



the social structure of individual populations and the statewide population;" and (4) it should acknowledge and discuss the potential of the hunt to impact animals and populations on various federal lands. Judge McCabe further ordered that any revised cumulative impacts analysis must be published for public comment, and required DFG/FGC to summarize and respond to all comments.

DFG/FGC did not challenge Judge McCabe's January 1988 ruling; instead, it abandoned the 1987 hunt and published notice of its intent to adopt regulations permitting a fall 1988 mountain lion hunt. It adopted those regulations in April 1988, and shortly thereafter filed a declaratory relief action in Sacramento Superior Court, in an attempt to preclude petitioners from challenging the 1988 hunt before Judge McCabe. However, Judge McCabe retained jurisdiction and undertook review of petitioners' challenge to the 1988 hunt regulations. She examined FGC's new draft cumulative impacts analysis; found that it failed to adequately address, or address at all, several of the points that were specified in and required by the court's earlier order; and invalidated the proposed 1988 hunt.

On appeal, DFG/FGC sought review of their environmental review process against the requirements of CEQA and its guidelines, as opposed to the requirements of Judge McCabe. The court of appeal declined to find error in Judge McCabe's ruling, and upheld it. The First District found that, "[g]iven the unambiguous nature of the court's order," DFG/FGC's cumulative impacts analysis was "woefully inadequate." Rather than squarely addressing the elements required by Judge McCabe, the appellate court found that DFG/FGC "chose to circulate a document that simply swept the serious criticisms of this project under the rug." Because DFG/FGC were under a duty imposed by Judge McCabe's order to circulate a draft analysis for public comment which contained a complete review of certain issues, and failed to do so, the appellate court held that DFG/FGC "abused their discretion by not proceeding in a manner required by law," and upheld the trial court's order.

DFG/FGC petitioned the California Supreme Court to review the First District's decision, and requested that the appellate court's opinion be depublished. The Supreme Court denied both requests.

On July 27 in *Fund for Animals, et al. v. California Fish and Game Commission*, No. 361662 (Sacramento Superior Court), Judge Cecily Bond ruled in favor of the petitioners and cancelled the 1989 black bear hunt scheduled to begin in August. Once again, the court's decision was based on the inadequacy of the Department's environmental impact report. FGC vowed to appeal the ruling; however, no appeal has been filed and the legal deadline has passed. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 119 and Vol. 9, No. 3 (Summer 1989) p. 111 for background information.)

RECENT MEETINGS:

At its December 1 meeting, FGC was scheduled to consider six petitions to list various plants as either endangered or threatened, under the California Endangered Species Act. Commissioner Albert Taucher moved that the Commission require the petitioners to present detailed recovery plans for each of the species before FGC would consider the species for listing. Commissioner Everett McCracken questioned whether FGC is authorized to impose such a requirement, which does not exist in the Endangered Species Act. Audience members responded with a resounding "no", to which FGC Executive Secretary Harold Cribbs agreed. All six petitions were subsequently granted; the Commission ordered DFG to prepare the recovery plans.

At its December 21 meeting, FGC finally adopted its 1990-92 sport fishing regulations, which had been the subject of several public hearings throughout the fall of 1989. Included in these regulations are restrictions on ocean and in-river salmon fishing, in furtherance of the ten-point salmon recovery plan adopted last fall. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 119 for background information.)

FUTURE MEETINGS:

May 17-18 in San Luis Obispo.
June 28-29 in South Lake Tahoe.

BOARD OF FORESTRY

Executive Officer: Dean Cromwell
(916) 445-2921

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 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: Harold Walt (chair), Carlton Yee, 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 Forest Practice Act (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:

OAL Approves Erosion Control Maintenance Regulations. On February 7, 1989, the Board approved a regulatory action to clarify and strengthen standards for the maintenance of erosion control structures following completion of timber operations. The Board submitted the proposed action to the Office of Administrative Law (OAL) on July 21. On August 21, OAL disapproved the proposal due to the Board's failure to provide statutory fifteen-day public notice of modifications, and to demonstrate the necessity of the proposed regulations. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 120; Vol. 9, No. 1 (Winter 1989) p. 93 and Vol. 8, No. 4 (Fall 1988) p. 107 for detailed background information.)

The Board modified the regulatory proposal to comply with OAL's specifications and readopted the changes on October 12, subject to the statutory fifteen-day notice requirement. The proposal was resubmitted to OAL on November 22 and approved on December 20.

OAL Approves Site Preparation Regulations. On February 8, the Board adopted numerous amendments to its rules governing the preparation of THP sites prior to timber harvesting pursuant to AB 1629 (Sher) (Chapter 987, Statutes of 1987). (See CRLR Vol. 9, No. 4 (Fall 1989) p. 120; Vol. 9, No. 2 (Spring 1989) p. 105; and Vol. 9, No. 1 (Winter 1989) pp. 92-93 for detailed background information.) On August 21, OAL rejected the proposed regulations for lack of clarity; specifically, the Board failed to define the term "quality of water" as used in the rules.

