



REGULATORY AGENCY ACTION

Valley Wildlife Area, Lake Henshaw of Vista Irrigation District, and the Wister and Finney-Ramer Units of the Imperial Wildlife Area hold the best possibilities. DFG plans to continue exploring these areas and the establishment of licensed pheasant clubs on them.

Tricia Campbell appeared before the Commission at its November meeting to present a status report on the capuchin monkey which she and her husband are raising as part of the Simian Aids for the Disabled Program. Last year, FGC approved this program—the first of its kind in California—to allow the Campbells to raise the monkey on a trial basis. Campbell reported great success with the monkey, and stated that it is “like another member of the family.” The Commission approved the Campbells’ request to keep the monkey until it is ready to train at four years of age.

Helping Hands/Simian Aids for the Disabled is a Boston program run by Dr. M.J. Willard. Dr. Willard had previously requested that she be allowed to implement the Helping Hands program in California, but FGC denied this request until the Campbells’ pilot program is completed. The monkeys are raised in homes until they are four years old, and then are sent to the Boston facility to be trained more thoroughly. Once trained, the monkeys are placed with disabled persons to help them around the house with daily activities such as opening cupboards, turning appliances on and off, retrieving dropped items, and dressing. The training costs about \$6,900 per monkey. Capuchin monkeys, which are found in Central and South America, are not taken from the wild but are captive bred. Some of the monkeys used in the Helping Hands program come from a breeding colony sponsored by Disney World.

At its December meeting, FGC accepted a land grant from The Nature Conservancy, a nonprofit corporation from Washington, D.C., for land in Tulare County. The Desert Tortoise Preserve Committee also recently granted land to the Department to serve as a protection area of the desert tortoise.

FUTURE MEETINGS:

April 4-5 in Sacramento.
May 16-17 in Fresno.
June 27-28 in Alturas.

BOARD OF FORESTRY

Executive Officer: Dean Cromwell
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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 section 4511 *et seq.*). The Board is established in Public Resources Code (PRC) section 730 *et seq.*; its regulations are codified in Division 1.5, Title 14 of the California Code of Regulations (CCR). The Board serves to protect California's timber resources and to promote responsible timber harvesting. Also, the Board writes forest practice rules and provides the 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 members are:

Public: Carlton Yee (Acting Chair), Robert J. Kerstiens, Franklin L. “Woody” Barnes, and Elizabeth Penaat.

Forest Products Industry: Roy D. Berridge, Mike A. Anderson, and Joseph Russ IV.

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 the Department of Forestry, 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:

Board Readopts Emergency Regulations to Protect Northern Spotted Owl. On November 7, the Board readopted emergency regulations it hopes will fairly balance the interests of the logging industry and protection of the threatened northern spotted owl. The Board had intended to adopt permanent regulations at its October 9 meeting; however, due to overwhelming public comment received during the preceding four months and the need for numerous changes in the proposed regulations, the Board was unable to adopt a satisfactory permanent rule package. To continue protection of the owl until agreement is reached on key issues, such as the need for a state biologist and the role of the CDF Director in determining conditions under which there has been a “take,” the Board readopted its emergency regulations, which are effective until March 28. (See CRLR Vol. 10, No. 4 (Fall 1990) pp. 157-58 for background information.)

Adoption of Non-Industrial Timber Management Regulations. On October 10, the Board held a public hearing to discuss proposed amendments to section 895 and 895.1, and the adoption of new sections 1090-1090.27, Title 14 of the CCR. The Board is required to adopt regulations to implement SB 1566 (Keene) (Chapter 1290, Statutes of 1989), which established an alternative to the THP for non-industrial forest landowners (less than 2,500 acres). The new regulations will allow non-industrial forest landowners to perform several possible timber operations under one long-term harvest plan. (See CRLR Vol. 10, No. 4 (Fall 1990) pp. 159-60 for background information on these proposed regulatory changes.)

Public comment at the hearing was predominantly supportive of the proposed regulatory changes, as they will reduce costs to small landowners and encourage better forest management. Following a 15-day comment period commencing on October 16, the Board adopted these modified regulations on November 7, and hoped to submit the rulemaking package to the Office of Administrative Law (OAL) by December 28.

