tives may already be used by California farmers who are not willing to share their secrets of success with the task force.

FUTURE MEETINGS

DPR's PAC, PREC, and PMAC meet regularly to discuss issues of practice and policy with other public agencies. The committees meet in the annex of the Food and Agriculture Building in Sacramento. For meeting information, call (916) 654-1117.

WATER RESOURCES CONTROL BOARD

Executive Director: Walt Pettit
Chair: W. Don Maughan
(916) 657-0941

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 water quality control board (RWQCB or "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.

WRCB 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.

MAJOR PROJECTS

Hearings on Interim Delta Standards Conclude. On August 4, WRCB wrapped up 15 days of evidentiary hearings on interim water rights standards to protect the Delta waters until it concludes its ongoing, five-year-old San Francisco Bay/Sacramento-San Joaquin Delta Estuary proceedings. The Board is responding to Governor Wilson's call for interim standards to reverse the continuing decline of the Delta. *[12:2&3 CRLR 214–15]* The standards will, among other things, regulate water flow "to ensure that the available water supply is reasonably used and that the public trust resources in the Bay-Delta Estuary are reasonably protected."

At the hearings, testimony by the U.S. Environmental Protection Agency (EPA) laid out three proposed standards that are designed to provide protection to Delta fish and wildlife. EPA acknowledged that it has started its own rulemaking process, but hopes that WRCB's interim standards will avoid the need for federal regulation in the Delta.

At this writing, the Board plans to meet in closed session in October to deliberate on evidence presented at the hearings. The exact release date has not been established, but draft interim standards may be published in October for public review and comment, with a final order issued by December to meet the Governor's end-of-the-year deadline.

Proposed Central Valley Project Takeover. On September 15, the Wilson administration unveiled a skeletal agreement with the federal government containing initial elements of a plan for the State of California to assume ownership and control of the Central Valley Project (CVP) by 1995. The CVP is a federally-owned water system that supplies over 30% of California's farms with water. *[12:2&3 CRLR 214–15]* Environmentalists, noting that all crucial details of the transfer have yet to be negotiated, charged that the announcement was timed to influence deliberations of congressional conferees meeting to decide whether to shift a substantial amount of CVP water rights from farmers to environmental protection (*see infra* for discussion of the Miller bill). Absent from the agreement are provisions that determine the price to be paid by the state (which, according to statements of federal officials, apparently may range anywhere from $1.9 to $7 billion); decide whether farmers will continue to receive very long-term contracts for highly-subsidized water; and determine whether water will be set aside for environmental protection. California Resources Agency Secretary Douglas P. Wheeler argues that the substantial shortfall in California's projected water supply over the next 20 years can only be solved by integrating the CVP with the smaller State Water Project (SWP). He expects this consolidation to reduce redundancy and increase water supply efficiency, facilitate development of an institutional framework to support marketing of water rights, and subject all Central Valley water systems to the Board's anticipated interim Bay/Delta standards and to the Governor's long-term program to "fix the Delta."

Under the agreed-upon schedule, the general terms and conditions of the transfer are to be worked out by November. Public hearings would start in January and continue until shortly before the final decision in October 1995. The agreement calls for joint operation of the CVP and SWP by next year.

However, in early October, the U.S. Senate approved and sent to President Bush an omnibus water bill that included historic CVP reform. Introduced by California Representative George Miller, the CVP reform provisions include the following:

–modification of the primarily agricultural purpose of CVP water to add as a priority the restoration and protection of fish and wildlife habitat, and setting a goal of doubling the historic fish populations in Central Valley rivers and streams by 2002;

–prohibiting the government from entering into new contracts for CVP water until the environmental restoration goals are achieved;

–setting aside 800,000 acre-feet of CVP water (approximately 18% of 1991 CVP water deliveries to farmers) to meet the new fish and wildlife protection goals;

–establishing a $50 million restoration fund financed by fees on CVP water and power sales to pay for fish and wildlife restoration activities;

–renewing existing water contracts for 25 years—with reduced water quantities to reflect water allocated to the environment—and providing for additional 25-year extensions at the discretion of the Secretary of the Interior, thus ending the controversial practice of automatic

renewal of 40-year contracts;

–reducing government water subsidies for nearly all CVP farmers by replacing fixed prices with a three-tiered pricing system that encourages conservation; and

–permitting CVP water to be voluntarily sold anywhere in California by contract holders.

Governor Wilson, U.S. Senator John Seymour, and Central Valley farmers called on President Bush to veto the bill despite overwhelming Senate approval. Most Republican senators support the bill because it contains many high-priced water projects, including the $992 million Central Utah Project favored by Senator Jake Garn. The omnibus bill also includes protection for the Grand Canyon from environmental damage caused by fluctuating water releases from Glen Canyon Dam, and a project to develop 120,000 acre-feet per year of reclaimed water in southern California to offset water diversions from the environmentally-sensitive Mono Lake Basin. At this writing, President Bush has not acted on the bill.

