tic adjustment on a patient who is under anesthesia. After a further discussion of this issue at its September 13 meeting, the Board—in a 4-2 vote—approved the following policy statement: "A proper chiropractic adjustment, if within the scope of [regulatory] section 302, is not made illegal simply because the patient is under anesthesia." The Board does not plan to adopt this policy as a regulation; Board members noted that hospitals with chiropractors on staff should establish protocols to implement this new policy.

At its September meeting, the Board discussed the application of Dean D. Wieben, D.C., a Missouri chiropractor, for a California license by reciprocity. Wieben had called the Board prior to moving to California, and was assured that Missouri and California routinely grant reciprocity licensure to each other's licensees, so long as all credentials are satisfactory. Thus, Wieben invested money in a practice here and moved to California. Although the Board has apparently granted reciprocity licensure to Missouri chiropractors on four prior occasions, it recently learned that Missouri requires one year of licensed practice to be eligible for reciprocity licensure in Missouri. Because BCE does not impose a similar requirement, the Board does not consider this "reciprocity," and initially voted to deny Weiben a reciprocity license. However, upon reconsideration, the Board decided to grant the license on a one-time basis, due to Weiben's detrimental reliance upon the information given to him by a BCE staff member.

FUTURE MEETINGS:

January 17 in southern California.
March 7 in northern California.
April 18 in southern California.
June 20 in northern California.

CALIFORNIA ENERGY COMMISSION

Executive Director: Stephen Rhoads
Chairperson: Charles R. Imbrecht
(916) 324-3008

In 1974, the legislature enacted the Warren-Alquist State Energy Resources Conservation and Development Act, Public Resources Code section 25000 *et seq.*, and established the State Energy Resources Conservation and Development Commission—better known as the California Energy Commission (CEC)—to implement it. The Commission's major regulatory function is the siting of powerplants. It is also generally charged with assessing trends in energy consumption and energy resources available to the state; reducing wasteful, unnecessary uses of energy; conducting research and development of alternative energy sources; and developing contingency plans to deal with possible fuel or electrical energy shortages. CEC is empowered to adopt regulations to implement its enabling legislation; these regulations are codified in Title 20 of the California Code of Regulations (CCR).

The Governor appoints the five members of the Commission to five-year terms, and every two years selects a chairperson from among the members. Commissioners represent the fields of engineering or physical science, administrative law, environmental protection, economics, and the public at large. The Governor also appoints a Public Adviser, whose job is to ensure that the general public and interested groups are adequately represented at all Commission proceedings.

There are five divisions within the Energy Commission: (1) Administrative Services; (2) Energy Forecasting and Planning; (3) Energy Efficiency and Local Assistance; (4) Energy Facilities Siting and Environmental Protection; and (5) Energy Technology Development.

CEC publishes *Energy Watch*, a summary of energy production and use trends in California. The publication provides the latest available information about the state's energy picture. *Energy Watch*, published every two months, is available from the CEC, MS-22, 1516 Ninth Street, Sacramento, CA 95814.

MAJOR PROJECTS:

Harbor Generating Station Repowering Project Decision. CEC recently reaffirmed its July 25 decision that the Los Angeles Department of Water and Power's (LADWP) Harbor Generating Station Repowering Project comes within CEC's jurisdiction, over LADWP's vigorous objection. The ruling is a significant one, since "repowering projects"—now the subject of both litigation and legislation (*see infra* LEGISLATION)—are expected to constitute a majority of utility construction projects in the upcoming decade.

The Harbor Generating Station occupies approximately twenty acres of land in Wilmington. Nine generating units are located on this parcel. The generating units all use natural gas as the primary fuel. Units 1 through 5—each of which consist of a steam boiler operated in conjunction with a steam turbine—were commissioned in the 1940s. Their unrestricted generating capacities are as follows: Unit 1—72 megawatts (MW); Unit 2—67 MW; Unit 3—62 MW; Unit 4—86 MW; and Unit 5—86 MW. Units 6 through 9—which are simple cycle gas turbine generators with a capacity of 19 MW—were commissioned in the early 1970s. Units 6 through 9 do not constitute part of the Repowering Project.

LADWP is required to engage in the Repowering Project under Rule 1135 adopted by the South Coast Air Quality Management District, which establishes a decreasing scale of District-wide daily allowable emission rates and a schedule for achieving such rates for LADWP. Rule 1135 requires, in part, that "[the LADWP]...system shall repower at least 240 megawatts of existing steam boilers by December 31, 1993, with repowered capacity such that NOx [oxides of nitrogen] emissions from the repowered unit do not exceed 0.25 pound of NOx per net megawatt hour."

The proposed Repowering Project will be built on the existing Harbor Generating Station site, and will involve a change from the existing boiler and steam turbine combination to a two-stage combined cycle configuration. As part of the Project, the existing boilers and steam turbine generators for both Units 1 and 2 will be physically removed. In the vacated space, two new combustion turbines (Units 1A and 2A) with a design generating capacity of 80 MW net each and two heat recovery steam generators (HRSG) will be installed. The existing boilers for Units 3, 4, and 5, as well as the existing steam turbine for Unit 3, will be permanently removed from service. The existing steam turbine generators from Units 4 and 5 will remain, with that from Unit 5 serving as the primary receptor of steam from the new HRSGs, and that from Unit 4 serving as the back-up for Unit 5. The steam turbine generator from Unit 5 will receive sufficient steam from the HRSGs installed in conjunction with Units 1A and 2A to generate 80 MW.

