



Edison's permits to incorporate regular monitoring and reporting by Edison. [11:4 CRLR 176-77] However, on February 10, the San Diego Regional Water Quality Control Board, against the Commission's and its own staff's recommendations, unanimously decided there is no clear and convincing evidence to indicate that SONGS is in violation of its federal pollution discharge permit. [12:2&3 CRLR 226-27]

Attorneys for Earth Island claim that neither agency has been diligent in its efforts and vowed to continue its suit against Edison on the alleged federal pollution violations. At this writing, Earth Island and Edison are conducting settlement negotiations.

In a related matter, the Commission recently approved SCE's plan to restore the mouth of the San Dieguito River Valley in mitigation of the damage to fish and plant life caused by SONGS' cooling systems. [12:2&3 CRLR 226-27] The project to restore 180 acres of wetlands is expected to cost the utility \$20-\$25 million. San Dieguito River Valley Regional Park supporters halted the lagoon restoration project as part of an overall plan to create a 55-mile park from Del Mar to Julian. Rimmon C. Fay, one of three biologists on the Marine Review Committee (MRC) that conducted the 15-year study of damage caused by the nuclear plant's cooling systems, questioned the efficacy of offsite mitigation in this situation, stating that only the cooling towers recommended by the MRC can solve the problems caused by SONGS.

Upon a motion for rehearing, the Second District Court of Appeal again found, in *Patrick Media Group, Inc. v. California Coastal Commission*, No. B056181 (Sept. 15, 1992), that the Patrick Media Group's complaint for compensation was barred by its failure to challenge a Commission requirement to remove an advertising display by means of a petition for a writ of administrative mandamus accompanied, or followed, by an inverse condemnation claim for compensation. [12:2&3 CRLR 228]

RECENT MEETINGS

In July, the Commission criticized the City of Laguna Beach for failing to address the issue of coastal access in private communities. The Commission considered refusing to certify the Implementation Plan of the City's LCP as a penalty for the City's foot-dragging; however, it finally decided to retain land use control over four of the city's beachfront communities—Three Arch Bay, Irvine Cove, Treasure Island, and Blue Lagoon. In

doing so, the Commission retains its authority over these areas until the City proposes a long-term plan permitting public access to exclusive "pocket" beaches. With few exceptions, the Commission has not been able to pry a public opening through locked-gate communities that existed before it was created.

In August, the Commission unanimously approved a plan by Monarch Beach Resorts, Inc., to develop the 225-acre Monarch Beach Resort in Dana Point. The resort community will boast a 400-room hotel, a luxury residential development, and the Links at Monarch, an existing golf course. The Commission took note of the Resort's plan to include hiking and biking trails, vista points, botanical gardens, and tramways to provide public access to the resort and the beach. The golf course must also reserve 50% of its starting times for the public. The Commission also required the resort to dedicate 25% of the housing in the residential area to "affordable" homes.

In September, the Commission objected to the Air Force's consistency determination for the acquisition of easements affecting the potential development of land adjacent to Vandenberg Air Force Base. The purpose of the easements is to assure that development occurring on this land will not exceed a level consistent with public safety needs due to the "hazard footprints" for fallout of debris that may occur from aborted missile launches at Vandenberg. The Air Force seeks to establish a "Zero Development Line," west of which no permanent residential development would be allowed. This would be accomplished by a 6,000-acre easement extinguishing all potential development. The Air Force also seeks to establish a "Low Development Line," establishing an area between that line and the Zero Development Line where a permanent 22,000-acre easement would be acquired that would place a limit on the total number of permanent structures that could be developed. Under this easement, a maximum of 45 homes would be permitted. The easements would not affect ongoing uses, such as existing structures, cattle grazing and support, and oil wells, including storage facilities. The area on which the easements would be imposed is known as Bixby Ranch. The Commission objected to the Air Force's plan because the LCP for Santa Barbara County requires public access, recreation and camping facilities, and biking trails to be provided concurrent with any future development of the Bixby Ranch. The LCP was approved with development of the entire area in mind and requires public facilities

and beach access commensurate with present and future development. Easements extinguishing and limiting the development potential of the area will create an imbalance in the LCP, and it is probable that an amendment would be required. The Air Force stated that it has no intention of blocking any future access improvements anticipated by the LCP for the area, with the exception that it would not allow permanently occupied structures, and that it would reserve the right to close off access trails, campgrounds, and other facilities during missile launches. The Air Force is currently considering further action it may take regarding the easements.

