used by Charles Hurwitz in his corporate takeover of the company.

On February 8, the Board of Forestry requested the California State Bar to investigate Van de Kamp's withdrawal. In the request, Board Chair Harold Walt stated his belief that Van de Kamp's conduct in withdrawing himself from representing the Board violated the basic professional ethical standard that lawyers refrain from taking a public stance on litigation matters in conflict with the position of their client. However, the State Bar found no violation of the Rules of Professional Conduct.

At this writing, the Board is involved in finding replacement counsel to take Van de Kamp's place, and determining a funding source for reimbursing the replacement.

RECENT MEETINGS:

At its January 10 meeting, the Board announced new appointments to the Northern, Southern, and Coastal DTACs, the RPF Liaison Committee, and the Professional Foresters Examining Committee.

Also in January, John Ross of the California Cattleman's Association requested the Board to adopt a position opposing the Wildlife Protection Initiative scheduled for November 1990 ballot. The initiative is sponsored by the Planning and Conservation League. Mr. Ross' organization is concerned about the initiative's redirection of funds presently granted to CDF from the Environmental License Plate fund. The initiative would also implement an acquisition of California oak woodlands, which would infringe upon the Board's policy management of oaks under the Integrated Hardwood Range Maintenance Program.

In the course of discussing methods of opposing the initiative, Board member Dr. Carlton Yee twice made disturbing remarks regarding the signing of false names on initiative petitions as a method of defeating the initiative. Under California law, if more than 8% of the signatures of a random sample drawn from the initiative petition are either false or belong to unregistered voters, the petition may be rejected. Although the bulk of Dr. Yee's comments were made in a humorous vein, and he was careful to clarify that this method is his own personal policy and not Board policy, the acts described by Dr. Yee are illegal under Elections Code section 29733, according to the Attorney General's office.

At the February 6 meeting, CDF Assistant Chief Ross Johnson presented the Board with a summary of Forest Practice Rules enforcement in 1989. Although the complete statistics had not yet been completed, Mr. Johnson stated that enforcement actions were up slightly from 1988. The increase was attributed both to an increase in inspectors and a less serious fire season. Annual misdemeanor actions also showed an increase from 30 in 1987 to 100 in 1989. Mr. Johnson attributed the increase to new enforcement policies emphasizing citation issuance as opposed to awaiting prosecution by the district attorney. In addition, prosecutions were pursued only in cases of environmental damage; administrative remedies were taken in the absence of such damage. Finally, Mr. Johnson noted increases in fines levied, amount of suspended jail time, and probationary periods.

At the Board's April 3 meeting, former Board Chair Harold Walt made his first report to the Board in his new capacity as CDF Director. In his address, Mr. Walt stressed the need for CDF, the Board, and the forestry profession to address what he referred to as "social forestry," focusing on the values of society as reflected in the demands of the public, the courts, and the profession. Mr. Walt expressed a need for special attention to the performance of environmental analysis of proposed THPs. In pursuit of this goal, Mr. Walt outlined four goals he has established for the remainder of 1990: (1) to ensure that THPs are prepared to standards that will sustain the "biological productivity" of forests; (2) ensure RPFs make a complete and careful analysis of the environmental effects of proposed timber operations; (3) provide the public with the opportunity for input in the THP review process; and (4) improve cooperation with other agencies, such as DFG and WRCB. Mr. Walt noted that the need for the practice of "social forestry" was stressed in a report prepared by LSA Associates, an independent consulting firm commissioned by CDF to review the present THP process.

The Director also addressed several other recommendations raised in the LSA report, including establishment of a thorough cumulative effects analysis. The cumulative effects analysis is an aspect of the THP process which assesses the long-term environmental impact of the proposed harvesting operation in conjunction with past, present, and future operations within the same area. The cumulative effects analysis reflects a requirement of the CEQA process, and includes an evaluation of impacts on soil viability, erosion, wildlife habitat, wildlife species, and water quality of cross-multiple projects. The Board is presently considering amendments to the cumulative effects addendum of the Forest Practice Rules, in conjunction with the controversial regulatory package proposed by the Timber Association of California. (See CRLR Vol. 10, No. 1 (Winter 1990) p. 140 and CRLR Vol. 9, No. 4 (Fall 1989) p. 121 for background information.) Mr. Walt also stressed a need to regain the public's confidence in CDF, the Board, and the FPA, which will require increased, concerted efforts to demonstrate to the public the effectiveness of the FPA and the sincerity of those involved in the THP progress regarding environmental protection.

FUTURE MEETINGS:

September 11-12 in Sacramento.
October 9-10 in South Lake Tahoe.
November 6-7 in Santa Barbara.

