



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-



REGULATORY AGENCY ACTION

latory changes after making necessary editorial modifications pursuant to OAL's suggestion. OAL subsequently approved the changes on June 21.

OAL Approves THP Forester Responsibility Regulations. On May 11, the Board submitted to OAL a proposed regulatory action clarifying the responsibilities under the FPA of the THP submitter, the RPF, and the licensed timber operator (LTO) in the preparation and implementation of a THP. The action adopts new sections 1035, 1035.1, 1035.2, and 1035.3, and repeals existing sections 1035, 1035.1, and 1035.2, Title 14 of the CCR.

Specifically, section 1035 establishes communications responsibilities between the THP submitter and the LTO concerning THP contents. Section 1035.1 clarifies the statutory and regulatory liability of the RPF preparing the THP. Section 1035.2 sets forth required communication between the RPF and the LTO for identifying sensitive areas on the THP. Section 1035.3 sets forth specific LTO responsibilities to inform the RPF preparing the THP of conditions inconsistent with the THP implementation. The section would also establish LTO responsibility for the actions of their employees.

On June 15, OAL disapproved the proposed action for failure to satisfy the clarity and reference standards of Government Code section 11349.1, and for failure to submit relevant documentation in the rulemaking file. Specifically, sections 1031, 1035, 1035.1, and 1035.2 were found to be capable of more than one meaning. Sections 1035 and 1035.2 were based upon incorrect statutory reference citations. Also, the rulemaking file failed to include documentation relied upon by the Board in the proposed action.

The Board resubmitted the proposed action to OAL for approval after modifying the rulemaking file pursuant to OAL's requirements. OAL subsequently approved the revised proposal, which was filed with the Secretary of State on September 26.

OAL Approves Amendments To RPF Licensing Regulations. On April 4, the Board adopted amendments to sections 1601-1647, Title 14 of the CCR, regarding RPF licensing. The changes seek to clarify the regulations and to adopt policy recommendations of the Board's Professional Foresters Examining Committee. (See CRLR Vol. 9, No. 2 (Spring 1989) p. 106 for detailed background information.) OAL approved this regulatory action on August 4.

Emergency Slash Disposal Regulations Extended For Southern District.

On May 3, OAL approved emergency regulations submitted by the Board to address drastic increases in tree-killing insect populations resulting from the 1987-89 drought (see CRLR Vol. 9, No. 3 (Summer 1989) p. 112 for background information). The rules were effective for pine trees in all three timber districts through July 15.

Due to the continuing magnitude of the problem in the southern timber district, the Board adopted an emergency regulatory action to extend the application of section 957.8, Title 14 of the CCR. This action extended the duration of the emergency regulation in the southern district until September 15. OAL approved the emergency regulation on August 2.

OAL Disapproves Erosion Control Maintenance Regulations. On February 7, the Board approved a regulatory action to clarify and strengthen standards for the maintenance of erosion control structures following completion of timber operations. (See CRLR Vol. 9, No. 1 (Winter 1989) p. 93 and Vol. 8, No. 4 (Fall 1988) p. 107 for detailed background information.) The proposed action would adopt new sections 923.8, 943.8, 963.8, 1022.3, and 1050, and amend sections 895.1, 914.6, 934.6, 954.6, 923.3, 943.3, 963.3, 923.4, 943.4, 963.4, 923.6, 943.6, and 963.6, Title 14 of the CCR. The Board submitted the proposed action to the OAL on July 21.

On August 21, OAL disapproved the proposal, finding that the Board failed on three separate occasions to provide the statutory fifteen-day public notice required following agency modification of the originally proposed text of the regulation. Such notice is required under Government Code section 11346.8 and section 44, Title 1 of the CCR. The Board also failed to submit a satisfactory statement of reasons to demonstrate the necessity of the proposed regulations as required under Government Code section 11346.7 and section 10, Title 1 of the CCR. Specifically, OAL found that the Board's Initial Statement of Reasons failed to sufficiently explain the need for the proposed regulations, or to provide substantial evidence of the need for the regulations. Absent such information, OAL was unable to assess the necessity of the regulations. The Board also added the phrase "and during timber operations as defined in Public Resources Code sections 4527 and 4551.5" to sections 914.6, 934.6, and 954.6 after the text had been originally made available to the public, and subsequent copies failed to double underscore the changes to

provide sufficient notice to the public of the changes. Finally, sections 923.4, 943.4, and 963.4 failed to define the meaning of the terms "timely action" and "deleterious quantities" for the prevention of the discharge of timber materials, resulting from slope failure, into watercourses and lakes.

