



lic fire safety and burn prevention education program with specified objectives. The measure, which would be funded by \$190,000 from the Cigarette and Tobacco Products tax account, is pending in the Senate Governmental Organization Committee.

SB 427 (Torres) would require CDF to study the causes of tropical rain forest destruction worldwide and the detrimental effects on the ozone layer within the state of California, and to report to the legislature by January 1, 1991. The Board supports this bill so long as CDF is able to obtain the necessary funding and the finished report is submitted to the Board as well. SB 427 is pending in the Senate Committee on Natural Resources and Wildlife.

AB 339 (Hauser) would require disclosure as part of a sale report for property if adjacent lands are zones for timber harvest, thereby putting buyers on notice in advance that adjacent lands may be used for timber production. The Board supports this bill.

AB 433 (Waters). Existing law provides that arson of a structure or forest land is a felony punishable by imprisonment in the state prison for two, four, or six years. This measure would increase the maximum prison sentence to eight years. The Board supports this bill, which is pending in the Assembly Ways and Means Committee.

AB 470 (Farr) would expand the use of the Forest Resources Improvement Fund to fund CDF administration of demonstration forests held in trust by the State. This measure is specifically aimed at the Soquel Demonstration Forest. The Board supports this bill, which is pending in the Assembly Ways and Means Committee.

AB 579 (Jones) would require CDF to adopt minimum fire safety standards to apply to construction approved within state responsibility areas after January 1, 1991, instead of the current date of July 1, 1989. The bill would declare that it is to take effect immediately as an urgency statute. The Board supports this bill, which is pending in the Assembly Ways and Means Committee.

AB 639 (Quackenbush) would authorize the Director of the Department of Corrections and the Department of the Youth Authority to allow the CDF Director to use prisoners and wards during declared fire emergencies, for fire protection efforts outside of the state along the borders of Oregon, Nevada, or Arizona. This bill is pending in the Assembly Public Safety Committee.

The following is a status update on

ills reported in detail in CRLR Vol. 9, No. 1 (Winter 1989) at page 93:

AB 348 (Sher), which would enact the California Reforestation and Urban Forestry Act of 1990 and authorize the issuance of bonds in the amount of \$300,000,000 for purposes or financing a specified reforestation and urban forestry program, is pending in the Assembly Ways and Means Committee.

AB 390 (Sher), which would prohibit the clearcutting of any virgin timber stands or the use of any other silvicultural methods that have the same effect of a clearcut on virgin timber stands, is pending in the Assembly Natural Resources Committee. The Board opposes this bill.

LITIGATION:

On January 30, in *Environmental Protection Information Center (EPIC) v. Maxxam Corp., et al.*, No. 79879, Humboldt County Superior Court Judge John E. Buffington ruled that the Pacific Lumber Company (Maxxam Corporation) is enjoined from harvesting in implementation of the THP at issue until such time as the Board is able to clarify its findings upon initial review of Maxxam's THP. In a prejudgment interlocutory remand, the court returned three questions to the Board which must be answered before a proper ruling can be made on the THP. The Board must answer the following questions: (1) Will this harvest cause an adverse impact? (2) What mitigation measures suggested by the Department of Fish and Game should be implemented before this harvest occurs? (3) If there is any adverse environmental impact, is it overcome by economic considerations? At this writing, the Board is steadfastly working on the answers to these questions. (See CRLR Vol. 9, No. 1 (Winter 1989) p. 94 and Vol. 8, No. 4 (Fall 1988) p. 108 for background information on this case.)

FUTURE MEETINGS:

To be announced.

WATER RESOURCES CONTROL BOARD

Executive Director: James W. Baetge
Chairperson: W. Don Maughan
(916) 445-3085

The Water Resources Control Board (WRCB), established in 1967 by the Porter-Cologne Water Quality Control Act, implements and coordinates regulatory action concerning California water quality and water rights. 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.

Water quality regulatory activity 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 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:

Phase II of the Bay-Delta Workplan Stalled. Because of the controversy created by the recommendations contained in the WRCB's October 1988 draft Water Quality Control Plan for salinity and draft Water Quality Policy for pollutants, the Board has indefinitely suspended much of its Workplan for the San Francisco Bay/San Joaquin Delta Estuary hearings. (See CRLR Vol. 9, No. 1 (Winter 1989) pp. 94-95; Vol. 8, No. 4 (Fall 1988) p. 109; and Vol. 7, No. 2 (Spring 1987) p. 96 for background information.)