Drought Worsens as Summer Progresses. On June 1, the state's 155 reservoirs were at 69% of average levels, with 19.8 million acre-feet (maf) of water. Statewide precipitation stood at 85% of normal, with southern California recording greater than normal rainfall. San Diego's rate was the state's highest with 129% of normal rainfall.

By July 1, state reservoirs fell to 61% of average, with 17.8 maf of water in reserve. Precipitation remained at 85% of normal, with southern California again coming in with higher than normal rainfall. San Diego had 127% of normal rainfall, Los Angeles 122%, and Fresno 101%.

By August 1, state reservoirs had fallen to 58% of average, the lowest in the six-year drought. *[12:2&3 CRLR 215]* State runoff was at 43% of average, despite high precipitation in southern California. Statewide precipitation remained at 85%. Runoff totals are low because most rain has fallen in southern California where there are few reservoirs to collect rainfall. The state's most important water supply basins, the Sacramento and San Joaquin basins, averaged 46% and 42%, respectively, of average water runoff.

As of September 1, the state's reservoirs stood at 13.7 maf, slightly higher than was predicted when the August drought report was released. The reservoirs held 57% of average for this time of year. However, storage in major reservoirs of the Central Valley system as of September 7 stood at only 47% of average and 30% of capacity. At this writing, California's water situation is at its worst since the drought began.

San Diego Sewage Disaster Report to Remain Secret—For Now. On August 17, the San Diego Regional Water Quality Control Board rescinded an earlier order requiring the City of San Diego to release a report prepared by Failure Analysis Associates (the same firm that studied the cause of the Challenger space shuttle disaster) that examined the reasons for the devastating sewage outfall break six months earlier. *[12:2&3 CRLR 215–16]* The RWQCB also rejected Executive Director Art Coe's recommendation that the City be fined $88,000 for failing to produce the report by the predetermined date of May 4. The City successfully persuaded the regional board that releasing the report would lead to litigation and jeopardize its position in existing lawsuits. Subsequently, in ongoing federal court litigation against the City of San Diego over its longtime failure to comply with the federal Clean Water Act (*see infra* LITIGATION), U.S. District Court Judge Rudi Brewster refused to allow Sierra Club attorney Robert Simmons to question the director of the City's clean water program about the results of Failure Analysis Associates' study. Thus, unless the Sierra Club or another public interest organization sues to compel release of the report, FAA's opinion of the cause of San Diego's disastrous sewage spill will remain a secret.

State Files Lawsuit Against Southern Pacific for Dunsmuir Spill. On July 13, Attorney General Dan Lungren filed a civil suit against Southern Pacific for damage to fish, plants, and wildlife killed in the July 14, 1991 Sacramento River spill of 19,900 pounds of the pesticide metam sodium. *[12:2&3 CRLR 216; 11:4 CRLR 164]* The lawsuit alleges violations of the state Fish and Game Code, Water Code, Health and Safety Code, Government Code, Civil Code, and state common law, as well as the federal Comprehensive Environmental Response, Compensation and Liability Act. The amount of damages sought is not specified but state officials suggest it could be at least $30 million, including the cost of studies necessary to determine the damages. A spokesperson for Southern Pacific complained that the company is already cooperating and has paid out more than $12 million to state and local governments and private individuals and businesses.

The lawsuit will be on hold for the next two to three years, during which time studies of the damage will be completed. After that, Southern Pacific and other defendants, which include the pesticide manufacturer and the tanker car manufacturer, will enter into settlement negotiations with the state to determine whether the matter can be resolved without further litigation. No criminal charges were filed by the Attorney General.

Certification of Wastewater Treatment Plant Operators and Classification of Wastewater Treatment Plants. OAL has approved in two parts regulatory changes originally submitted by WRCB as one package. *[12:2&3 CRLR 217]* On May 21, OAL approved WRCB's adoption of new section 3717 and repeal of section 3678, Title 23 of the CCR. On June 24, OAL approved WRCB's adoption of sections 3670.1, 3680, 3683–86, 3700–16, and 3718, amendment of sections 3670, 3671, 3675, and 3676, and repeal of sections 3680 and 3685–3705 (non-consecutive). These regulatory changes reorganize and clarify existing regulations, slightly alter the classification of wastewater treatment plants, require agencies to report to the Board more information concerning wastewater treatment plant operators, alter application and certification procedures for operators, require successful passage of a written certification examination before one may become an operator in training, and add a new fee schedule. The single package was submitted to OAL in April, but the greater portion was withdrawn on May 21 and subsequently resubmitted for approval.

