



tiffs allege that CDF regularly approves THPs and allows timber operations to commence without issuing written responses to significant environmental objection by the public no more than ten days from the date the plan is approved, contrary to the requirements in sections 1037.7 and 1037.8 of the Forest Practice Rules and CEQA, as interpreted in *EPIC v. Johnson*, 170 Cal. App. 3d 604 (1985), and other cases. Further, plaintiffs allege that, in numerous instances, CDF has failed to address the cumulative impacts of the proposed harvest along with other past, present and proposed harvests, pursuant to CEQA and *EPIC v. Johnson*. Plaintiffs allege a list of 65 approved THPs as illustrative of respondents' "procedure" to issue responses to public comments tardily or not at all, and of respondents' having "consistently ignored" their duty to assess cumulative impacts. Respondents demurred to the amended complaint. The trial court sustained the demurrer, and plaintiffs appealed.

In reversing and remanding for trial, the appellate court held that an action for declaratory relief is a proper vehicle, noting that the material factual allegations of plaintiffs' complaint have been admitted by respondents' demurrer. "Appellants allege and respondents dispute whether CDF is engaged in conduct or has established policies in violation of applicable statutes, regulations, and judicial decisions. Clearly the allegations of appellants' complaint sufficiently set forth an actual controversy over significant aspects of respondents' legally-mandated duties."

In response to CDF's argument that plaintiffs are merely expressing dissatisfaction with a series of 65 THP approvals, the court again noted that plaintiffs allege a "pattern and practice" of conduct violative of the law, which has been admitted by means of respondents' demurrer. The court also rejected respondents' argument that plaintiffs' challenge should be by way of a petition for administrative mandamus; "[a]ppellants...challenge not a specific order or decision, or even a series thereof, but an overarching, quasi-legislative policy set by an administrative agency. Such a policy is subject to review in an action for declaratory relief."

On September 19, the California Supreme Court denied respondents' petition for review. At this writing, this action is proceeding to trial.

#### RECENT MEETINGS:

At the June 5 Board meeting, Lloyd Bradshaw, Chair of the Forest Pest Council, reported that pest conditions

were getting worse in California as a result of low precipitation. The average annual loss to insects is 800 million board-feet. In 1989, losses were estimated at 2 billion board-feet. Bradshaw estimates that 5-6 billion board-feet will be lost in 1990 due to insect mortality, increasing the fire hazard and worsening burning conditions.

At the Board's September 12 meeting, CDF Director Harold Walt recommended that the Board follow the Governor's lead in publicly opposing Proposition 130 in the November election, which would affect the composition of the Board. Although Board public member Elizabeth Penaat suggested that this policy statement would appear to be a self-serving attempt by Board members to maintain their positions, the policy was approved.

Also in September, the Mendocino County Board of Supervisors requested assistance from the Board in developing a long-term timber goal. According to members of the Board of Supervisors, Mendocino County has allowed industry to cut at a higher rate than growth in the name of private property rights. With its resource base dwindling, the county now seeks to achieve a "sustained forest." The Board is assembling a task force on this issue, and intends to visit Mendocino County in early 1991.

#### FUTURE MEETINGS:

To be announced.

#### 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 respec-

tive 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 appropriate 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:

*California's Drought Continues.* Ongoing drought conditions continue to be a major water resource control problem; a recent poll indicated that 71% of California residents believe that an adequate supply of water is a critical issue facing the state. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 193 for background information.) One report estimated that if the drought extends into a fifth year, it could cost the southern California economy alone up to \$25 billion and 400,000 jobs, resulting from forced reductions in municipal, industrial, and agricultural use.

Experts contend that reservoirs are already so low and watersheds are so dry that even a normal winter would not provide enough runoff for most water systems in the state to satisfy full demand in 1991. Further, the Department of Water Resources—which has proclaimed 1990 to be a "critically dry year"—is unable to forecast the weather from November through February, normally the wettest months for parts of the state.

Most cities have already implemented mandatory or voluntary conservation plans, seeking to save between 10-45% of normal water use. Cities which do not currently meter residents' water usage,



such as Sacramento, are considering implementing water meters as a way to encourage people to conserve water. However, the projected net water savings which would occur as a result of installing water meters in Sacramento has ranged from estimates of 2-40%, depending on who is conducting the study. (For background information on other conservation measures, see CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 192 and Vol. 9, No. 1 (Winter 1989) pp. 1 and 95.)