In September, the Commission approved Crescent City's proposal to construct an artificial reef consisting of concrete boxes filled with steel and clay pipe for purposes of enhancing recreational fishing opportunities in the Crescent City harbor. Crescent City sought the permit to improve the fishing area at the "B" Street Pier in the hope of discouraging people from climbing out on the harbor jetty to fish, thereby risking harm to both the jetty and themselves. The Commission required Crescent City to obtain review from the U.S. Army Corps of Engineers prior to beginning the project.

Also at its September meeting, the Commission heard a report from Executive Director Peter Douglas on the \$833,000 budget cut imposed on the Commission. Douglas noted that as many as ten members of the Commission's 100-member staff may have to be laid off; other measures will also have to be taken. Douglas also proposed that the Commission consider developing a set of guidelines by which annual, limited events such as Pro-Beach Volleyball and thunderboat (hydroplane) races may be approved without the current process of staff reports and recommendations.

FUTURE MEETINGS

December 8-11 in San Francisco.

CALIFORNIA ENERGY COMMISSION

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In 1974, the legislature enacted the Warren-Alquist State Energy Resources Conservation and Development Act.



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

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

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

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

MAJOR PROJECTS

CEC Survives Budget Cuts. Confronted with the state's budget crisis and bills that would have eliminated CEC, the agency survived—with deep funding cuts. The legislature transferred \$12 million from the Public Utilities Commission (PUC) to CEC, then transferred \$25 million from CEC's budget into the general fund. These cuts will directly affect local funding projects, while staffing and contract cuts are also likely.

CEC Publishes California Energy Plan for 1992-93. CEC recently published its eighth biennial energy report entitled *1992-93 California Energy Plan*. The report is California's principal energy

planning and policy document (Public Resources Code section 25309). It identifies emerging trends in energy supply and demand and, once approved by the Governor, becomes the state's official energy policy. The Energy Plan forms the basis for action by the legislature, the Governor, other governmental agencies, utilities, and the private sector to meet California's future energy needs.

The *1992-93 California Energy Plan* contains twelve recommendations, with supporting action steps, for implementing an aggressive and effective state energy policy. Most of these recommendations and action steps involve both CEC and the PUC as the lead agencies responsible for effectuating energy actions. Seven of the twelve recommendations have been previously reported. [11:4 CRLR 178] The remaining five recommendations are as follows:

- In order to make more dollars available for public services and to set an example for the private sector, state and local governments should increase cost-effective, energy-efficient measures in their operations.

- California should aggressively work to increase the efficiency of its transportation system and the vehicles that use it; transportation consumes three-fourths of the oil and half of all energy used in the state, and is the major source of air pollution in California.

- Transportation energy demand forecasts should be integrated into the next state Energy Plan to assist state and local agencies in reaching solutions to transportation, energy, and environmental problems.

- The state should promote energy education and provide information to help consumers make informed decisions, reduce their energy costs, and capture the benefits of the marketplace.

- The market should send accurate signals to consumers by reflecting the true, full costs of energy to promote fair competition in the market.

Concrete action steps suggested in the plan include the following:

- utility energy efficiency and load management programs sufficient to supply at least three-fourths of California's additional electricity needs by 2001;

- CEC-mandated cost-effective reductions of energy consumption in new buildings by at least 5% every three years;

- demonstration and promotion by CEC, California utilities, and the independent energy industry of cost-effective, high-efficiency advanced gas turbines with advanced pollution controls for electricity generation and thermally en-

hanced oil recovery;

- active state encouragement of natural gas pipelines;

- a statewide reduction in the number of trips driven in personal vehicles, achieved by encouraging new land use patterns such as higher-density mixed-use projects that are linked to bus, rail, or other mass transit, and/or are pedestrian-oriented;

- state support of a cost-effective increase in the federal Corporate Average Fuel Economy (CAFE) standards or, in the absence of a CAFE increase, California application for a federal exemption allowing higher state vehicle fuel economy standards;

- development of a plan by the state Department of General Services, in consultation with CEC, the Air Resources Board, and affected state agencies, that allows for cost-effective conversion of state government fleets to alternative fuel vehicles;

- development of plans by all local agencies for conversion of their fleets to alternative fuel vehicles by 1993; and

- state use of pricing mechanisms, such as increased gasoline taxes, congestion or time-of-use pricing, toll roads, and other specific measures, to charge the actual costs associated with motor vehicles and related services.

