5717.1 of the Business and Professions Code provides for the Board's appropriation or disbursement from the Auctioneer Commission Fund only to pay necessary expenses associated with the effective performance of the duties and powers of the Board. Accordingly, we do not hold uncommitted reserves." Hall noted that the Board is "troubled and shocked that a special tax will be imposed on regulated businesses in California by using fees collected and held in trust for the operation of the Commission for General Fund purposes." Hall also informed Hayes that "if this 'tax' is assessed, licensee fees must necessarily be increased to recoup those monies, which may be subject to the same assessment in the future."

In a December 9 response, DOF Chief Deputy Director LaFenus Stancell opined that section 14 of the Budget Act, which authorizes the transfer of substantial portions of many agencies' reserve funds to the state's general fund, "does not impose a special tax on regulated businesses in California. . . . Any transfers from a special fund must leave an estimated three months' operating revenue for operations supported by that fund. Consequently, neither a fee increase nor a deficiency should result from implementation of Section 14." According to Stancell, "[i]t is not the intent of Section 14 to leave boards/commissions that renew licenses on a biannual basis (such as the Auctioneer Commission) without operating funds for the 1992-93 fiscal year. The transfer will be based on the Fund's reserve at the end of the 1992-93 fiscal year to ensure that adequate operating funds will be available in that year. The estimated amount of the excess fees to be transferred from the Auctioneer Commission Fund is \$166,000, which will, as required by Section 14, occur on June 30, 1992."

The Board was scheduled to review its options regarding this matter at its February 28 meeting in San Francisco.

Commission Proposes to Reduce License Renewal Fees. In direct contradiction to its concern over the transfer of its excess reserve funds to the general fund, the Commission has proposed to reduce auctioneer and auction company renewal fees. On October 25, the Commission proposed to amend section 3525, Division 35, Title 16 of the CCR, to reduce its biennial renewal fee from \$265 to \$200 for auctioneer licensees, and from \$275 to \$200 for auction company licensees. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 194 for background information.) No public hearing was scheduled; the Commission accepted public comments on the proposal until December 13. At this writing, the rulemaking file has not been submitted to the Office of Administrative Law (OAL) for approval.

Commission Amends Conflict of Interest Code. On September 13, the Commission amended the Appendix to section 3526, Division 35, Title 16 of the CCR, which sets forth the Commission's conflict of interest code. The Appendix presently lists designated Auctioneer Commission employees who must file statements of economic interest with the Fair Political Practices Commission; the amendments add consultants to the list of designated employees. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 194 and Vol. 11, No. 3 (Summer 1991) p. 182 for background information.) On November 26, OAL approved the Commission's amendments.

RECENT MEETINGS:

At its November 22 public meeting in Monterey, Board of Governors member Steve Grove discussed his view of the need to impose apprenticeship or educational requirements on auctioneer candidates prior to licensing. The Board noted that other states require a specific level of education and/or a one- to three-year apprenticeship. While conceding that educational requirements are often imposed to restrict the number of practitioners within a trade, Grove contended that educational requirements would increase the level of professionalism in the auctioneer industry and discourage those who simply want to move quickly in and out of a potentially profitable venture. Because legislation would be required to effect such a change, Grove stated that he would present a formal proposal at the Board's next meeting.

FUTURE MEETINGS:

November 13 in San Diego.