Section 25500 of the Public Resources Code (PRC) states that CEC "shall have the exclusive power to certify all sites and related facilities in the state, whether a new site and related facility or a change or addition to an existing facility," and that "no construction of any facility or modification of any existing facility shall be commenced without first obtaining certification for any such site and related facility by the commission...." The term "modification of an existing facility" is defined in PRC section 25123 and is limited to projects that result "in a 50-megawatt or more increase in the electric generating capacity of an existing thermal powerplant."

CEC staff and the Independent Energy Producers Association (IEP), which was certified as an intervenor in this proceeding, argued alternatively that the Repowering Project is either a new 240 MW powerplant or a modification to Unit 5 resulting in a 154 MW increase; under either theory, the Project is subject to CEC jurisdiction. LADWP made several arguments opposing CEC jurisdiction, including a claim that the legislative history of the Warren-Alquist Act does not support a need to extend CEC siting jurisdiction over preexisting powerplants which adopt changes in plant operations, where the changes do not increase energy output in a manner responding to increased energy demands; in fact, the legislative history indicates that plant modifications not related to new energy capacity were specifically excluded from the Commission's siting authority.

Following a detailed analysis of the language of the Warren-Alquist Act, CEC concluded that the Repowering Project is subject to CEC jurisdiction on two grounds: (1) it involves "construction of...[a] facility" under PRC section 25500, in that the project involves the construction of two new combustion turbines with a generating capacity of 160 MW; and (2) it involves a "modification of an existing facility" under PRC section 25123, because the existing "powerplant" being modified is Unit 5, with a capacity of 86 MW, while the repowered facility will have a generation capacity of 240 MW.

CEC found that, under LADWP's interpretation, CEC would have no jurisdiction over sites where old powerplants are replaced with new powerplants, so long as the difference in total output capacity for the entire site is less than 50 MW. This would open a giant loophole in CEC jurisdiction, because power companies could simply repower existing sites and avoid the normal CEC licensing process required of new sites. CEC noted that "[t]his would permit LADWP to replace the current Harbor facility with a nuclear generation station without obtaining a Commission license, and indeed, would permit every other utility in California to build as many new nuclear generation facilities as they could find existing sites for, all without Commission review, so long as they were installed concurrently with the retirement of existing facilities such that the output was never increased by more than 50 MW." CEC found this interpretation to be clearly inconsistent with the intent of the Warren-Alquist Act.

LADWP filed a Request for Reconsideration of the decision, but that request was denied by the full CEC at a hearing on August 22. On September 18, LADWP filed an action challenging CEC's decision in Los Angeles County Superior Court. The court scheduled a November 6 hearing in the matter. CEC Deputy General Counsel Steve Cohn stated that any ruling unfavorable to CEC will undoubtedly be appealed, due to the significance of this issue.

SDG&E Powerplant Proposal. In December 1989, San Diego Gas & Electric Company (SDG&E) filed an application with CEC for construction of a 460-MW combined cycle project. The project will consist of two combustion turbine generators, two heat recovery steam generators, and one steam turbine generator. SDG&E proposes to locate this project at one of five alternative sites. In March 1990, CEC accepted SDG&E's Notice of Intention (NOI) to seek certification for the project, and commenced the twelve-month NOI process. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 200-01 and Vol. 10, No. 1 (Winter 1990) p. 147 for background information.)

On June 5, CEC sent a letter to all agencies that have or would have jurisdiction over one of the proposed sites, requesting these agencies to provide preliminary analyses, comments, and recommendations on the relevant site and proposed powerplant. These comments were to be based on available information regarding the design, operation, and location of the proposed facilities in relation to environmental quality, public health and safety, and other factors over which the agency has expertise or jurisdiction. Pursuant to section 1714.3(d), Title 20 of the CCR, CEC requested that the comments be limited to those necessary to advise the Commission on whether there is a likelihood that the proposal will be able to comply with the agency's applicable laws or concerns. CEC requested that the agencies submit their comments by August 3.

On June 11 and 21, CEC held two Staff Data Response Workshops. The purpose of these workshops was to discuss SDG&E's responses to CEC's April data requests for information on the Encina, South Bay, and Sycamore Canyon sites in the following technical areas: biology, water resources, land use, waste management, paleontological resources, structural engineering, socioeconomics, transportation, industrial/fire safety, civil engineering, transmission system evaluation, transmission line safety and nuisance, soils, cultural resources, powerplant reliability, powerplant efficiency, engineering geology, alternatives, and visuals.

On July 16, CEC held a Staff Alternatives Workshop. Section 1721(b)(7), Title 20 of the CCR, requires CEC "to consider alternatives to the proposal, including feasible alternative sites, facilities, or sites and related facilities which may substantially lessen any significant adverse effects which the applicant's proposals may have on the environment or which may better carry out the policies and objectives of the [Warren-Alquist] Act." At the workshop, staff and participants examined the feasibility of numerous alternative fuels (such as methanol and propane); retrofitting, repowering, or replacing electric generating units at existing powerplants with more efficient units; alternative advanced gas turbine generating systems; and electricity generation using solar power (with and without auxiliary fossil fuel combustion), and geothermal powerplants. In addition, the San Diego Water Authority explained its suggestion to SDG&E regarding the incorporation of a seawater desalination unit in the project design for the Encina and South Bay sites.