CEC Summarizes Studies of Health Effects from High-Voltage Transmission Lines. In response to heightened public concern about living near high-voltage transmission lines, CEC in July released a report summarizing the current knowledge regarding health effects from exposure to electromagnetic fields. The report provides background information about (1) the general nature of electromagnetic fields; (2) the levels at which they are usually encountered in the environment; (3) the types of biological effects that have been attributed to them from studies with humans, lab animals, and biological tissue; (4) the possible magnitude of human health risks based on current knowledge and findings; and (5) how this type of information is presently considered by CEC and other permitting agencies when approving the design, construction, and operation of high-voltage transmission lines.

Electromagnetic fields from high-voltage power lines and other sources are presently regulated only indirectly by limiting current intensities to protect against their known shock hazards. Because electromagnetic fields are too weak to directly produce large bodily currents, direct exposure to them has traditionally been considered unlikely to pose any sig-



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nificant short-term or long-term hazards to humans or animals. At present, however, an increased public concern exists about the possible health effects of long-term exposures attributable to living near high-voltage transmission lines. Evidence of possible adverse health effects has been reported in several laboratory animal and tissue studies and studies of humans with presumed, long-term exposure to electromagnetic fields. However, because of the general difficulty in replicating these findings and a lack of understanding of the biological mechanisms that may underlie any effects of these weak fields, there is considerable disagreement over the appropriate interpretation of these studies. [12:2&3 CRLR 260] The CEC report concludes that available information does not establish significant health effects from exposure to electric and magnetic fields, but does not rule out the possibility they may exist. At this time, CEC staff does not recommend additional regulatory limits on the strengths of electromagnetic fields from high-voltage transmission lines. Staff will continue to investigate the issue and provide appropriate regulatory guidance if and when it becomes necessary based on findings from further research efforts.

CEC Awards \$2 Million for Electric Car Development. In May, CEC announced that it would provide \$2 million in funding for the electric vehicle and advanced transportation industry in California. CEC provided letters of support worth \$2 million in state money to eight California applicants for \$12 million in federal support. The letters of support were designed to give California-based applicants an advantage in a national competition for three federal grants.

Although CEC was hoping that two state-supported groups would be selected, only one received the federal nod, a consortium named Calstart. Calstart, a broad-based coalition of public agencies (including three universities), labor groups, at least one environmental organization, and private businesses, has set up headquarters in the Burbank complex where the stealth fighter was built. A formal contract between CEC and Calstart is presently being drawn up. (See *infra* LEGISLATION; see *supra* report on NATURAL RESOURCES DEFENSE COUNCIL for related discussion.)

CEC Releases Third and Fourth Quarter Oil Reports. In February, CEC released its Quarterly Oil Report for the third quarter of 1991. According to the report, the total amount of petroleum fuels supplied to California continued to decline in the third quarter, down 7% from

1990 and 0.7% from the second quarter of 1991. The state unleaded gasoline volume was up 0.6% from 1990 and 0.7% from the second quarter of 1991.

The average international crude oil price was \$17.58 per barrel for the third quarter of 1991. This was 6.4% higher than the previous quarter but 24.8% lower than 1990. Oil company revenues in the third quarter of 1991 decreased an average of 8% from 1990, with net income decreasing 38.9%. The third-quarter decrease in oil company earnings continued a trend beginning in the second quarter of 1991. Oil companies cited lower marketing margins and prices and considerably higher crude oil prices due to the Persian Gulf crisis as factors influencing this trend.

In July, CEC released its Quarterly Oil Report for the fourth quarter of 1991. According to the report, the total volume of petroleum products supplied to California in the fourth quarter of 1991 declined from both the previous quarter and 1990 by 3.3% and 1.6%, respectively. Gasoline prices were down 2.2% from the third quarter of 1991, but were 3.4% higher than the fourth quarter of 1990.