The center of controversy is the WRCB's "flow" proposal, which called for some cuts in water exports to southern California and the creation of a "California water ethic." Diversions of the freshwater supply in the Delta have increased pollution and salinity levels in the watershed. The Board's proposal was



REGULATORY AGENCY ACTION

intended to increase the freshwater flow to create a flushing effect and decrease salinity, and to protect certain fish populations. Increased freshwater flows are hoped to push vulnerable young salmon and striped bass into the bay and away from the pumps. Under the WRCB's proposal, the increase in flow would be accomplished by cutbacks in the amount of water diverted. The plan called for the institutionalization of conservation, a cap on diversions through 2010, and restoration of 1.5 million acre-feet of the natural water flow.

Due to strong opposition, the Board voted on January 19 to drop some of the proposed restrictions, at least until they can be further reviewed and studied. At this writing, the WRCB is bifurcating the upcoming public hearings so that noncontroversial elements may move forward. Hearings on the "flow" provisions and/or alternative proposals are not expected to begin until at least fall 1989. The Board has indicated that it will pursue alternative methods of accomplishing its water quality and salinity objectives.

The harshest criticism came from the regional water districts which manage the distribution of the scarce resource. The dispute appears to have north-south implications as well. Myron Holburt of the Metropolitan Water District of southern California told the Board that its plan "radically affects everyone's life in this whole state." He also argued that the restrictions particularly threaten the reliability of southern California's water supply.

However, the "flow" recommendation had the support of divergent groups. Most environmental groups, including the Sierra Club Legal Defense Fund and the Environmental Defense Fund, strongly supported the Board's proposal, and were disappointed at the Board's retreat under intense pressure. Additionally, the Board gained support from the beleaguered fishing industry. The industry considers the decrease in pumping crucial to protecting the livelihood of salmon fishers.

Pursuant to the Board's January 19 decision, WRCB staff is currently revising the Bay/Delta Workplan, including (1) revising the scope of the Water Quality Control Plan to delete flow objectives, retain salinity objectives, and add temperature objectives; (2) consideration in the Water Quality Control Plan of upstream measures being taken to protect salmon, in setting water quality objectives to protect salmon; (3) new time schedules that include early consideration of the

draft Pollutant Policy Document while the Water Quality Control Plan is being revised; (4) a broadened program of implementation in the Water Quality Control Plan to generally cover physical facilities, negotiated settlements, new legislation, other agencies' programs, and water rights changes to protect the beneficial uses; and (5) in Phase III, a detailed sequential review of the matters discussed in the program of implementation of the Water Quality Control Plan, leaving consideration of any changes in water rights apportionments to the end.

Kesterson Reservoir Clean-up. The continued efforts to clean up the Kesterson National Wildlife Refuge and Reservoir have not yet been successful. In January, the U.S. Bureau of Reclamation issued a biological monitoring report on Kesterson, which describes the 1988 conditions at the Reservoir and the significant toll on its environment.

Kesterson Reservoir is part of a 5,900-acre wildlife refuge. From 1978 until 1986, the reservoir served as an evaporation pond for drainage water from the Westlands Water District. In June 1986, the drainwater flows were stopped because of severe pollution. The Westlands drainage contained significant levels of heavy metals, selenium, and other trace elements. These substances had leached from the soil of the Western San Joaquin Valley, which is an ancient seabed.

The selenium contamination has created severe consequences for animal life at Kesterson. Bird populations are especially hard hit because the Refuge is in the heart of a major wintering ground for millions of migratory fowl in the Pacific Flyway.

The current clean-up efforts are being conducted by the U.S. Bureau of Reclamation under the supervision of the WRCB. Simply put, the clean-up plan is to fill in low-lying areas where ephemeral pools have formed from high concentrations of selenium. (See CRLR Vol. 9, No. 1 (Winter 1989) p. 95 and Vol. 8, No. 4 (Fall 1988) pp. 108-09 for background information.) It was hoped that burying the pools with dirt would stop the runoff of selenium and contamination of animal species.

However, the Bureau's report indicates that the contamination continues to be severe. For example, coyotes are showing signs of significant selenium poisoning. Birds examined at Kesterson contained selenium concentrations dangerous enough to trigger genetic mutations. Federal biologists stated that their data proves Kesterson will remain dangerous to wildlife for many years to come.

