



been wrongfully included in the coastal zone under the Commission's jurisdiction, and that the conditions imposed by the Commission regarding development of the property were improper and excessive. Appellants further pressed a civil rights claim pursuant to 42 U.S.C. section 1983.

Regarding the boundaries of the coastal zone, appellants argued that their properties should be excluded from the coastal zone as defined in Public Resources Code section 30103, as being beyond "the first major ridgeline paralleling the sea." The trial court's interpretation of the applicable statutory language and maps incorporated therein revealed that the legislature had intended the maps to define the coastal zone and had declined to amend the maps despite introduction of legislation specifically designed to do so. The court of appeal affirmed, adding that the plain language of the statute referred to the coastal zone as generally described by words and specifically defined by the maps, and noting a well-established rule of statutory construction which dictates that the specific must control the general.

On the issue of the conditions imposed by the Commission, the trial court sustained the Commission's demurrer without leave to amend on the ground that Code of Civil Procedure section 1094.5 required filing of a petition for writ of mandate within sixty days of the Commission's decision. However, the trial court overruled the demurrer interposed by the Commission on the ground that petitioners' acceptance of the permits and compliance with the conditions imposed constituted a waiver of the right to attack those conditions. The Second District affirmed the trial court's action with respect to the first demurrer, but reversed on the issue of acceptance as waiver. Basing its decision on *County of Imperial v. McDougal*, 19 Cal. 3d 505 (1977), and *Pfeiffer v. City of La Mesa*, 69 Cal. App. 3d 74 (1977), the appellate court held that a landowner may not challenge a condition imposed upon the granting of a permit after acquiescence in the condition by either specifically agreeing to the condition, or failing to challenge its validity and accepting the benefits afforded by the permit.

Finally, the court of appeal affirmed the trial court's determination that the Commission is an arm of the state for Eleventh Amendment purposes and that neither a state nor its officials acting in their official capacities are "persons" under section 1983 of the federal civil right statutes. Both, therefore, are im-

mune from liability under that section.

RECENT MEETINGS:

At its September 12 meeting, the Commission voted to allow Pepperdine University to triple the size of its Malibu area campus. The 7-5 decision of the Commission followed staff's recommendation to restrict the seaside university's expansion to existing graded areas. The expansion will allow Pepperdine to double its student enrollment by the end of the century.

FUTURE MEETINGS:

To be announced.

DEPARTMENT OF FISH AND GAME

Director: Pete Bontadelli
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The Department of Fish and Game (DFG) manages California's fish and wildlife resources. Created in 1951 as part of the state Resources Agency, DFG regulates recreational activities such as sport fishing, hunting, guide services and hunting club operations. The Department also controls commercial fishing, fish processing, trapping, mining and gamebird breeding.

In addition, DFG serves an informational function. The Department procures and evaluates biological data to monitor the health of wildlife populations and habitats. The Department uses this information to formulate proposed legislation as well as the regulations which are presented to the Fish and Game Commission.

The Fish and Game Commission (FGC) is the policymaking board of DFG. The five-member body promulgates policies and regulations consistent with the powers and obligations conferred by state legislation. Each member is appointed to a six-year term.

As part of the management of wildlife resources, DFG maintains fish hatcheries for recreational fishing, sustains game and waterfowl populations and protects land and water habitats. DFG manages 100 million acres of land, 5,000 lakes, 30,000 miles of streams and rivers and 1,100 miles of coastline. Over 1,100 species and subspecies of birds and mammals and 175 species and subspecies of fish, amphibians and reptiles are under DFG's protection.

The Department's revenues come from several sources, the largest of which is the sale of hunting and fishing licenses

and commercial fishing privilege taxes. Federal taxes on fish and game equipment, court fines on fish and game law violators, state contributions and public donations provide the remaining funds. Some of the state revenues come from the Environmental Protection Program through the sale of personalized automobile license plates.

DFG contains an independent Wildlife Conservation Board which has separate funding and authority. Only some of its activities relate to the Department. It is primarily concerned with the creation of recreation areas in order to restore, protect and preserve wildlife.