During the fourth quarter of 1991, the average price of internationally traded crude oil decreased 37% compared to the fourth quarter of 1990. Fourth-quarter 1991 earnings decreased an average of 51.5% compared to the fourth quarter of 1990. Every industry component—exploration, production, refining, and marketing—was down in the fourth quarter of 1991.

CEC Proposes Regulatory Standards for Fenestration Product Certification. In August CEC announced its intent to adopt new sections 10-111 and 10-112, Title 24 of the CCR, relating to the certification and labeling of U-values (thermal conductivity ratings) for fenestration products (windows). The regulations would designate the National Fenestration Rating Council (NFRC) as the supervising entity overseeing a comprehensive certification program for fenestration U-values. NFRC's designation is conditioned upon meeting certain fairness criteria established in the regulations. If the NFRC does not meet the fairness criteria, CEC will look for other qualified organizations to fill the position. CEC was scheduled to hold public hearings on the proposed regulations on September 23 and October 7; thereafter, the regulations will be submitted to the Building Standards Commission (BSC) for approval.

Intervenor Funding Program Guidelines Reviewed. In 1991, CEC

began the process of codifying its Intervenor Funding Program (IFP) guidelines as formal regulations to implement SB 2211 (Rosenthal) (Chapter 1661, Statutes of 1990). The IFP is intended to encourage public participation in certain CEC proceedings by awarding financial reimbursement to eligible organizations and individuals who make a compensable contribution to those proceedings. [12:1 CRLR 163; 9:4 CRLR 128] On June 29, CEC adopted an amended version of the guidelines that had been revised by Public Adviser Tracey Buck-Walsh to make them more user-friendly. As part of the revision, the program's name has been changed to the Intervenor Award Program to more accurately reflect the purpose of the program. The CEC has decided to see how these new guidelines work before commencing the formal rulemaking process.

CEC Recommendation on Adoption of Statewide Carbon Dioxide Reduction Goal. After holding several workshops and public hearings, CEC has not yet completed a report to the Governor in which it is expected to make recommendations on whether the state should adopt a carbon dioxide reduction goal, and set forth possible parameters of such a goal. [12:2&3 CRLR 230]

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

• **Energy Efficiency Standards for New Buildings.** On June 8, BSC approved revised energy efficiency standards for new buildings. Amended sections 10-101 through 10-110, Title 24 of the CCR, among other things, contain new requirements and criteria for approving alternative calculation methods used by building permit applicants to demonstrate compliance with the standards. [12:2&3 CRLR 231]

• **Appliance Efficiency Regulations for Water Heaters.** On July 23, the Office of Administrative Law approved CEC's amendments to sections 1603, 1604, 1606, 1607, and 1608, which include new energy efficiency standards for gas, oil, and electric water heaters. [12:2&3 CRLR 231]

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AB 2742 (Peace) provides that in determining the emission values associated with the current operating capacity of existing electric powerplants, the PUC shall adhere to a specific protocol in determining values for air quality costs and benefits to the environment; restricts the use of environmental values, as specified; and establishes a procedure per-



mitting an electric utility to submit to the PUC for approval an alternative energy resources plan. The bill was signed by the Governor on September 21 (Chapter 836, Statutes of 1992).

SB 1601 (Rosenthal) requires publicly owned electric and gas utilities that provide energy for space heating for low-income customers to also provide home weatherization services for those customers if a significant need for those services exists in the utility's service territory. The bill requires each of those utilities to file a biennial report with CEC on the status of its weatherization program. This bill was signed by the Governor on September 21 (Chapter 809, Statutes of 1992).

AB 3051 (Polanco) would have required CEC to study the overseas market potential to support production and commercialization by small and medium-sized California companies of electric and other clean fuel vehicles, components, and subsystems, and report to the Governor and the legislature as part of a specified report. This bill was vetoed by the Governor on September 22.

AJR 67 (Polanco) urges the President and Congress to include, in pending legislation to establish a national energy strategy, provisions for an accelerated research, development, and demonstration program to improve natural gas and fuel cell technologies. Furthermore, the resolution urges Congress and the President to fund this program for \$2.5 billion over ten years, beginning with \$189 million in federal fiscal year 1993-94. This measure was chaptered on July 15 (Chapter 78, Resolutions of 1992).