On July 17, staff held a Soils and Biology Workshop. The focus of this workshop was beach erosion and sedimentation at the Encina and South Bay sites.

On August 31, CEC filed its Issues and Alternatives Report (IAR) for the three San Diego County sites proposed in SDG&E's NOI to file an application for certification. The IAR assesses the general acceptability and suitability of the technology proposed by SDG&E at the three San Diego County sites, in addition to assessing potentially significant environmental effects and proposed mitigation measures; the safety and reliability of preliminary engineering designs; potential health and safety effects of the project; and the likelihood the project will comply with applicable laws, ordinances, regulations, and standards (LORS) during construction and operation.

The IAR concluded that in fourteen areas of concern (demand conformance, powerplant reliability, industrial/fire safety, waste management, transmission line safety and nuisance, noise, paleontological resources, socioeconomics, cultural resources, engineering geology, transmission system evaluation and engineering, traffic and transportation, facility engineering, and water resources) the project is not likely to cause significant adverse environmental impacts, and that it is likely to comply with applicable LORS if the mitigation measures proposed by SDG&E and CEC are implemented. These areas require no

further review in the NOI proceeding and should be deferred for more detailed, site-specific analyses in the certification or application for certification (AFC) proceeding when it will be necessary to specify conditions of certification.

However, CEC's environmental analyses in the areas of air quality, public health and safety, land use, soils and agriculture, visual resources, and biological resources led staff to conclude that the project has the potential to cause significant adverse impacts in these areas, and that the proposed mitigation is or may not be adequate. These areas are likely to weigh heavily in assessing the relative merits of the proposed sites and will raise issues regarding redesigning the project, finding alternatives, or deferring in-depth, site-specific studies to the proceeding on certification.

On September 19, CEC held an Issues and Alternatives Workshop to discuss the IAR, reports and comments filed by other governmental agencies (including the cities of Carlsbad and Chula Vista and the San Diego County Air Pollution Control District), and the organization of issues for a series of nonadjudicatory informational hearings scheduled to begin on September 24.

At the meeting, numerous language changes and/or additions to the IAR were proposed and CEC agreed to print a revised version of the IAR, which would be stipulated to at the beginning of the nonadjudicatory hearing on September 25.

At the September 19 workshop, Chris Ellison from the City of Chula Vista voiced the city's concerns in the areas of socioeconomics and traffic and transportation, and urged that these topics be addressed in adjudicatory hearings, not nonadjudicatory hearings. Chula Vista has two concerns in the area of socioeconomics: severe overcrowding in Chula Vista schools, and the city's need to know whether increased tax revenues from this project would allow it to maintain city services especially in regard to schools; and its belief that alternative uses of the site may be better for the city both in terms of jobs and revenue. The city's traffic and transportation problem concerns the possible inability of the city to maintain service at a "Level C" in some of the surrounding intersections. Mr. Ellison acknowledged these areas could be mitigated, but expressed concern that SDG&E may not be willing to go to the extent needed for appropriate mitigation. Arlene Ichien of CEC stated that these issues should be addressed at the nonadjudicatory stage, and that traffic impact is insufficient to remove a site from the "potential" list. Ms. Ichien also stated that evaluating "lost opportunity costs" is not appropriate for either an NOI or an AFC. CEC's function is not to determine the most economic use for a site, but to evaluate whether a potential site is feasible for a powerplant. Jeff Parrott from SDG&E questioned the "lost opportunity" position of Chula Vista, as SDG&E already owns the land and does not plan to sell it or to cease operating its existing powerplant located on the land.

Chula Vista also had questions regarding conservation considerations; CEC proposed that these be addressed at post-NOI/pre-AFC filing workshops. Additionally, the City of Chula Vista and the City of Carlsbad announced their willingness to stipulate that the powerplant should be located at a desert site.

On the afternoon of September 24, CEC held a site visit at the Sycamore Canyon site to provide members of the public an opportunity to visually inspect the proposed location. That evening, CEC held the first nonadjudicatory hearing in San Diego. The purpose of this hearing was to allow CEC to explain the NOI process, summarize its IAR, and hear public comment.

Gary Fay of CEC began the hearing by explaining the NOI process. He explained that NOI is the first in a two-stage process which must be completed before an applicant may begin construction on a powerplant. Mr. Fay elaborated that NOI is designed to get the public involved in the application process; allow CEC to determine whether the project complies with federal, state, and local LORS; allow the consideration of alternatives which may better serve environmental interests; and enable CEC to comply with the Warren-Alquist Act. The focus at the NOI stage is to determine whether a particular impact should be mitigated, and whether that impact can be mitigated. The second stage of the process is the Application for Certification (AFC). At this stage, CEC prepares a detailed analysis of the impacts of a particular project on a particular site. SDG&E is now at the preliminary portion of the NOI process—the nonadjudicatory hearing stage. The purpose of nonadjudicatory hearings is to dispose of nondisputed issues and decide which issues are in dispute and should be addressed in adjudicatory hearings. Mr. Fay further explained that the two proposed desert sites, Heber and Blythe, have been separated and are not yet being addressed, because SDG&E still has to submit information on those sites to CEC.