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:

Metropolitan Water District/Imperial Irrigation District Water Transfer. On January 9, the Metropolitan Water District (MWD) and the Imperial Irrigation District (IID) completed an agreement that will transfer approximately 106,000 acre-feet of water per year from IID to MWD, in return for MWD's financing of improvements in Imperial's irrigation system. Metropolitan will pay IID approximately $98 million over the next five years for several conservation measures, which include constructing new reservoirs, installing automated controls to adjust water flows through irrigation canals, lining earthen canals with concrete, and hiring more employees to monitor and control irrigation activities. MWD also will pay $2.6 million per year in maintenance for the next 35 years, and $23 million in indirect costs. The 106,000 acre-feet represents the expected water savings from the conservation measures. (See CRLR Vol. 9, No. 1 (Winter 1989) pp. 1 and 95 for detailed background information.)

Proposed Regulatory Changes. The Porter-Cologne Water Quality Control Act authorizes the regional boards to regulate discharges of waste which could affect the quality of waters of the state. The Act also authorizes the boards to investigate the effects of discharges on water quality. Section 13172 of the Act directs WRCB to develop regulations governing discharges of waste to land; this section also requires WRCB to conform its regulations to the Hazardous Waste Management System (HWMS) regulations adopted by the U.S. Environmental Protection Agency (EPA).

Article 5 (Water Quality Monitoring for Classified Waste Management Units), Subchapter 15, Chapter 3, Title 23 of the CCR, sets forth water quality monitoring regulations intended to protect state waters from waste discharge to land. Article 5 sets forth explicit measures which must be followed when detecting and stopping leakage from waste management units. For example, the regulations require monitoring of surface and groundwater outside of each waste management unit, as well as monitoring the unsaturated zone beneath a waste management unit. The rules also state that even if there is no evidence of leakage, the discharger must implement a detection monitoring program. This program requires routine sampling and analysis of surface and groundwaters. If potential waste leakage is detected, the discharger is required to implement more stringent monitoring devices and take corrective action.

On June 23, 1989, the Board published its proposal to repeal the existing text of Article 5 and replace it with proposed Article 5—"Water Quality Monitoring and Response Programs for Waste Management Units." The revised text was intended to comply more fully with section 13172(d) of the Water Code. The Board's intent was also to draft regulations consistent with analogous regulations proposed by the Department of Health Services (DHS). WRCB and DHS have concurrent statutory authority to adopt regulations applicable to hazardous waste treatment, storage, and disposal sites. Both agencies have determined that adoption of duplicate regulations is necessary in order to ensure regulatory consistency at these sites. The proposed changes to Article 5 were drafted by a group comprised of staff from WRCB and DHS.

Proposed Article 5 would retain the three-phased monitoring strategy outlined in the current Article 5; i.e., Detection, Evaluation, and Corrective Action Monitoring. This strategy would be applied to all waste management units and conforms to the existing program. However, proposed Article 5 would provide that verification of leakage from a waste management unit is required in the Detection Monitoring Program rather than in the Evaluation Monitoring Program (the second phase). Other proposed changes would allow a discharger to monitor for a relatively small number of waste constituents which provide a high degree of certainty of leakage, rather than requiring the discharger to monitor for all known waste indicators in the event of leakage.

A public hearing on the proposed changes to Article 5 was held on August 9, 1989. However, the Board took no final action on this issue, and extended the public comment period on this proposed regulatory action until March 5, 1990. WRCB staff is presently reviewing all the comments it has received, and may modify the proposed regulations in order to accommodate concerns raised by the public and Board members. WRCB will schedule this issue on the agenda of a future meeting, at which time a final decision will be made. The proposal will then be submitted to the Office of Administrative Law (OAL) in compliance with the Administrative Procedure Act (APA).

In a closely related matter, WRCB has also proposed to amend the existing text of section 2601 (Technical Definitions) of Article 10 (Definitions), Subchapter 15, Chapter 3 of the CCR. The amendments would modify some existing technical definitions in Article 10 and set forth new technical definitions applicable to the proposed monitoring program under Article 5. The Board's intent is to clarify terminology set forth in Article 5.

The proposed amendments to Article 5 introduce terms which are not defined in the existing regulations. These new terms include: affected medium, aquifer, background monitoring point, concentration limits, hazardous constituent, control chart, physical parameter, waste constituent, and x-bar chart. The proposed Article 10 amendments would define these Article 5 terms.

The proposed Article 10 amendments also include revisions to definitions for terms in Article 5 which are not technically precise. Such terms include "background" and "land treatment facility". Further, existing definitions which refer to terms deleted or changed by proposals to Article 5 will also be amended by proposed changes to Article 10, in order to ensure consistency.