MAJOR PROJECTS:

Commission Lists Desert Tortoise as Threatened. In November 1987, FGC approved the desert tortoise for "candidate species" status, thus triggering a one-year period for DFG to study the proposed listing. At its February 1989 meeting, FGC decided to postpone its decision to list the species until the June meeting, citing voluminous amounts of written public comment as the reason for the delay. (See CRLR Vol. 9, No. 3 (Summer 1989) p. 108 and Vol. 9, No. 2 (Spring 1989) pp. 102-03 for background information.) At its June meeting, FGC agreed to amend section 670.5, Title 14 of the California Code of Regulations (CCR), to add the tortoise to the threatened species list.

It is estimated that the desert tortoise population has declined between 30-70% in the western Mojave Desert over the past seven years. Reasons for the decline of this species include respiratory disease and attacks by raven which prey on tortoise eggs and young tortoises before the protective shell hardens. Increased human presence in the desert habitat is also believed to have raised the species' level of stress, making them more susceptible to respiratory disease. The tortoise is an "indicator species"—that is, its decline has a ripple effect felt throughout the desert habitat. Preservation of this species will benefit the numerous populations that prey upon it, as well as those that utilize the tortoise burrows for dwelling.

On another front, the federal Bureau of Land Management (BLM) on September 12 announced a temporary emergency quarantine of 37,700 acres in the western Mojave Desert to protect the desert tortoise. The quarantine will prohibit access to this area without Bureau permission. The BLM quarantined only 37,700 of the 65,000 acres originally proposed, in the hopes that this will allow



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researchers to better evaluate the effect of human contact on the tortoises. The quarantine went into effect on October 1, and will stay in effect as long as one year.

"Species of Serious Concern" Proposal Deferred. At its June 22 meeting, the Commission again considered a proposed amendment to section 670.1, Title 14 of the CCR. (See CRLR Vol. 9, No. 3 (Summer 1989) p. 108 for background information.) As first drafted, the proposed change would have created a new category of protection—entitled "species of serious concern"—to supplement the existing "endangered" and "threatened" designations. Environmental groups, among others, were concerned that this new category would be used by FGC to avoid listing a species as threatened or endangered, both of which immediately afford the affected population a number of protections. FGC disputed this argument, insisting that a new category is necessary for populations which are experiencing a severe decline in numbers but which do not yet meet the criteria for threatened or endangered status.

FGC subsequently amended the proposal to additionally require DFG to prepare a recovery plan for any species listed as "of serious concern", threatened, or endangered. As this amendment was first drafted, it would have allowed FGC to call for a recovery plan "in lieu of" listing the species.

Following the June 22 hearing, FGC decided to scrap the "species of serious concern" proposal for the time being; additionally, the amendment no longer allows for recovery plans "in lieu of" listing. At this writing, FGC is still receiving public comment on the issue and has yet to reach a final decision.

LEGISLATION:

AB 1018 (Hauser) authorizes the DFG Director to open ocean waters of this state to the taking of king salmon commercially to harvest underutilized spring-run king salmon. This bill was signed by the Governor on September 14 (Chapter 453, Statutes of 1989).

AB 2232 (Bradley). Existing law prohibits the possession or transportation of live wild animals except under permits issued by DFG. This bill would establish a license and permit program, and set forth shelter and transportation requirements for live wild animals, except birds. This bill would require the DFG Director to establish fees for the licenses and permits. This bill is a two-year bill pending in the Assembly Committee on Water, Parks and Wildlife.

The following is a status update on bills reported in detail in CRLR Vol. 9, No. 3 (Summer 1989) at pages 109-11:

AB 317 (Allen), as amended September 5, requires every person, while engaged in taking any bird, mammal, fish, amphibian, or reptile, to have on his/her person or in his/her immediate possession the license, tag, stamp, or permit required for the taking of such an animal. This bill was signed by the Governor on September 25 (Chapter 826, Statutes of 1989).