The Board plans to modify the regulatory proposal to comply with OAL's specifications and resubmit it to OAL for approval.

OAL Rejects Proposed Site Preparation Regulations. On February 8, the Board adopted numerous amendments to its rules governing the preparation of areas for the planting of tree seedlings after timber harvesting. The regulations were developed pursuant to AB 1629 (Sher) (Chapter 987, Statutes of 1987) and would add relevant definitions to sections 895.1, and amend sections 912.5, 914, 914.2, 914.7, 915, 915.2, 915.3, 915.4, 916.3, 916.4, 917.3, 932.5, 934, 934.2, 934.7, 935, 925.2, 935.3, 935.4, 936.3, 936.4, 937.3, 952.5, 954, 954.2, 954.7, 955, 955.2, 955.3, 955.4, 956.3, 956.4, 957.3, 1022.2, and 1035, Title 14 of the CCR. (See CRLR Vol. 9, No. 2 (Spring 1989) p. 105; Vol. 9, No. 1 (Winter 1989) pp. 92-93; and Vol. 8, No. 4 (Fall 1988) p. 107 for detailed background information.)

On August 21, OAL rejected the proposed regulations due to lack of clarity in sections 914, 934, and 954. These sections require timber operations to be conducted to meet the goal of preventing "degradation of the quality and beneficial uses of water." Specifically, OAL found that the sections fail to define the term "quality of water" as used in the rules. As a result, the intended goal of preventing degradation of water quality cannot be uniformly and clearly understood.

The Board intends to incorporate by reference the definition of "quality of water" contained in the erosion control maintenance regulations presently being modified (*see supra*), and to resubmit both sets of proposed regulations simultaneously to OAL. The Board intends to formally adopt the modifications on December 15, subject to a fifteen-day public comment period.

Road Performance Bond Regulations Adopted. On September 13, the Board held a public hearing on proposed regulations to clarify the standards on performance bonds for public roads in five counties having special forest practice rules. The proposed action would repeal existing sections 925.11, 926.13, 928.4, and 965.8, and adopt new sections 925.11,



926.13, 928.4, and 965.8, Title 14 of the CCR.

In 1984, the Board adopted regulations implementing a requirement that timber operators post bonds in certain counties to indemnify the county for damage to county roads resulting from their timber operations. The present proposal would clarify the type of damage covered by the bond, the responsibility of the county to request posting of the bond, the limits of timber operator liability, and procedures the county must follow upon discovery of such damage. The regulations require the county to notify CDF of damage within thirty days of operation completion or the bond will be released.

The regulations were scheduled to be adopted by the Board at its October 12 meeting, and then await approval by OAL.

Board Modifies THP Notice Procedures. On August 9, the Board held a public hearing on proposed regulatory amendments which would change the required procedure for notifying adjacent landowners of one's intent to harvest timber, and increase the cost to the public of obtaining a copy of the THP. The action would amend section 1032.7, Title 14 of the CCR. (See CRLR Vol. 9, No. 3 (Summer 1989) p. 112 for background information.)

The intent of section 1032.7 is to ensure that all persons who own property adjacent to land for which a THP is being prepared are notified. The amendment seeks to change the present definition of the term "person," which has been construed to exclude adjacent federal landowners from receiving notice of a pending THP. The amendment would also transfer from the THP submitter to the RPF who is preparing the THP the responsibility of submitting a list of adjacent landowners. CDF experience reveals that THP submitters occasionally turn in incomplete and erroneous lists. The new rule would require the list to be compiled within sixty days of THP submittal and provided by a California title company, or to be from the latest equalized assessment roll.

Finally, the amendment would increase the cost to the public of obtaining a THP from \$1 to \$2.50 for the first twenty pages and \$.125 for each additional page. During the public hearing, this provision provoked numerous complaints from members of the public outside the timber industry. Gail Lucas of the Sierra Club stated that the proposal is one-sided, as the timber industry pays no THP fee; such a cost increase to the public, she argued, would be contrary to the Board's policy of increasing public

involvement in Board proceedings, and should either be avoided or covered by placing a fee upon the THP submitters. Furthermore, Ms. Lucas pointed out that consumer groups and the public want to alleviate concerns about THPs before involving the courts, and urged the Board to support public participation—not discourage it through prohibitive costs. At the conclusion of the August 9 hearing, the Board adopted the proposed action in its original form. The regulations await submission to and approval by OAL.