Public comments were accepted on the proposed changes to Article 10 until March 5, and WRCB held a public hearing on the regulatory action on March 15. Board staff is presently reviewing the comments and will respond as required. The issue will be placed on the agenda of a future Board meeting, and at that time the Board will make its final decision. The proposal will then be submitted to OAL.

Regulatory Determination Decision. In April 1989, J. H. Baxter & Company (Baxter) submitted a request for determination to OAL. Baxter contended that certain standards used by WRCB and the North Coast Regional Board in administering the Toxic Pits Clean-up Act (TPCA) were regulations required to be adopted in compliance with the

APA. Baxter specifically objected to the definitions of two key terms under the TPCA—"discharge" and "free liquids". Baxter questioned the definition of "free liquids" and its application to rainwater entering an impoundment.

Baxter owns and operates a wood preserving facility located within the jurisdiction of the North Coast Regional Board. On May 27, 1987, the regional board requested Baxter to pay fees under the TPCA for certain containment units on its premises. Baxter paid under protest and then submitted a letter to the regional board outlining the reasons why the TPCA did not apply to its facility. Baxter argued that TPCA is not a retroactive statute and therefore its facility is exempt. It also argued that rainfall entering the impoundments on its facility did not constitute "free liquids" under TPCA because the rainfall never combined with the solid hazardous waste contained therein. Baxter also challenged the board's definition of "discharge" under the TPCA.

This letter became the subject of an interoffice memorandum which was circulated among members of the regional board. Baxter received a copy of this memo seven months later in connection with a cease and desist order issued on June 23, 1988. The memorandum discussed Baxter's arguments, and defined "discharge" and "free liquids". The memo concluded by stating that a surface impoundment containing solid hazardous waste is covered by the TPCA as soon as the impoundment receives water from precipitation, infiltration, flooding, etc. The memo also indicated that as a general rule, WRCB follows this policy. In its request to OAL, Baxter contended that the memo indicated the regional board had illegally adopted, through the use of internal memoranda, certain standards or policies which it was applying generally in the administration of the TPCA. Baxter contended that these policies and definitions are regulations which must undergo the APA rulemaking procedure.

OAL issued its determination on February 2, concluding that the North Coast Regional Board had not acted improperly in applying the TPCA to the discharge by Baxter. OAL reached its conclusion by examining the legislative intent of the TPCA and the legislature's own interpretations of "discharge" and "free liquids". OAL concluded that the definitions as articulated by the regional board are merely restatements of provisions within the TPCA, and that it is not necessary to go through the rulemaking process in order to enforce them. (*See supra* agency report on OAL and CRLR Vol. 9, No. 1 (Winter 1989) p. 28 for background information.)

Drought Threatens Water Supplies. On March 15, the Department of Water Resources (DWR) notified State Water Project (SWP) contractors that the fourth consecutive drought year may result in water supply cutbacks up to 50%. Water deliveries from the federal Bureau of Reclamation's Central Valley Project have already been reduced for only the second time since the 1930s. Final spring surveys indicate that the winter snowpack melted away early, leaving only 10% of normal capacity. Winter runoff into the Sacramento River system, which supplies the majority of water to southern California, is at 40% of average capacity. Although the Sacramento and Feather River systems have higher levels than in 1977, California's worst drought year, the previous three drought years have combined to make the situation critical. Additionally, recent court decisions have reduced the amount of water available to the Metropolitan Water District (MWD) from the Mono Lake area and the Colorado River. (*See infra* LITIGATION and CRLR Vol. 9, No. 3 (Summer 1989) p. 116 for background information.)

Because of the reduced water supply, the Deukmejian administration is considering new proposals to increase the amount of water available to the SWP. The proposed $1 billion package includes construction of a "water bank" reservoir at Los Banos, which will cost an estimated $600-$700 million. The $1.7 million acre-foot capacity reservoir would store extra water available from early winter runoffs, reducing the amount of water taken from the Bay-Delta Estuary in the spring and summer months. Additional measures under consideration include construction of four new pumps at the Clifton Court Forebay, where water currently is pumped to the California Aqueduct. In late summer or early fall, the DWR will issue another report on construction of another $100-$150 million in channel improvements, including widening the south fork of the Mokelumne River. DWR concedes that the new measures will force WRCB to reevaluate the current proposals under consideration at the Bay-Delta hearings. (See CRLR Vol. 10, No. 1 (Winter 1990) pp. 142-43; Vol. 9, No. 3 (Summer 1989) p. 114; and Vol. 9, No. 2 (Spring 1989) pp. 107-08 for background information.)

