



## REGULATORY AGENCY ACTION

screen has been installed at ACID's Bonneyview pump station and appears to be operating at the required performance level.

On July 13, the eve of the first anniversary of the metam sodium spill that killed all wildlife along a 45-mile stretch of the upper Sacramento River, Attorney General Dan Lungren filed a lawsuit against Southern Pacific Railroad to recover millions of dollars of clean-up costs. The state has already spent \$2 million on clean-up, but DFG estimates its total expenditures alone will reach the \$3 million mark. [12:2&3 CRLR 14, 216, 236-37]

Southern Pacific officials complained that the suit is unnecessary since the company has agreed to pay all appropriate costs for the spill. The suit also seeks to recover damages from AMVAC Chemical Company of California, manufacturer of the metam sodium, and General American Transportation Corporation of New York, owner and maker of the tank car carrying the pesticide. (See *supra* agency report on WATER RESOURCES CONTROL BOARD for related discussion.)

Decimation of the fish population prompted DFG to ban fishing in the river this past summer. DFG also declined to stock the river with hatchery-raised trout, despite pleas from local officials whose towns are suffering from the resultant drop in tourism. Typically, DFG puts 27,000 fish in this stretch of the Sacramento River; this year marks the first time in 50 years that trout have not been introduced. DFG feared that stocking the river with hatchery fish would upset the delicate balance of insects, predators, and wildlife in areas rendered sterile by the spill.

The Sierra Club Legal Defense Fund, representing a coalition of environmentalists and fishers, filed suit against the federal government in U.S. District Court for the Eastern District of California on September 10. Pursuant to the federal Endangered Species and Clean Water acts, as well as the state Fish and Game Code, the coalition contends that illegal water policies are killing already low salmon populations in the Sacramento River. The coalition is seeking to force the Bureau of Reclamation to hold additional water in Shasta and Trinity lakes to protect salmon spawning. It is alleged that the Bureau has mismanaged federal Central Valley Project water during the California drought over the last six years by deliberately depleting cold-water reserves in Shasta Lake. The coalition claims that too much water was delivered to big dairy, beef, and cotton operations on the west side of the San Joaquin Valley, thereby

contributing to the disruption in salmon spawning.

### RECENT MEETINGS

At FGC's August 28 meeting, N. Gregory Taylor of the Metropolitan Water District (MWD) gave a presentation on mitigation banking. [11:1 CRLR 126] Taylor stated that the three current goals of mitigation banking are to set aside threatened areas, establish a process which is readily available to accept land into the program, and avoid confrontations over proposed development projects. Taylor enumerated several important elements of successful mitigation banking strategy. First and foremost is the significance of cooperation and partnership among involved parties. Currently, mitigation banking "wish lists" exceed available state funding, thereby making consolidation of efforts among parties more attractive. Also, he stressed that efforts should be made to accept parcels of land of almost any size, since much of the land acquired for a mitigation bank comes in smaller parcels that over time accumulate to become part of a greater unit deserving of large parcel protection.

As an example of successful collaborative efforts, Taylor cited how six parties cooperated in the acquisition of the Santa Rosa Plateau, a 3,835-acre area near Murietta, for \$35.4 million. The parties involved were a wildlife conservation group, The Nature Conservancy, Metropolitan Water District, Riverside County Parks and Operations, USFWS, and DFG. Another example of partnership is the Shipley Reserve, named after Dr. Roy E. Shipley from whom it was purchased. Here, five parties worked together during the summer of 1991 to acquire 2,460 acres of habitat necessary to keep the Kangaroo Rat program alive. This \$10 million acquisition was vital because it provides a spine of land connecting two reservoir sites containing abundant wildlife and plants.

Taylor suggested that a mitigation bank acquire only those parcels with demonstrated suitability in order to spend limited available funds in the most useful manner. He commended the Tahoe Conservancy, whose goal is maintaining the clarity of Lake Tahoe, for its land management successes due to a well-contemplated, long-range approach. On the other hand, he cited a project in the Santa Monica mountains as an example of how a good idea can be unsuccessful in practice if it lacks a suitable plan.