"Commercial Purposes" Definition. On July 12 and August 9, the Board held public hearings concerning the proposed amendment of section 895.1, Title 14 of the CCR. The amendment would clarify the meaning of the term "commercial purposes" as that term is used in the Public Resources Code to determine when a timber operation requiring a THP is occurring. (See CRLR Vol. 9, No. 3 (Summer 1989) p. 112 for background information.)

The amendment is intended to address three situations arising from the current definition. First, district attorneys who prosecute violations of the Public Resources Code need a clear definition of the term. Second, many forest landowners are unaware of the current CDF interpretation of the term, which includes exchanging wood onsite with a timber operator or other individual for the service of clearing and removing the trees. Furthermore, the Board is concerned that landowners are cutting, removing, and destroying good wood products to avoid the Board's jurisdiction and rules. Such timber operations require a Timberland Conversion Permit (TLCP), which is subject to California Environmental Quality Act (CEQA) process and viewed as overly time-consuming by many landowners. The proposed amendment would define "commercial purposes" (for purposes of determining whether a "timber operation" is occurring) to mean that timber, logs, or other forest products are or may be offered for sale, barter, exchange, or trade.

On August 9, the Board closed the public hearing on the proposed definition and referred the issue back to its Forest Practice Committee for further review and possible amendment.

TAC Petition for Rulemaking. At its July 12 and August 9 meetings, the Board continued the open hearings pertaining to regulatory amendments proposed by the Timber Association of California (TAC). The amendments propose numerous amendments to sections 895.1-1037.5, Title 14 of the CCR. (See CRLR

Vol. 9, No. 3 (Summer 1989) p. 112 for background information.)

The proposed amendments address recent court holdings that the review and processing of THPs on non-federal land, which are subject to the Forest Practice Act, are "projects" which fall under the scope of CEQA. CEQA provides that regulatory programs may be certified as equivalent to the Environmental Impact Report (EIR) process required under CEQA. Upon certification, the certified regulatory program is exempt from the preparatory requirements of the full EIR. The regulatory program of the Board of Forestry has been certified by the Resources Agency Secretary to meet this standard in 1976 and 1979.

However, according to TAC, lawsuits such as *Laupheimer v. State of California* and *EPIC v. Johnson*, which successfully challenged the Board's THP process as being inconsistent with CEQA, have resulted in conflicting decisions, administrative uncertainty, and an unstable regulatory climate which discourages sustained investment in timber production. According to TAC, this proposed regulatory action seeks to establish a program which is equivalent to the CEQA process so as to avoid court review of Board-approved THPs for violation of CEQA. As such, the amendments address three standards set forth in CEQA and in which THPs have been found lacking: cumulative effects, wildlife protection, and overriding considerations.

At the meetings, Sierra Club and EPIC representatives expressed concern that the proposed amendments are essentially a clever disguise enabling reduced environmental protection. The groups also voiced concern about a conflict between the stated policy of the Board to facilitate timber production, and the restraints that environmental and wildlife protection goals may require on that policy.

The Board closed the public hearing on the proposed regulations on August 9, and referred the matter back to the Forest Practice Committee, the Wildlife Task Force, and the Legislation and Policy Development Committee for further consideration.

LEGISLATION:

The following is a status update on bills discussed in detail in CRLR Vol. 9, No. 3 (Summer 1989) at pages 112-13:

AB 1812 (Sher) requires, on and after July 1, 1991, a seller of real property within an area classified as a state responsibility area by the Board to disclose



REGULATORY AGENCY ACTION

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 except under specified conditions. This bill was signed by the Governor on September 12 (Chapter 380, Statutes of 1989).

AB 1814 (Sher) would have required 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 was vetoed by the Governor on July 14.

AB 390 (Sher), which, as amended June 29, would have prohibited the clear-cutting of any virgin old-growth timber stand or the use of other silvicultural methods that have the effect of a clearcut on virgin old-growth timber stands, failed passage in the Assembly on June 30.

