



tions, ranging from the California Coastal Act—which is analogous to the South Carolina statute before the Court—to laws on earthquake development, toxic substance controls, and pesticide regulation. For example, California could be forced to pay millions of dollars to landowners who are barred from building on flood plains and unstable hillsides. Nearly 75 California cities and counties filed similar briefs. The Bush administration has taken a moderate position. It claims the government has the right to prevent harm to the public without owing compensation. However, in this case, the administration believes South Carolina should have to prove that building houses on Lucas' property would cause actual harm. The Supreme Court's ruling is expected this summer.

Last December, Minoru Isutani, owner of the Pebble Beach Company, sued the Commission over its refusal to permit him to sell private memberships at his world-famous golf courses on the Monterey coast. [12:1 CRLR 158; 11:4 CRLR 174-75] On February 20, however, Isutani announced his plans to sell the resort. This action, likely to end the legal controversy, was hailed by critics who sought to preserve public access to California's coast.

RECENT MEETINGS:

At its February meeting in San Diego, the Coastal Commission approved a plan to remodel the Monterey Bay Aquarium (MBA) and to install a desalination plant. Adopting an amendment to MBA's coastal permit, the Commission approved the remodeling of the main entry and ticket booth, new and larger classrooms, the main gift and bookstore, and improvements to the sea otter exhibit. In addition, MBA will install in the basement of the aquarium a reverse-osmosis desalination treatment facility with a 25,000 gallon storage reservoir to meet some of the facility's needs for nonpotable water. The plant is expected to reduce demand for city water by 20-30%.

At its April meeting in San Rafael, the Commission granted a permit, subject to specified conditions, for the maintenance dredging of the Monterey Marina. The permit will allow the annual maintenance of the Monterey Marina for ten years. The Marina is located between the city's Fisherman's Wharf and the commercial wharf. The initial dredging will produce about 4,500 cubic yards of dredge spoils. Approximately 1,500 cubic yards of spoils will be disposed of east of the commercial wharf to replenish beach sand.

The annual maintenance dredging of

the Monterey Harbor is complicated by significant contamination found throughout the harbor. In the late 1970s, higher than expected lead measurements were identified in the Monterey/Pacific Grove area, exhibiting increasing lead levels as one approached Monterey Harbor. Possible sources were atmospheric input, surface runoff from Cannery Row, and leaded boat and automobile fuels. In 1984, the Monterey County Department of Health warned the public in the Cannery Row area not to eat shellfish because of lead contamination. Lead concentrations in mussels and sediments from the Monterey Harbor were found to be among the highest observed in a marine environment anywhere in the world.

Although the source of much of the lead concentration was removed in 1989, the Commission and the RWQCB still note significant contamination in Monterey Harbor which will not necessarily be improved by the dredging/disposal project. Dredging and disposal needs may vary significantly from year to year. Specific conditions will need to be met each year to allow for maintenance dredging without full coastal development permit review. Each year, the city must determine the dredge areas, sample for contamination, propose a disposal method and plan, and receive RWQCB and Monterey County Health Department approval. If the dredging does not require special handling of dredge materials and is safe to dispose in the surf zone, will not impede public access, and in all aspects falls within the parameters of the permit conditions, the Commission will allow the city to proceed with annual dredging upon review and approval of the executive director. After five years the Commission will reanalyze using updated data, science, technology, and law. Although the project will not improve the existing water and sediment quality in Monterey Harbor, it has been reviewed and conditionally approved by the jurisdictions responsible for water quality and human health and no significant impacts have been identified. Future clean-up of the harbor sediments is under review by the RWQCB. Therefore, as conditioned, the Commission found the dredging proposal consistent with the marine resources policies of the Coastal Act.

FUTURE MEETINGS:

August 11-14 in Huntington Beach.
September 8-11 in Eureka.
October 13-16 in Monterey.

CALIFORNIA ENERGY COMMISSION

Executive Director: Stephen Rhoads
Chair: Charles Imbrecht
(916) 654-3888

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.