WRCB Proposes Rules to Implement Statute Pertaining to Stream Systems Declared to be Fully Appropriated. On July 3, the Board published notice of its intent to adopt new Article 23, Chapter 2, Division 3, Title 23 of the CCR. The new article would implement existing Water Code sections 1205–07, which authorize WRCB to declare that a stream system is fully appropriated. Before making this declaration, WRCB must find that a previous water rights decision has determined that no water remains available for appropriation from the stream system. After making such a declaration, WRCB (1) may not accept an application to appropriate water from the stream system, and may not accept a registration of small domestic use within the stream, unless the application or registration is consistent with conditions that may be included in the declaration; and (2) may cancel any pending application to appropriate water from the stream system, unless the application is consistent with such conditions. WRCB is authorized, upon its own motion or upon petition of any interested person and following notice and hearing, to revoke or revise a declaration that a stream system

is fully appropriated.

New Article 23 (sections 870–874) would provide procedures for (1) revoking or revising the status of stream systems declared to be fully appropriated, (2) adding stream systems to the initial or any revised declaration, and (3) public participation in the process through which a declaration is changed. Specifically, section 871(b) would establish the process that WRCB must follow to undertake revocation or revision of a declaration on its own motion, and section 871(c) would set forth the process available to any person to petition WRCB to revoke or revise a declaration. Such a petition must be accompanied by hydrologic data, water usage data, or other relevant information based upon which the Chief of WRCB's Division of Water Rights may determine that reasonable cause exists to conduct a hearing on the petition. Section 871(c) also authorizes a petitioner to lodge with WRCB a proposed application to appropriate unappropriated water or a proposed registration of small domestic use. Section 874 provides that the Chief of the Division of Water Rights shall mail notice of any hearing scheduled pursuant to new Article 23, at least 60 days prior to the hearing, to any person interested in any pending application to appropriate unappropriated water from any stream system which is the subject of the hearing.

On August 27, the Board held a public hearing on proposed Article 23; based on the comments and testimony received at the hearing, WRCB published a modified version of the new article on September 22. Most of the changes are minor, with the exception of the addition of new subsection 871(c)(5), which enables a petitioner to request WRCB review in the event the Chief of the Division of Water Rights determines that a petition does not show reasonable cause to conduct a hearing on the question whether a declaration should be changed. The Board reopened the public comment period on the proposed regulatory action until October 7; at this writing, WRCB has not adopted the proposed rules in final form.

Board Proposes to Amend Regulations Governing Changes in Point of Diversion, Place of Use, and Purpose of Use and Changes Due to Transfers of Water or Water Rights. On July 10, WRCB published notice of its intent to amend sections 791–93, 795–96, and 799, and repeal section 794, Article 15, Title 23 of the CCR, pertaining to changes in point of diversion, place of use, or purpose of use of water; amend sections 801–02, repeal sections 800 and 803, and adopt section 804, Article 16, pertaining to temporary changes due to transfers of water or water rights; adopt sections 805 and 806, Article 16.5, relating to petitions for temporary urgency changes; and amend sections 811–12, 814, and 816, and repeal section 813, Article 17, pertaining to changes involving a long-term transfer of water.

Water Code sections 1701–02 authorize an applicant, permittee, or licensee to change the point of diversion, place of use, or purposes of use of water, provided permission is obtained from WRCB and the petitioner has established that the proposed change will not injure any legal user of water. The amendments to Article 15 would, among other things, specify the information required to be included in a petition to change the point of diversion, place of use, or purpose of use; clarify methods of Board approval of such petitions and provide minimum approval requirements; and provide a more complete list of criteria for the Board to consider in determining when stream flow changes are caused by adding a power plant to existing works.

Water Code sections 1725–27 authorize 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 under specified circumstances, provided permission is obtained from WRCB. The Board must make a finding that the proposed temporary change would not injure any legal user of the water and would not unreasonably affect fish, wildlife, or other instream beneficial uses. The amendments to Article 16 would, among other things, specify information which must be included in a notice of temporary change; establish a new procedure for public notice and for filing objections to temporary transfers; and establish a new procedure for Board approval of temporary changes.

Water Code sections 1435–42 authorize a permittee or licensee who has an urgent need to change a point of diversion, place of use, or purpose of use to seek a temporary urgency change order from the Board. WRCB's adoption of Article 16.5 (sections 805 and 806) would specify the information to be included in a petition for a temporary urgency change order and clarify the objection process required to expedite the issuance or validation of these orders.

Under Water Code sections 1735–36, WRCB may consider petitions for long-term transfers of water or water rights involving a change of point of diversion, place of use, or purpose of use for any period in excess of one year. The Board must first make a finding that the proposed change would not injure any legal user of water and would not unreasonably affect fish, wildlife, or other instream beneficial uses. The proposed amendments to Article 17 would, among other things, specify information which must be included in the petition for a long-term transfer and give the Board the discretion to determine whether to hold a hearing on a proposed long-term transfer upon the request of a petitioner or protestant.