CEC Public Adviser Thomas Maddock then explained the functions of the Public Adviser's office and the role the public can play in the siting process. Next, Arlene Ichien summarized the IAR and set forth the six subjects which CEC recommends be addressed in the adjudicatory hearing stage. These subjects are air quality (whether it will comply with local regulations and whether the best available technology has been proposed); biology (impacts to marine biology and rare/endangered species —the significance of these impacts and whether they can be mitigated); land use (nonconformance with local land use plans and problems with other uses in the area, *e.g.*, neighboring residential uses); public health and safety (the handling and storage of hazardous materials and risk from electromagnetic fields); soils and agriculture (sediment transport at all three of the sites); and visual impacts. Final testimony on the contested issues will be presented at the adjudicatory hearings, which will probably be held in 1991. Staff will then present its relative merit findings which will rank the five sites. The objective of the NOI process is to come up with at least two acceptable sites.

Public comment at the September 24 hearing was varied. A resident of Chula Vista spoke in opposition to the South Bay site, citing several areas of concern including the impact of the project on Chula Vista's wetlands preserves and bird sanctuary; the seismic risk presented by the Rose Canyon Fault; and the carcinogenic effect of electromagnetic fields and transmission lines. A resident of Imperial Beach spoke on behalf of Save Our Bay, Inc., as to thirteen other projects planned for the area of the South Bay site; he urged the Commission to look at their cumulative environmental impacts. The mayor of Chula Vista addressed the proposed land usage in the area, which has been geared toward visitor-oriented services. A representative of the City of Santee addressed Santee's concerns regarding the Sycamore Canyon site, including visual impacts, impacts of the thermal plume on state parks, the need for a more in-depth analysis of air quality, construction of an access road to the plant, and land use impacts on a residential community which has been proposed for that area.

On September 25, CEC held a nonadjudicatory hearing to discuss the topics of cultural resources, paleontology, traffic and transportation, socioeconomics, noise, water quality, waste management, facility engineering, transmission line safety and nuisance, and transmission system evaluation.

On September 26, CEC held another hearing to discuss engineering geology,

industrial/fire safety, powerplant reliability, demand conformance, and the prehearing conference on topics identified for adjudicatory hearings. The first part of this hearing was set aside to hear Motions to Compel Data Responses filed against SDG&E by Chula Vista, Carlsbad, and the Coastal Commission. The three entities challenged SDG&E's inadequate response to their requests for information relevant to a "cumulative impacts" analysis of the proposed project, which is required by both the Warren-Alquist Act and the California Environmental Quality Act (CEQA), Public Resources Code section 20000 *et seq.* SDG&E had responded to these requests by saying that this information is not available; that Chula Vista has better access to such information than does SDG&E; and that Chula Vista should perform its own cumulative impacts analysis. Chula Vista replied that the applicant has the burden of proof to make the case at the NOI stage. SDG&E argued that these studies are not appropriate at the NOI stage; according to the utility, the Warren-Alquist Act requires a cumulative impacts analysis to be done at the AFC stage, and SDG&E will prepare such a study for the site which is chosen for the AFC stage.

CEC explained that a detailed cumulative impacts analysis is usually not conducted at the NOI stage; only information on cumulative impacts which is available to the applicant is considered during the NOI. To ease the burden on all parties, CEC requested that Chula Vista, Carlsbad, Santee, and the Coastal Commission all submit a list of the projects which should be considered in a cumulative impacts study, and the information each of these agencies currently has as to impact studies already conducted on these projects.

At the end of the hearing CEC announced upcoming deadlines in the NOI process. On October 3, a listing of proposed projects for purposes of a cumulative impacts analysis was due from the respective local agencies. On October 16, written briefs or comments on the evidence presented at the nonadjudicatory hearings were due from all parties and interested members of the public. At the end of October, CEC was scheduled to prepare the Summary and Hearing Order, which will summarize the case and delineate the issues for the adjudicatory hearings.

Light-Duty Methanol Fuel Flexible Vehicle (FFV) Demonstration Opportunity Notice. In June, CEC issued a notice to California light-duty fleet operators and rideshare programs informing them that CEC is coordinating a pre-commercial demonstration of FFVs to accrue in-service information, and urging them to enter into a partnership with the state by participating in the FFV program.

FFVs are designed to operate on any mixture of methanol (M85), ethanol, or unleaded gas; thus, FFVs can be operated on unleaded gas when methanol is not available. Most domestic and foreign automakers are pursuing this technology for future production, with vehicles expected to be available to the general public in the 1993 model year. Vehicles available to fleets in 1990-91 include the Ford Taurus and Chevrolet Lumina; other manufacturers, including Volkswagen, may also make FFVs available during this timeframe.

FFVs can reduce the United States' increasing dependence on imported petroleum, and help attain federal and state clean air standards. California is the third largest consumer of gasoline in the world, following the United States as a whole and the Soviet Union. While California presently receives only 7% of its oil from a non-U.S. producer (Indonesia), crude oil imports are expected to represent 50% of the nation's demand by the mid-1990s, which increases the potential adverse impact if supply is suddenly reduced.