The Board incorporated by reference the definition of "quality by water" contained in the erosion control maintenance regulations recently approved (see above), and resubmitted the proposed regulatory changes to OAL on November 22. OAL subsequently approved the regulations on December 20.

"Commercial Purposes" Definition. On July 12 and August 9, the Board held public hearings concerning a proposed amendment to section 895.1, Title 14 of the CCR. The amendment would clarify the current definition of "commercial purposes" as that term is used in the Public Resources Code to determine when a timber operation requiring a THP is occurring. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 121 and Vol. 9, No. 3 (Summer 1989) p. 112 for background

information.)

On December 12, the Board's Forest Practice Committee released a modified version of the originally proposed language and, at this writing, plans to renotice the proposal for a full 45-day period. The language has been modified to include only timber operations conducted under THPs, exemptions from THPs, and emergency notices. The language does not include timber operations engaged for purposes of land conservation. The Board has severed this controversial aspect of the proposed amendment and plans to separately address that issue on its own merits in April.

TAC Regulatory Action Petition. On November 9, the Board reopened the hearing record on rulemaking proposed by the Timber Association of California (TAC). TAC's petition for rulemaking proposes substantial changes to sections 895.1-1037.5, Title 14 of the CCR. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 121 and Vol. 9, No. 3 (Summer 1989) p. 112 for background information.)

The proposed amendments address recent court rulings that the review and processing of THPs on non-federal land, which are regulated by the FPA, are also "projects" which fall under the scope of the California Environmental Quality Act (CEQA). The proposed action seeks to establish a THP program that is equivalent to the environmental impact report (EIR) process required under CEQA. This move, which is designed to limit the number and scope of court challenges to Board-approved THPs, would effectively place the decision regarding the environmental impact of logging projects within the sole determination of the Board.

The Board held public hearings on TAC's proposed regulations at its May, July, and August meetings. Following the August meeting, the Board assigned to two of its committees the task of reviewing and incorporating as appropriate numerous public comments made both orally at the hearings and in writing. The Board's Forest Practice Committee considered all information relative to CEQA's "cumulative effects" standard, and the Board's Legislation and Policy Development Committee considered all information relative to CEQA's wildlife protection and "overriding considerations" standards, and all other aspects of this proposal. Additionally, the Board received further public comments until December 11. The committees were expected to final-

ize their reviews and submit the proposed language of the regulatory changes at the Board's January meeting.

Watercourse Protection Regulations Proposed. On November 8, the Board held a public hearing on proposed amendments to sections 895.1, 914.2, 934.2, 954.2, 914.8, 934.8, 954.8, 916.1, 936.1, 956.1, 916.2, 936.2, 956.2, 916.3, 936.3, 956.3, 916.4, 936.4, 956.4, 916.5, 936.5, 956.5, 916.6, 936.6, 956.6, 916.7, 936.7, 956.7, 923.6, 943.6, and 963.6, Title 14 of the CCR.

These amendments address the recommendations of the Board-appointed Watercourse and Lake Protection Task Force. The Task Force was created in 1988 to investigate the negative environmental impact upon watercourse and lake protection zones (WLPZ) by adjacent timber operations.

Generally, the proposed changes address four major topics. First, the measures seek to improve protection of vegetative canopy and riparian vegetation within WLPZs. These plants and trees play an important role in stream and lake ecology. Riparian vegetation serves as a natural filtration system for sediment originating in timber operation areas. When the vegetation is destroyed or greatly reduced, excessive amounts of sediment are placed in the watercourse. Furthermore, riparian vegetation at stream or lakeside provides necessary energy for the water ecosystem. Insects and leaves from the vegetation provide food for fish and fertilizer for the aquatic plantlife. The canopy provides necessary shade to keep water temperature at a level conducive to the limitations of fish and plant life. Finally, both areas provide sources of coarse woody debris, which contributes to pool ripple ratio for fish breeding and helps to hold the stream together during storm seasons which greatly magnify quantity and turbulence of water flow in the WLPZ.

The amendments also seek to develop regulatory definitions for "watercourse bank" and "change in slope" necessary to address the problem of erosion and flood risk. Third, the amendments incorporate geological, hydrological, and biological factors into forestry procedures used to determine appropriate WLPZ width and protective measures to be required at specific timber operations. Finally, the amendments develop procedures to enhance hardwood and non-commercial tree retention during and after timber operations and evaluate the use of "in lieu" practices within



Forest Practice Rules.