At the meeting, the role of DFG in mitigation banking was clarified. Its responsibilities require it to provide field

staff for examination of parcels, attorneys for negotiations of final agreements, and tracking staff for endowments. FGC President Biaggini suggested that banking funds be rolled over quickly in order to acquire more land sooner and to enable the program to become a self-sufficient entity. Commissioner Boren suggested that the acquisition of easements may enhance the current program.

At FGC's August 28 meeting, Commissioner Owen questioned the viability of the CESA listing procedure. [10:2&3 CRLR 1] In response, it was suggested that the procedure serves a public function by bringing attention to the issues and focusing local interests and agency energies in carrying out efforts to secure habitat. Commissioner Boren challenged FGC to become more knowledgeable in scientific analysis and suggested that it may be useful to implement an annual review of currently listed species to better determine if listing actually accomplishes what it is designed to do.

Shel Meyer, president of the NorCal Fishing Guides and Sportsman Association, spoke about the futility of the listing procedure as it is currently being implemented, especially in relation to the salmon issue. Meyer suggested the imposition of a time limit for population recovery and increased cooperation with other boards, including the Water Resources Control Board. He likened the salmon egg situation to agriculture: If it is illogical to cut down a seedling one-quarter of the way through its growth, it is equally illogical to kill up to 92% of some salmon run eggs by introducing warm water into the Sacramento River and lowering its flows, thereby destroying the developing salmon (see *supra* "California Salmon Status Report").

### FUTURE MEETINGS

January 5 in Palm Springs.  
February 4-5 in Long Beach.  
March 4-5 in Redding.

### BOARD OF FORESTRY

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The Board of Forestry is a nine-member Board appointed to administer the Z'berg-Nejedly Forest Practice Act (FPA) of 1973, Public Resources Code (PRC) section 4511 *et seq.* The Board, established in PRC section 730 *et seq.*, serves to protect California's timber resources



and to promote responsible timber harvesting. The Board adopts the Forest Practice Rules (FPR), codified in Division 1.5, Title 14 of the California Code of Regulations (CCR), and provides the California Department of Forestry and Fire Protection (CDF) with policymaking guidance. Additionally, the Board oversees the administration of California's forest system and wildland fire protection system, sets minimum statewide fire safe standards, and reviews safety elements of county general plans. The Board's current members are:

Public: Terry Barlin Gorton (Chair), Franklin L. "Woody" Barnes (Vice-Chair), Robert J. Kerstiens, Robert Heald, and James W. Culver.

Forest Products Industry: Mike A. Anderson, Joseph Russ IV, and Thomas C. Nelson.

Range Livestock Industry: Jack Shannon.

The FPA requires careful planning of every timber harvesting operation by a registered professional forester (RPF). Before logging operations begin, each logging company must retain an RPF to prepare a timber harvesting plan (THP). Each THP must describe the land upon which work is proposed, silvicultural methods to be applied, erosion controls to be used, and other environmental protections required by the Forest Practice Rules. All THPs must be inspected by a forester on the staff of the Department of Forestry and, where deemed necessary, by experts from the Department of Fish and Game, the regional water quality control boards, other state agencies, and/or local governments as appropriate.

For the purpose of promulgating Forest Practice Rules, the state is divided into three geographic districts—southern, northern, and coastal. In each of these districts, a District Technical Advisory Committee (DTAC) is appointed. The various DTACs consult with the Board in the establishment and revision of district forest practice rules. Each DTAC is in turn required to consult with and evaluate the recommendations of CDF, federal, state, and local agencies, educational institutions, public interest organizations, and private individuals. DTAC members are appointed by the Board and receive no compensation for their service.