Widespread use of methanol fuel for transportation can provide significant improvements to California's air quality. Methanol vehicle exhaust emissions form 50% less ozone than is normally produced by similar gas vehicles. Most major California urban areas exceed the federally determined safe ozone level during the summer months. Federal, state, and local governmental agencies have taken steps to increase the use of clean fuels. The federal Clean Air Act may soon require the use of clean fuels in nine major urban areas throughout the country. The South Coast Air Quality Management District is currently promulgating Rule 1601, which will require fleets to use low-emission vehicles.

CEC hopes to have 5,000 FFVs in California fleets by 1993. The estimated price for both the Taurus and the Lumina for the 1990-91 calendar year is $15,000. Methanol-fueled FFVs produce greater horsepower than equivalent gas-fueled vehicles, but require more fuel to travel the same distance. FFVs use about 1.7 gallons of M85 to travel the same distance as one gallon of gas. The equivalent amount of M85 to one gallon of gas costs approximately $1.35.

In 1988, CEC established the California Fuel Methanol Reserve to ensure a reasonably priced supply of fuel methanol for California's demonstration programs. Fuel methanol (85% methanol, 15% unleaded gas) is currently available at 18 ARCO and Chevron stations around the state, with 32 additional locations to be established at ARCO, Chevron, EXXON, Shell, and Mobil stations. The M85 fuel station network is accessed by a "GasCard" credit card which operates similar to an ATM card.

One of the drawbacks to methanol fuel is its extreme toxicity due to the high formaldehyde content. It is also highly corrosive, eating through many metals and making some types of rubber brittle. Replacing metal tanks and rubber tubing with stainless steel and teflon-coated plastics could solve this problem.

CEC conducted a series of informal public workshops throughout the state during June and July, to explain how fleets could purchase FFVs and participate in CEC's demonstration program.

Energy Awareness Program. October was declared Energy Awareness Month by Governor Deukmejian, to remind all Californians of the importance of energy conservation and other energy-related issues. California is currently experiencing a level one energy emergency. Level one is a voluntary stage in which CEC tries to encourage voluntary conservation. Levels two and three—pre-emergency and emergency—involve mandatory measures.

The program's theme is "use energy wisely; there's never enough to waste." CEC is trying to get the media involved in promoting conservation on a voluntary basis, as CEC's budget does not contain funds for paid advertising. CEC has already received a donation of 100 billboards to be used around the state to encourage people to use energy wisely. Public libraries will be distributing bookmarks asking Californians to turn off the television and read a book. Buses will carry placards, in both English and Spanish, thanking riders for saving gas by taking the bus. CEC will also sponsor its annual energy poster drawing contest for elementary school children to help educate them on the need for conservation.

Global Climate Change. A possible change in the earth's climate has become one of the major topics of our time. CEC examines on an ongoing basis the effect a global climate change may have on California's energy supply and demand, economy, environment, agriculture, and water supplies.

In June, CEC held a workshop to discuss its recently released *1988 California Greenhouse Gas Emissions Inventory—Preliminary Staff Report.* The workshop offered the public a chance to provide comments and ask questions concerning the report.

In July, CEC and the University of Southern California's Jesse M. Unruh Institute of Politics presented a symposium to provide an objective proceeding in which an academic, scientific dialogue on global climate change could be conducted. The symposium was part of CEC's directive from the legislature to investigate the probability of global climate change and its possible effects on California, and to make recommendations to the Governor and legislature. The topics of the two-day symposium were: (1) evidence relating to global climate change (the increase in atmospheric composition of greenhouse gases, the role of clouds and oceans to greenhouse gas levels, and the potential for greenhouse gases to affect climate patterns); (2) strengths and weaknesses of global climate change models (role and function of global climate change models, the extent of consensus or disagreement regarding modeling, and modeling's effects on policymaking); and (3) what California policymakers should do in response to global climate change (costs and benefits of "wait-and-see" versus "immediate action" approach, implications of unilateral policy actions by California, and potential suggestions to policymakers).

Energy and Endangered Species. CEC is presently conducting several studies of endangered and threatened species. The studies seek to develop ways the energy industry can have a positive impact on endangered and threatened species. The motivation for these studies is not mere altruism; future site certifications will depend on power companies proving the new sites can share the area with endangered and threatened species.

-Desert Tortoise Project. Powerplant development in the California desert is accelerating, and CEC is especially concerned about the impact new facilities will have on California's official state reptile, the desert tortoise. Desert tortoises were recently listed as a threatened species by both the state and federal governments, after years of political foot-dragging. (See CRLR Vol. 9, No. 4 (Fall 1989) pp. 117-18 for background information.)

CEC's desert tortoise project is tabulating existing desert tortoise populations, as well as analyzing the effectiveness of barriers designed to keep tortoises out of the way of cars on public roadways and access roads to powerplants. If the barriers prove effective during the 18-month study, they will be used on access roads to powerplant sites in the California desert, and will almost certainly be adopted by Caltrans and the U.S. Bureau of Land Management (BLM) as well. The study is being conducted by BLM under a contract with the Biology Unit of CEC's Environmental Protection Office. The contract termination date is December 31, 1991.