MAJOR PROJECTS:

Intervenor Funding Program Guidelines Reviewed. In 1991, CEC's Public Adviser embarked on a project to codify CEC's Intervenor Funding Program (IFP) guidelines as regulations and to implement SB 2211 (Rosenthal) (Chapter 1661, Statutes of 1990), which



provided a budget augmentation for the IFP in the amount of \$250,000. 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. [12:1 CRLR 163; 9:4 CRLR 128] The package was drafted by former CEC Public Adviser Tom Maddock before he left CEC for the Department of Consumer Affairs. Because CEC was unable to complete the rulemaking process before Maddock departed, formal adoption of the regulations was put on hold until the recent appointment of new Public Adviser Tracey Buck-Walsh. Upon taking office, Buck-Walsh reviewed the IFP policies and decided to further refine the guidelines, seeking to make them more user-friendly by condensing the originally-proposed package.

On May 6, CEC announced that the Public Adviser's Office would conduct a public workshop on May 20 in Sacramento in order to review proposed amendments to the guidelines; following the workshop, CEC anticipated commencing the formal rulemaking process to seek adoption of the guidelines as regulations.

CEC Hears Testimony on Adoption of Statewide Carbon Dioxide Reduction Goal. In October 1991, Governor Wilson directed CEC, as the lead agency responsible for global climate change issues and as the state's energy agency whose policy decisions affect nearly all carbon dioxide emissions within the state, to hold appropriate public proceedings to determine whether California should establish a carbon dioxide reduction goal. As a result, CEC conducted a staff workshop on January 15, in order to assess whether there may be consensus on key issues and to provide interested parties with the opportunity to express their views in an informal setting. Following the workshop, staff concluded that there is consensus on the perception of risk to the state from climate change; however, uncertainties exist regarding the potential costs of measures to reduce emissions and whether and to what extent such measures should be implemented statewide.

A CEC subcommittee consisting of Chair Charles Imbrecht and Commissioner Richard Bilas then conducted formal informational hearings on February 18 in Sacramento and February 20 in Los Angeles to receive testimony from interested parties concerning carbon dioxide reduction goal issues. At those hearings, various organizations and members of the public were invited to testify and discuss the testimony of other participants.

At those hearings, CEC staff recommended that the state establish a quantitative carbon dioxide reduction goal; that goal should also include methane, nitric oxide, and chlorofluorocarbons, as these other gases contribute to about 50% of the warming problem. Staff based its recommendation on a number of factual findings, including the fact that climate change poses significant economic and environmental risks to California and the world; fifteen other nations have established such goals, as have Oregon and New York; and California contributes 1.5% of the world's annual carbon emissions, an amount equal to the combined annual emissions of Germany and France.

Staff recommended a 10% carbon dioxide reduction from 1988 levels by 1998, and a 1% per year reduction thereafter. Staff chose 1988 as its base year since its best recent inventory of carbon dioxide is from that year. Staff noted that this goal is similar to goals established by Southern California Edison, the Los Angeles Department of Water and Power, and the South Coast Air Quality Management District.

Much of the testimony presented concerned the uncertainty of current scientific data regarding global warming, and how much California should invest in carbon dioxide reduction given that uncertainty. Representatives from industries with high carbon dioxide outputs advocate a so-called "no regrets" policy, which would encourage California business and the general public to achieve a carbon dioxide reduction goal when it is possible to do so without otherwise adverse impacts; in other words, the state would simply encourage companies to reduce carbon dioxide emissions but would not require them to do so.

Other hearing participants agreed that there are some uncertainties regarding scientific data, but contended that the state should not refuse to take any action to reduce a probable cause of global warming. Further, some participants noted that because other nations have adopted reduction goals, the United States' failure to do so undercuts its oral commitment to reduce greenhouse gases.

