



final hearing if the petitioned action is warranted. The bill would also, if DFG's report states that the petitioned action is not warranted and FGC disagrees, require FGC to issue a notice of proposed rulemaking and conduct a final hearing on the petitioned action. This bill passed the Senate on May 4 and is pending in the Assembly Ways and Means Committee.

SB 1208 (Keene), as amended in June, would authorize the DFG Director to close any waters or to restrict the taking under a commercial fishing license in state waters of any species or subspecies of fish if the Director of the Department of Health Services determines that species or subspecies is likely to pose a human health risk from high levels of toxic substances. The closure or restriction would be required to be adopted by emergency regulation. This bill passed the Senate on May 18 and is pending in the Assembly Ways and Means Committee.

LITIGATION:

Fund for Animals, et al. v. California Fish and Game Commission, No. 361662 (Sacramento Superior Court). On May 22, the Fund for Animals, Animal Legal Defense Fund, and Wildlife Conservancy filed a petition for a writ of mandate in Sacramento Superior Court to prohibit FGC from offering a black bear hunt in the state this year. Relying on many of the same arguments that were successful in the mountain lion and Tule elk litigations, petitioners here claim that FGC has violated portions of CEQA. Specifically, they argue that DFG must conduct an annual environmental review prior to approving, amending, or leaving intact regulations for the hunting of game animals. These groups claim that there has been a severe decline in the bear population due to poaching, hunting, and loss of habitat. Because no environmental review was conducted in 1989, petitioners claim that it is impossible to tell how threatened this animal has become.

Petitioners tried in vain to convince FGC to conduct an environmental assessment prior to the filing of this lawsuit. At the Commission's April 6 meeting, a representative from the Wildlife Conservancy presented information regarding this issue, but FGC denied the request. During the presentation, two of the commissioners left the room.

The lawsuit asks that an injunction be issued to prevent the taking of these animals until FGC issues an environmental impact statement. At this writing,

the hunt is scheduled to begin on August 10. Petitioners' motion for injunction will be heard on July 27. Judge Cecily Bond, who ruled against DFG in the Tule elk litigation last year, will hear the motion.

RECENT MEETINGS:

At its April 6 meeting in Sacramento, FGC heard an appeal from Sonoma County officials that they be relieved from the obligation to build a "fish ladder" at Healdsburg Dam. The fish ladder is a device that enables fish to migrate around manmade obstructions. Fish and Game Code section 5932 requires the free flow of migratory fish, and DFG had previously determined that fish passage at the site is obstructed by the dam and that Sonoma County must install the ladder. The County disagrees with the Department's findings. It has requested that a new study be conducted to determine whether a problem actually exists. County officials fear that they may be required to spend over one million dollars for the ladder when it may not be necessary. The Commission declined to reverse its previous decision.

Also in April, the Commission heard reports on the increasing salinity of the Salton Sea. This increase has created a host of problems for the state's largest inland body of water. The sea is one of the state's most productive fisheries and is also a migratory waterfowl refuge. The last two years of drought, coupled with the reduction of runoff farm water, has led to the salinity increase. Many saltwater fish cannot survive in this increasingly salty environment, and birds that feed on these fish tend to develop problems as well. The importance of the Salton Sea as a state fishery and wildlife refuge has made the search for a solution to the salinity problem a top Department concern. The Commission has asked that it be kept informed of the situation and possible solutions.

FGC was also apprised of the federal Bureau of Reclamation's attempt to sell an additional 1.5 million acre-feet of water from the Central Valley Water Project. The proposed sale has been assailed by various state agencies because of the lack of water in the state due to the last two years of drought. DFG has asked the Bureau to withdraw its plan to sell the water. The Department is especially concerned because low water levels have already had a disastrous effect on the state's salmon industry. DFG would like the Bureau to hold off on the proposed sale until the state Water Resources Control Board completes its

study of water quality and quantity in the San Francisco Bay and the San Joaquin Delta Estuary. (See *infra* agency report on WRCB; see also CRLR Vol. 9, No. 2 (Spring 1989) pp. 107-08 and Vol. 9, No. 1 (Winter 1989) pp. 94-95 for background information.) DFG wants to ensure that the Bureau's proposed sale does not deplete needed water supplies for other worthy purposes such as fish runs and wildlife enhancement. At this writing, the Bureau has not yet responded to DFG's concerns.

FUTURE MEETINGS:

August 29-30 in Sacramento.

October 5-6 in San Diego.