## MAJOR PROJECTS

**Senate Unsuccessfully Attempts to Resurrect Governor's "Grand Accord."** Governor Wilson's timber practices reform package, known as the "Grand Accord," originally appeared in the form of four bills (AB 641, AB 714,

SB 854, and SB 300), all of which had to pass in order to become law. Last February, the legislature defeated the plan when SB 300 (McCorquodale) and SB 854 (Keene) failed to get the 41 votes needed for passage from the Assembly. [12:2&3 CRLR 29-30, 33-34, 241]

In late August, the Senate attempted to revive the "Grand Accord" by amending its major provisions into AB 641 (Hauser) and AB 714 (Sher). By August 28, the two identical bills had been amended to include most of the provisions of both SB 300 and SB 854, including conflict of interest rules for the Board, clearcutting restrictions, rules for watercourse and lake protection zones, and a requirement that THPs include long-term timber management plans. Simultaneously, AB 512 (Sher) was amended in conference committee to include the clearcutting guidelines of AB 714/AB 641, which would have prohibited the clearcutting of more than 30 contiguous acres and/or an ownership's harvesting of more than 70% of its ancient and old-growth forests in a single operation. All three bills failed to reach the Governor's desk by the end of the legislative session.

### Continuing Changes in Proposed Permanent Forest Practice Rules.

During late summer and early fall, the Board heard public testimony at its August 3-4 meeting, summary public comments at its August 25-27 meeting, conducted discussions at its September 8-9 meeting, and on September 25 published further proposed modifications of permanent regulations to replace its October 1991 emergency rules which were struck down in February by Sacramento Superior Court Judge Joe S. Gray. [12:2&3 CRLR 241] The Board scheduled another opportunity for public comment at its October 15-16 meeting. Following is a summary of the Board's regulatory language as modified on September 25:

• **Sensitive Watersheds.** On September 25, the Board issued a 15-day notice proposing a final resolution of sensitive watershed issues. In this notice, the Board stated its intent to adopt Option #1 of new section 916.8 (936.8 and 956.8), Title 14 of the CCR. [12:2&3 CRLR 242-43] Option #1 would establish a nomination process to be utilized by public agencies or the public to nominate watersheds as "sensitive" to further timber operations, and set up a screening mechanism for the nomination process whereby the Board's District Technical Advisory Committees would serve as screening committees. The rejected Option #2 would have provided for more centralized decisionmaking by having the Board itself designate or

declassify sensitive watersheds at a public hearing.

The noticed language also includes new section 916.9 (936.9 and 956.9), which would set standards for protecting domestic water supplies, and new section 1032.10, which would require a THP submitter to first notify downstream property owners of proposed timber operations in order to solicit information on domestic water supplies obtained from the affected watercourse. However, the CDF Director would be authorized to grant exemptions from this requirement.

### • Old-Growth Forest, Late-Seral Stage Forest, and Wildlife Protection Regulations.

On August 8, after an August 5 hearing, the Board issued a 15-day notice proposing to adopt a modified version of the first of two options noticed in June. In its original form, Option #1 would have required THP submitters to provide detailed information to enable the CDF Director to assess the potential effects of timber operations on resources associated with late-seral and old-growth forests, and to determine necessary mitigation measures to avoid or reduce impacts to insignificance. [12:2&3 CRLR 243] However, as modified, subsection 919.16 (939.16 and 959.16)(b), Title 14 of the CCR, would enable a timberland owner to choose not to follow the path set forth in section 919.16(a) for providing the specified types of detailed information. Instead, no more than a map of old-growth and late-seral stands and a list indicating pre- and post-harvest acreages on these stands would be required. Section 919.16(b) would create a presumption that there is no potential long-term significant adverse effect on fish, wildlife, and listed species if, after harvest, the tree stand structure characteristics meet levels specified in certain tables, and if it is shown that there is adequate late-seral or old-growth habitat within the ownership or planning watershed as a whole.

New section 919.17 (939.17 and 959.17) has also been added to Option #1; this section would allow the CDF Director, after consultation with the Department of Fish and Game, to prohibit all timber harvesting within particular old-growth stands for up to five years during scientific evaluation of the importance of the parcel as wildlife habitat, or pending acquisition or other transfer to public ownership or control. However, subsection 919.17(c) requires that funding must exist "so that the denied old-growth THP submitter will receive fair market value for his property during the 'moratorium' period." Subsection (d) provides that if, at any time, subsection (c) ceases to exist, the entire sec-



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tion becomes inoperative and the THP submitter is free to submit a new THP.

After an August 24-25 public hearing on the revised Option #1 language, the Board directed staff to add a new second option. On September 25, the Board published language containing the August 8 revised version of Option #1 and a new Option #2.