Specifically, section 895 would add the abbreviation "WLPZ" to reduce the length of the rules. Section 895.1 would add definitions for the terms "beneficial uses of water", "riparian", "understory vegetation" and "watercourse bank," as well as modifying the definition of WLPZ to clearly include protection of beneficial uses relating to fish and riparian wildlife habitat as well as concerns of erosion and flood risk within the primary policy of WLPZ practices. Sections 914.2(i), 934.2(i), and 954.2(i) would create alternative erosion control methods when waterbreaks are deemed ineffective. Sections 914.8, 934.8, and 954.8 would be modified to include a reference to the statutory standard for removal of watercourse crossings installed during the timber operation. Sections 916.1, 936.1, and 956.1 would require additional information and justification in THPs using "in lieu" practices to ensure proper review of the THPs and adequate resource protection. Sections 916.2, 936.2, and 956.2 would clarify the beneficial uses of water for RPFs preparing THPs, specifically including the biological needs of riparian wildlife and its habitat. Sections 916.3, 936.3, and 956.3 would clarify the WLPZ intent language to improve enforceability and comprehension of the regulations, including the exact circumstances under which the timber operator may use watercourses or other wet areas for log landings, roads, skid trails, or tractor roads.

Sections 916.4, 936.4, and 956.4 would require the RPF to examine and evaluate sensitive nearstream conditions which impact biological, geological, riparian zone, or near-watercourse conditions. These regulations seek to increase RPF awareness and evaluation of these conditions in the THP. The changes specifically enumerate water temperature control, waterflow modification in streams, filtration of organic and inorganic material, flood control, bank and channel stabilization, and vegetation structure diversity for fish and riparian wildlife as special areas of WLPZ concern. The sections also require a retention of 75% of the ground cover in the area for a filtration strip.

Amendments to sections 916.5, 936.5, and 956.5 clarify and standardize the methods of measuring watercourse sideslope steepness and provide for retention of structural diversity of plantlife for riparian wildlife within a

WLPZ. Specifically, these sections set standards for canopy and understory vegetation to address water temperature and erosion. Sections 916.6, 936.6, and 956.6 allow the director to suggest alternative practices other than those outlined in a specific THP for operations within a WLPZ. Sections 916.7, 936.7, and 956.7 would provide for protective measures to be taken against potential erosion, such as seeding, mulching, and planting to stabilize the soil. Sections 923.3, 943.3, and 963.3 would require the construction, where feasible, of permanent watercourse crossings and associated fills to ensure proper waterflow and minimize erosion.

At the Board's November meeting, CDF proposed substantial modifications to the language of the Task Force's proposals. Both versions of the regulations have been sent to field testing to determine the best way to address the Task Force's findings. The result of the field tests will then be reviewed by the Forest Practice Committee. The Board will continue to hold public hearings on the proposed watercourse rules in the future.

LEGISLATION:

The following is a status update on bills described in CRLR Vol. 9, No. 4 (Fall 1989) at pages 122-23:

SB 917 (McCorquodale), which would prohibit timber operations until five days after approval of a THP by the CDF Director (or the Board upon approval) and the Director's filing of written responses to significant environmental comments, is pending in the Senate Appropriations Committee.

SB 1569 (Keene) would create the Timberland Task Force, composed of eleven members, which would study various issues relating to timberlands and wildlife species utilizing timberland habitats. This bill is pending in the Assembly Natural Resources Committee.

AB 1811 (Sher) would enact the Forestry and Wildland Fire Protection Bond Act of 1989 which, if adopted, would finance a program for forestry and wildlife fire protection purposes, through the issuance of bonds in an amount of \$255,500,000. This bill is pending on the Assembly floor.

SB 377 (Campbell) would establish the Public Fire Prevention Program Advisory Committee with specified membership and would require the State Fire Marshal to implement, with assistance from the Committee, the Public Fire Prevention Act of 1989. This bill is

pending in the Assembly Ways and Means Committee's suspense file.

SB 28 (Campbell) would have required the Attorney General, in consultation with the State Fire Marshal, to establish and maintain an arson information system. This bill died in committee.

SB 134 (Campbell), which would have required the Department of Justice to furnish to specified individuals and entities a record of arson convictions of persons who apply for employment or volunteer for a position which involves supervisory or disciplinary power over a minor, died in committee.

AB 339 (Hauser), which would have required property sellers to disclose whether adjacent lands are zoned for timber harvest, died in committee.

AB 348 (Sher), which would have enacted the California Reforestation and Urban Forestry Act of 1990 and would have authorized the issuance of bonds in the amount of \$300,000,000, died in committee.

Environmental Initiative. On October 17, Attorney General and gubernatorial candidate John Van de Kamp introduced the Environmental Protection Initiative of 1990, a ballot initiative drafted by representatives of the Sierra Club, the League of Conservation Voters, the Natural Resources Defense Council, the National Toxics Campaign, Citizens for a Better Environment, Lieutenant Governor Leo McCarthy, Assemblymember Tom Hayden, and Van de Kamp.