AB 1049 (Katz) requires CEC, in conjunction with the Departments of Commerce and Transportation, to allocate to eligible consortia funds appropriated by the bill to match federal funds for the development of advanced transportation systems and electric vehicles by consortia in the state that apply and meet the standards of eligibility for federal grants under the federal Intermodal Surface Transportation Efficiency Act of 1991 (*see supra* MAJOR PROJECTS). This urgency measure was signed by the Governor on May 26 (Chapter 66, Statutes of 1992).

The following is a status update on bills reported in detail in CRLR Vol. 12, Nos. 2 & 3 (Spring/Summer 1992) at pages 231-32:

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 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 authorizes CEC to disclose this confidential information to ARB if ARB agrees to keep the information confidential. This bill was signed by the Governor on July 23 (Chapter 333, Statutes of 1992).

SB 1211 (Committee on Energy and Public Utilities) authorizes 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 requires 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. This bill was signed by the Governor on May 27 (Chapter 67, Statutes of 1992).

AB 3052 (Polanco) requires 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. This bill was signed by the Governor on September 19 (Chapter 762, Statutes of 1992).

AB 3050 (Polanco) would have required the Department of Commerce, in collaboration with CEC and the Business, Transportation and Housing Agency, to establish and maintain until January 1, 1997, a California Electric and Clean Fuel Vehicle Interagency Consortium with specified objectives and functions. This bill was vetoed by the Governor on September 30.

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. This bill requires 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. This bill was signed by the Governor on September 26 (Chapter 951, Statutes of 1992).

SB 1205 (Committee on Energy and Public Utilities) would have—among

other things—required CEC, on or before December 31, 1995, to determine whether any appliances that are currently not subject to a CEC standard should be regulated and, for any such appliance, to adopt standards in accordance with prescribed procedures. This bill was vetoed by the Governor on September 27.

SB 1207 (Committee on Energy and Public Utilities) requires CEC to establish criteria for, and adopt, by January 1, 1994, in consultation with specified agencies and organizations, a statewide home energy rating program for residential dwellings. The bill prohibits, on and after July 1, 1994, the performance of home energy rating services unless the services conform to the criteria established by CEC for a statewide home energy rating program. This bill, which also requires CEC to publish, on or before January 1, 1995, an informational booklet about the program, was signed by the Governor on September 18 (Chapter 769, Statutes of 1992).

SB 1208 (Committee on Energy and Public Utilities) would have required CEC, as part of its biennial report, to establish priority technologies for research, development, and demonstration; establish specific performance goals for these priority technologies; and develop research, development, and demonstration programs which pursue these technologies. This bill was vetoed by the Governor on September 27.

AB 2130 (Brown) would have required CEC to convene one or more workshops by March 1, 1993, to establish at least three pilot projects, with specified participants, and to increase the use and awareness of energy efficient mortgages, and to report to the Governor and legislature on the pilot projects. This bill was vetoed by the Governor on September 27.

The following bills died in committee: **SB 1905 (Johnston)**, which would have made legislative findings and declarations with regard to electric power transmission and declared the policy of the state with regard to access to electric power transmission facilities and electric power transmission pricing practices; **SB 1812 (Rosenthal)**, which would have required CEC, in cooperation with the state Department of Health Services and the PUC, to provide utilities, electric appliance manufacturers, local governments, and others with basic information regarding health risks that may be associated with exposure to electromagnetic fields; **AB 3097 (Katz)**, which would have, to the extent permitted by federal law, transferred almost \$9 million in Petroleum Violation Escrow Account funds to the Katz Schoolbus Fund and appropriated



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that amount therefrom to CEC for implementation of the Katz Safe Schoolbus Clean Fuel Efficiency Demonstration Program; **SB 2062 (Leslie)**, which would have decreased from 30% to 20% the percentage of revenues received and deposited in the Geothermal Resources Development Account that would be available for expenditure by CEC as grants or loans to local jurisdictions or private entities; **SB 1216 (Rosenthal)**, which would have enacted the Energy Security and Clean Fuels Act of 1992 and authorized, for purposes of financing a specified energy security and clean fuels program, the issuance of bonds in the amount of \$100 million; **AB 920 (Hayden)**, which would have required 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; **AB 1064 (Sher)**, which would have required 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; and **AB 1586 (Moore)**, which would have required 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.