The drought has impacted each of the state's nine water regions quite differently. For example, Santa Barbara County, within the jurisdiction of the Central Coast Regional Board, is currently under a mandatory 45% water use reduction program. Santa Barbara County is not supplied via aqueducts which bring water in from northern California and the Colorado River, but instead relies on reservoirs. The city's Cachuma Reservoir is currently 30% below its normal level. New rules in Santa Barbara make it illegal to water lawns, limit home consumption of water to 50-75 gallons per person per day, and impose stiff fines on violators.

Many of San Diego County's individual water agencies are considering mandatory cutbacks on water use in order to achieve a 10% reduction in county water use. Outdoor water use would be targeted—for example, lawns could only be watered between the hours of 6:00 p.m. and 6:00 a.m.; rinsing driveways and sidewalks with water would be banned; and restaurants could serve water only upon request. If these restrictions are unsuccessful in saving water, county water officials may implement a Stage 3 alert, with much more drastic mandatory restrictions on water use.

The City of Los Angeles, part of the Los Angeles Region, is also considering a mandatory water rationing plan which would set stiff financial penalties for residents and businesses which fail to curtail consumption by 10%. Measures such as low-flow shower heads, reduction in the number of car washes, and planting drought-resistant gardens will be considered as a part of the reduction plan.

Statewide Plans. On February 28 and March 5, WRCB held public hearings regarding two proposed statewide water quality control plans: the proposed Water Quality Control Plan for Inland Surface Waters, and the proposed Water Quality Control Plan for Enclosed Bays and Estuaries. The two plans would supplement and complement the already existing California Ocean Plan and the Thermal Plan. These proposed plans would impact WRCB, the nine regional boards, waste dischargers regulated by the regional boards, and the public.

The federal Clean Water Act (CWA) requires each state to adopt water quality standards for surface waters within that state. California Water Code section 13170 authorizes the Board to adopt water quality control plans (statewide plans) for those same waters within California. The statewide plans supersede any regional water quality control plans for the same waters. The plans must designate the beneficial uses to be protected, water quality objectives, and a program of implementation. The CWA

also requires each state to adopt water quality objectives for toxic substances expected to interfere with beneficial uses.

WRCB staff prepared a Functional Equivalent Document (FED) which describes several important issues relevant to the statewide plans. Among others, these issues include: designation of beneficial uses, water quality objectives for the protection of aquatic life and human health, effluent limitations, monitoring requirements, and the relationship of the statewide plans to existing statewide water quality control policies.

Much of the testimony presented at the two hearings centered on the difficulty of meeting the proposed water quality objectives. The Board made no decisions at these hearings regarding the adoption of the statewide plans. After evaluating all the comments received, staff will respond to the public comments, and present a summary of the hearing record to the Board at a future meeting. The staff may prepare a revised draft of the plans, which would also be presented to the Board for consideration at a future meeting; at this writing, the exact date has not been set.

Fee Regulation. On January 5, the Board held a public hearing on proposed regulations controlling annual fees for the regulation of waste discharge. (See CRLR Vol. 10, No. 1 (Winter 1990) p. 142 for background information.) These proposals would amend sections 2200 and 3833, Title 23 of the CCR.

The language of the proposed regulations was revised in response to comments received at the January 5 hearing and during the public comment period. One revision would require that National Pollutant Discharge Elimination System (NPDES) permits for areawide urban storm water discharges, or for group industrial storm water discharges, be subject to an annual fee of $10,000. Additional revisions state that if waste discharge requirements are waived pursuant to section 13269 of the Water Code, a refund of the filing fee will be provided with certain restrictions. These restrictions include the withholding of sufficient funds to cover staff time spent in reviewing the report of waste discharge, which sum will be calculated at $50 per hour.

Written comments on these revisions were accepted until May 23. The Board will consider the written comments at a future meeting; at this writing, the date has not yet been determined.

LEGISLATION:

SCR 55 (Boatwright) requests WRCB and the state Department of Health Services, with the cooperation of the Department of Water Resources, to conduct a study of the quality of drinking water available from the Sacramento-San Joaquin Delta, including specified matters, and to submit a report to the legislature by June 30, 1991. This measure was chaptered on May 18 (Chapter 39, Resolutions of 1990).

AB 3426 (Eastin) would create the Water Planning Task Force, as prescribed, to evaluate California's major long-term water problems and to attempt to reach consensus on methods to resolve those problems. This bill would require the Task Force to prepare a concise analysis of the various water problems and their interrelationships, and to make its recommendations to the Governor and the legislature on or before December 31, 1991. This bill would appropriate $50,000 from the California Environmental License Plate Fund to the Department of Water Resources for purposes of the task force. This bill is pending in the Senate Agriculture and Water Resources Committee.

AB 4328 (Baker), as amended April 30, would require WRCB to conduct a survey to identify water and sewage reclamation plants that produce water suitable and available for use in central valley wildlife refuges. This bill is pending in the Senate Agriculture and Water Resources Committee.