AB 1222 (Costa) extends until January 1, 1994, an existing provision requiring each state lead agency to consult with DFG to ensure that specified actions of the agency are not likely to jeopardize the continued existence of any endangered or threatened species. This bill was signed by the Governor on September 13 (Chapter 423, Statutes of 1989).

AB 1652 (Wright), as amended September 11, authorizes the DFG Director to revoke or cancel commercial gill or trammel nets permits upon prescribed violations, authorizes renewal of the permits to only those existing holders who meet specified qualifications, and prohibits issuing new permits until there are less than 325 permits issued by DFG. This bill was signed by the Governor on October 1 (Chapter 1242, Statutes of 1989).

SB 756 (Marks), as amended August 21, requires any person using steel-jawed traps, except specified government officers and employees, to be licensed and the traps to be identified, and provides for the inspection and removal of animals from the traps. This bill was signed by the Governor on September 26 (Chapter 890, Statutes of 1989).

SB 763 (Green), as amended July 6, authorizes FGC to require the owner and operator of a commercial fishing vessel, the holder of a commercial fishing permit, and the owner and licenseholder of a commercial passenger fishing boat to keep and submit a complete and accurate record of fishing activities. This bill was signed by the Governor on September 20 (Chapter 587, Statutes of 1989).

SB 999 (McCorquodale), as amended August 28, would have required DFG to make public its report regarding a petition for the listing of a species as threatened or endangered. If DFG's report states that the petitioned action, as specified, is warranted, this bill would have required FGC to publish the notice of proposed rulemaking in conjunction with scheduling the petition for final consideration, which is to be not more than 60 days after receiving the report on the petition from DFG. This bill was

vetoed by the Governor on September 26.

SB 1208 (Keene), as amended in July, authorizes 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 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. This bill was signed by the Governor on September 15 (Chapter 486, Statutes of 1989).

SB 1462 (Mello) prohibits the use of set or drift gill or trammel nets, except with mesh size greater than fourteen inches, in ocean waters 60 fathoms or less in depth from Pillar Point at Half Moon Bay to Waddell Creek in Santa Cruz County. This bill was signed by the Governor on September 12 (Chapter 399, Statutes of 1989).

The following bills were made two-year bills, and may be pursued when the legislature reconvenes in January: *AB 1 (Allen)*, which would establish the Marine Protection Resources Zone around the Channel Islands and prohibit the use of gill nets and trammel nets in the Zone on and after January 1, 1993; *AB 178 (Floyd)*, which would specifically direct FGC to rewrite its sport fishing and hunting regulations in simple English, and would state that the regulatory changes made pursuant to this bill are exempt from the regulatory program requirements of the CEQA; *AB 196 (Allen)*, which, as amended July 18, would make it unlawful, except as specifically authorized by the Fish and Game Code or regulations thereunder, to pursue, drive, herd, or harass any bird or animal (with prescribed exceptions); *AB 197 (Allen)*, which would provide for unspecified fines for persons who unlawfully export, import, transport, sell, possess, receive, acquire, or purchase any bird, mammal, amphibian, reptile, fish, or any listed endangered or threatened species in violation of the Fish and Game Code; *AB 371 (Condit)*, which would exempt any resident 62 years of age or older from the requirement for a sport fishing license; *AB 860 (Katz)*, which would return the mountain lion to specially protected status, and would provide for the issuance of special permits by the DFG to take mountain lions which have injured or destroyed livestock or damaged property; *AB 2126 (Felando)*, which, as amended August 21, would authorize the transfer or a drift gill net shark and swordfish permit to specified persons under specified conditions; *AB 2196 (Campbell)*, which would exempt FGC from certain



provisions of the Administrative Procedure Act when conducting a rulemaking proceeding on a petition to list a species as endangered or threatened; *AB 2497 (Connelly)*, which would create the California Riparian Habitat Protection and Restoration Program within DFG, under which the Department would be required to establish and implement specified projects; *SB 211 (Nielsen)*, which would allow any disabled state or local peace officer or firefighter with a 70% or more occupation-connected disability to receive a sport fishing license for \$2 upon proof of the disability; and *SB 212 (Nielsen)*, which would allow any resident 65 years of age or older whose income does not exceed specified amounts and any disabled peace officer or firefighter to obtain a hunting license for a fee of \$2.