Adoption of Fire Safe Regulations. On October 10, the Board held a public hearing to discuss the proposed adoption of fire safe regulations, sections 1270-1276.04, Title 14 of the CCR. The proposed regulations are in response to SB 1075 (Rogers) (Chapter 995, Statutes of



1987), which added section 4290 to the PRC, requiring the Board to adopt minimum fire safe standards applicable to the state responsibility area (SRA) lands under the authority of CDF. The statute was enacted to deal with California's increasing fire protection problem. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 160 for background information on these proposed regulatory changes.)

At the hearing, several witnesses expressed concern that the regulations did not clearly specify whether the standards would apply to parcel owners retroactively or only to those parcels purchased after the effective date of the regulations. The Board responded by modifying the language of proposed section 1270.02 to specify that the standards would only apply to developments on or after the effective date of the regulations.

Others questioned whether the costs imposed by the regulations on parcel owners would make the parcels unaffordable. The Board responded by modifying the language of proposed section 1270.08, to grant exceptions to the standards where proposed by the applicant, if the exception provides the same practical effect as the regulations toward providing "defensible space" or, more significantly, where the strict application of the regulations will preclude the construction of a single-family dwelling on a parcel created before the effective date of these regulations. The Board, however, did not create an economic hardship exception nor did it comment on whether state funds could be made available to offset the costs.

Other witnesses stated that the proposed regulations did not clearly identify the responsibilities of local governments, but a subsequent modification by the Board to section 1270.03 would allow the Board to certify local ordinances as providing the same practical effect of state regulations, and section 1270.06 would allow inspections to be made by local jurisdictions that have assumed state fire protection responsibility on SRA lands. This section would also allow local jurisdictions to charge fees for processing and inspecting permits or maps relative to the sections of the regulations that may apply. The local jurisdiction is also expected to handle appeals under section 1270.10; concerns that this duty will excessively burden local jurisdictions were not addressed by the Board in the regulations.

Following the October 10 hearing, the Board published the modified language for a 15-day comment period commencing on October 18. At its November 7 meeting, the Board adopted

the modified regulations, and hoped to submit the rulemaking file on these proposed regulation to OAL on December 21.

Proposed Adoption of Wildlife Protection Regulations. At its January meeting, the Board was scheduled to hold a public hearing to consider a proposed regulatory action to repeal sections 917.1, 937.1, 957.1, 919.5, 939.5, 959.5, and 936.3(g); renumber sections 919, 939, 959, 919.2, 939.2, 959.2, 919.7, 939.7, 959.7, 919.8, 939.8, 959.8, and 953.8; renumber and amend sections 919.5, 939.5, 959.5, 919.6, 939.6, 959.6, 919.8, 939.8, and 959.8; amend 895.1, 898.2(d), 917, 937, 957, 919, 939, 959, and 1034; and adopt new sections 919, 939, 959, 919.1, 939.1, 959.1, 919.4, 939.4, 959.4, 939.6, and 939.9, Title 14 of the CCR, to establish an article of rules on wildlife protection practices. The Board was originally scheduled to hear these proposed changes at its November 1990 meeting; however, time constraints prompted the Board to postpone the hearing until January.

The Board appointed a Wildlife Taskforce in May 1988 to review the Forest Practice Rules (FPR) and make recommendations to improve wildlife habitat consideration and protection. The Taskforce completed its report in April 1990 and its findings, which the Board accepted, are as follows: (1) public concern for wildlife protection and sustainable forest management has grown in importance as the state population has increased; (2) retention of habitat components to maintain a diverse forest environment is an object easily attained by the forest manager; (3) the Forest Practice Rules' "species of special concern" classification may be too narrow in scope and lacks biologically-based criteria for periodic list update, review, and modification; (4) the state currently lacks the information and biological review capacity to consistently assess the effects of timber harvest activities on wildlife species and their habitats; (5) landowners must be increasingly sensitive to the environmental effects of their neighbors' activities, and no procedures are in place to equitably plan future management actions or share the cost of data collection or implementation of mitigation measures; and (6) long-term maintenance of biological diversity that preserves species viability can reduce the number of threatened or endangered species and maintain landowner resource management and decisionmaking feasibility.