SB 1816 (Roberti), as amended May 30, would enact the Toxic Discharges Prevention Act of 1990, which would require WRCB, in consultation with the regional water quality control boards and publicly owned treatment works, to establish a program to prevent the generation of water pollutants. The bill would require specified dischargers to conduct a pollution prevention audit and plan, and to submit the audit and plan for review and certification in accordance with prescribed procedures. The bill would require WRCB, by January 1, 1992, to adopt a format to be used by dischargers for completing the audit and plan, and a plan summary.

The bill would require WRCB to establish a technical and research assistance program, containing specified elements, to assist facilities in identifying and applying methods to prevent the generation of water pollutants. The bill would also require WRCB to submit every two years to the Governor and the legislature a report, containing specified information, on the operations and activities in carrying out the bill; and would require WRCB to adopt regulations to carry out the bill, including regulations to protect trade secrets, as prescribed.

Finally, this bill would require WRCB, by January 1, 1992, to adopt, by regulation, a fair and equitable system for charging and collecting fees from dischargers subject to the bill, and would require all fees collected to be paid to WRCB by September 1, 1992, and deposited in the Water Pollution Prevention Account in the general fund, which the bill would create. This bill is pending in the Assembly Committee on Environmental Safety and Toxic Materials.

SB 2004 (Keene) would authorize WRCB to expend money from the Underground Storage Tank Clean-up Fund in the general fund to reimburse eligible owners and operators for costs related to the compensation of third parties for bodily injury and property damages arising from an unauthorized release of petroleum into the environment from an underground storage tank for up to a specified amount, if WRCB makes a specified determination. This bill would increase the amount of money which the Board is authorized to pay to eligible owners and operators for corrective action costs to not more than $1 million, and would require the Board to approve the reasonableness of the estimated cost of corrective action. Also, the bill would prohibit the Board from paying any claims against, or presented to, the Fund if the claims are in connection with an unauthorized release of petroleum from an underground storage tank resulting from the intentional or reckless acts of, or gross negligence of, the claimant. This bill is pending in the Assembly Committee on Environmental Safety and Toxic Materials.

SB 1999 (Bergeson), which would require WRCB to conduct a pilot study to determine the feasibility of the use of wetlands treatment in improving water quality in the New River, is pending in the Assembly Ways and Means Committee.

The following is a status update on bills described in CRLR Vol. 10, No. 1 (Winter 1990) at page 143:

SB 65 (Kopp, et al.), which—subject to the approval of the electorate—amends Proposition 65 to include public agencies regardless of the number of employees within their jurisdiction, became law without the Governor's signature (Chapter 407, Statutes of 1990).

AB 478 (Bates) would have required certain regional boards to conduct unannounced inspections of waste discharges that could affect the quality of specified waters. This bill was vetoed by the Governor on June 1.

SB 415 (Torres), as amended May 8,

would revise the provision regarding civil and criminal penalties in Proposition 65. This bill is pending in the suspense file of the Assembly Ways and Means Committee.

LITIGATION:

On February 28 in *California Trout v. Superior Court*, No. C007123, 90 D.A.R. 2125, the Third District Court of Appeal ordered WRCB to immediately comply with a previous court order to attach minimum water flow requirements on the appropriation permits of the Los Angeles Department of Water and Power (DWP). In *California Trout v. State Water Resources Control Board*, 207 Cal. App. 3d 585 (1989), the court found that DWP was releasing insufficient amounts of water over its diversion dams on four tributaries to Mono Lake, destroying the fishery habitats on those stream systems. DWP's actions conflicted with sections 5937 and 5946 of the Fish and Game Code, which establish a public trust priority for the maintenance of fisheries. (See CRLR Vol. 9, No. 3 (Summer 1989) p. 116 and Vol. 9, No. 2 (Spring 1989) p. 110 for background information.)

On remand to the trial court, the court directed WRCB to attach immediate water release requirements to DWP's appropriation permits. However, WRCB successfully urged the trial court to grant a delay until 1992, arguing that studies on the appropriate instream water flow requirements would take over a year to complete, and that WRCB had discretion to coordinate action on the four tributaries with current studies of Mono Lake.

The appellate court rejected both arguments for delay, finding that information on the necessary water flow requirements could be discovered through other studies within thirty days, and would allow interim release rates to be set. Additionally, WRCB's discretion is limited by section 5946, since the legislature previously established a public trust priority for fisheries. According to the court, the imposition of water flow requirements will affect the water level in Mono Lake, but do not justify the lengthy delay urged by WRCB.

On April 4, WRCB amended the water rights licenses of the City of Los Angeles, requiring that enough water be left in the Mono Lake tributaries to support fisheries.