November 6-7 in Redding.

BOARD OF FORESTRY

Executive Officer: Dean Cromwell (916) 445-2921

The Board of Forestry is a nine-member Board appointed to administer the Z'berg-Nejedly Forest Practice Act of 1973 (Public Resources Code section 4511 *et seq.*). The Board serves to protect California's timber resources and to promote responsible timber harvesting. Also, the Board writes forest practice rules and provides the Department of Forestry and Fire Protection (CDF) with policymaking guidance. Additionally, the Board oversees the administration of California's forest system and wildland fire protection system. The Board members are:

Public: Harold Walt (chair), Carlton Yee, Clyde Small, Franklin L. "Woody" Barnes, and Elizabeth Penaat.

Forest Products Industry: Roy D. Berridge, Clarence Rose and Joseph Russ, IV.

Range Livestock Industry: Jack Shannon.

The Forest Practice Act requires careful planning of every timber harvesting operation by a registered professional forester (RPF). Before logging operations begin, each logging company must retain an RPF to prepare a timber harvesting plan (THP). Each THP must describe the land upon which work is proposed, silvicultural methods to be applied, erosion controls to be used, and other environmental protections required by the Forest Practice Rules. All THPs must be inspected by a forester on the staff of the Department of Forestry and, where appropriate, by experts from the Department of Fish and Game and/or the regional water quality con-



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trol boards.

For the purpose of promulgating Forest Practice Rules, the state is divided into three geographic districts—southern, northern and coastal. In each of these districts, a District Technical Advisory Committee (DTAC) is appointed. The various DTACs consult with the Board in the establishment and revision of district forest practice rules. Each DTAC is in turn required to consult with and evaluate the recommendations of the Department of Forestry, federal, state and local agencies, educational institutions, public interest organizations and private individuals. DTAC members are appointed by the Board and receive no compensation for their service.

MAJOR PROJECTS:

Emergency Slash Disposal Regulations Adopted. At its April 5 meeting, the Board approved an emergency regulatory action adopting new sections 917.8, 937.8, 957.8, and 1052.3, and amending existing section 1052.2, Title 14 of the California Code of Regulations (CCR). The regulation changes were adopted in order to curb the drastic build-up in tree-killing insect populations and the resulting stress conditions on timberlands due to drought conditions over the last two years. Existing regulations vary regarding slash treatment requirements, but do not require lopping of trees felled or pushed over during timber operations. The proposed changes would require the lopping of all slash within the full area of timber operations in order to speed the drying of the remaining slash and reduce the habitat for insect reproduction.

On April 7, the Board submitted the emergency proposals to the Office of Administrative Law (OAL). OAL rejected them on April 13, stating that "the proposed regulatory action failed to articulate sufficient facts showing that immediate regulatory action was necessary for the immediate preservation of the public peace, health and safety or general welfare and did not comply with the clarity standard of [Government Code section 11349.1]." Specifically, OAL stated that although the Board's proposal articulated a sufficient threat to the public health, safety or welfare (as required by the Administrative Procedure Act for emergency regulations), there was no showing that immediate adoption of the regulations is necessary to deal with the threat.

Following OAL's rejection, the Board modified the proposed regulatory changes and resubmitted them to OAL for

approval. OAL subsequently approved them on May 3.

Fire Protection Regulations Rejected.

In June 1988, the Board adopted a regulatory action to change numerous provisions on fire protection in the Forest Practice Rules. Specifically, the Board adopted new sections 918.1, 938.1, and 958.1; amended sections 918, 938, 958, 918.8, 938.8, 958.8, 918.10, 938.10, and 958.10; and repealed sections 918.1, 938.1, 958.1, 918.2, 938.2, 958.2, 918.9, 938.9, and 958.9, Title 14 of the CCR.

On March 27, OAL disapproved the proposed regulatory action due to lack of clarity in sections 918.8, 938.8, and 958.8 regarding post-timber operation inspections during the period when burning permits are required; sections 918.10, 938.10, and 958.10 regarding fire extinguishers; and sections 918, 938, and 958 regarding Public Resources Code burning permit requirements. OAL also found that sections 918.10, 938.10, and 958.10 would have authorized a cleared area for fire prevention which is less than that required in Public Resources Code section 4427.

The Board has modified this proposed regulatory action and resubmitted it to OAL for reconsideration.