-Kit Fox Program. CEC's San Joaquin kit fox program monitors the effects of various levels of oil development on kit fox activity; evaluates and develops measures to mitigate impacts of energy development activities on kit fox and their habitat; and evaluates the effectiveness of current survey methods. The kit fox is listed as endangered by the federal government and as a threatened animal by the state. CEC has a contract with California State University at Bakersfield/Bakersfield Foundation, to carry out the three- to five-year study, which began in fiscal year 1988-89.

-Southern San Joaquin Valley Ecosystems Protection Program. CEC's Southern San Joaquin Valley Ecosystems Protection Program is almost ready to publish the results of this study. The program sought to identify and prioritize land parcels in the San Joaquin Valley according to their potential as nature preserves. The study will provide maps of the remaining natural habitats in the Valley and lists of endangered species and plants in the area, as well as recommendations for protecting the endangered plants and animals. One startling finding of this study is that, relative to area size, there are more endangered species in the San Joaquin Valley than in the entire remainder of the continental United States.

LEGISLATION:

The following is a status update on bills reported in detail in CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) at pages 201-02:

AB 3587 (Farr). Under existing law, CEC is authorized to assist California energy technology and energy conservation firms to export technologies, products, and services to the international markets. As amended August 6, this bill requires every firm awarded direct financial assistance to reimburse CEC for that assistance if specified conditions are met. This bill was signed by the Governor on September 29 (Chapter 1514, Statutes of 1990).

AB 3995 (Sher), as amended August 6, generally requires CEC and the Public Utilities Commission (PUC), in calculating the cost effectiveness of energy resources, to include a value for any costs and benefits to the environment, including air quality; and to ensure that any values they develop are consistent with values developed by the other commission. This bill was signed by the Governor on September 29 (Chapter 1475, Statutes of 1990).

ACR 153 (Hansen), which recommends that the Governor establish a coordinating council under CEC, with representatives from specified groups, to oversee efforts to bring the Secretariat of the International Geothermal Association to California, was chaptered on September 6 (Chapter 115, Resolutions of 1990).

SB 494 (Rosenthal) appropriates $1,000,000 in funds received by the state from federal oil overcharge funds in the Petroleum Violation Escrow Account and other sources to CEC for allocation to the University of California for support of the California Institute of Energy Efficiency; and authorizes CEC to make this funding available only if the utilities in this state provide specified funding for the Institute. This bill was signed by the Governor on September 30 (Chapter 1655, Statutes of 1990).

SB 1926 (Rosenthal). As amended June 12, this bill requires CEC, as part of its biennial report on emerging energy conservation trends, to develop and update in consultation with specified parties an inventory of current and potential cost-effective opportunities in each utility's service area, to improve efficiencies and to help utilities manage loads in all sectors of natural gas and electricity use. This bill was signed by the Governor on September 4 (Chapter 593, Statutes of 1990).

SB 2057 (Rosenthal), as amended May 1, would have appropriated $100,000 from the Energy Resources Programs Account in the General Fund to CEC, for research and development of technology for dismantling and decommissioning nuclear power reactors. This bill was vetoed by the Governor on September 25.

SB 2200 (Nielsen), as amended August 13, authorizes CEC to make loans to private entities in the exploration and development of geothermal energy, subject to specified conditions, and extends the maximum repayment period on loans from six to twenty years. Under existing law, CEC is required to submit to the legislature by April 1 of each year a list of projects relating to geothermal resources selected and prioritized by CEC. This bill requires CEC to provide notification for any unforeseen or urgent projects which CEC wishes to approve but which are not included in the April 1 budget list, and prohibits CEC from executing any funding agreement for any project until at least thirty days after that notification has been made. This bill was signed by the

Governor on September 8 (Chapter 644, Statutes of 1990).

SB 539 (Rosenthal), as amended August 9, requires CEC, on or before June 30, 1991, to adopt and implement, to the extent feasible, a pilot program of incentives to encourage utilities to maintain and expand their energy conservation and demand side management programs, and specifies related requirements for CEC's incentives program. The bill requires CEC to require one or more utilities to implement specified pilot projects, and on or before June 30, 1993, to adopt, to the extent feasible, a competitive bidding system that allows demand side management programs to compete with energy supply sources to fulfill future utility resource needs. This bill was signed by the Governor on September 26 (Chapter 1369, Statutes of 1990).

AB 2395 (Sher). The Warren-Alquist Act declares the policy of the state and the intent of the legislature to employ a range of measures to reduce wasteful, uneconomical, and unnecessary uses of energy, thereby reducing the rate of growth of energy consumption. As amended August 21, this bill would have included in that declaration that employment of those measures will also reduce the state's contribution to global climate change and the production of greenhouse gases. This bill also would have required CEC to submit a report to the legislature by July 1, 1992, concerning the mitigation or reduction of greenhouse gas emissions, and would have enacted the Global Climate Change Act of 1990. This bill was vetoed by the Governor on September 27.