The report explained that food-chain elements still contain selenium levels far in excess of the recommended safety limit of three parts per million. The report said that levels of selenium in livers of coyotes averaged 54 parts per million and that levels of the trace element in killdeer and meadowlark eggs "was at a level associated with embryonic mortality and deformity." Several coyotes examined had the symptoms of chronic selenium toxicosis. The report concluded that toxicity levels are not any lower at Kesterson than they were five years ago.

OAL Disapproves Discharge Regulations. On January 9, the Office of Administrative Law (OAL) disapproved new sewage and hazardous waste discharge regulations adopted by the WRCB in June 1988. The regulations—new sections 2250, 2251, and 2260, Title 23 of the California Code of Regulations (CCR)—would have established reportable quantities for sewage, hazardous waste, and hazardous materials. (See CRLR Vol. 8, No. 4 (Fall 1988) pp. 109-10 and Vol. 8, No. 3 (Summer 1988) p. 116 for background information.)

OAL disapproved the regulations because of improper incorporation by reference, missing and defective documents, and because the clarity and consistency standards of Government Code section 11349.1 were not met.

Section 2251 attempted to adopt U.S. Environmental Protection Agency (EPA) standards regarding reportable quantities for hazardous substances as found in 40 C.F.R. Part 302. The proposed section read in part: "[a]mendments to 40 C.F.R. Part 302 developed by EPA and adopted after public review and comment are incorporated by reference into this section." According to OAL's decision of disapproval, section 2251 improperly incorporated by reference the federal standards because it failed to supply an identifying date for the EPA standards it was incorporating. Any California regulation which attempts to incorporate by reference a document not found in the CCR must provide the date when the document was published or issued.

OAL criticized section 2250 for being unclear as to the entities it would regulate. As written, section 2250 applies to "municipal and private utility wastewater treatment plants...and to those public entities responsible for collection and maintenance of sewage collection systems leading to [the treatment plants]." Because the Water Code section to be implemented by section 2250 governs public and private entities, OAL in its



decision said "it would be contradictory to [the intent of the act] to regulate only those collection systems which are publicly owned."

Sewage Treatment Plant Construction. The WRCB has agreed to join EPA and the City of San Diego in building a waste treatment plant and a two-mile pipeline to address the problem of Mexican sewage flowing into San Diego County from Tijuana. The treatment plant would be located north of the border and would treat a portion of the Mexican waste. The pipeline would be used to transport the sewage to the plant or to send it back to Mexico for treatment at a plant in Tijuana.

Tijuana's current treatment plant is unable to keep up with the increased amount of sewage generated by population and industrial growth. As a result, an estimated 5-8 million gallons of raw sewage flows into San Diego from Mexico every day. The flow is projected to increase to 100 million gallons by the year 2000.

Under the agreement approved by the WRCB at its January 19 meeting, the WRCB will administer \$5.3 million in state funds for the project. San Diego will pay approximately \$10 million for the project, and the federal government will contribute \$20 million.

LEGISLATION:

AB 444 (Isenberg), as introduced, would make findings and declarations concerning the diversion of water from the Mono Lake Basin. The bill finds that the water level in Mono Lake has been lowered by diversions by Los Angeles, but that decreased diversions would deprive Los Angeles of an important source of water. It declares that future water diversions should be managed to increase water inflows to Mono Lake and that the responsibility for protecting the Mono Lake basin must be shared by Los Angeles, California, and the United States.

The bill will eventually be amended as a bond act. It is intended to set up a fund of money for Los Angeles to finance alternative water and power sources so the city will no longer divert water from Mono Lake. (See *infra* LITIGATION for related decision.) *AB 444* is pending in the Assembly Water, Parks and Wildlife Committee.

SB 201 (McCorquodale), as amended April 10, would authorize the WRCB and the regional water quality control boards, if accompanied by Department of Forestry and Fire Protection personnel and after 24-hour notice to the land-

owner, to enter and inspect areas in which timber operations are conducted. Inspections are restricted to normal business hours after commencement of timber harvesting plan activities on the land. At this writing, this bill is pending in the Senate Appropriations Committee.

AB 523 (Seastrand), as introduced, would prohibit any discharge from a San Joaquin Valley agricultural drain in Morro Bay or the ocean between Morro Bay or any tributaries draining into those waters until January 1, 1996. The bill is pending in the Assembly Water, Parks and Wildlife Committee.

SB 312 (Boatwright) would require the installation of water meters to measure the amount of water used on every new water service connection on and after January 1, 1991. The cost of installation shall be borne by the user of the water, and the person furnishing the water is authorized to impose and collect charges for the costs. The bill requires the WRCB to adopt standards of accuracy and reliability for the meters and to certify meters for each use and area of use. The bill is pending in the Senate Agriculture and Water Resources Committee at this writing.