Hearing participants also discussed what real effect a California reduction goal would have on global warming, since so many nations do not have formal reduction goals. Industry representatives claimed that a reduction goal in this state would have little impact on the global problem, contending that two-thirds of current emissions come from developing countries. Environmental organizations rebutted this argument by stating that

California—and the United States as a whole—are looked to as leaders on environmental issues and should set an example on this issue.

CEC is currently in the process of reviewing comments received and preparing a report to the Governor regarding the hearings. It is expected that the report will contain CEC's recommendation on whether the state should adopt a carbon dioxide reduction goal.

CEC Distributes 1991 Fuels Report. Public Resources Code section 25310(a) requires CEC to prepare a comprehensive report on historic trends and long-range forecasts of the demand, supply, and price of petroleum and petroleum products, natural gas, coal, and synthetic and other fuels; the report must also include specific recommendations for legislative or administrative actions needed to maintain sufficient, secure, and affordable fuel supplies for the state. Accordingly, CEC recently released its *1991 Fuels Report*, which examines possible improvement of California's transportation system through economic incentives and policy integration; transportation fuels issues; the role of natural gas in energy and environmental security; and energy security and supply vulnerability. The conclusions reached by CEC in the report include the following:

—Incentive-based regulatory strategies provide policymakers with a valuable approach to respond to increasing transportation fuel demand and air quality concerns.

—CEC needs to develop methods for more quantitatively estimating the benefits of emissions averaging and trading for transportation fuels.

—California's policy is to let the market decide what combination of fuels and technologies will best serve the state's future transportation needs.

—The government should encourage cooperative projects to determine the benefits and impacts of alternative fuels.

—Natural gas is one of the several alternative fuels that can play an enhanced role in meeting energy security and environmental needs, particularly in transportation.

—Natural gas prices are well below oil prices and are like to remain so for the foreseeable future.

—California's economy remains vulnerable to the impacts of a severe or prolonged energy supply disruption.

—State government should exercise restraint in imposing mitigation measures which would interfere with the market during temporary supply disruptions and natural disasters.



Attorney General Reviewing CEC Manuals. On November 1, California Building Standards Commission (BSC) Executive Director Richard T. Conrad requested an Attorney General's Opinion regarding whether energy conservation manuals developed by CEC contain building standards and administrative regulations that apply directly to the implementation or enforcement of building standards and, therefore, require approval by BSC. BSC is contending that CEC's Energy Conservation Manual for New Residential Buildings, dated July 1988, and Energy Efficiency Manual, Second Generation, Nonresidential Standards, dated September 1988, require BSC approval because they refer to specific building features that fall within the meaning of the term "building standard," as defined by Health and Safety Code section 18909(b). BSC's request is currently pending at the Attorney General's Office.

CALBO Withdraws 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 contended that section 2-5352(a) imposes undue hardship on residential addition builders because compliance requirements are complex, restrictive, and expensive. [12:1 CRLR 163] The proposed amendment would have made compliance with certain provisions of section 2-5352(a)2B optional for residential building additions.

CEC was scheduled to decide whether to pursue the proposed regulatory amendment at its February 9 meeting. However, CALBO withdrew its petition pursuant to a compromise with CEC under which CEC agreed to publish calculations regarding specified energy requirements that will make compliance with section 2-5352(a) less complex and costly.

CEC Amends Energy Efficiency Standards for New Buildings. On January 17, CEC published notice of its intent to amend sections 10-101 through 10-110, Title 24 of the CCR, regarding energy efficiency standards for new buildings. Among other things, the amendments would adopt new requirements and criteria for approving alternative calculation methods (ACMs) that building permit applicants use to demonstrate compliance with the standards; specify the input assumptions, output forms, and contents for calculation methods; and set uniform test-

ing and approval criteria.

CEC conducted a public hearing on the proposed amendments on March 4, and subsequently adopted the package on April 29; following that action, CEC submitted the rulemaking file to the BSC for approval; BSC was expected to consider the approval of the package at its June 8 meeting.

