Region v. Office of Administrative Law, No. 906452 (San Francisco County Superior Court). The court held that WRCB's wetlands policies at issue are regulations within the meaning of the Administrative Procedure Act (APA); the rules are not exempt from the APA; and since the rules were not adopted pursuant to the APA, they are unenforceable. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 165; Vol. 11, No. 1 (Winter 1991) pp. 134-35; and Vol. 10, No. 4 (Fall 1990) p. 164 for detailed background information; *see supra* LEGISLATION for AB 88 (Kelley), which would remove some of WRCB's decisionmaking from the requirements of the APA.)

In *United States and California v. City of San Diego*, No. 88-1101-B (S.D. Cal.), U.S. District Court Judge Rudi Brewster ruled on March 28 that the City of San Diego "has been in violation of the Clean Water Act almost continuously since the statute was enacted in 1972" and fined the city $3 million for "causing significant harm to the marine environment." The ruling is part of a pending lawsuit brought by the federal and state governments against San Diego based on the city's failure to comply with several provisions of the Clean Water Act. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 165; Vol. 11, No. 1 (Winter 1991) p. 135; and Vol. 10, No. 4 (Fall 1990) p. 164 for detailed background information.) Based on the city's failure to comply with the Act, the federal government urged Judge Brewster to order the city to construct a multibillion-dollar sewage treatment plant and fine the city $10 million, payable entirely to the federal government; the City of San Diego had asked that the judge fine the city $1.4 million for its violations. Of the $3 million fine, only $500,000 must be paid to the U.S. Treasury; the remaining $2.5 million will be allocated for a "credit" water conservation project aimed at retrofitting homes with water-saving devices such as low-flow faucets and toilets.

On April 3, Judge Brewster issued another decision in this proceeding, ruling that the City of San Diego need not build a $28 million chlorination plant to disinfect its sewage before pumping it into the ocean. The U.S. Environmental Protection Agency (EPA) had argued that such treatment is necessary to remove dangerous bacteria from the sewage, which sometimes floats back toward the shore after being discharged from an underwater pipe 2.2 miles offshore. However, the City successfully argued that its $145 million plan to extend the pipe by 2.5 miles would eliminate any such problems by the mid-1990s.

The major issue remaining in this proceeding is whether San Diego will be required to spend over $2.8 billion on a new sewage water reclamation system, including a secondary treatment plant. During March, Judge Brewster received extensive testimony regarding the necessity of the secondary treatment facility, one of the most expensive aspects of the overall plan. On June 5, Judge Brewster decided to defer approval of the system until January 1993, giving the city 18 months to pursue water conservation, reclamation, and treatment programs which may substantially reduce the cost of compliance with the Act. Judge Brewster also established numerical targets which the City should strive to achieve over the next 18 months. If the city is able to meet these goals, Judge Brewster noted that it could make "a very credible and meritorious case" for seeking a waiver from the secondary standards from the EPA.

Trial is scheduled to begin on September 13 in *City of Sacramento v. State Water Resources Control Board; California Regional Water Quality Control Boards for the Central Valley Region; Rice Industry Committee as Real Party in Interest*, No. 363703 (Sacramento County Superior Court). In this proceeding, plaintiff alleges that the boards violated state environmental and water quality laws when they adopted and approved a new pollution control plan in January and February 1990. The Board contends that it complied with CEQA and the Porter-Cologne Water Quality Control Act. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 134; Vol. 10, No. 4 (Fall 1990) p. 164; and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 195-96 for detailed background information.)

In the lawsuit filed by the San Francisco based-environmental group, Earth Island Institute Inc., against Southern California Edison (SCE), alleging violations of the federal Clean Water Act stemming from operations at the San Onofre Nuclear Power Plant, U.S. District Court Judge Rudi Brewster ruled on May 6 that the California Coastal Commission and the San Diego Regional Water Quality Control Board have six months to determine whether coolant-water discharges from the plant are violating the federal law and the plant's coastal permit. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 166; Vol. 11, No. 1 (Winter 1991) p. 135; and Vol. 9, No. 4 (Fall 1989) p. 115 for background information.) The Coastal Commission's Marine Review Committee has previously concluded that the operation of the San Onofre plant kills tons of fish and kelp each year. Although WRCB has jurisdiction over violations of the federal Act, it is deferring action until the Coastal Commission acts.