■ FUTURE MEETINGS

CEC meets every other Wednesday in Sacramento.

FISH AND GAME COMMISSION

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The Fish and Game Commission (FGC), created in section 20 of Article IV of the California Constitution, is the policymaking board of the Department of Fish and Game (DFG). The five-member body promulgates policies and regulations consistent with the powers and obligations conferred by state legislation in Fish and Game Code section 101 *et seq.* Each member is appointed by the Governor to a six-year term. Whereas the original charter of FGC was to "provide for reasonably structured taking of California's fish and game," FGC is now responsible for determining hunting and fishing season dates and regulations, set-

ting license fees for fish and game taking, listing endangered and threatened species, granting permits to conduct otherwise prohibited activities (*e.g.*, scientific taking of protected species for research), and acquiring and maintaining lands needed for habitat conservation. FGC's regulations are codified in Division 1, Title 14 of the California Code of Regulations (CCR).

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

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

As part of the management of wildlife resources, DFG maintains fish hatcheries for recreational fishing, sustains game and waterfowl populations, and protects land and water habitats. DFG manages 506,062 acres of land, 5,000 lakes and reservoirs, 30,000 miles of streams and rivers, and 1,300 miles of coastline. Over 648 species and subspecies of birds and mammals and 175 species and subspecies of fish, amphibians, and reptiles are under DFG's protection.

The Department's revenues come from several sources, the largest of which is the sale of hunting and fishing licenses and commercial fishing privilege taxes. Federal taxes on fish and game equipment, court fines on fish and game law violators, state contributions, and public donations provide the remaining funds. Some of the state revenues come from the Environmental Protection Program through the sale of personalized automobile license plates.

DFG contains an independent Wildlife Conservation Board which has separate funding and authority. Only some of its activities relate to the Department. It is primarily concerned with the creation of recreation areas in order to restore, protect and preserve wildlife.

On August 19, the Senate confirmed Governor Wilson's appointment of developer Gus Owen to a six-year term on FGC. At this writing, candidates are being interviewed for the position left vacant by

the May resignation of former FGC President Everett McCracken. [12:2&3 CRLR 236] FGC hopes to have a replacement by its December meeting.

■ MAJOR PROJECTS

Gnatcatcher Follies Continue. FGC's treatment of the tiny California gnatcatcher, a four-inch-long, blue-gray songbird which makes its home in the rapidly disappearing coastal sagebrush of southern California, has engendered considerable controversy and thrust the Commission into numerous legal and political battles in a variety of fora. In the year since FGC refused to list the bird as endangered under the California Endangered Species Act (CESA), the Commission has become embroiled in state court litigation against the Natural Resources Defense Council (NRDC); federal rulemaking to list the bird as endangered under CESA's federal counterpart statute; executive branch pressure on developers to voluntarily enroll lands in Governor Wilson's alternative to the sometimes inflexible results of a CESA listing, the Natural Community Conservation Planning (NCCP) program; legislative branch pressure to strengthen the NCCP program through the budget process; and state rulemaking to establish a coastal sage scrub habitat protection area. [12:2&3 CRLR 26-27, 233-34; 11:4 CRLR 181-82] Following is a status update on the various legal proceedings involving the California gnatcatcher:

• **State Court Litigation.** On August 27 in *NRDC v. California Fish and Game Commission*, No. 368042, Sacramento County Superior Court Judge William R. Ridgeway held that FGC failed to cite sufficient evidence to support its decision to reject NRDC's petition to list the gnatcatcher as endangered under CESA. The court ruled that FGC may not reject a petition if it contains "relevant and credible evidence which, considered with other evidence before the commission, a reasonable mind might accept as adequate to support a conclusion that listing was necessary." The court said it was left to "speculate" as to how FGC arrived at the six general and conclusory reasons it cited for denying the petition, and ordered the Commission to reconsider its decision.

Both NRDC and several development interests which intervened in the case claimed victory. NRDC senior attorney Joel Reynolds said the ruling is important because it is the first time a court has interpreted CESA and articulated a legal standard to guide the Commission in evaluating petitions for listing; NRDC also feels that the ruling brings the gnatcatcher one step closer to protection (*see*