CEC Amends Appliance Efficiency Regulations for Water Heaters. On February 7, CEC published notice of its intent to amend sections 1603, 1604, 1607, and 1608, Title 24 of the CCR, to adopt new efficiency standards for gas, oil, and electric water heaters that will have the same conservation effect as the standards adopted by CEC in 1989, but which contain different express requirements. [10:1 CRLR 145]

On April 1, CEC conducted a public hearing on the proposed amendments. Following the hearing, CEC made minor changes to the proposed amendments and released the modified text for an additional 15-day public comment period. On April 29, CEC adopted the proposed amendments, which currently await review and approval by the Office of Administrative Law (OAL).

Regulatory Update. The following is a status update on regulatory packages discussed in detail in recent issues of the *Reporter*:

-Appliance Efficiency Rulemaking. On January 16, OAL approved CEC's amendment to section 1604, Title 20 of the CCR, to change the effective date of new efficiency standards for certain types of large, commercial-size gas water heaters from January 1, 1992 to January 1, 1993. [12:1 CRLR 163]

-Conflict of Interest Code. On February 27, OAL approved CEC's amendments to its conflict of interest code, codified at sections 2401 and 2402, Title 20 of the CCR. CEC's amendments created eight categories of CEC employees for purposes of making personal financial disclosures. [12:1 CRLR 163]

CEC Considers Modification of Bottle Rock Powerplant Certification. In January 1991, the Department of Water Resources (DWR) published notice of its intent to temporarily suspend its operations at the Bottle Rock Powerplant located in Lake County. According to DWR, with the current and future availability of alternative power sources, it is not economically practical for DWR to continue Bottle Rock operations. DWR proposed to suspend operations at the powerplant for two to five years during which the economic feasibility of restart-

ing operations would be assessed.

As a result, CEC has been working with DWR, Lake County, and the public to draft modifications to the original Conditions of Certification for the plant. Under its siting authority, CEC had imposed a set of conditions on plant operations designed to protect the local environment and public health and to monitor to plant's impact on its community. After several modifications, CEC staff held a site visit and workshop to finalize its recommended modifications on April 16. Under staff's recommendations, many conditions relating to air quality, public health, socioeconomics, aesthetics, cultural resources, and engineering would be suspended; many of the conditions that will remain in effect concern biological resource monitoring and water quality protection. As a new condition, CEC would require DWR to provide a list of all hazardous and acutely hazardous chemicals currently used or stored at the site, and to remove from the plant site all chemicals, solvents, and lubricants, except those essential during the suspension period, and those only in the quantities reasonably required to maintain the plant during the suspension period. CEC would define the suspension period as five years from the date of the CEC order approving the modifications to the Conditions of Certification; DWR would be required to notify CEC staff six months prior to resuming operations and one year prior to facility closure.

CEC was scheduled to consider the approval of the modifications at its June 24 meeting.

LEGISLATION:

SB 1905 (Johnston), as amended May 5, would make legislative findings and declarations with regard to electric power transmission and would declare the policy of the state with regard to access to electric power transmission facilities and electric power transmission pricing practices. [S. Floor]

SB 1812 (Rosenthal), as amended May 12, would require CEC, in cooperation with the state Department of Health Services and the Public Utilities Commission (PUC), to provide utilities, electric appliance manufacturers, local governments, and others with basic information regarding health risks that may be associated with exposure to electric and magnetic fields. (See *infra* agency report on the PUC for related discussion.) [S. Appr]

SB 1697 (Royce), as introduced February 20, would abolish CEC. On March 31, this bill was referred to interim



REGULATORY AGENCY ACTION

study by the Senate Governmental Organization Committee.