*OAL Disapproves Proposed Regulatory Changes.* On June 22, WRCB submitted its proposed regulatory action on water quality monitoring and response programs for waste management units to the Office of Administrative Law (OAL) for approval. The proposed action would have repealed existing Article 5, Subchapter 15, Chapter 3, Title 23 of the CCR, and adopted a new Article 5. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 192 for detailed background information.) One purpose of the proposed action was to adopt water quality monitoring and response programs which parallel the water quality monitoring and response programs adopted by the state Department of Health Services as part of its effort to receive authorization to administer the state's program for management and control of hazardous wastes in lieu of the federal program.

On July 30, OAL rejected the proposed regulatory amendments, citing a number of procedural defects. For example, OAL found that sections 2550, 2550.4, 2550.7, 2550.8, 2550.9, and 2550.10 were adopted with modifications but without opportunity for public comment on the modifications; WRCB failed to provide OAL with the written delegation authorizing the person who signed the certified copy of the regulatory action to do so; a copy of the order of repeal for existing Article 5, Subchapter 15, was not transmitted to OAL; the copy of the published notice included in the rulemaking record contained no informative digest; the rulemaking record included no findings regarding the applicability of required reports to small businesses; several documents in the rulemaking record, including the final statement of reasons, were incomplete; and the declaration regarding closure of the rulemaking record was not included on the index to the rulemaking record.

Also on July 30, OAL rejected WRCB's proposed amendments to section 2601 (Technical Definitions) of Article 10, Subchapter 15, Chapter 3 of the CCR. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 192 for

background information.) OAL rejected the proposed amendments on grounds that WRCB failed to comply with the Administrative Procedure Act (APA) in that, among other things, the rulemaking record did not demonstrate that before the modified proposal was adopted, it had been made available for public comment with the modifications "clearly indicated." OAL also stated that the proposal failed to meet the clarity standard in Government Code section 11349.1, determining that the text of the definition of "active life" did not clearly convey its meaning as described in a response to comment, and the terms "discharges" and "waste" as used in the definition of "discharger" were undefined.

At this writing, WRCB has not confirmed its intention to resubmit the proposed changes.

*Fee Regulation.* On August 1, OAL approved the Board's proposed regulatory changes revising annual fees for the regulation of waste discharge. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 194 and Vol. 10, No. 1 (Winter 1990) p. 143 for background information.) The regulatory changes amend sections 2200 and 3833, Title 23 of the CCR.

*Statewide Plans.* On September 4, WRCB held a public workshop on the proposed Water Quality Control Plan for Inland Surface Waters, and the proposed Water Quality Control Plan for Enclosed Bays and Estuaries. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 193-94 for detailed background information.) A major element of the proposed plans is the adoption of water quality objectives for toxic substances mandated by the federal Clean Water Act.

WRCB staff is currently reviewing and responding to comments received, and will present a summary of the workshop record to the Board for consideration as a future meeting; at this writing, no exact date has been set.

*San Francisco Bay/Sacramento-San Joaquin Delta Estuary Update.* On June 21, WRCB adopted a resolution accepting a Pollutant Policy Document (PPD) for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary. (See CRLR Vol. 10, No. 1 (Winter 1990) pp. 142-43; 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 detailed background information.)

The PPD establishes the state policy for water quality control under Water Code sections 13140-13147, and will be used by the San Francisco Bay and Central Valley Regional Water Quality Boards as a guide in updating portions of their Basin Plans. The PPD addresses

concerns in the Bay/Delta with six pollution policies and a number of actions. For example, one part of the PPD protects beneficial uses of water such as fish and wildlife by prohibiting the use of the Delta outflow to flush out Bay portions, unless all other reasonable source controls have been implemented and it would be in the public interest to do so.

One of WRCB's goals is to eliminate the discharge of dioxins and related compounds into the Bay/Delta by the year 2000. Thus, the PPD establishes a Mass Emission Strategy, designed to control emissions of compounds that tend to accumulate in the tissues of organisms and in sediment.

Adoption of the PPD completes one of WRCB's four products expected from the Bay-Delta proceedings, which have been ongoing since 1987. The three other products are a Water Quality Control Plan for Salinity (scheduled for completion in the fall of 1990), a Water Rights Decision, and an accompanying Environmental Impact Report (both scheduled for completion in the fall of 1992).