On August 27, WRCB held a public hearing on these proposed regulatory changes; at this writing, the proposed changes have not been further modified or adopted by the Board.

Policies and Procedures for Investigation, Clean-up and Abatement of Hazardous Discharges. On June 18, WRCB adopted Resolution 92-49, which sets forth its policies and procedures regarding investigation, clean-up, and abatement of discharges into state waters under Water Code section 13304. Section 13304 provides that any person who has discharged into state waters in violation of any waste discharge requirement or other order or prohibition issued by a RWQCB or WRCB may be required to clean up the discharge and abate the effects thereof. Resolution 92-49 sets forth the policies and procedures that WRCB, its representatives, and RWQCB representatives shall follow in the oversight of investigations and clean-up and abatement activities resulting from discharges of hazardous substances.

Specifically, the resolution states that investigations and clean-up and abatement activities usually contain five basic elements: preliminary site assessment to confirm the discharge, the identity of the dischargers, and preliminary impact of the discharge; soil and water investigation to determine the source, nature, and extent of the discharge; proposal and selection of clean-up action; implementation of clean-up action; and monitoring to confirm short- and long-term effectiveness of the clean-up and abatement alternative chosen. Under the resolution, regional boards shall implement the following procedures in deciding when a person may be required to undertake an investigation:

–use any relevant evidence to establish the existence and source of a discharge;

–make a reasonable effort to identify the dischargers associated with the discharge;

–require one or more persons identified as a discharger to undertake an investigation; and

–notify the appropriate federal, state, and local agencies, and coordinate with

these agencies on investigation, clean-up, and abatement activities.

In overseeing an investigation and clean-up/abatement, the regional boards shall:

–routinely require the discharger to conduct a phased, step-by-step investigation and clean-up;

–require the discharger to extend the investigation and clean-up/abatement to any location affected by the discharge, and require (if necessary) uncooperative landowners and tenants of property affected by the discharge to cooperate;

–require the discharger to submit written workplans for elements and phases of the investigation, clean-up, and abatement;

–review and concur with adequate workplans prior to initiation of investigations;

–require the discharger to submit reports on results of all phases of investigations and clean-up/abatement actions, regardless of the degree of oversight by the regional board; and

–require the discharger to provide documentation that plans and reports are prepared by professionals qualified to prepare such reports, and that each component of investigative and clean-up/abatement actions is conducted under the direction of appropriately qualified professionals.

The resolution also sets forth procedures which the regional boards must follow to ensure that dischargers have the opportunity to select cost-effective methods for detecting discharges and cleaning up and abating the effects thereof. In this regard, the regional boards shall:

–concur with any investigative and clean-up/abatement proposal which the discharger demonstrates has a substantial likelihood to achieve compliance within a reasonable timeframe;

–consider whether the burden, including costs, of reports required of the discharge during the investigation and clean-up/abatement of a discharge bears a reasonable relationship to the need for the reports and the benefits to be obtained from the reports;

–require the discharger to consider the effectiveness, feasibility, and relative costs of applicable alternative methods for investigation, clean-up, and abatement;

–ensure that the discharger is aware of and considers techniques which provide a cost-effective basis for initial assessment of a discharge;

–ensure that the discharger is aware of and considers specified clean-up and abatement methods or combinations thereof;

–require clean-up and abatement actions to conform to specified WRCB resolutions and regulations; and

–ensure that dischargers are required to clean up and abate the effects of discharges in a manner that promotes attainment of background water quality, or the highest water quality which is reasonable if background levels of water quality cannot be restored, considering all demands being made and to be made on those waters.

Board Reopens Statewide Industrial Storm Water Permit. In response to industry outcry, the Board recently modified the monitoring requirements and reopener provision of the statewide industrial activities storm water permit which it previously adopted in November 1991 pursuant to the federal Clean Water Act. Based on federal EPA regulations authorizing states to issue permits regulating industrial storm water discharges, WRCB adopted permit provisions requiring dischargers to eliminate non-storm water discharge to storm water systems, develop and implement a storm water pollution prevention plan, and perform monitoring of discharges to storm water systems. *[12:1 CRLR 154]*

However, in April 1992, EPA relaxed the minimum monitoring and reporting requirements, giving WRCB the discretion to eliminate most required reporting and monitoring of storm water discharges as long as a minimum of one annual evaluation inspection and compliance certification is required. Initially, there was some question whether the Board could reopen the permit to accommodate the new EPA standards, but the Board was swamped with calls from industry requesting the action.