In new Option #2, an amendment to section 895.1 would define the term "late successional forest stands" as "stands of dominant, codominant, and predominant trees that meet the criteria of WHR class 5M, 5D, or 6, with an open, moderate or dense canopy cover classification, and are at least 20 acres in size. Functional characteristics of late successional forests include large decadent trees, snags, and large down logs." Under Option #2, amended section 895.1(a) would require the THP submitter to provide habitat structure information if a proposed harvest would "significantly reduce the amount and distribution of late successional forest stands or their function[al] habitat value." Also required would be a statement of objectives for late successional forest stands over time on the ownership, a discussion of how the proposed harvesting would affect the existing functional habitat for species primarily associated with late successional forest stands, a map, and various lists and descriptions of ecological characteristics of the planning watershed or ownership. Proposed subsection 895.1(b) would require a description of feasible mitigation measures to prevent potential significant adverse effects to functional habitat for fish, wildlife, and listed species primarily associated with late successional forests. Subsection 895.1(c) would allow a THP submitter to request a waiver of the informational requirements in subsection 895.1(a), which the CDF Director may grant when substantial evidence is presented to support "a determination that post-harvest late successional forest stands will continually provide adequate structure and connectivity to prevent potential long-term significant adverse effects on fish, wildlife, and listed plant species known to associate with late succession forest stands within the planning watershed."

• **Silvicultural Methods with a Sustained Yield Objective.** The Board's attempt to define the critical statutory term "maximum sustained production of high quality timber products" (MSP) has been a lengthy and confusing process. At its August meetings, the Board narrowed the number of options from four to one. Options #1, #2, and #3 were removed from

consideration. [12:2&3 CRLR 242]

At its September meeting, the Board considered Option #4 and then added Options #5 and #6. Unable to agree, the Board ultimately eliminated all three options and started over with a single new proposal, published for 15 days on September 25. Previous versions of section 895.1, Title 14 of the CCR, defined MSP as either "restoring, maintaining or enhancing the biological and economic productive potential of an ownership" or "assuring the continuous growing and harvesting of commercial forest tree species on the state's timberlands where feasible to maintain, restore and enhance their productivity." The goal of MSP as proposed on September 25 (new section 913.10) is "to restore, enhance, and maintain the productivity of timberlands where feasible." The previous requirement of section 913 (933 and 953) that silvicultural systems "shall further be consistent with the protection of other timberland values including, but not limited to, recreation, watershed, wildlife, range and forage, fisheries, aesthetic enjoyment, and the rules pertaining to snag retention, watercourse protection, and maintenance of functional wildlife habitat" has been deleted.

Subsections 913.1 (933.1 and 953.1)(a)(6) and (a)(7) drop the prohibitions on "evenaged regeneration harvests" (clearcuts) within 300 feet of permanent roads and within 200 feet of an adjacent owner's property, and replace them with the admonitions that "[s]pecial consideration for aesthetic enjoyment shall be given to selection of silvicultural treatments and timber operations within 200 feet" of a permanent road and "[s]pecial consideration for aesthetic enjoyment and protection of adjacent stand vigor shall be given to the selection of silvicultural methods and timber operations within 200 feet" of adjacent lands.

Subsection 913.1 (933.1 and 953.1)(b) deletes a previous limitation on clearcutting to 80 acres or 40 acres if the area has an extreme erosion hazard rating with average slope exceeding 50%. Subsection 913.1 (933.1 and 953.1)(c) drops the requirement that harvests leave an average of 40 dominant and/or codominant trees per 40 acres of specified native conifers and 20 trees per 40 acres of each other native commercial tree species. Proposed sections 913.2 (933.2 and 953.2), 913.3 (933.3 and 953.3), 913.4 (933.4 and 953.4), 913.6 (933.6 and 953.6), 953.5, 953.8, 913.10 (933.10 and 953.10), 953.11, 1034(m), and 1091, Title 14 of the CCR, would be amended to be consistent with these changes.