Based upon these findings, the Taskforce recommended that the Board (1) adopt a process within the FPR whereby

species are evaluated for special concern designation and guidelines are provided for mitigative measures that retain habitat; (2) clarify who is responsible for collection of wildlife and habitat information during THP development and review and how much information is sufficient; and (3) consolidate wildlife rules for each of the Forest Practice Districts into one article.

The proposed regulatory changes now scheduled for a January hearing consolidate wildlife-related regulations into Article 9 of the FPR, add or amend necessary definitions for clarity and consistency, provide intent language for the Wildlife Protection Practices article, adopt a new rule for consideration of non-listed species, and move regulations dealing with meadows, wet areas, and snags into the wildlife article. The changes also clarify what information must be provided in THPs concerning wildlife, clarify the rule which mandates disapproval of THPs for wildlife impacts, moves two existing sections in Article 9 dealing with pest protections to Article 7 (which deals with hazard reduction), and modifies the intent section of Article 7 to reflect the previous changes.

Hearing on CDF's Denial of the Pacific Lumber Company's THPs. On January 9 in Sacramento, the Board was scheduled to hold a public hearing to consider the appeals of Pacific Lumber Company on the disapprovals of THPs No. 1-89-762-HUM and No. 1-89-793-HUM by the CDF Director under PRC section 4582.7. The THPs were disapproved because the plans failed to incorporate feasible operating methods and procedures that will substantially lessen significant adverse impacts on the environment, under section 898.1, Title 14 of the CCR. The plans proposed harvesting in an area known to be inhabited by one of the three remaining populations of marbled murrelets in California, and would have an adverse impact on the habitat needed to ensure the continued viability of the species in that area.

THP No. 1-89-762-HUM encompasses 165 acres located near the Little South Fork Elk River in Humboldt County; THP No. 1-89-793-HUM encompasses 399 acres located near Salmon Creek in Humboldt County. After the hearing, the Board will decide whether to order the plans approved or to uphold the Director's denial.

Status Update on Other Proposed Regulatory Actions. The following is a status update on regulatory proposals discussed in recent issues of the Reporter:



-Cumulative Impacts Assessment Methodology. In September 1990, the Board adopted amendments to sections 895.1, 896(a), 897(a), 898, 898.1(f), 898.2(c), 1034, 1037.3, 1037.5, and adopted Technical Rule Addendum No. 2, Title 14 of the CCR. These amendments, which originated in a petition for rulemaking by the Timber Association of California in October 1988, are intended to provide a bridge between the California Environmental Quality Act (CEQA) and the FPA in the review and processing of THPs on non-federal land. (See CRLR Vol. 10, No. 4 (Fall 1990) pp. 158-59; Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 191; and Vol. 10, No. 1 (Winter 1990) p. 140 for background information.) The Board hoped to submit the rulemaking package on these proposed regulations to OAL on December 28.

-Roads and Landings Regulations to Comply with "Best Management Practice" Under Federal Clean Water Act. In July 1990, the Board adopted new sections 912.6, 932.6, 952.6, Technical Rule Addendum No. 3, and amendments to Technical Rule Addendum No. 1 and numerous sections of its regulations in Title 14 of the CCR. These regulatory changes modify the Forest Practice Rules addressing road and landing construction standards to ensure compliance with the Federal Clean Water Act (FCWA) (section 208 of the Federal Pollution Control Act (FPCA)), and to enable the Board's rules to be certified "best management practice" under the FCWA and FPCA. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 186-87 for background information.) This regulatory package was submitted to OAL on December 7.

-Limited Exemptions to THP Requirements. In March 1990, the Board adopted new section 1038.2 and amended section 1103.1(a), Title 14 of the CCR, to provide limited exemptions to the preparation of THPs required under the FPR. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 188 for background information.) In March 1990, Acting Board Chair Carlton Yee recommended that the new language be held in abeyance pending preparation of a revised cost estimate reflecting the cost analysis findings of the Forest Practice Committee. According to Board staff member Doug Wickizer, the revised cost analysis has been completed and the Board is expected to renote the language of the regulatory changes in February or March 1991.

