



REGULATORY AGENCY ACTION

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



Francisco Bay/Sacramento-San Joaquin Delta Estuary. The PPD identifies and characterizes pollutants with the greatest potential biological significance in the Bay-Delta Estuary, and proposes a program to monitor and control these pollutants. The San Francisco and Central Valley Regional Water Quality Control Boards must update their water quality control plans to account for the pollutants.

The revision is a response to the significant controversy created when the Board released its October 1988 draft proposals. (See CRLR Vol. 9, No. 3 (Summer 1989) p. 114; Vol. 9, No. 2 (Spring 1989) pp. 107-08; and Vol. 9, No. 1 (Winter 1989) pp. 94-95 for background information.) The consideration of the PPD is the next step in the remaining phases of the Bay/Delta proceedings, since the Board adopted the revised draft Bay/Delta workplan via Resolution 89-65 on July 20. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 124 for background information.)

Public hearings to review the PPD were held in Sacramento and Concord during December. Following these hearings, the Board will direct its staff to further revise the PPD based upon the public comments. The next revision is scheduled for release for a thirty-day public comment period in March; final adoption is scheduled for July.

LEGISLATION:

The following is a status update on bills described in CRLR Vol. 9, No. 4 (Fall 1989) at page 124:

AB 478 (Bates) would require certain regional boards to conduct unannounced inspections of waste discharges that could affect the quality of specified waters. This bill is pending in the Assembly inactive file.

SB 415 (Torres), which would revise the provision regarding civil and criminal penalties in Proposition 65, is pending in the Assembly Ways and Means Committee.

SB 277 (Kopp), which would have established requirements for protection of the waters of San Francisco Bay, died in committee.

SB 65 (Kopp, et al.), which would amend Proposition 65 to include public agencies regardless of the number of employees within their jurisdiction, is pending in the Assembly Committee on Environmental Safety and Toxic Materials.

SB 405 (Ayala) would have required any decision of WRCB amending water appropriation permits concerning the State Water Project and the federal Central Valley Project to contain reasonable water quality standards at the "without project level." This bill died in committee.

LITIGATION:

WRCB has filed suit against the Office of Administrative Law (OAL) regarding OAL Determination No. 4, issued on March 29, 1989. (See CRLR Vol. 9, No. 3 (Summer 1989) p. 27 for background information.) The suit, entitled *State Water Resources Control Board and the San Francisco Regional Water Quality Control Board v. OAL*, No. 906452, was filed in San Francisco Superior Court. The San Francisco Bay Planning Coalition is the real party in interest. In Determination No. 4, OAL decided that policies adopted by the Board defining the term "wetlands" and prescribing criteria for permit decisions on discharges to wetlands are regulations which must be adopted pursuant to the Administrative Procedure Act (APA) rulemaking process. At this writing, WRCB's court challenge is still pending. Until a decision is reached regarding Determination No. 4, the Board will not appeal OAL Determination No. 8, issued by May 17, 1989, in which OAL concluded that the Board's "sources of drinking water" policy is also a regulation. (See CRLR vol. 9, No. 3 (Summer 1989) pp. 114-15 for background information.)

On December 4, U.S. Supreme Court agreed to review the Ninth Circuit Court of Appeals' decision in *California v. Federal Energy Regulatory Commission (FERC)*, No. 89-333. In June, the Ninth Circuit unanimously held that the federal government has exclusive control over water usage at federally licensed hydroelectric plants. The court rejected WRCB's attempts to impose minimum flow requirements on a small American River hydroelectric plant to protect salmon spawning. (See CRLR Vol. 9, No. 4 (Fall 1989) pp. 124-25 for background information.)

California bases its appeal on the apparent inconsistency between the Ninth Circuit's reliance on *First Iowa Hydro-Electric Coop. v. Federal Power Commission*, 328 U.S. 152 (1946), which limits state regulation to irrigation and municipal uses, and *California v. United States*, 438 U.S. 645 (1978),

which allows states to impose any conditions on a water rights permit so long as the conditions do not interfere with federal project objectives. Forty-three other states and nine environmental groups joined California in its successful petition for review.

In *United States v. San Francisco Regional Water Quality Control Board*, No. 89-0598-JPV (N.D. Cal.), the hearing on the Board's motion for summary judgment, originally calendared for October 26, was rescheduled for January 16. The suit, filed on behalf of the U.S. Department of the Navy, contends that the Regional Board lacked authority to deny the Navy's water quality certificate application. The Navy needed the certificate to obtain a dredging permit from the U.S. Army Corps of Engineers. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 125 for background information.) Since the Navy obtained the dredging permit while the case has been pending, the federal government filed a motion to dismiss the case as moot. However, the Board, in its motion for summary judgment, contends the court should still decide the case because the issues are substantially controversial and will likely arise in the future.

RECENT MEETINGS:

At its November 16 meeting, the Board conducted a hearing regarding the complaint of Mr. George Nickel against the Lost Hills Water District. In February 1989, Nickel filed a complaint against the District, alleging that irrigation practices within the District constituted waste and an unreasonable use of water. Nickel and others also filed a civil lawsuit against the District in Kern County Superior Court. The lawsuit raises the same issues as are raised in the complaint filed with the Board against the District. The Board heard testimony from Nickel and from the District, and after discussion of the issue, decided to dismiss Nickel's complaint without prejudice, pending the outcome of the ongoing civil lawsuit. Dismissing the complaint without prejudice will allow Nickel to refile his complaint with the Board if he is dissatisfied with the outcome of the lawsuit.

FUTURE MEETINGS:

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