The following bills died in committee: *AB 3221 (Peace)*, which would have required CEC to assist the Department of Transportation in conducting a three-year pilot project on using energy from an alternative source to illuminate electrical transmission towers and lines in the vicinity of the boundary between Imperial and San Diego counties; *SB 1842 (Rosenthal)*, which would have added "repowering projects" to those project proposals exempt from the requirement of submitting a notice of intention, and would have defined repowering projects as any replacement of the equipment that provides thermal energy for an existing facility with equipment providing thermal energy by a different method; *SB 2210 (Rosenthal)*, which would have required CEC to include in its biennial energy development report an updated report on the benefits of research, development, and demonstration projects for which financing was provided under the Rosenthal-Naylor Act of 1984; *SB 2348 (Rosenthal)*, which would have required CEC, in cooperation with the PUC and the state's electric and gas utilities, to undertake a research, development, and demonstration program to identify and utilize improved technologies and hardware that can mitigate damages to energy utility facilities during periods of natural disasters such as earthquakes; and *SB 2541 (Rosenthal)*, which would have created the California Nuclear Power Plant Safety, Health, and Environment Advisory Committee and would have required CEC to collect a fee from every publicly-owned utility owning or operating a nuclear power plant, and to deposit the fees in the Committee Fund created by this bill.

LITIGATION:

In *California Energy Commission v. Bonneville Power Administration*, consolidated case Nos. 88-7280, 88-7315, 88-7318, and 88-7319 (July 26, 1990), the U.S. Ninth Circuit Court of Appeals found that the Bonneville Power Administration's (BPA) Long-Term Intertie Access Policy (LTIAP) reasonably balances the interests of all affected parties in a manner consistent with the directives of Congress.

BPA is a federal agency within the U.S. Department of Energy that produces and markets power produced from dams that comprise the Federal Columbia River Power System. BPA oversees access to the Intertie, which was designed to even out peaks and troughs in the production and consumption of power in the Northwest and the Southwest by allowing these regions to assist each other during times of heavy demand. BPA's operation of the Intertie is governed by four statutes: the Pacific Northwest Electric Power Planning and Conservation Act of 1980, 16 U.S.C. sections 839-839h; the Federal Columbia River Transmission System Act of 1974, 16 U.S.C. sections 838-838k; the Pacific Northwest Consumer Power Preference Act of 1964, 16 U.S.C. sections 837-837h; and the Bonneville Project Act of 1937, 16 U.S.C. sections 832-832l.

These statutes require BPA, in marketing federal power, to establish rates that will ensure BPA's fiscal independence and repay the U.S. Treasury for the federal funds borrowed to build the projects in the Federal Columbia River Power System. BPA must also market federal power so as to encourage the widest possible diversified use of electric power at the lowest possible rates to consumers, consistent with sound business principles. BPA must give priority to public bodies and purchasers within the Northwest. Sales to purchasers outside the Northwest are limited to energy which would otherwise be wasted.

In allocating limited transmission capacity, BPA must give itself priority. However, it must transport nonfederal power to the extent that the federal transmission lines have capacity not needed to transmit federal power. Any excess capacity must be made available to nonfederal utilities on a nondiscriminatory basis. The transmission of nonfederal power must not conflict with BPA's other marketing obligations, applicable operating limitations, or existing contractual obligations. It must also be at the request and expense of any customer or group of customers that sell power by transmitting it on the Intertie. Finally, BPA must protect, mitigate, and enhance fish and wildlife affected by the operation of the federal hydroelectric system.

LTIAP is a result of BPA's attempt to balance the mandates of its governing statutes. LTIAP provides nonfederal utilities with Intertie capacity on two bases—Formula Allocation and Assured Delivery. Formula Allocation apportions Intertie capacity in excess of that required for firm power transmissions. This policy allows nonfederal utilities to make short-term spot sales of surplus power and varies depending on which of these conditions exists: Condition 1 (a likelihood of spill in the Northwest hydro system), Condition 2 (no likelihood of spill, but BPA and Northwest utilities have more than enough surplus nonfirm energy to fill the Intertie), or Condition 3 (BPA and Northwest utilities lack sufficient surplus to fill the Intertie). Assured Delivery allocates transmission capacity to nonfederal utilities on a continuous, long-term basis, allowing them to make firm power sales and power exchange transactions.

To help protect fish and wildlife, LTIAP provides that a utility obtaining power from or constructing a hydroelectric plant located in a designated protected area will lose a portion of its formula allocation equal to the amount of power so acquired. New hydroelectric plants located in protected areas will be denied access to the Intertie unless they demonstrate that they will benefit BPA's fish and wildlife efforts.

Petitioners in the case—CEC, Pacific Gas & Electric, the PUC, the Southern California Utilities, Direct Service Industrial Customers, and intervenors Western Public Agencies Group, Puget Sound Power & Light Company, the Northwest Power Planning Council, and the Public Generating Pool—raised a variety of challenges to the LTIAP.

These challenges included the following: rates under LTIAP will be higher than allowed by statute; LTIAP is inconsistent with BPA's governing statutes because it does not fully satisfy federal needs for Intertie capacity before providing access to nonfederal utilities, and it fails to maximize BPA returns and to recover from Northwest utilities all the revenue BPA foregoes by allowing these utilities access to the Intertie; BPA's adoption of LTIAP was arbitrary and capricious; BPA abused its discretion in adopting the Formula Allocation provisions because they are anticompetitive and BPA's stated objectives could be achieved by more competitive alternatives; BPA has no authority to limit access to the Intertie because of the perceived impact of generating facilities on fish and wildlife; and such restrictions are the sole province of the Federal Energy Regulatory Commission through its licensing procedures. The court found all these contentions to be without merit.