#### LEGISLATION:

The following is a status update on bills reported in detail in CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) at pages 194-95:

*AB 3426 (Eastin)*, as amended August 29, would have created 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 have required 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 was vetoed by the Governor on September 21.

*AB 4328 (Baker)*, which requires 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, was signed by the Governor on September 30 (Chapter 1646, Statutes of 1990).

*SB 1816 (Roberti)*, as amended August 23, would have enacted the Toxic Discharges Prevention Act of 1990, and would have required 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 also would have required WRCB to establish a technical and research assistance program, containing specified elements, to assist facilities in identifying and applying methods to pre-



vent the generation of water pollutants. This bill died after being rejected by the Assembly Ways and Means Committee on August 29.

*SB 2004 (Keene)*, as amended August 28, makes numerous significant and technical clean-up changes to provisions established in *SB 299 (Keene)* (Chapter 1442, Statutes of 1989), which established two programs intended to assist owners or operators of petroleum underground storage tanks to upgrade, replace, remove, and/or clean up their tanks, in compliance with state and federal underground storage tank (UST) laws.

Under one of these programs, administered by WRCB, owners/operators of USTs are required to pay an annual maintenance fee of \$200 for each UST issued a permit, and to maintain the financial ability to deal with the consequences of leaking tanks. They must establish the ability to finance at least \$50,000 in clean-up activities through insurance, a surety bond, guarantees, or a letter of credit. If the owner/operator carries out a clean-up, he/she may claim reimbursement from the Underground Storage Tank Clean-up Fund (USTCF), administered by WRCB, for clean-up costs which exceed \$50,000. Under *SB 299*, the maximum reimbursement for each clean-up was \$950,000.

This urgency bill repeals the \$200 annual maintenance fee, and instead requires owners/operators to pay a storage fee of six mills (.6 cents) per gallon of fuel stored in the tank. It also decreases the level of financial responsibility required to be obtained to \$10,000 for each occurrence, thus increasing the reimbursement level to \$990,000. Among other things, this bill also deletes the current 5% cap which limits the amount of funds which may be appropriated to WRCB for its administrative expenses in operating this program. This bill was signed by the Governor on September 26 (Chapter 1366, Statutes of 1990).

*SB 1999 (Bergeson)*, as amended August 23, requires WRCB to conduct a pilot study to determine the feasibility of the use of wetlands treatment in improving water quality in the New River. Although the Governor signed this bill on September 24 (Chapter 1322, Statutes of 1990), he deleted the \$100,000 appropriation which would have enabled WRCB to carry out this function.

*SB 415 (Torres)*, which would have revised the provision regarding civil and criminal penalties in Proposition 65, died after being rejected by the Assembly Ways and Means Committee on August 28.

## LITIGATION:

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

Despite the settlement agreement, at an August 29 hearing, U.S. District Court Judge Rudi M. Brewster questioned the rationale behind the \$2.8 billion expenditure to build the new secondary sewage plant, stating that he had become disturbed by the level of scientific opposition to the plan. For example, Roger Revelle, Director Emeritus of Scripps Institute, stated that marine scientists oppose the project on the basis that it would not result in any significant improvement to the marine environment. Judge Brewster asked all sides to submit briefs addressing his authority to alter the Clean Water Act's secondary treatment requirement. If he does have such authority, Judge Brewster may hold new hearings to determine possible alternative solutions which would protect the environment and comply with the intent of the Clean Water Act. Counsel had until October 1 to submit their briefs.

*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, is still pending in Sacramento County Superior Court. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 195-96 for detailed background information.) The suit 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. At this writing, WRCB had not yet filed its answer to the complaint.

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), plaintiffs request a writ of mandate ordering OAL to vacate its Determination No. 4 (Docket No. 88-006). (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 196-97 for detailed background information.) The Determination found that certain WRCB amendments to the San Francisco Bay Plan, which defined "wetlands" and set forth certain criteria for permit discharges to wetlands are regulations, and therefore must be adopted in compliance with the APA.

Following a September 14 hearing, the judge took the matter under submission; he was expected to release his decision in late November.

## 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 Wyatt*  
(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 estab-

lishing 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