LEGISLATION:

The Board's Seventeenth Annual Report, issued in December 1990, focused on a new theme: the human costs of the forestry crisis in California. The Board—its very composition and focus threatened by three competing initiatives on the November 1990 ballot (all of which were defeated)—reflected on the three propositions, the northern spotted owl controversy, and other crises in forest management in the preface to its annual report: "Forestry in California is clearly under siege. People are arguing over how many trees and how they should be cut, as well as how to treat wildlife, water quality, aesthetics, and old growth. Political sides are drawn and funded by regional and national interests who recognize that what occurs here will flow elsewhere. The visible battleground has been the media—but the war scars are borne by the forestry-dependent communities of Northern California. The rest of the story is the logger, trucker, mill worker, and hundreds of related jobs that exist in the forest-dependent communities."

The Board's annual report contains two legislative recommendations which the Board intends to pursue. First, the Board will seek legislative oversight hearings on the human costs of the forestry crisis. The Board views the debate over the three forestry initiatives on the November ballot and significant legal challenges to THPs by environmental groups as indications of a growing disagreement about the way in which forests should be managed and used. Public hearings on the proposed northern spotted owl regulations have evidenced the pro-industry/anti-industry polarization in forest-dependent communities. A recent study of forest communities by sociologists at UC Berkeley and the University of Washington notes that fear of the loss of jobs, homes, and an independent rural lifestyle can lead to alcoholism, spousal and child abuse, and suicide among those unable to adjust and whose communities lack appropriate social services. The Board believes that legislative hearings on the subject may result in the implementation of essential social programs in these timber-dependent communities.

The Board also recommends that the Professional Foresters Law, PRC section 750 *et seq.*, be amended in two areas: funding sources and committee composition. Under the Professional Foresters Law, the Board licenses and disciplines persons practicing forestry in California. Over the last three years, the number of complaints filed with the Board against its licensees has increased significantly,

and is likely to continue to increase as the public becomes more aware of disciplinary complaints as a course of action. Currently, the costs of investigation and discipline are paid from a \$55 license fee and the program's reserve fund. To reduce depletion of the fund caused by the additional complaints, the Board recommends that the legislature lift the \$100 license fee cap to give it flexibility to recover full program costs through licensing fees.

Another proposed legislative amendment addresses committee composition. The Professional Foresters Examining Committee is composed entirely of licensed foresters with one public member serving from the Board. Because of the substantial and growing interest of the public in the program, the Board proposed to change the composition of the Committee to allow two members of the public to serve.

LITIGATION:

In *Sierra Club v. California Department of Forestry, Pacific Lumber Company*, Nos. A046150 and A046632 (Nov. 21, 1990), the First District Court of Appeal held that a provision of the California Environmental Quality Act (CEQA) requiring a petitioner to request a hearing within 90 days of filing a writ of mandate alleging noncompliance with CEQA does not apply to THPs.

The Sierra Club filed two petitions for writ of mandate challenging CDF's approval of two THPs submitted by Pacific Lumber Company (PALCO) to log over 200 acres of virgin old-growth redwood and Douglas fir. CDF and PALCO moved to dismiss both actions under PRC section 21167.4, which states that a petitioner must request a hearing within 90 days of filing a writ for CEQA non-compliance or it is subject to dismissal. Section 21167 and its so-called "offspring" (sections 21167.1-8) are part of CEQA covering the preparation of environmental impact reports (EIR). However, in *EPIC v. Johnson*, 170 Cal. App. 3d 604 (1985), the First District Court of Appeal held that CDF's THP process is functionally equivalent to CEQA's EIR process, such that THPs are exempt from Chapters 3 and 4 of CEQA (preparation of EIRs by state and local agencies for projects of potentially significant environmental effect) and from section 21167 of the PRC (time limits on judicial proceedings to review or set aside agency decisions involving the various steps of the EIR process). The *EPIC v. Johnson* court did not address the eight "offspring" statutes of section 21167, procedural statutes which augment section 21167 and deal with



various procedural aspects of challenges to EIRs.