AB 3777 (Polanco). Under the Petroleum Industry Information Reporting Act of 1980, petroleum refiners and marketers are required to submit information to CEC; the Act prescribes the circumstances under which that information is confidential or shall be publicly disclosed. Existing law also authorizes the CEC, in consultation with the PUC and the Air Resources Board (ARB), to require fuel producers, suppliers, distributors, and retailers to provide specified information concerning low-emission vehicle fuel and provides that this information is also subject to the Act's confidentiality requirements. This bill would authorize CEC to disclose this confidential information to ARB if the ARB agrees to keep the information confidential. [A. Floor]

AB 3052 (Polanco), as amended May 11, would require CEC, in collaboration with other governmental agencies and private entities, to develop a consumer recharging and refueling infrastructure master plan to support development, production, and operation of alternative fuel vehicles, and to report its findings to the Governor and the legislature by January 1, 1994. [A. W&M]

SB 1211 (Committee on Energy and Public Utilities) would authorize CEC, in consultation with the ARB and the PUC, to require fuel producers, suppliers, distributors, and retailers to provide specified low-emission vehicle fuel information; the bill would require CEC to include, in a biennial report prepared by it, information on whether those fuels are being effectively marketed and made available to the consumer. [A. Floor]

AB 3050 (Polanco), as amended May 14, would require the Department of Commerce, in collaboration with CEC and the Business, Transportation and Housing Agency, to establish and maintain until December 31, 1996, a California Electric and Alternative Fuel Vehicle Interagency Consortium that would have specified objectives and functions. [A. W&M]

AB 3097 (Katz), as amended April 21, would, to the extent permitted by federal law, transfer almost \$9 million in Petroleum Violation Escrow Account funds to the Katz Schoolbus Fund and appropriate that amount therefrom to CEC for implementation of the Katz Safe Schoolbus Clean Fuel Efficiency Demonstration Program. [A. Floor]

AB 3655 (Horcher). The Warren-Alquist State Energy Resources Conservation and Development Act requires CEC to provide technical assistance and grants-in-aid to assist local agencies to site

energy production or transmission projects. As introduced February 21, this bill would require CEC to provide technical assistance and grants-in-aid to assist local agencies to integrate into their planning process, and incorporate into their general plans, methods to achieve cost-effective energy efficiency. [S. E&PU]

SB 2062 (Leslie). Existing law requires that 30% of revenues received and deposited in the Geothermal Resources Development Account be available for expenditure by CEC as grants or loans to local jurisdictions or private entities. As amended March 31, this bill would decrease that percentage of revenues to 20%. [S. Appr]

The following is a status update on bills reported in detail in CRLR Vol. 12, No. 1 (Winter 1992) at page 164:

SB 1216 (Rosenthal) 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. [A. Trans]

AB 920 (Hayden) 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. [S. Appr]

AB 1064 (Sher) 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. [S. E&PU]

AB 1586 (Moore) 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. [S. E&PU]

SB 1205 (Committee on Energy and Public Utilities) 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. [S. 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. [A. NatRes]

SB 1208 (Committee on Energy and Public Utilities) 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. [A. inactive file]

AB 2130 (Brown) would direct CEC to prescribe 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. [S. E&PU]

SB 1203 (Committee on Energy and Public Utilities), which would have abolished CEC, created the California Energy Resources Board, and authorized the Board to succeed to all powers, authority, responsibilities, and programs of CEC, and **SB 1204 (Committee on Energy and Public Utilities),** which would have returned, effective January 1, 1993, CEC's authority to certify new powerplant sites and facilities to cities and counties for projects utilizing non-nuclear energy, died in committee.

LITIGATION:

In *CEC v. Department of Water and Power, City of Los Angeles*, No. B055524 (Dec. 31, 1991), the Second District Court of Appeal affirmed a trial court's holding that the Los Angeles Department of Water and Power's Harbor Generating Project is not subject to CEC's jurisdiction. [12:1 CRLR 164; 10:4 CRLR 140] According to the court, the project cannot be considered a "modification of an existing facility" under Public Resources Code section 25123 or the "construction of any facility" under section 25110. CEC subsequently petitioned the California Supreme Court to review the matter; on March 19, that court denied review.

FUTURE MEETINGS:

CEC meets every other Wednesday in Sacramento.