In July, the Board drafted proposed modifications and submitted them for public comment, and held a public hearing on the issue on September 2. Among other things, the modifications reduce the number of required storm water discharge samples, allow for self-certification, and allow for some exemptions from sampling and analysis. In addition, the modifications clarify the reopener clause and conditions under which the permit may be modified, revoked, reissued, or terminated. The Board approved the modifications at its September 17 meeting.

Underground Storage of Hazardous Substance Regulations. The public comment period closed on June 23 on WRCB's proposed amendments to sections 2611, 2621, 2631, 2642, 2643, 2646, 2680, and 2681, Division 3, Title 23 of the CCR, which govern the underground storage of hazardous substances. Among other things, the proposed amendments would modify certain definitions and terms; clarify which tanks and pipelines are exempt from regulation; state additional equipment requirements; clarify certain performance standards; specify mandatory disclosures and corrective actions; set forth upgrade requirements; delete certain existing requirements; and conform the regulations to state and federal statutes. *[12:2&3 CRLR 216]* At this writing, the Board has taken no action on the proposed modifications.

LEGISLATION

The following is a status update on bills reported in detail in CRLR Vol. 12, Nos. 2 & 3 (Spring/Summer 1992) at pages 217–19:

AB 3359 (Sher) exempts from the Administrative Procedure Act and its rulemaking requirements the issuance, denial, or revocation of specified waste discharge requirements and permits, the issuance, denial, or waiver of a water quality certification, the adoption or revision of state policy for water quality control, and the adoption or revision of water quality control plans and guidelines by WRCB and the regional boards, except that any policy, plan, or guideline or any revision thereof which WRCB has adopted or which a court determined is subject to review by the Office of Administrative Law, after June 1, 1992, is required to be submitted to that office, with certain exceptions. This bill was signed by the Governor on September 28 (Chapter 1112, Statutes of 1992).

AB 2449 (Bentley). The existing Personal Income Tax Law and the Bank and Corporation Tax Law allow, by reference to a specified federal statute, a deduction for amortization of pollution control facilities; the state certifying authority, as defined, is required to certify to the federal certifying authority that the pollution control facility is constructed, reconstructed, erected, or acquired in conformity with the state program or requirements. Existing law defines the state certifying authority as the Department of Health Services. This bill instead defines WRCB as the state certifying authority in the case of water pollution. This bill was signed by the Governor on July 18 (Chapter 238, Statutes of 1992).

AB 3180 (Woodruff) creates the Leaking Underground Storage Tank Cost Recovery Fund in the general fund, and authorizes WRCB to expend the money in the Fund—upon appropriation by the legislature—for specified activities relating to underground storage tanks contain-

ing petroleum and for administrative expenses related to carrying out these activities. This bill was signed by the Governor on September 29 (Chapter 1215, Statutes of 1992).

SB 1277 (Ayala). Existing law authorizes RWQCBs to require specified persons or entities discharging waste to submit certain technical or monitoring program reports; any person failing to furnish a required report is guilty of a misdemeanor. This bill makes those provisions applicable to persons or entities who have discharged, discharge, or are suspected of discharging the waste.

Existing law provides that a person who discharges waste, or threatens to cause or permit the discharge of waste, into waters in violation of a waste discharge or other specified requirement is liable for reasonable costs incurred by a government agency taking remedial action to clean up or abate the effects of the waste. This bill provides that the amount of these costs constitutes a lien on the affected property upon the recordation of a notice of lien. The bill authorizes the lien to be foreclosed by an action brought by WRCB for a money judgment, and requires that any money recovered be deposited in the State Water Pollution Clean-up and Abatement Account. This bill was signed by the Governor on September 17 (Chapter 729, Statutes of 1992).

SB 1669 (Hill) requires the Department of Water Resources (DWR) to carry out the San Joaquin Valley Drainage Relief Program, which the bill establishes. The bill authorizes DWR to enter into agreements with WRCB, the Department of Fish and Game (DFG), the Wildlife Conservation Board, possessors of water rights, and other appropriate public agencies and nonprofit organizations to provide for the purchase and management of prescribed agricultural land in the San Joaquin Valley. This bill was signed by the Governor on September 26 (Chapter 959, Statutes of 1992).

SB 1865 (Hart) requires each health officer, as defined, on or before March 30, 1994 and annually thereafter, to submit to WRCB a prescribed survey documenting all beach postings and closures that occurred during the preceding calendar year. This bill was signed by the Governor on September 26 (Chapter 961, Statutes of 1992).

SB 1866 (Johnston), as amended August 26, enacts the Johnston-Baker-Andal-Boatwright Delta Protection Act of 1992, creates a 19-member Delta Protection Commission, and specifies the powers and duties of the Commission: to prepare, adopt, review, and maintain a comprehensive long-term resource management plan for the Delta. This bill was signed by the Governor on September 23 (Chapter 898, Statutes of 1992).