The court found that in developing LTIAP, BPA balanced three interests: the desires of Northwest generators to sell or exchange power on a firm basis to California; the desires of BPA's total requirement customers for stable and favorable rates; and its obligation to repay the U.S. Treasury. The court found that LTIAP complies with statutory requirements while adequately balancing the interests of the petitioners, and that BPA's actions and decisions in developing LTIAP were not arbitrary and capricious. The court affirmed LTIAP in its entirety.

RECENT MEETINGS:

At its October 3 meeting, CEC unanimously approved $15,000 in advance funding to APP-TECH, Inc. under its Intervenor Funding Program. This is the first time an advance funding award has been made under the Intervenor Funding Program. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 128 and Vol. 9, No. 3 (Summer 1989) p. 118 for background information on the Program.) The award will cover the start-up costs of a previously approved project APP-TECH will complete for the Building Standards Committee. The project will use computer programs to determine the percentage of existing building which would be able to comply with the requirements of proposed new building regulations, if the regulations are adopted. The Commission approved the request because upfront costs for software development were significant, and APP-TECH, Inc., is a one-person consulting firm that could not afford to perform the project otherwise.

FUTURE MEETINGS:

General CEC meetings are usually held every other Wednesday in Sacramento.

HORSE RACING BOARD

Executive Secretary: Dennis Hutcheson
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The California Horse Racing Board (CHRB) is an independent regulatory board consisting of seven members. The Board is established pursuant to the Horse Racing Law, Business and Professions Code section 19400 *et seq.* Its regulations appear in Chapter 4, Title 4 of the California Code of Regulations (CCR).

The Board has jurisdiction and power to supervise all things and people having to do with horse racing upon which wagering takes place. The Board licenses horse racing tracks and allocates racing dates. It also has regulatory power over wagering and horse care. The purpose of the Board is to allow parimutuel wagering on horse races while assuring protection of the public, encouraging agriculture and the breeding of horses in this state, generating public revenue, providing for maximum expansion of horse racing opportunities in the public interest, and providing for uniformity of regulation for each type of horse racing. (In parimutuel betting, all the bets for a race are pooled and paid out on that race based on the horses' finishing positions, absent the state's percentage and the track's percentage.)

Each Board member serves a four-year term and receives no compensation other than expenses incurred for Board activities. If an individual, his/her spouse, or dependent holds a financial interest or management position in a horse racing track, he/she cannot qualify for Board membership. An individual is also excluded if he/she has an interest in a business which conducts parimutuel horse racing or a management or concession contract with any business entity which conducts parimutuel horse racing. Horse owners and breeders are not barred from Board membership. In fact, the legislature has declared that Board representation by these groups is in the public interest.

MAJOR PROJECTS:

Trifecta Wagering. At its July 26 meeting, the Board resumed its discussion of the proposed addition of section 1979, Title 4 of the CCR, which would allow racing associations the option of conducting Trifecta parimutuel wagering (selecting horses finishing first, second, and third, in that exact order). (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 202-03 and Vol. 10, No. 1 (Winter 1990) p. 148 for background information.)

Jim Smith, President of the Federation of California Racing Associations, Inc., requested that CHRB consider permitting Trifecta wagering in California, and proposed that the Board establish a one-year experimental period for Trifecta, beginning with the effective date of the adoption of the regulation, and limit each association to one Trifecta per day during that experimental period.

On August 24, CHRB held a public hearing regarding the proposed adoption of section 1979, including Mr. Smith's proposed changes. The Board subsequently adopted the proposed regulation subject to other minor modifications, and submitted it to the Office of Administrative Law (OAL) for approval. On September 19, OAL rejected the proposed regulation on grounds that it failed to comply with the necessity and clarity standards in Government Code section 11349.1, and that CHRB failed to comply with the procedural requirements of the Administrative Procedure Act (APA). CHRB re-referred the proposed amendment to committee for revision.

Implementation of CHRB Post-Mortem Examination Program. At its August meeting, the Board again discussed its post-mortem examination program established in section 1846.5, Title 4 of the CCR. As it currently exists, the section requires that every horse which suffers a breakdown on the racetrack in training or in competition, and is destroyed, and every other horse which expires while stabled at a racetrack under CHRB's jurisdiction, shall undergo a post-mortem examination to determine the injury or sickness which resulted in euthanasia or natural death. The exam must be conducted by a licensed veterinarian employed by the owner or trainer of the deceased horse. Test samples must be obtained from the carcass and sent to a laboratory approved by the Board for testing for foreign substances or their metabolites and natural substances at abnormal levels; these results are forwarded to CHRB.

At its April 1990 meeting, CHRB held a public hearing on proposed amendments to section 1846.5, which it hoped would enhance compliance with the post-mortem examination requirement. Due to a lack of facilities at racetracks in which to perform complex post-mortems, the rule has proven unenforceable. As published, the proposed