Other Proposed Rulemaking. On July 12, the Board was scheduled to resume consideration of proposed regulatory amendments to sections 895.1, 896(a), 897(a), 898, 898.1(f), 898.2(c), 1037.3, and 1037.5, Title 14 of the CCR, addressing THP preparation, THP evaluation by the CDF Director, and application of the Forest Practice Rules. The Board also proposes to adopt a new article on wildlife protection, including sections 929, 939, 959, 929.1, 939.1, 959.1, 929.6, 939.6, and 959.6. At the request of the Timber Association of California, which petitioned the Board to consider these amendments, the Board scheduled an initial regulatory hearing on this proposed regulatory action at its May meeting, and continued it until the July meeting.

Also on July 12, the Board was scheduled to consider a proposed amendment to section 895.1, Title 14 of the CCR, to add a definition of "commercial purposes" as that term is used in the Public Resources Code. CDF believes a definition is necessary in order to assist in determining when a timber operation requiring a THP is taking place. CDF also believes that various district attorneys interpret the term differently, and are filing and dismissing cases unnecessarily.

On August 9, the Board was scheduled to hold a public hearing on its

proposal to amend section 1032.7, Title 14 of the CCR, which would change the procedures for the Notice of Intent for Timber Harvesting Plans, and increase the cost to the public for obtaining a copy of a THP. CDF believes these amendments are necessary to improve the notice system whereby a landowner undertaking a timber harvest must notify all adjacent landowners of that intent.

LEGISLATION:

SB 917 (McCorquodale) would prohibit timber operations until five days after approval of a THP by the CDF Director (or the Board upon appeal) and the Director's filing of written responses to significant environmental comments. The proposed bill would also require the Director to disapprove a plan if implementation would cause damage to soil and water resources in violation of federal or state standards. Finally, this bill would authorize the person submitting a plan to appeal to the Board if the Director does not act to approve, but would delete an existing provision allowing timber operations to commence without approval. This bill is pending in the Senate Committee on Natural Resources and Wildlife.

SB 1184 (Mello), as amended June 6, would give the CDF Director ten additional working days (or a longer period mutually agreed upon by the Director and the person submitting the plan) to review public input regarding submitted THPs. This bill is pending in the Senate Appropriations Committee.

SB 1568 (Keene), as amended May 16, would authorize the Department of Fish and Game and the Water Resources Control Board to appeal to the Board of Forestry the approval of a THP by the CDF Director, under specified circumstances. This bill would prohibit timber operations until final determination of the appeal by the Board, which would be required to hold a public hearing on the appeal. This bill is pending in the Senate Appropriations Committee.

SB 1569 (Keene) would create the Timberland Task Force composed of eleven members which would study various issues relating to timberlands and wildlife species utilizing timberland habitat. The Task Force would be required, on or before January 1, 1992, to transmit its findings and recommendations to the Fish and Game Commission with respect to threatened or endangered species, to the Board of Forestry with respect to species of special concern impacted by management activities on private land and public timberlands, and to the legis-



lature, as specified. This bill is pending in the Senate Appropriations Committee at this writing.

AB 1811 (Sher) would enact the Forestry and Wildland Fire Protection Bond Act of 1989 which, if approved by the voters, would provide \$255,500,000 of general obligation bonds to finance a program for forestry and fire protection improvement purposes. The bill provides for the submission of the bond act to the voters at the June 5, 1990 primary election. This bill is pending in the Assembly Ways and Means Committee.

AB 1812 (Sher) would, on and after July 1, 1991, require a seller of real estate property within an area classified as a state responsibility area by the Board to disclose to any prospective purchaser that the property is in a wildland area which may contain fire risks and hazards, is subject to certain requirements for clearing around buildings and structures, and that it is not the state's responsibility to provide fire protection to buildings and structures unless specifically agreed upon with a local agency. The Board supports this bill, which is pending in the Assembly Ways and Means Committee.

AB 1814 (Sher) would require CDF to report to the Governor and the legislature by July 1, 1990 on the feasibility of implementing a system of landowner cost sharing to support existing wildland suppression and prevention activities. This bill is pending in the Senate Committee on Natural Resources and Wildlife.

The following is a status update on bills reported in detail in CRLR Vol. 9, No. 2 (Spring 1989) at pages 106-07 and Vol. 9, No. 1 (Winter 1989) at page 93:

SCR 17 (Campbell), which would require the Board to assess and determine the effects of its land use decisions and actions on any oak woodlands that may be affected, passed the Senate on April 13 and is pending in the Assembly Ways and Means Committee.