The initiative—also known as "Big Green"—addresses a number of environmental concerns, including protection of our food supply from pesticide residues, global warming, and the protection of coastal waters. Among other things, the initiative proposes to establish a \$200,000,000 state fund to purchase stands of ancient redwood trees threatened by logging. The initiative would also impose an immediate one-year moratorium on clear-cutting of such trees. Also, developers would be required to plant one tree for every 500 square feet of new development in the state. These measures address global warming, which is caused in part by the increase of carbon dioxide in the atmosphere. Because trees consumer carbon dioxide and release oxygen, they are believed to play a vital role countering the greenhouse effect.

Environmentalists contend the initiative is necessary because the legislature has failed to act. "As the environmental



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challenge becomes more staggering, we must circumvent many competing forces in the legislature and get a clear expression from the voters," according to Lucy Blake, executive director of the League of Conservation Voters. Although drafters of the proposal are unable to say what the measure would ultimately cost, the initiative is given a strong chance for passage amid a rising tide of public concern over the environment.

According to Tom Hayden, 500,000 signatures are needed to qualify the measure for the November 1990 ballot.

FUTURE MEETINGS:

May 1-2 in Sacramento.

June 5-6 (location undecided).

WATER RESOURCES CONTROL BOARD

Executive Director: James W. Baetge

Chair: W. Don Maughan

(916) 445-3085

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 Chapters 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 government which are within the scope of its power and duties.

MAJOR PROJECTS:

Proposed Increase in Waste Discharge Fees. On January 5, WRCB was scheduled to hold a public hearing on proposed emergency amendments to the schedule of fees presently charged to those who discharge waste into state waters. Specifically, WRCB seeks to amend sections 2200 and 3833, Title 23 of the CCR.

The Board is authorized to assess fees against dischargers of waste under section 13260 of the Porter-Cologne Act. In the past, section 13260 required that a filing fee accompany each report of waste discharge submitted for a new discharge or for a material change in an existing discharge. Those who discharge waste may be generally divided into two categories: point source dischargers who discharge waste pursuant to a National Pollutant Discharge Elimination System (NPDES) permit; and all other dischargers who discharge waste pursuant to the state water discharge requirements (WDRs).

The Board found that the assessment of fees under the previous regulatory section 2200 Filing Fee Schedule created serious inequities as between NPDES permit dischargers and WDR dischargers; that system also did not generate a predictable level of revenue from year to year, causing WRCB to make conservative estimates of expected revenue to be generated by filing fees, and increasing the Board's reliance on general fund monies.

Thus, SB 2829 (Bergeson) (Chapter 1026, Statutes of 1988), effective January 1, 1989, amended section 13260

to require the Board to establish the necessary regulations, fee schedule, and mechanisms to collect an annual fee from all dischargers regulated by WRCB's waste discharge requirements in section 13263 of the Water Code. (See CRLR Vol. 8, No. 4 (Fall 1988) p. 110 and Vol. 8, No. 3 (Summer 1988) p. 117 for background information on SB 2829.)

The proposed regulations contain a schedule of annual fees based on the threat to water quality presented by the discharge and on the complexity of the requirements needed to regulate the discharge. Total flow, volume, number of animals, or area of land involved are taken into consideration in assessing both threat to water quality and complexity. The proposed fees range from \$100 to \$3,100 per year.

If adopted by the Board, these emergency regulatory amendments would be effective for 120 days, during which time the Board is expected to initiate formal rulemaking proceedings for the permanent adoption of the changes.

Model Well Ordinance Adopted. On November 1, WRCB adopted a model well standards ordinance, pursuant to Water Code section 13801. The ordinance requires every city, county, or water agency having permit authority over well drilling to adopt, by February 15, 1990, standards which meet or exceed the minimum standards of section 13801 and Department of Water Resources Bulletin 74-81. The minimum requirements must cover the construction, reconstruction, repair, destruction, and abandonment of water wells, cathodic protection wells, and monitoring wells. Responding to the concerns of farmers, ranchers, and other interested parties, WRCB adopted specific language that the ordinance is not intended to apply to water ponds, stock ponds, drainage trenches and canals, or other similar excavations.

Existing ordinances of a city, county, or water agency may be used to satisfy the requirements of section 13801, so long as the ordinances are in substantial compliance with the minimum standards. If a city, county, or water agency fails to adopt minimum standards by February 15, 1990, the model well ordinance will take effect in that jurisdiction.

San Francisco Bay/Sacramento-San Joaquin Delta Estuary Proceedings: Pollutant Policy Document Hearings Held. In October, WRCB released a revised draft version of the Pollutant Policy Document (PPD) for the San