the court find no merit in WRCB's objections, it may sign the order after January 21.

In *United States and California v. City of San Diego*, No. 88-1101-B (S.D. Cal.), city, state, and federal officials have ratified a settlement agreement, under which the City of San Diego is required to have a new sewage water reclamation system fully operational by December 31, 2003. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 164; Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 195; and Vol. 9, No. 4 (Fall 1989) p. 125 for extensive background information on this case.) The agreement to proceed with a secondary sewage treatment facility is based on the 1972 federal Clean Water Act, which requires cities such as San Diego to install a secondary treatment plant.

Despite the settlement agreement, U.S. District Court Judge Rudi M. Brewster expressed concern about the $2.8 billion cost, the opposition to the secondary sewage plant within the scientific community, and the lack of a clear public benefit to be afforded by the agreement. Judge Brewster requested the parties to submit briefs on whether he has authority to alter the Clean Water Act's secondary treatment requirement. At a November 1 hearing, Judge Brewster ruled that although he does not have jurisdiction to stray from a strict reading of the statute, he does have the power to approve or reject the consent decree between the city and the EPA settling the lawsuit. Brewster announced that, in order to approve the consent decree, he must find that it both complies with the Clean Water Act and is in the public interest. Therefore, Judge Brewster requested that additional briefs be submitted and set a hearing date of February 5. At the hearing, Judge Brewster will determine whether there is significant environmental damage being caused by the current sewage treatment plant. Attorneys will be allowed to call scientists and other experts as witnesses.

The February 5 hearing will be held in conjunction with a previously-scheduled hearing at which the EPA is attempting to collect millions of dollars from the City of San Diego for violating the Clean Water Act in the past; that phase of these proceedings is expected to take several weeks.

On November 8, Earth Island Institute, a San Francisco-based environmental group, filed suit in U.S. District Court for the Southern District of California against Southern California Edison Company (SCE), alleging that SCE's operation of the San Onofre Nuclear Generating Station violates the federal Clean Water Act. Earth Island's claims are primarily based on a fifteen-year, 46 million study which was ordered by the Coastal Commission and financed completely by SCE; the study found that the operation of the San Onofre plant does in fact kill tons of fish and kelp each year. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 115 for background information.) Federal law requires SCE to obtain a permit to operate San Onofre from both WRCB and the California Coastal Commission; Earth Island contends that operation of the plant in such a way as to kill marine life technically violates WRCB's permit. The suit demands that SCE either fix the plant's cooling system, which the study found to be responsible for most of the fish and kelp kills, or close the plant.

FUTURE MEETINGS:

Workshop meetings are generally held the first Wednesday and Thursday of each month. For the exact times and meeting locations, contact Maureen Marche at (916) 445-5240.

INDEPENDENTS

AUCTIONEER COMMISSION

Executive Officer: Karen Wyant
(916) 324-5894

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 (see CRLR Vol. 7, No. 4 (Fall 1987) p. 99 for background information).

RECENT MEETINGS:

The Board of Governors' January 11 meeting was held in violation of the Bagley-Keene Open Meeting Act, Government Code section 11125(a), for failure to provide proper notice.

At the meeting, Executive Officer Karen Wyant stated that she is having difficulties in prosecuting auctioneers suspected of permitting shilling to occur at an auction. She explained that an auctioneer can easily avoid disciplinary action because, under the current state of the law, it is unclear at what point an item owner, who is bidding purportedly to protect his/her "reserve," becomes an illegal "shill." Although Wyant has frequently presented legislative and regulatory proposals to the Board which would clarify undefined industry terms and enable the Commission to more effectively police common abuses by auctioneers, industry opposition and Board inaction have thwarted her efforts. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 126; Vol. 9, No. 1 (Winter 1989) p. 97; and Vol. 8, No. 4 (Fall 1988) p. 111 for background information.)

At the January meeting, Wyant presented a proposal which would explicitly specify the manner in which bidding may be performed by the owner of goods at an auction, in order to assure that he/she is not bidding for the sole purpose of increasing the sale price. The proposed rule would prohibit an owner or his/her agent from making more than one bid on an item, unless the owner or agent is personally identified to the audience after the lot is put up for sale and before bids are taken. It would also limit

the number of agents which may be employed by the owner of the goods or the licensee to bid on behalf of the owner. Although this proposal was discussed for some time, the Board took no action on it.

FUTURE MEETINGS:
May 6 in San Diego.

BOARD OF CHIROPRACTIC EXAMINERS

Executive Director: Vivian R. Davis (916) 445-3244

In 1922, California voters approved an initiative which created the Board of Chiropractic Examiners (BCE). Today, the Board's enabling legislation is codified at Business and Professions Code section 1000 *et seq.*; BCE's regulations are located in Division 4, Title 16 of the California Code of Regulations (CCR). The Board licenses chiropractors and enforces professional standards. It also approves chiropractic schools, colleges, and continuing education courses.

The Board consists of seven members, including five chiropractors and two public members.