AB 231 (Costa) declares that, when any 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. This bill was signed by the Governor on September 18 (Chapter 779, Statutes of 1992).

AB 1103 (Bates), among other things, would have required specified RWQCBs to conduct unannounced inspections of waste discharges that require a national pollutant discharge elimination system (NPDES) permit and which could affect the waters of specified bays at least four times annually for major dischargers and two times annually for other dischargers, to determine compliance with applicable requirements. This bill was vetoed by the Governor on September 22.

SB 1559 (Johnston) was substantially amended on August 28 and is no longer relevant to WRCB.

The following bills died in committee: **AB 2464 (Lee)**, which would have required WRCB, within the limits of available resources, to adopt policies, guidelines, and standards for the disposal of dredged materials; **AB 2473 (Burton)**, which would have—among other things—required WRCB and the regional boards, on or before July 1, 1993, to identify prescribed dischargers which are not yet subject to waste discharge permits; **AB 2533 (Alpert)**, which would have required the RWQCBs to include, in all NPDES program permits issued on and after January 1, 1993 to dischargers that discharge directly into the ocean, the bacterial assessment and remedial action requirements included in the California Ocean Plan; **AB 3323 (Hayden)**, which would have required WRCB to formulate and adopt water quality standards for marine bay, estuarine, and coastal waters to protect swimmers and coastal beach users; **AB 3730 (Costa)**, which would have—among other things—required WRCB, DWR, and DFG to annually prepare recommendations relating to the times, terms, and conditions for the short-term and long-term transfer of water from the Sacramento-San Joaquin Delta; **SB 1380 (Ayala)**, which would have enacted the Water Recycling Bond Law of 1992, and authorized, for the purpose of financing a water recycling program, the issuance of bonds in the amount of $70 million; **AB 2090 (Katz)**, which would have—among other things—required WRCB, upon receipt of notification of a proposed temporary change of the point of diversion, to notify in writing DFG and the appropriate county board of supervisors of the proposed transfer; **ABX 15 (Kelley)**, which would have authorized WRCB to make loans or grants to fund eligible water reclamation projects in order to relieve emergency drought situations; **AB 614 (Hayden)**, which would have made legislative findings and declarations relating to marine pollution; **AB 88 (Kelley)**, which would have exempted WRCB's 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 from the requirements of the Administrative Procedure Act; **SB 685 (Calderon)**, which would have required 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 a specified date; and **AB 24 (Filante)**, which would have enacted the Water Resources Bond Law of 1992, the Water Recycling Bond Law of 1992, and the Clean Water Bond Law of 1992.

LITIGATION

In ***Golden Gate Audubon Society, et al. v. State Water Resources Control Board***, No. 366984 (Sacramento County Superior Court), environmentalists allege that WRCB's May 1991 Water Quality Control Plan for Salinity does not satisfy the Board's mandate under the Porter-Cologne Act and the Clean Water Act in that it fails to set flow standards necessary to reduce salinity and protect fish and other wildlife in the Delta. In addition, the environmental groups allege that former WRCB member Darlene Ruiz tainted the Board's deliberative process which resulted in the salinity plan by secretly transmitting internal drafts of the plan to representatives of water export interests. *[11:3 CRLR 180]*

In May and September, the court issued rulings on several discovery motions. As decided, admissible evidence will not be strictly limited to the administrative record, and petitioners will be allowed to present other evidence including additional documents which they feel WRCB should have considered in drafting its salinity plan. In addition, petitioners

may compel WRCB to answer deposition questions and produce documents containing internal notations which may have been influenced by improper ex parte contacts with water export interests.

On August 28 in ***United States and California v. City of San Diego***, No. 88-1101-B (U.S.D.C., S.D. Cal), U.S. District Judge Rudi M. Brewster affirmed his July 9 order allowing the City of San Diego to backtrack on its 1990 agreement with federal and state authorities. Judge Brewster reduced the City's obligation to upgrade the Point Loma wastewater treatment plant from the secondary treatment required under the Clean Water Act to "modified secondary" treatment, and set a March 1993 deadline for testing new, cheaper methods of sewage treatment. The City hopes the modified secondary treatment will eliminate 80% of suspended solids from the sewage effluent, as compared with the 90+% elimination level achieved in a full secondary treatment system. The City must also proceed with its $54 million project to extend its existing undersea sewage disposal pipeline to 4.5 miles offshore at a depth of 330 feet (from the current outfall length of 2.2 miles at a depth of 220 feet); and build one water reclamation sewage plant capable of handling 30 million gallons of sewage per day. *[12:1 CRLR 156–57; 11:3 CRLR 181]*