On March 16 in *Boston Ranch Company, et al. v. Wetlands Water District and U.S. Dep't of the Interior*, No. 89-15098, 90 D.A.R. 2919, the U.S. Ninth Circuit Court of Appeals upheld a federal law which limits the size of farms eligible for irrigation water subsidies. The law, passed in 1982 and amended in 1987, allows leased farms larger than 960 acres to continue receiving subsidized water from Bureau of Reclamation (Bureau) projects only if the land in excess of the 960-acre limit is sold within ten years. After that date, the Interior Department has the power to force a sale and charge the actual water delivery costs to the access land owners. The Bureau currently provides subsidized water at $8 per acre-foot, rather than the approximate $42 per acre-foot actual cost. The average subsidy in California from the Bureau's Central Valley Project is about $1,850 per acre.

The Ninth Circuit rejected arguments that farmers who signed agreements before 1982 had a contractual right to continue receiving subsidized water, finding that Congress intended the law to apply to all Bureau contracts. The court also rejected arguments that farmers had a constitutional right to the subsidy.

In *United States and California v. City of San Diego*, No. 88-1101-B (S.D. Cal.), city, state, and federal officials ratified a settlement agreement on January 30. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 125; Vol. 9, No. 3 (Summer 1989) p. 116; and Vol. 9, No. 2 (Spring 1989) p. 110 for extensive background information on this case.)

Under this agreement, the city is required to have a new sewage water reclamation system fully operational by December 31, 2003. The Sierra Club, an intervenor in the lawsuit, subsequently charged that the settlement agreement was inadequate. The Sierra Club alleged that the city had failed to implement adequate water conservation efforts, such that the total volume of waste water being treated is expected to increase by about 50 million gallons per day. The completion date of the new sewage plant is thirteen years in the future, and the Sierra Club is concerned that releasing the sewage effluent into the ocean during the thirteen-year interim period will violate the federal Clean Water Act. The Sierra Club urged amendments to the settlement agreement requiring the city to employ water conservation measures, thereby reducing the influx of water into the sewage system, and consequently reducing the amount of effluent which must be treated and discharged.

Oral argument on this issue was heard on February 21 in the courtroom of U.S. District Court Judge Rudi M. Brewster. Attorney Robert Simmons appeared on behalf of the Sierra Club; the City of San Diego, the EPA, and the Regional Water Quality Control Board were also represented at the hearing.

The Sierra Club argued that county residents could save more than $200 million over twenty years and save millions of gallons of water if the federal government were to order San Diego to institute water conservation measures. Residents would save money because less sewage (which is about 90% water) would be generated, such that the city would not have to construct a massive new sewage treatment plant. The Club urged installation of low-flow toilets, low-flow shower heads, and faucet restrictors in all new homes and homes remodeled or sold in the San Diego area.

City and federal officials urged the judge not to amend the settlement agreement, arguing that it took months to negotiate and that the agreement requires the city to reduce the amount of effluent released into the ocean. The existing treatment plant removes about 75% of the solids from the sewage treatment each day; the agreement requires the city to remove about 90% of the solids by 2003. The decree also requires the city to begin recycling 89 million gallons of sewage per day by 1999.

On March 21, Judge Brewster issued his ruling, which rejected the Sierra Club's proposed amendments to the settlement agreement. The court noted that water conservation measures are needed, but are "best developed by elected representatives." The ruling means that the city can finally proceed with its sewage water reclamation plans, pending public hearings and final judicial approval of the system.

City of Sacramento v. State Water Resources Control Board; California Regional Water Quality Control Board for the Central Valley Region; Rice Industry Committee as Real Party in Interest, No. 363703, was filed in Sacramento County Superior Court on March 16. This suit is a companion suit to the action filed by the Environmental Health Coalition and the Environmental Council of Sacramento against the same parties. The suit filed by the environmental groups includes the Department of Food and Agriculture as a real party in interest. Both suits allege 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. This action is the third suit filed against the same parties on essentially the same issues.

The Porter-Cologne Act requires each regional board to adopt water quality control plans (basin plans) which set forth water quality control policies and

objectives for waters within its jurisdiction. Water Code sections 13240-13245 also require that the basin plans adopted by each regional board include programs of implementation designed to meet these objectives. The California Environmental Quality Act (CEQA) requires the preparation of an environmental impact report (EIR) or equivalent document for any project which may have a significant effect on the environment. The City of Sacramento contends that the January 1990 amendment of the Central Valley Regional Board's basin plan constitutes a project under CEQA.