In the trial court, CDF and PALCO relied on *EPIC v. Johnson* for the proposition that section 21167.4 applies to THPs and is thus grounds for dismissal of the Sierra Club's petitions. The trial court agreed, and dismissed both actions without a hearing on the merits. The First District reversed and remanded, holding that the "offspring" statutes were intended to augment and to be subsumed under section 21167 (from which THPs are exempt under *EPIC v. Johnson*), and were not intended to apply to THP procedures. "While in *EPIC* this court applied the *substantive* provisions of CEQA to the environmental review of THPs, the *procedural* distinctions between EIRs and THPs, both in preparation and in the nature of the judicial challenge thereto, must be underscored" (emphasis original). After an extensive review of the procedures underlying the preparation of EIRs and THPs, the court ruled that "[a] court challenge to a THP approval is governed by the usual statutes and rules pertinent to civil proceedings generally. There are no specific statutes analogous to those involving judicial review of EIRs pertinent to the procedures employed in judicial review of a THP."

RECENT MEETINGS:

On October 11, the Board met in South Lake Tahoe to view the impact of four years of drought and severe insect damage on the forests in the Basin. Bob Harris of the U.S. Forest Service (USFS) briefed the Board on the activities of the USFS, noting that in the Basin, national forest ownership had increased from 40% to 80%. Currently, approximately 20% of the Basin forest (about 200 million board-feet) is dead standing timber which USFS is unable to adequately protect. Fires are so common that one broke out during the meeting; however, at this writing, no emergency regulation has been proposed to deal with this problem.

On November 6, the Board met in Mendocino County to examine the impact of forest practices on harvesting sites and watershed within Mendocino County. The Board is working with the Mendocino County Forestry Advisory Committee and the County Board of Supervisors to develop language that will assist the county in regulating an industry that has been allowed to cut at a higher rate than growth. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 162 for background information.)

FUTURE MEETINGS:

April 2-3 in Sacramento.

May 7-8 in Jackson.
June 4-5 (location undecided).
July 9-10 (location undecided).

WATER RESOURCES CONTROL BOARD

Executive Director: James W. Baetge
Chair: W. Don Maughan
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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.* 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 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. All regional board action is subject to State Board review or approval.

The State Board and the regional boards have quasi-legislative powers to adopt, amend, and repeal administrative regulations concerning water quality issues. 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 grants from state and federal sources are allocated for projects such as waste water treatment facilities.

The Board 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. Furthermore, the Board is authorized to represent state or local agencies in any matters involving the federal gov-

ernment which are within the scope of its power and duties.

MAJOR PROJECTS:

Drought and Conservation Efforts. As of December 31, the state's winter rainfall was 75% below normal, storage reservoirs were only 33% full, and many of the reservoirs contained less water than in 1977, the driest year in California's history. As the state entered a fifth year of drought, the Metropolitan Water District (MWD), which provides two-thirds of southern California's water, announced plans to begin rationing water effective February 1. Under MWD's plan, residential use must be reduced by 5% and farm suppliers must cut water usage by 20%. MWD will fine cities and other agencies if they surpass their limits; local agencies exceeding their limits will be subject to treble fees.

As a result of the drought, there has been an increase in conservation efforts throughout the state. Many of the conservation programs may have positive, long-lasting effects, such as the program created by the Monterey County Flood Control and Water Conservation District. The District has begun circulating a quarterly newsletter, aimed at reducing rumors, confusion, and misunderstandings concerning District initiatives, as well as stimulating public support for conservation efforts. The District has established various task groups which are working with different user groups to determine which conservation measures work best with each group; established a mobile Irrigation Evaluation Laboratory, which is evaluating various irrigating alternatives such as below-ground continuous "trickle" as opposed to the normal above-ground intermittent soil saturation method; and has experimented with weather modification (cloud-seeding) programs.

Statewide Plans. On December 10, the Board held a public workshop regarding adoption of the proposed Water Quality Control Plan for Inland Surface Waters and the proposed Water Quality Control Plan for Enclosed Bays and Estuaries. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 163 and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 193-94 for background information.) The Porter-Cologne Act (Water Code section 13170) authorizes WRCB to adopt water quality control plans for waters for which water quality standards are required by the federal Clean Water Act (CWA). Such plans, when adopted, supersede any regional water quality control plans for the same waters to the extent of any conflict. Water quality control plans must contain three major