MAJOR PROJECTS:

Definition of "Chiropractic Adjustment" Withdrawn. At its October 18 meeting, the Board held a public hearing on the proposed addition of section 310.3 to its regulations. The proposed section states: "For the purpose of defining the unlicensed practice of chiropractic, adjustment and/or manipulation of hard tissues shall be defined as manually or mechanically moving such tissues beyond their passive physiological range of motion by applying a forceful thrust." (See CRLR Vol. 10, No. 4 (Fall 1990) p. 166 for background information.)

The Board received comments opposing the adoption of the proposed regulation from the California Chapter of the American Physical Therapy Association, the Physical Therapy Examining Committee, the California Medical Association, the Council on Technic of the American Chiropractic Association, and other interested parties. Much of the opposition centers on arguments that proposed section 310.3 lacks clarity and consistency with other laws and regulations, and that BCE lacks the authority to adopt such a regulation, because the appellate court in *CREES v. California State Board of Medical Examiners*, 213 Cal. App. 2d 195 (1963), held that the Board is not authorized to enlarge the scope of chiropractic practice. Opponents claim that the phrases "beyond their passive physiological range of motion" and "forceful thrust" are too vague; and the California Medical Association expressed concerned that the proposed definition of "manipulation" is overly broad and will be misinterpreted by the Board to prohibit permissible activities by other allied health professionals within their scope of licensure. Those in opposition also agree that the Board has proffered no scientific, medical, or other basis demonstrating the necessity of the proposed regulation.

The California Chiropractic Association (CCA) supports the adoption of proposed section 310.3, arguing that BCE is fully authorized to adopt such a rule under section 4(b) of the Chiropractic Act, and that the regulation is necessary to enable the Board to protect the public from the unlicensed practice of chiropractic. In CCA's opinion, the definition of "adjustment and/or manipulation" is clear. CCA also notes that BCE is not attempting to define the practice of chiropractic (as it did in section 302 of its regulations—*see infra* LITIGATION); rather, it is formulating a definition of the unlicensed practice of chiropractic.

At its December meeting, the Board decided to withdraw this proposed regulatory language.

Recognition of Associations. At its December meeting, the Board held a public hearing on the proposed addition of section 356.1 to its regulations. The purpose of the proposed regulation is to establish the criteria which the Board will use to approve chiropractic associations sponsoring continuing education seminars in chiropractic. These standards will assist the Board in determining what a legitimate association is, and protect the interests of the public by assuring that sponsored seminars meet these standards. Among other things, proposed section 356.1 would require a sponsoring association to be an organized body with an established membership, bylaws, and rules of conduct; in functional existence for at least one year; and which offers courses and seminars co-sponsored by a chiropractic college or previously recognized association for at least one year. The public comment period ended on December 12; the Board took no action on this proposal at its December meeting.

Out-of-State Consultants. At its December meeting, the Board held a public hearing on the proposed addition of section 312.3 to its regulations. The section would clarify that a chiropractor licensed in another state may render professional services and/or evaluate or judge any person in California only after actively consulting with a BCE-licensed treating chiropractor. The purpose of the proposed regulation is to prohibit a chiropractor not licensed in the state of California from rendering professional services to a patient in California unless he/she is consulting with a treating chiropractor who has a California license. The Board believes this regulation is necessary because insurance companies utilize out-of-state consultants to review patient records and report their findings to the insurance company as they pertain to length of treatment, type of treatment, and fees. Because the out-of-state chiropractor reviewing the claim has not seen the patient and has not necessarily reviewed the patient's X-rays, the Board believes the consultant lacks the knowledge necessary to make the evaluation. The patient may have complicating conditions which are unknown to the consultant. Further, the out-of-state consultant must conform to another state's standards of chiropractic care when evaluating the treatment, and California's high standards are not taken into consideration.

The public comment period was extended to December 17; the Board took no action on this proposal at its December meeting.

"No Out of Pocket" Billing/Advertising Regulation. On July 5, the Board's new regulation section 317(u), regarding "no out of pocket" billing and advertising, became effective. However, at its July 26 meeting, the Board decided to refrain from enforcing new section 317(u) until it could clarify the situations in which it will be applied and enforced. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 166; Vol. 10, No. 1 (Winter 1990) p. 145; and Vol. 9, No. 4 (Fall 1989) pp. 126-27 for background information on this issue.) At its September meeting, the Board approved draft language for an amendment to section 317(u), which would prohibit chiropractors from using "no out of pocket" billing as an advertising or marketing device. However, at this writing, the Board has neither noticed this proposed amendment nor scheduled it for a public hearing.

Update on Other Proposed Regulatory Changes. In November, the Office of Administrative Law (OAL) disapproved the modified version of regulatory section 356, which would specify that four hours of each licensee's annual twelve-hour continuing education requirement must be completed in adjustive technique, and must be satisfied by lecture and demonstration. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 165 and Vol. 10, No. 1 (Winter 1990) p. 144 for background information.) OAL disapproved the modified version of section 356 due to