LITIGATION:

On July 27 in *Fund for Animals, et al. v. California Fish and Game Commission*, No. 361662 (Sacramento Superior Court), Judge Cecily Bond ruled in favor of petitioners and cancelled the black bear hunt scheduled to start in August. (See CRLR Vol. 9, No. 3 (Summer 1989) p. 111 for background information.) In ruling that the Commission should not have approved the 1989 hunt without first considering the environmental impacts, Judge Bond expressed dismay that the Department could not produce any environmental impact reports for the last thirteen years. She also found that there have been significant changes in the bear's habitat over the years, and chastised the Commission for allowing hunts without annual reviews of environmental changes. The FGC argued that DFG has sufficient up-to-date information on the black bear habitat, and vowed to appeal the ruling.

FGC filed an appeal of *Mountain Lion Coalition, et al. v. California Fish and Game Commission*, the 1988 decision by the San Francisco Superior Court cancelling an FGC-approved mountain lion hunt for the second consecutive year. (See CRLR Vol. 9, No. 1 (Winter 1989) p. 92 and Vol. 8, No. 4 (Fall 1988) p. 106 for background information.) The court held that FGC could not authorize a mountain lion hunt until DFG produced a legally sufficient environmental analysis of the "cumulative impacts of the mountain lion hunting season." Oral argument in this appeal was scheduled for October 4.

RECENT MEETINGS:

At its August 29 meeting, FGC continued its review of a ten-point recovery

plan for the winter-run king (chinook) salmon, which FGC listed as endangered at its May meeting following a presentation of evidence that fewer than 600 of the fish remained in the Sacramento River and Estuary. (See CRLR Vol. 9, No. 3 (Summer 1989) p. 108; Vol. 9, No. 2 (Spring 1989) p. 104; and Vol. 7, No. 4 (Fall 1987) p. 94 for background information.) The Commission also reviewed a report presented by DFG Director Pete Bontadelli on the impacts of ocean and in-river sport fishing on the species. The report stated in no uncertain terms that sport fishing is not to blame for the decline of the species; rather, the problem has resulted from warm water temperatures, toxic acid mine runoff, degraded habitat, and massive water diversions from the Sacramento River and Estuary. Bontadelli presented the Commission with a number of regulatory alternatives to increase the escapement of adult winter-run chinook salmon by specific increments through graduated restrictions on sport fishing of the species. FGC will consider these alternatives and reach a decision at a future meeting.

At the same meeting, FGC granted temporary listing to the Delta Smelt. This was granted on the condition that the petitioner present a recovery plan to the Commission within one year. The Delta Smelt, an indicator species, lives for only one year; thus, it may be difficult to calculate the success of implemented recovery measures. The Delta Smelt is threatened with habitat destruction as the marshlands it inhabits deteriorate.

FUTURE MEETINGS:

To be announced.

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 policy-making 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, Robert J. Kerstiens, Franklin L. "Woody" Barnes, and Elizabeth Penaat.

Forest Products Industry: Roy D. Berridge, Mike A. Anderson, and Joseph Russ IV.

Range Livestock Industry: Jack Shannon.

The Forest Practice Act (FPA) 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 control 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:

OAL Approved Fire Protection Regulations. In June 1988, the Board adopted a regulatory action to change numerous provisions in the Forest Practice Rules pertaining to fire protection. The action adopts new sections 918.1, 938.1, 958.1; amends sections 918, 938, 958, 918.8, 938.8, 958.8, 918.10, 938.10, 958.10; and repeals sections 918.1, 938.1, 958.1, 918.2, 938.2, 958.2, 918.9, 938.9, and 958.9, Title 14 of the California Code of Regulations (CCR).

On March 27, the Office of Administrative Law (OAL) disapproved the proposed regulations for lack of clarity and for authorizing standards which are less than the statutory minimum (see CRLR Vol. 9, No. 3 (Summer 1989) p. 112 for background information). On May 22, the Board resubmitted the proposed regu-