In 1975, the Central Valley Regional Board and WRCB approved and adopted a plan for the Sacramento River Basin, Folsom Lake, and the American River below Folsom Lake. The plan stated, *inter alia,* that the pesticide levels in the Sacramento River could not exceed .6 parts per billion (ppb). In 1977, in an action entitled *City of Sacramento v. Regional Board, et al.*, No. 350988 (Sacramento County Superior Court), the city claimed that the regional board had neither designed nor initiated the required implementation program. Consequently, the pesticide levels in the Sacramento River exceeded the .6 ppb level. The city asserted that the water boards were allowing growers to drain chemical-laden farm run-off back into the Sacramento River. The city sought a court order requiring the Central Valley Regional Board to initiate an implementation plan. The court issued the order; the regional board appealed to the Third District Court of Appeal. The appeal has not yet been heard. In this most recent lawsuit, the city claims that the regional board has refused to comply with the 1977 Superior Court order.

In 1988, the city filed a second suit, *City of Sacramento, Lloyd Connelly, and the Sacramento Environmental Health Coalition v. Regional Board, et al.*, No. 361381 (Sacramento County Superior Court). Petitioners asserted that the Central Valley Regional Board had failed to comply with CEQA requirements for environmental review regarding the rice herbicide programs. Consequently, the pesticide levels in the Sacramento River again exceeded .6 ppb and the regional board had not produced any implementation plan to reduce the pesticide levels to the required .6 ppb. The court issued an order requiring the regional board to perform a proper environmental review as required by CEQA. The regional board appealed this decision. In the recent suit, the city claims the regional board has also refused to comply with this Superior Court order.

In January and February 1990, WRCB and the regional board approved and adopted changes to the regional board's basin plan. The new plan invalidates the prior pollution standard which prohibited pesticide residues in the river from exceeding .6 ppb. The new standard requires that pesticides not be present in concentrations which would impair beneficial uses of water. The regional board also adopted a new implementation plan designed to attain the new standard.

The March 16 action filed by the city charges that with the adoption of the new standard, the boards failed to prepare a separate EIR as required by CEQA; the regional board's program of implementation is deficient and ineffective; the regional board's plan directly contradicts state policy prohibiting further degradation of water quality; and the regional board failed to fully review alternatives for reducing pollution levels. The city has petitioned for a writ of mandate to set aside the amendments to the basin plan adopted by the regional board on January 26 and approved by WRCB on February 15, and to order the regional board to prepare a proper EIR before it amends the basin plan. This document would contain alternatives to the basin plan for reducing pesticide levels. The city has also requested an injunction prohibiting the respondents from taking any further action to implement a rice herbicide control program which does not meet existing water quality objectives or fully comply with CEQA. Further, the city has also requested a declaration that the amendments adopted by the regional board are null and void because they conflict with state water policy. Finally, the city requests an order declaring that the amendments approved by WRCB on February 15 violate the Porter-Cologne Act.

WRCB asserts it has fully complied with the CEQA requirements regarding the potential environmental impacts. At this writing, no hearing date has been set.

No hearing has been set in *State Water Resources Control Board and the Regional Water Quality Control Board, San Francisco Region v. Office of Administrative Law*, No. 906452 (San Francisco County Superior Court). The San Francisco Bay Planning Coalition is the real party in interest. The suit, filed in May 1989, requests a writ of mandate against OAL, ordering OAL to vacate its Determination No. 4 (Docket No. 88-006).

On April 17, 1975, WRCB approved the Water Quality Control Plan for the San Francisco Bay Region. Between 1975 and 1986, the regional board adopted and WRCB approved eight amendments to the Plan. In December 1986, the San Francisco Regional Water Quality Control Board adopted certain additional amendments to the Plan and requested WRCB to approve them. WRCB approved these amendments in May 1987; at the same time, it remanded other portions to the regional board for further consideration.

In August 1987, the regional board adopted Resolution No. 87-106, which addressed the issues remanded by WRCB. The Resolution resulted in amendments to Chapters 2, 3, and 4 of the San Francisco Bay Plan. These amendments included, *inter alia*, amendments intended to advance the protection of wetlands within the San Francisco Bay region. Three public hearings and three public workshops were conducted. In September 1987, WRCB approved the regional board's amendments to Chapters 2, 3, and 4 of the San Francisco Bay Plan; that approval was set forth in Resolution 87-92.

In May 1988, the Bay Planning Coalition filed a request for determination with OAL. This request charged that the amendments as adopted by the regional board and approved by WRCB violated the APA. The Coalition alleged that the regional board had engaged in "underground rulemaking." In March 1989, OAL issued Determination No. 4, finding that those amendments to the Bay Plan which defined "wetlands" and set forth certain criteria for permit discharges to wetland are regulations, and therefore must be adopted in compliance with the APA.