SB 27 (Campbell), which would require the Office of Emergency Services, in cooperation with CDF and the State Fire Marshal, to establish and administer the FIRESCOPE Program, passed the Senate on May 11 and is pending in the Assembly Natural Resources Committee.

SB 28 (Campbell), as amended June 8, would require the Attorney General, in consultation with the State Fire Marshal, to establish and maintain an arson information system, to function as a central repository of arson investigation data which would be submitted by and accessible to designated arson investigators and law enforcement personnel statewide. This bill is pending in the

Senate Appropriations Committee.

SB 133 (Campbell), regarding required local registration of persons convicted of arson, passed the Senate on May 4 and is pending in the Assembly Public Safety Committee.

SB 134 (Campbell), which would require the Department of Justice to furnish to specified persons and entities a record of arson convictions of a person who applies for employment or volunteers for a position which involves supervisory or disciplinary power over a minor, is still pending in the Senate Judiciary Committee.

SB 186 (Dills), which would require each county containing state responsibility areas for purposes of fire prevention and suppression to submit a copy of the proposed safety element of the county's general plan to the Board and to every local agency providing fire protection to unincorporated territory in the county prior to adoption of that safety element, passed the Senate on May 26 and is pending in the Assembly Local Government Committee.

SB 201 (McCorquodale) would authorize the Department of Fish and Game, the regional water quality control boards, and the state Water Resources Control Board, if accompanied by CDF personnel and after 24-hour advance notice to the landowner, to enter and inspect land during normal business hours at any time after commencement of THP activities on the land and before the CDF Director issues a report of satisfactory stocking, or before the end of the first winter period after the filing of a stocking work completion report, whichever is later. *SB 201* passed the Senate on May 18 and is pending in the Assembly Natural Resources Committee.

SB 254 (Bergeson), which would delete the repeal date (January 1, 1991) of existing law allowing local agencies which provide fire suppression services directly or by contract with the state or a local agency to act by ordinance to levy an assessment to pay for fire suppression services, passed the Senate on March 16 and is pending in the Assembly Local Government Committee.

SB 360 (Campbell), which would require CDF to study methods to control the dieback of chaparral in southern California, passed the Senate on May 4 and is pending in the Assembly Natural Resources Committee.

SB 377 (Campbell), as amended May 18, would establish the Public Fire Prevention Program Advisory Committee with specified membership and would require the State Fire Marshal to imple-

ment, with assistance from the Committee, the Public Fire Prevention Act of 1989 consisting of specified components. This bill is pending in the Senate Appropriations Committee at this writing.

SB 427 (Torres), regarding global warming, has been amended and no longer applies to CDF or the Board of Forestry.

AB 339 (Hauser), which would require property sellers to disclose whether adjacent lands are zoned for timber harvest, is pending in the Assembly Local Government Committee.

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, is still pending in the Assembly Ways and Means Committee.

AB 390 (Sher), which would prohibit the clearcutting of any virgin old-growth timber stand, as defined, or the use of other silvicultural methods that have the effect of a clearcut on virgin old-growth timber stands, except as specified, is still pending in the Assembly Natural Resources Committee.

AB 433 (Waters, N.), which would increase the maximum prison sentence for arson of a structure or forest land to eight years, passed the Assembly on April 13 and is pending in the Senate Judiciary Committee.

AB 470 (Farr) would expand the use of the Forest Resources Improvement Fund to fund CDF administration of demonstration forests held in trust. As amended April 12, this bill would require the lands to be managed to produce revenue that offsets state costs. *AB 470* passed the Assembly on April 20 and is pending in the Senate Committee on Natural Resources and Wildlife.

AB 579 (Jones), which would require CDF to adopt minimum fire safety standards to apply to construction approved within state responsibility areas after January 1, 1991, passed the Assembly on April 27 and is pending in the Senate Appropriations Committee at this writing.

AB 639 (Quackenbush), which would allow CDF to use prisoners and wards during declared fire emergencies for fire protection efforts outside the state in specified areas, passed the Assembly on May 11 and is pending in the Senate Judiciary Committee.

LITIGATION:

In *Environmental Protection Information Center (EPIC) v. Board of Forestry, Maxxam Corporation, et al.*, the Board recently submitted its answers to three questions regarding the environmental



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impact of a Board-approved THP allowing Pacific Lumber Company (Maxxam Corporation) to harvest timber in Humboldt County. (See CRLR Vol. 9, No. 2 (Spring 1989) p. 107; Vol. 9, No. 1 (Winter 1989) p. 94; and Vol. 8, No. 4 (Fall 1988) p. 108 for background information on this case.)