**Board Discusses Proposed Rules to Provide Small Landowner Relief.** At its July, August, and September meetings, the Board heard public testimony and discussed two proposed alternatives for non-industrial landowner THP exemptions. Alternative I calls for adoption of section 1153(c), Title 14 of the CCR, to provide a Class 4 categorical exemption under the California Environmental Quality Act (CEQA). This exemption would allow small-acreage timber operators to submit less expensive THPs not required to meet certain informational requirements and cumulative impact assessments. Alternative II is a general exemption from specified THP requirements for small-acreage timber operations on ownerships of limited size. This exemption is not an exemption from CEQA, but rather a declaration that current Forest Practice Rules together with the limitations provided will not reasonably result in a significant individual or cumulative effect. The CDF Director would have the discretion to deny general exemptions to plans that either do not meet the exemption criteria or may create a reasonable potential for significant individual or cumulative impacts to specified resources or watersheds. [12:2&3 CRLR 243-44]

Throughout the summer meetings, Alternative I was supported by all three regional DTACs. The committees maintain that Alternative I provides the greatest relief for small landowners. The DTACs have agreed that the exemptions should be applied to timber operations on ownerships of approximately 80 acres or less. The California Licensed Foresters Association also spoke in favor of Alternative I, claiming that a categorical exemption is preferable because it provides greater regulatory relief to non-industrial timberland owners. Small landowners claim that an exemption for ownerships that have a maximum of less than 60 acres would provide little or no relief. One person testified that the price of THP preparation runs from \$10,000 to \$20,000 for a 40-acre plot, and the value of the timber on such an ownership is only \$20,000.

The Institute for Sustainable Forestry presented the Board with a regulatory proposal that is now being considered as a possible third alternative. The Institute's proposal attempts to develop a program to market forest products grown under environmentally sensitive conditions. The Institute does not support Alternative I. The Sierra Club advocates that all proposals should be rejected because, under the Administrative Procedure Act, there is no demonstrated necessity for the need to regulate by ownership size, and



the Board's statement of reasons fails to provide reference to studies, facts, or expert opinions upon which the proposed is based. Other members of the public suggested that Alternative I does not meet the standard of the categorical exemption as set forth in 15300.1 of the CEQA guidelines. At this writing, the Board has made no decision and will take further public comment at future meetings.

**Status Update on Other Board Rulemaking.** The following is a status update on other Board rulemaking proceedings which are described in detail in previous issues of the *Reporter*:

- **Watercourse and Lake Protection Zones.** After adopting regulations restricting timber harvesting in WLPZs in April 1991, receiving approval by the Office of Administrative Law (OAL) in September 1991, adopting an emergency regulation to delay the effective date of the rules, OAL rejection of the emergency rule in October 1991, and proposed further modification of the permanent WLPZ regulations, the Board finally acted at its September 8 meeting. However, the Board decided not to adopt any of the proposed substantive changes. Instead, new section 916.10 (936.10, and 956.10), Title 14 of the CCR, requires the CDF Director to report on the implementation and effectiveness of the existing rules by 1994. [12:1 CRLR 172]

- **Timberland Conversion Permit Fees.** On June 24, OAL approved new sections 1104.3 and 1105.1, Title 14 of the CCR, establishing a basic application fee and methodology for calculating any additional processing fees needed to convert timberland to a non-timber-growing use. [12:2&3 CRLR 224; 12:1 CRLR 173]

- **Registered Professional Forester Examination Fees.** On August 3, OAL approved an amendment to section 1605(b), Title 14 of the CCR, which raises the application fee to take the RPF exam from \$15 to \$200. [12:2&3 CRLR 244]

- **Sensitive Species Petition Mechanism.** On August 31, OAL approved new section 919.12 (939.12, and 959.12), Title 14 of the CCR, and amendments to section 895.1, which establish a sensitive species petition mechanism. [12:2&3 CRLR 244; 12:1 CRLR 173]

**Board Prepares for Budget Cuts and Impact on the Fire Protection Program.** Due to the state budget crisis, the Board has asked CDF to prepare for an 8.4% cut in funds that will amount to a reduction of approximately \$19 million. The Department believes that even under these constraints, it can maintain its initial attack capability. The Fire Plan goal of containing 95% of the fires at 10 acres or less can

continue to be met. CDF believes that the biggest impact from the budget cuts will be in major fires, or where there are a large number of concurrent fires. The 8.4% cut will require the removal of nine lookouts, six air tankers, and three conservation camps, and a reduction of 37 crews. The Board noted that the first priority on initial attacks is the protection of property and life; protection of timber or natural resources is then a second priority.