The EPA, upset about Judge Brewster's July 9 decision, had requested the August 28 reconsideration. However, Judge Brewster said he is convinced that no significant threat is posed by the City's current treatment of sewage. Scientists from Scripps Institute of Oceanography testified that the City's new proposal would not cause any damage to ocean life, and this testimony apparently carried great weight with Judge Brewster. In his decision, Judge Brewster warned the City not to assume that it would never have to meet the federal standards set forth in the 1989 consent decree signed by the City. He warned the City's attorney that if by February 1994, when all parties must reappear in court, the City has not convinced Congress to exempt San Diego from the Clean Water Act or upgraded the Point Loma sewage treatment plant to comply with federal standards, he might have to order the City to live up to its consent decree with EPA. (*See supra* report on SIERRA CLUB for related discussion.)

On July 15 in ***Earth Island Institute v. Southern California Edison***, No. 90-1535 (U.S.D.C., S.D. Cal.), U.S. District Judge Rudi M. Brewster partially denied a motion for summary judgment that would have dismissed Earth Island Institute's lawsuit against Southern California Edison (SCE). The lawsuit alleges that SCE, as operator of the San Onofre Nuclear Generating Station (SONGS), is violating federal water pollution laws by discharging cooling water into the ocean. *[12:2&3 CRLR 220]* In ruling on SCE's motion, Judge Brewster left intact Earth Island's claim of federal Clean Water Act violations but dismissed nuisance and fraud claims, which eliminated the threat of punitive damages against the utility. The judge also refused to allow plaintiffs to add the EPA as a defendant, despite the Institute's allegations that EPA has failed to enforce regulations at the plant. (*See infra* agency report on CALIFORNIA COASTAL COMMISSION for related discussion.)

As it proceeded to trial in July, ***City of Sacramento v. State Water Resources Control Board and California Regional Water Quality Control Board for the Central Valley Region (Rice Industry Committee, Real Party in Interest)***, No. 363703 (Sacramento County Superior Court) was settled. The parties were disputing the validity of WRCB/RWQCB's 1990 pollution control plan for the Delta Basin. *[10:2&3 CRLR 195–96]* The terms of the settlement are not known at this writing.

In ***State Water Resources Control Board and the Regional Water Quality Control Board, San Francisco Region v. Office of Administrative Law (San Francisco Bay Planning Coalition, Real Party in Interest)***, No. A054559, the parties filed their final briefs with the First District Court of Appeal over the summer. The parties are disputing whether WRCB's San Francisco Bay wetlands policies are regulations within the meaning of the Administrative Procedure Act. The Governor's approval of AB 3359 (Sher) should preclude future disputes of this type (*see supra* LEGISLATION). Oral argument was scheduled in November; a decision is expected by January or February. *[12:2&3 CRLR 220]*

RECENT MEETINGS

At its September 17 meeting, WRCB denied Madera County's petition for review of waste discharge requirement 91-124 issued by the Central Valley Regional Water Quality Control Board. The County argued that a proposed expansion to its landfill should not require a lining as prescribed by the RWQCB. The regional board maintained that such a lining system is required to protect the groundwater in the surrounding area from becoming contaminated with leachate. WRCB upheld the regional board and ordered the County to comply with the plan if it wishes to expand the landfill.

At the same meeting, WRCB denied a petition by the City of Los Angeles and the North Valley Coalition of Concerned Citizens for review of waste discharge requirements concerning the Sunshine Valley Landfill. In its petition, the citizens group pointed to deficiencies in the environmental impact report for the landfill's expansion. The citizens group had successfully challenged the original EIR in court, but the landfill owners successfully certified a second EIR which the citizens group is also challenging. The Board accepted the landfill plan despite the litigation concerning the EIR.

Also on September 17, the Board overruled the San Diego Regional Water Quality Control Board's action in a seven-year-old San Diego Bay pollution case concerning copper ore discharged into the bay as long as thirteen years ago by Paco Terminals, Inc. Concerned that excessive copper concentrations will harm aquatic life and be detrimental to beneficial use of the bay, the Board restored the original and tougher standard of allowable copper concentration in bay water after the RWQCB had relaxed it from 1,000 milligrams per kilogram (mg/kg) to 4,000 mg/kg at Paco's request.

In 1979, Paco began operating a copper ore loading facility at the San Diego Unified Port District's 24th Street Marine Terminal in National City. Using a clamshell bucket, Paco transferred copper ore from an onshore asphalt pad to ship hulls. Due to clamshell malfunctions and rain and wind affecting the onshore copper stockpiles, a significant amount of copper was discharged into the bay.

In 1985, after inspecting Paco's facility and discovering copper discharges to the bay, the RWQCB issued Clean-up and Abatement Order 85-91. Addendum No. 1 to Order 85-91, issued in 1987, revised the order and required Paco to meet a clean-up concentration of less than 1,000 mg/kg copper in bay sediments and a clean-up deadline of January 1989.