SCE and the Coastal Commission are presently negotiating an agreement which would require SCE to spend over $30 million in mitigation efforts, including the construction of an artificial reef which would serve as a new marine habitat. At this writing, such an agreement still awaits approval by the Commission. Judge Brewster indicated that if the agencies do not come to a conclusion within the next six months, a trial will take place in early 1992 to determine whether the Clean Water Act has been violated.

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).

New Board member David Moore was introduced at the Board's May 6 meeting.

MAJOR PROJECTS:

Commission Approves Disciplinary Guidelines. At its May 6 meeting, the Board approved disciplinary guidelines for use by administrative law judges who hear disciplinary cases on behalf of the Commission. The guidelines set forth minimum and maximum penalties for failure to pay a consignor; failure to pay a consignor within thirty working days; use of false bidders/false bidding practices; use of false or misleading advertising or statements; and misrepresentation of goods offered for sale. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 166 for background information.)

Commission Proposes to Amend Conflict of Interest Code. On May 31, the Commission published its notice of intent to amend the Appendix to section 3526, Division 35, Title 16 of the CCR, which sets forth the Commission's conflict of interest code. The Appendix presently lists the designated employees who must file statements of economic interest with the Commission; the proposed amendments would add Commission consultants to the list of designated employees.

The Appendix currently requires designated employees to report any investment in or any income from specified activities. The proposed amendments would require designated employees to report any business positions in those specified activities.

Finally, the proposed amendments would provide that the Commission's Executive Officer may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements of section 3526. Such written determination must include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements for that consultant. According to the proposed amendments, the Executive Officer's determination is a public record and shall be retained for public inspection in the same manner and location as the Commission's conflict of interest code.

At this writing, no public hearing is scheduled regarding the proposed amendments. All public comments concerning the amendments were to be forwarded to the Commission by August 2.

RECENT MEETINGS:

At its May 6 meeting in San Diego, the Board of Governors discussed whether various practices concerning owner bidding harm the public and, if so, how such harm may be prevented or reduced. The Board resolved that the public is harmed when an item owner uses more than one personal bidder to bid on behalf of the owner. The Board also resolved that (1) if an owner intends to bid on his/her own goods, notice of that fact must be posted or distributed; and (2) if an owner is the last bidder on his/her item, the auctioneer may not announce or indicate that the item was "sold," since there is no transfer of ownership. Other issues which were not resolved and may be discussed at future meetings concern whether the public is harmed by the practice of allowing owners or their agents to bid without actually disclosing the identity of such owners/agents to other bidding consumers; whether the public is harmed by the practice of allowing owners or their agents to make more than one bid in competition with the bidding audience; and whether certain practices which would falsely lead other bidders to believe that the owner is a true bidder should be prohibited.

Also at its May 6 meeting, the Board, pursuant to Business and Professions Code section 5734, approved a motion to waive the examination requirement for applicants who are licensed as auctioneers in Florida, Pennsylvania, or Rhode Island. In granting these states reciprocity, the Board determined that the licensing requirement of these states are at least as stringent as those in California.

FUTURE MEETINGS:

November 22 in Monterey.

BOARD OF CHIROPRACTIC EXAMINERS

Executive Director: Vivian R. Davis (916) 739-3445

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:

Board Finally Settles Case, Adopts Emergency Regulation Defining Scope of Practice. All parties have finally reached a settlement in *California Chapter of the American Physical Therapy Ass'n, et al. v. California State Board of Chiropractic Examiners, et al.*, Nos. 35-44-85 and 35-24-14 (Sacramento County Superior Court). Since September 1987, the parties have been litigating the validity of BCE's adoption and the Office of Administrative Law's (OAL) approval of section 302 of BCE's regulations, which defines the scope of chiropractic practice. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 199; Vol. 9, No. 1 (Winter 1989) p. 97; and Vol. 7, No. 4 (Fall 1987) p. 100 for background information on this case.)

On February 1, the court approved a settlement agreement between BCE and the California Medical Association (CMA), which required BCE to adopt new section 302 on an emergency basis; OAL approved the emergency rule on April 4. Other parties and intervenors—including the California chapter of the American Physical Therapy Association, the Medical Board of California, and the Physical Therapy Examining Committee—initially objected to the settlement agreement and the proposed regulation, because it included the practice of physical therapy within the scope of practice of a chiropractor. However, BCE later agreed to revise the proposed regulation to include a definition of the "physical therapy" which may be practiced by a chiropractor, which was acceptable to all parties. OAL approved the revised version of emergency section 302 on June 3; BCE was scheduled to hold a regulatory hearing on the permanent adoption of revised section 302 on June 20.