## LEGISLATION

The following is a status update on bills reported in detail in CRLR Vol. 12, Nos. 2 & 3 (Spring/Summer 1992) at pages 245-46:

**SB 1579 (McCorquodale)** would have prohibited a Board member or any person, with specified exceptions, who intends to influence the decision of a Board member on a matter before the Board, from conducting an ex parte communication, unless specified conditions are satisfied. Although the Governor had included regulation of ex parte communications in his "Grand Accord" package (*see supra* MAJOR PROJECTS), he vetoed SB 1579 on September 26, noting that the legislature had failed to enact the entirety of his legislation and stating his "reluctan[ce] to begin a piece-meal approach to reforming timber practices in this state."

**AB 3046 (T. Friedman)** would have required CDF, upon availability of federal funds, or upon appropriation by the legislature of funds which do not consist of general fund monies, that are of sufficient amount to fund the demonstration project, to establish a two-year demonstration project within, but not necessarily limited to, the counties of Los Angeles, Alameda, Santa Barbara, Ventura, El Dorado, and Contra Costa for the purpose of testing, and integrating with conventional firefighting technology, the use of fixed-wing firefighting aircraft with the ability to scoop water from a reservoir, lake, or the ocean and deliver it with a foam additive directly to the fire without having to return to a fixed base to reload. The bill would have required the Department to allocate funds to the counties for the project by January 31, 1993. This bill was vetoed by the Governor on September 26.

**AB 3250 (Farr)** would have required that, within the Southern Subdistrict of the Coastal Forest District, feasible alternative practices that are needed to mitigate significant adverse environmental impacts, submitted in writing to the review team chairperson by review team members, shall be accepted by the review team chairperson and incorporated into the THP or the Director would be required to deny

the plan. This bill was vetoed by the Governor on July 10.

**AB 3756 (Sher)** requires, until January 1, 1996, a THP or a nonindustrial timber management plan to include a description of the known locations of any stands of the species *Taxus brevifolia* (Pacific Yew) larger than a specified size, and requires those plans and nonindustrial timber harvest notices to indicate the planned disposition or use of any such trees to be cut or removed as a result of timber operations. Until January 1, 1996, this bill prohibits, with specified exceptions, the cutting, removal, or sale of timber forest products from that species, except for the exclusive purposes of research related to taxol and the treatment of patients with cancer using taxol. This bill was signed by the Governor on September 17 (Chapter 756, Statutes of 1992).

The following bills died in committee: **SB 1777 (Leslie)**, which would have required that all members of the Board be appointed on the basis of their educational and professional qualifications and their general knowledge of, interest in, and experience with problems relating to watershed management, forest management practices, fish and wildlife, range management, forest economics, or land use planning; **AB 2562 (Farr)**, which would have authorized monies in the Forest Resources Improvement Fund to be expended, when appropriated, for the acquisition of adjacent parcels of land to expand the Soquel Demonstration State Forest in Santa Cruz County; **AB 3092 (Connelly)**, which would have imposed an annual state responsibility area fire protection benefit fee on each parcel of land located, in whole or in part, within a state responsibility area, with specified exceptions; **AB 641 (Hauser)** and **AB 714 (Sher)**, both of which were amended late in the session to include the entirety of Governor Wilson's "Grand Accord" package; **AB 512 (Sher)**, which would have created the Timberland Conversion Account in the general fund, and imposed the clearcutting restrictions contained in the "Grand Accord" (*see supra* MAJOR PROJECTS); and **SB 888 (Keene)**, which would have enacted the Old-Growth and Native Forests Protection Act of 1992 which would have authorized, for purposes of financing a specified old-growth forest protection program, the issuance of bonds in the amount of \$300 million.