When the January 1989 deadline arrived, Paco had not even begun clean-up operations. In February 1989, the regional board issued Addendum No. 3, naming the Port District, as owner of the property being leased by Paco, as a responsible party. In January 1990, with no action yet taken on the clean-up, the regional board moved the clean-up deadline to September 1990. Paco indicated that its inability to comply with the previous schedule was due to unavailability of ocean disposal for the dredged sediment.

In November 1990, when it appeared clear that no clean-up deadline would be met, the regional board ordered Paco and the Port District to submit a description of all clean-up activities to be conducted and to supply the Board with a viable deadline. Based on their consultants' study of alternative clean-up strategies, the dischargers petitioned the regional board to revise the clean-up level from 1,000 mg/kg to 4,000 mg/kg, with a new completion date of April 1, 1993. The dischargers asserted that this clean-up level would save approximately $3.6 million in clean-up costs. In December 1991, the regional board approved the new standards.

One of the petitioners in this case, Eugene Sprofera, contended that the RWQCB improperly excluded him from testifying at the hearing at which it set the less stringent standards. Sprofera and the Environmental Health Coalition petitioned WRCB to uphold Order No. 85-91 at the 1,000 mg/kg concentration levels.

WRCB's September 17 ruling granted petitioners' request and ordered Paco and the Port District to reduce the copper concentration in the affected portion of San Diego Bay to a sediment copper concentration less than 1,000 mg/kg. The Board found that the less stringent standard violates section 13304 of the Water Code, its Enclosed Bays and Estuaries Plan, and WRCB Resolution 68-16, which states that existing water quality shall be maintained unless a change will be "consistent with the maximum benefit to the people, will not unreasonably affect present and anticipated beneficial uses of such water and will not result in water quality less than that prescribed in the policies." In addition, by failing to allow Mr. Sprofera's testimony, the regional board violated section 647, Title 23 of the CCR. The ruling also upheld the previous clean-up deadline of April 1993, but gave Paco and the Port District the opportunity to present new arguments and evidence that a clean-up level of 4,000 mg/kg is sufficient to protect the environment.

FUTURE MEETINGS

Workshop meetings are generally held the first Wednesday and Thursday of each month. For exact times and meeting location, 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, virtually all development which occurs within the coastal zone must be approved by the Commission.

The Commission is also designated the state management agency for the purpose of administering the Federal Coastal Zone Management Act (CZMA) in California. Under this federal statute, the Commission has authority to review oil exploration and development in the three-mile state coastal zone, as well as federally sanctioned oil activities beyond the three-mile zone which directly affect the coastal zone. The Commission determines whether these activities are consistent with the federally certified California Coastal Management Program (CCMP). The CCMP is based upon the policies of the Coastal Act. A "consistency certification" is prepared by the proposing company and must adequately address the major issues of the Coastal Act. The Commission then either concurs with, or objects to, the certification.

A major component of the CCMP is the preparation by local governments of local coastal programs (LCPs), mandated by the Coastal Act of 1976. Each LCP consists of a land use plan and implementing ordinances. Most local governments prepare these in two separate phases, but some are prepared simultaneously as a total LCP. An LCP does not become final until both phases are certified, formally adopted by the local government, and then "effectively certified" by the Commission. Until an LCP has been certified, virtually all development within the coastal zone of a local area must be approved by the Commission. After certification of an LCP, the Commission's regulatory authority is transferred to the local government subject to limited appeal to the Commission. Of the 126 certifiable local areas in California, 79 (63%) have received certification from the Commission as of January 1, 1992.

The Commission meets monthly at various coastal locations throughout the state. Meetings typically last four consecutive days, and the Commission makes decisions on well over 100 line items. The Commission is composed of fifteen members: twelve are voting members and are appointed by the Governor, the Senate Rules Committee, and the Speaker of the Assembly. Each appoints two public members and two locally elected officials of coastal districts. The three remaining nonvoting members are the Secretaries of the Resources Agency and the Business and Transportation Agency, and the Chair of the State Lands Commission. The Commission's regulations are codified in Division 5.5, Title 14 of the California Code of Regulations (CCR).

MAJOR PROJECTS

Monterey Bay Sanctuary Dedicated. September 20 marked a long-awaited day that many environmental groups doubted would ever come: the official designation of the Monterey Bay National Marine Sanctuary (MBNMS). The designation substantially advances efforts of environmentalists in a 15-year battle to ward off continued threats to portions of the California coast from offshore oil drilling and development. *[12:2&3 CRLR 224]*

As the largest federal sanctuary in the nation, and second only to the Great Barrier Reef refuge off the Australian coast, the MBNMS extends over six counties