In its responses, the Board concluded that the proposed THP "will not produce a significant effect on the environment." The Board also defended its approval of the THP, citing the administrative record which contains "a discussion of cumulative effects on key wildlife species dependent on or related to old-growth habitat."

Humboldt County Superior Court Judge John E. Buffington had previously ordered the Board to supplement its administrative record by specifically answering the three questions. Judge Buffington has enjoined Maxxam from harvesting until he rules on EPIC's petition for writ of mandate to reverse the Board's approval of the THP.

In late April, the U.S. Fish and Wildlife Service (USFWS) reversed its own December 1987 decision and proposed to list the northern spotted owl as an endangered species. In November 1988, in a lawsuit by environmental groups challenging the agency's decision, a federal judge in Seattle ruled that USFWS acted arbitrarily and contrary to the findings of its own experts in not listing the owl, and gave the agency until May 1, 1989, to change its mind. (See CRLR Vol. 9, No. 1 (Winter 1989) p. 13 and Vol. 8, No. 3 (Summer 1988) p. 19 for background information.) USFWS' decision to propose the owl for endangered species treatment begins a yearlong review, during which management plans for protection of the bird will be developed and public comment sought.

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 appointing 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:

San Francisco Bay/Sacramento-San Joaquin Delta Estuary Proceedings: Phase II. The draft revised Bay/Delta workplan was mailed to over 8,000 interested parties beginning in late April. The revision is a response to the significant controversy created when the Board released its October 1988 draft proposals. (See CRLR Vol. 9, No. 2 (Spring 1989) pp. 107-08; Vol. 9, No. 1 (Winter 1989) pp. 94-95; and Vol. 8, No. 4 (Fall 1988) p. 109 for background information.)

The new workplan sets forth tentative schedules, topics and procedures for the remaining phases of the Bay/Delta proceedings. The workplan bifurcates the hearings by dividing proceedings on water quality and water rights. Additionally, the workplan is structured so as to increase public input into the decision-making process. The WRCB was sched-

uled to hold a special meeting on July 20, at which time it would consider whether to adopt the revised workplan.

Kesterson Reservoir Clean-Up. On June 28, WRCB was scheduled to hold a public hearing on the U.S. Bureau of Reclamation's Final Clean-up Plan for the Kesterson Reservoir. Under order by the WRCB, the Bureau has been attempting to clean up selenium contamination in the Reservoir since 1985. (See CRLR Vol. 9, No. 2 (Spring 1989) p. 108; Vol. 9, No. 1 (Winter 1989) p. 95; and Vol. 8, No. 4 (Fall 1988) pp. 108-09 for background information.) On June 28, the Board will receive public testimony on the Bureau's proposal; the decision whether the proposal satisfies the Board's requirements will be made at a subsequent Board meeting.

WRCB Policy Is Ruled A Regulation. On May 17, the Office of Administrative Law (OAL) ruled that Resolution 88-63, the Board's "source of drinking water" policy adopted on May 19, 1988, is a regulation which must be adopted pursuant to the Administrative Procedure Act (APA). Resolution 88-63 interprets the term "source of drinking water" as it is used in Proposition 65, the Safe Drinking Water and Toxics Enforcement of 1986. (See CRLR Vol. 8, No. 3 (Summer 1988) p. 116 and Vol. 7, No. 4 (Fall 1987) p. 98 for background information on Resolution 88-63.)

With certain exemptions and exceptions, Proposition 65 prohibits the knowing discharge or release of a chemical known to cause cancer or reproductive toxicity "into water or onto or into land where such chemical passes or probably will pass into any source of drinking water...." The statutory definition of the phrase is contained in Health and Safety Code section 25249.11(d), which provides that "'source of drinking water' means either a present source of drinking water or water which is identified or designated in a water quality control plan adopted by a regional board as being suitable for domestic or municipal uses [MUN]." Thus, the identification of "sources of drinking water" is performed by a regional water quality control board as part of the process of adopting a water quality control plan for an area. Under the Porter-Cologne Water Quality Control Act, WRCB has the responsibility to coordinate the statewide program for water quality control. In May 1988, the Board adopted Resolution 88-63, which, *inter alia*, instructed the regional boards that all waters except waters which satisfy specified criteria should be designated MUN, and speci-