## LITIGATION

On June 18, the California Supreme court granted review of the First District Court of Appeal's decision in *Public Resources Protection Association of*



*California v. California Department of Forestry and Fire Protection*, No. A047871 (Mar. 5, 1992). The First District held that the Board's emergency rules protecting the northern spotted owl applied to a THP that had been approved prior to the adoption of the rules. [12:2&3 CRLR 246]

On June 11, the California Supreme Court granted review of the First District's decision in *Sierra Club v. California Board of Forestry (Pacific Lumber Company, Real Party in Interest)*, No. A047924 (Mar. 18, 1992), in which the court reversed the Board's approval of two 1988 THPs submitted by Pacific Lumber Company. The court held that CDF is authorized to require timberland owners or timber operators to include surveys of old-growth-dependent wildlife species in THPs relating to stands of old-growth forests with complex habitat characteristics. [12:2&3 CRLR 246-47]

In *Redwood Coast Watershed Alliance v. California State Board of Forestry, et al.*, No. 932123 (San Francisco Superior Court), RCWA alleges—through San Francisco environmental attorney Sharon Duggan—that the Board and CDF's regulation of timber operations on private land violates certain requirements of CEQA. RCWA seeks a judicial determination and declaration that the Board and CDF are in violation of CEQA, and that the THP process administered by the Board and CDF is not functionally equivalent to the environmental impact review process required by CEQA. [12:1 CRLR 176] The court heard oral argument in early September and decided to hold the case under submission until after the Board's October 15-16 meeting, at which it was scheduled to discuss proposed rule changes regarding silvicultural methods with a sustained yield objective (*see supra* MAJOR PROJECTS).

## ■ FUTURE MEETINGS

January 5-6 in Sacramento.  
February 2-3 in Sacramento.  
March 2-3 in Sacramento.



## INDEPENDENTS

### AUCTIONEER COMMISSION

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

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

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

The Act provides assistance to the Board of Governors in the form of a council of advisers appointed by the Board for one-year terms. In September 1987, the Board disbanded the council of advisers and replaced it with a new Advisory Council. [7:4 CRLR 99]

### ■ MAJOR PROJECTS

**Legislature Defunds Commission in Retaliation for Lawsuit Challenging Required Transfer of Reserve Funds.** The Auctioneer Commission was abruptly defunded by the legislature shortly after it filed *California Auctioneer Commission v. Hayes*, No. 370773 (Sacramento County Superior Court), on June 15. Similar to the action filed by the Commission in the

Third District Court of Appeal in April, the petition for writ of mandate sought a court order prohibiting state budget officers from carrying out a June 30 transfer to the general fund of all but three months' worth of operating expenses from the Commission's reserve fund, in compliance with a legislative directive in the Budget Act of 1991. The Commission was attempting to prevent a loss of \$127,000 in auctioneers' licensing fees to the general fund. [12:2&3 CRLR 248; 12:1 CRLR 177]

Within days after the lawsuit was filed and oral argument was scheduled for August 14, the legislature completely defunded the Commission, thereby preventing it from pursuing its lawsuit. Other occupational licensing agencies which had intended to file *amicus curiae* briefs or support the Commission's action in other ways quickly reversed course in fear of similar retaliation. The legislature did not repeal the Auctioneer and Auction Licensing Act, the provisions of law which establish the Commission and its Board of Governors and set forth their respective authorities, or any other provision of law affecting the licensing of auctioneers or the conduct of auctions in California, with the minor exception of AB 2734 (Peace) (*see infra* LEGISLATION). It simply eliminated all funding for the Commission, preventing it from paying the attorneys handling its lawsuit and from functioning in any other way. Technically, the lawsuit is still pending, but there is no petitioner to pursue it at this writing. (*See supra* COMMENTARY for related discussion.)

In a September 2 farewell letter to licensees paid for by the California State Auctioneers Association, Board of Governors President Howard Hall noted that "[t]he seizure of your license fees would have required a substantial increase in your fees in the future to make up for the money taken, especially since [the legislature] seem[s] intent on continuing to transfer a portion of your licensee fees to the General Fund each year. In essence, this imposes a tax on individuals required to pay a fee to earn a living.... We were the only organization to challenge this seizure, and we were the only regulatory agency eliminated.... Following the Commission's elimination, there will no longer be any State agency to issue licenses or to