Subsequent to the exhaustion of all available administrative remedies by both the regional board and WRCB, they filed this lawsuit in May 1989. The petition for writ of mandate asserts that OAL exceeded its jurisdiction and abused its discretion. The petition alleges that OAL failed to recognize the incompatibility between the Porter-Cologne Water Quality Act, which requires adaptation of water quality control plans, and the APA, which establishes general procedures for the adoption of regulations by state agencies. The Boards assert that the statutory obligations of the Porter-Cologne Act prevail over the general requirements of the APA.

WRCB and the regional board have therefore requested the court to issue a declaration stating that the amendments

to Chapters 2, 3, and 4 of the San Francisco Bay Plan are not subject to the provisions of the APA. The boards have also requested the court to declare that the regional and state boards are not required to comply with the procedures of the APA when the boards are engaged in the formulation and adoption of water quality control plans under the Porter-Cologne Act. Finally, the boards also request recognition of the fact that the California legislature has exempted the water quality planning process from the requirements of the APA. (See CRLR Vol. 10, No. 1 (Winter 1990) p. 143 and Vol. 9, No. 3 (Summer 1989) pp. 27 and 114-15 for background information.)

In *California v. Federal Energy Regulatory Comm'n*, No. 89-333, 90 D.A.R. 5598 (May 21, 1990), the U.S. Supreme Court held that minimum flow rates established by WRCB are preempted by the Federal Power Act (FPA). (See CRLR Vol. 9, No. 4 (Fall 1989) pp. 124-25 for background information on this case.)

In 1983, the Federal Energy Regulatory Commission (FERC) issued a license authorizing the operation of the Rock Creek project. The license required the project to maintain interim minimum flow rates of 11 cubic feet per second (cfs) during the summer months and 15 cfs during the rest of the year. In 1984, WRCB issued a permit that conformed to FERC's interim minimum flow requirements but reserved the right to set different permanent minimum flow rates. Subsequently, WRCB demanded that the licensee maintain minimum flow rates of 60 cfs during the summer months and 30 cfs during the remainder of the year. After FERC issued a declaratory order directing the licensee to comply with the minimum flow requirements of the federal permit, WRCB intervened to seek a rehearing of FERC's order. FERC denied the rehearing request, on the grounds that FERC held exclusive jurisdiction to determine minimum flow rates.

Relying on *First Iowa Hydro-Electric Cooperative v. FPC*, 328 U.S. 152 (1946), the Court held that California's actions were preempted by the FPA. The Court stated: "Adhering to *First Iowa's* interpretation of § 27 [of the FPA], we conclude that the California requirements for minimum instream flows cannot be given effect and allowed to supplement the federal flow requirements. A state measure is 'pre-empted to the extent it actually conflicts with federal law, that is, when it is impossible to comply with both state and federal law, or where the state law stands as an obstacle to the accomplishment of the full purposes and objectives of Congress.'"

The Court agreed with FERC that the California requirements interfere with its comprehensive planning authority and found that allowing California to impose the challenged requirements would be contrary to congressional intent regarding the Commission's licensing authority and would "constitute a veto of the project that was approved and licensed by FERC."

FUTURE MEETINGS:

Workshop meetings are generally held the first Wednesday and Thursday of each month. For the exact times and meetings 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 Chapter 3.5, 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).

MAJOR PROJECTS:

Enforcement Program. The Board's enforcement program investigates complaints regarding specific licensees. (See CRLR Vol. 10, No. 1 (Winter 1990) p. 144 and Vol. 9, No. 4 (Fall 1989) pp.125-26 for background information.) The Board is currently investigating complaints against three auction companies and six auctioneers for failure to pay consignors. Additionally, eight licensees have been suspended by the Board for failing to pay administrative fines assessed by the Board.

Disciplinary Actions. In addition to the enforcement program, the Board has a disciplinary review committee for both northern and southern California. The new northern California committee members include John Gallo, Paula Higashi, and John Rademaker; while the current southern California members are Judith Johnson, Jan Bendis, and Brian Meyers. As a result of disciplinary proceedings, five licensees have lost their licenses since the Board's January meeting. The basis for each revocation was failure to pay consignors. All five licenses were revoked under the authority of section 5775(m) of the Business and Professions Code. The Board will continue to encourage consignors to file complaints and bond claims with the Board when they have not been paid within thirty working days.

Monitoring of Advertisements. The Board continues to investigate complaints dealing with false advertising. As the complaints are received by the Board, investigations are conducted to determine whether disciplinary action should be taken against the specific licensee. (See CRLR Vol. 10, No. 1 (Winter 1990) p. 144 and Vol. 9, No. 4 (Fall 1989) p. 126 for background information.) Lately, the main focus has been on the term "estate sale." The Board has