SB 277 (Kopp) would require the WRCB, in any proceedings for the establishment of salinity standards or flow requirements applicable to the State Water Resources Development System or the federal Central Valley Project for protection of beneficial uses within the San Francisco Bay/Sacramento-San Joaquin Delta Estuary, to include independent water quality objectives and permit terms and conditions for protection of the beneficial uses of the waters of San Francisco Bay. This bill is pending in the Senate Agriculture and Water Resources Committee.

AB 583 (Costa), as amended April 11, would authorize the WRCB to make a loan in the amount of \$15,200,000 from the 1986 Water Conservation and Water Quality Bond Fund to the Santa Ana Watershed Project Authority for purposes of financing specified drainage water management units. This bill is pending in the Assembly Water, Parks and Wildlife Committee.

AB 487 (Bates), as amended March 28, would require the regional boards for the North Coast, San Francisco Bay, Central Coast, Los Angeles, and San Diego regions to conduct unannounced inspections of waste discharges that require a NPDES permit and which could affect the water quality of San Francisco Bay, Humboldt Bay, Monterey Bay, Santa Monica Bay, or the San Diego Bay.

Major dischargers must be visited at least four times each year while other dischargers would be visited only twice each year. The inspections are to determine compliance with applicable requirements. The regional boards are required by the bill to establish a reasonable schedule of annual fees to be paid by dischargers. This bill is pending in the Assembly Water, Parks and Wildlife Committee.

AB 456 (Hansen) would create the Waste Discharge Permit Fund and require that any fees collected pursuant to waste discharge requirements be deposited in the new fund. The money in the fund would be made available for expenditure by the WRCB for carrying out water quality control laws. This bill has passed the Assembly and is awaiting Committee assignment in the Senate.

SB 65 (Kopp, et al.) would amend the Safe Drinking Water and Toxics Enforcement Act of 1986 (Proposition 65) to include public agencies regardless of the number of its employees within its jurisdiction. Proposition 65, as passed in 1986, exempts public agencies from its discharge and exposure prohibitions. The bill would exclude discharges governed by federal law to preempt state authority, as well as other specified discharges. The bill would also exclude publicly-owned treatment works from its definition of a "person in the course of doing business." This bill is pending in the Senate Appropriations Committee. Passage of the bill requires this amendment to Proposition 65 to be submitted to the voters at a special election to be consolidated with the primary election in June 1990.

SB 415 (Torres) would revise Proposition 65's provision for civil and criminal penalties. The bill would change the distribution of fines collected for violations of the Act: 50% of the money would go to the state or local agency which investigated the action, and 50% would go to the office which brought the action (city attorney, prosecutor, district attorney, or Attorney General). In an action brought by a private person in the public interest, 25% of the money would be given to the person and the remaining 75% deposited in the Hazardous Substance Account. The money in this account is available for expenditure upon appropriation by the legislature.

The bill would also provide that before the fine is apportioned, \$200 shall be deposited in the newly created Hazardous Waste Enforcement Training Fund. The money in this fund may be spent by the Office of Criminal Justice Planning to train local, county, and state hazard-



REGULATORY AGENCY ACTION

ous waste and materials enforcement personnel. SB 415 is pending in the Senate Committee on Toxics and Public Safety Management.

SB 299 (Keene), as amended March 27, would require owners of underground storage tanks containing petroleum to establish and maintain evidence of financial responsibility for taking corrective action in case of an unauthorized release and compensating third parties for bodily injury and property damage arising from the operation of an underground storage tank. If the owner fails to meet the financial responsibility requirement, the owner's permit for the tank must be revoked. The WRCB is required to adopt regulations implementing the financial responsibility requirements.

The bill would require owners to take corrective action in case of an unauthorized release, and authorizes the regional board to initiate or contract for corrective action if the owner fails to do so.

The bill also requires an owner to pay a monthly storage fee based on the amount of petroleum in the owner's tank. The fee would be deposited in the newly created Underground Storage Tank Cleanup Fund for use by the WRCB, upon appropriation by the legislature, to pay for corrective action and of administrative costs. The bill also creates an insurance fund, and would require the Insurance Commissioner to expend these funds, upon appropriation by the legislature, for the purpose of transacting insurance for underground tank owners and operators.

The bill contains a sunset date of January 1, 1994, and is pending in the Senate Committee on Toxics and Public Safety Management Committee at this writing.

LITIGATION:

For the second time in eight months, the Third District Court of Appeal has unanimously reversed a lower court ruling and ordered WRCB to begin proceedings to determine whether to revoke two water licenses granted to Los Angeles' Department of Water and Power (DWP). The licenses at issue permit DWP to appropriate 89,200 acre-feet per year from the Mono Lake tributaries. In *California Trout, Inc. v. State Water Resources Control Board*, No. C000713, 89 D.A.R. 1148 (Jan. 26, 1989), the Third District again ruled that section 5946 of the Fish and Game Code is fully applicable to DWP's licenses.

In 1940, the California Water Commission issued permits to DWP to divert

water from the Mono Lake tributary creeks. By the early 1970s, DWP was diverting the maximum possible amount of water allowable for "beneficial use." In fact, Los Angeles takes water from four of the seven streams feeding the Mono Lake basin, which lies next to Yosemite National Park on the eastern slope of the Sierra Nevadas. In 1974, WRCB issued two new licenses to DWP which validated the maximum diversion from the Mono Lake creeks.

In its action against DWP, California Trout contended that the 1974 licenses permitting unlimited water appropriations violate Fish and Game Code section 5946, which makes it illegal to diminish water levels to the point where they harm fish or wildlife populations. Section 5937, incorporated within section 5946, specifically requires that the owner of a dam must allow sufficient water to be released to sustain fish life below the dam. The explicit legislative purpose behind these provisions is to prevent the further destruction of fish life in the regional district which includes Mono County.

California Trout contended that DWP's appropriations were and are harmful to aquatic life in Mono Lake. Specifically, the diversions caused trout populations to drastically decline. Additionally, decreasing water levels have caused water pollution by raising the lake's salinity concentration. The salinity level has become so high that many indigenous forms of life can no longer survive in the lake. Moreover, the diversion has exposed 14,000 acres of lake bed, thereby creating severe dust storms. The disruption in the natural balance of the lake has diminished the number of migratory birds in the Pacific flyway.

The trial court dismissed Trout's petition for a writ of mandate, holding that section 5946 did not apply to the 1974 licenses. The Third District reversed, holding that section 5946 prohibits the issuance of a permit or license after September 1953 to "appropriate water in [Mono County] unless conditioned upon full compliance with section 5937." In effect, this ruling means that the DWP may only divert water in amounts that will not harm fish populations protected by the Fish and Game Code. The Third District ordered the lower court to "issue appropriate writs, commanding the [WRCB] to exercise its ministerial duty to attach the conditions required by section 5946" to the 1974 licenses.

In *United States and State of California v. City of San Diego*, No. 88-1101-B (U.S. District Court, Southern

Division), the government's suit against San Diego for numerous alleged Clean Water Act violations, the city has filed a motion to dismiss for failure to state a claim under Rule 12(b)(6), Federal Rules of Civil Procedure. The city argues that plaintiffs have no cause of action because they are seeking to "enforce the terms of the city's waste discharge requirements that have been replaced by prior enforcement action" by the regional water quality control board (regional board); they are trying to recover for the "same alleged violations that were the subject of prior or pending state enforcement actions"; and they seek recovery for violations occurring in 1989, which is not permitted in a complaint filed in 1988.

Government plaintiffs allege over 6,000 violations of the Clean Water Act by the City. In general, the violations involve discharges from the Point Loma treatment plant, negligent disposal of sludge at Brown Field and Fiesta Island, and violations of toxicity limits. (See CRLR Vol. 9, No. 1 (Winter 1989) p. 96 for background information on this lawsuit.)

San Diego claims that the alleged violations of its national pollutant discharge elimination system (NPDES) permit regarding the Point Loma plant are not violations at all. The city claims that the Point Loma plant is governed by a revised permit issued by the regional board in 1985 with interim standards regarding secondary treatment of sewage that are in effect until 1991. San Diego claims that plaintiffs are seeking relief for violations of the NPDES permit issued in 1977, which it claims is no longer enforceable.

San Diego also contends that plaintiffs are barred from relief regarding the improper disposal of sludge by res judicata. In 1986, the regional board ordered the city to remove the sludge from Brown Field, which it did. The city also paid an \$11,000 fine imposed by the regional board for the sludge it discharged from Fiesta Island.

At this writing, plaintiffs have not yet filed a response to the City's motion.

FUTURE MEETINGS:

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