AB 433 (N. Waters). Section 451 of the Penal Code provides that arson of a structure or forest land is a felony punishable by imprisonment in the state prison for 2, 4, or 6 years. This bill, as amended August 22, provides for an additional term of 1, 2, or 3 years for a person committing this offense who has previously been convicted of the same offense. This bill was signed by the Governor on September 25 (Chapter 832, Statutes of 1989).

AB 470 (Farr) expands the use of the Forest Resources Improvement Fund to fund CDF administration of demonstration forests held in trust. This bill requires the lands to be managed to produce revenue that offsets state costs. This bill was signed by the Governor on August 2 (Chapter 251, Statutes of 1989).

AB 579 (Jones) requires CDF to adopt minimum fire safety standards to apply to construction approved within state responsibility areas after January 1, 1991. This bill was signed by the Governor on June 28 (Chapter 60, Statutes of 1989).

AB 639 (Quackenbush), which allows CDF to use prisoners and wards during declared fire emergencies for fire protection efforts outside the state in specified areas, was signed by the Governor on September 13 (Chapter 419, Statutes of 1989).

SB 1184 (Mello), as amended August 21, gives 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 the public input regarding submitted

THPs. This bill was signed by the Governor on September 24 (Chapter 723, Statutes of 1989).

SB 1568 (Keene) authorizes the Department of Fish and Game (DFG) and the Water Resources Control Board (WRCB) to appeal to the Board of Forestry the approval of a THP by the CDF Director, under specified circumstances. This bill was signed by the Governor on September 12 (Chapter 400, Statutes of 1989).

SB 27 (Campbell), which requires the Office of Emergency Services, in cooperation with CDF and the State Fire Marshal, to establish and administer the FIREScope Program, was signed by the Governor on October 2 (Chapter 1364, Statutes of 1989).

SB 133 (Campbell), regarding required local registration of persons convicted of arson, was signed by the Governor on September 7 (Chapter 311, Statutes of 1989).

SB 186 (Dills), as amended August 31, requires each county which contains state responsibility areas for purposes of fire prevention and suppression to submit a copy of the proposed safety element (or proposed amendment to the 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 for review and recommendations. This bill was signed by the Governor on September 25 (Chapter 778, Statutes of 1989).

SB 201 (McCorquodale), as amended September 5, authorizes DFG, WRCB, and the California regional water quality control boards, 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 timber harvesting plan 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. This bill was signed by the Governor on September 26 (Chapter 915, Statutes of 1989).

SB 254 (Bergeson), as amended July 17, deletes the repeal date 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. This bill was signed by the Governor on July 27 (Chapter 221, Statutes of 1989).

SB 360 (Campbell), as amended July 20, requires CDF to conduct a research

study on chaparral dieback on brushlands in southern California, to cooperate with other entities on the chaparral dieback problem, and to submit annual progress reports on the research study to the Joint Committee on Fire, Police, Emergency, and Disaster Services. This bill was signed by the Governor on September 11 (Chapter 339, Statutes of 1989).

SCR 17 (Campbell), which requests that the Board assess and determine the effects of its land use decisions and actions on any oak woodlands that may be affected, was chaptered on September 1 (Chapter 100, Resolutions of 1989).

The following bills were made two-year bills, and may be pursued when the legislature reconvenes in January: **AB 1811 (Sher)**, which, as amended September 13, would enact the Forestry and Wildland Fire Protection Bond Act of 1989 which, if adopted, would finance a program for forestry and wildlife fire protection purposes, through the issuance of bonds in an amount of \$255,500,000; **SB 1569 (Keene)**, which, as amended July 17, would create the Timberland Task Force, composed of eleven members, which would study various issues relating to timberlands and wildlife species utilizing timberland habitat; **SB 377 (Campbell)**, which, as amended August 21, would establish the Public Fire Prevention Program Advisory Committee with specified membership and would require the State Fire Marshal to implement, with assistance from the Committee, the Public Fire Prevention Act of 1989 consisting of specified components; **AB 339 (Hauser)**, which would require property sellers to disclose whether adjacent lands are zoned for timber harvest; **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; **SB 917 (McCorquodale)**, which 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; **SB 28 (Campbell)**, which would require the Attorney General, in consultation with the State Fire Marshal, to establish and maintain an arson information system; and **SB 134 (Campbell)**, which would require the Department of Justice to furnish to specified persons and entities a record of arson convictions of persons who apply for employment or volunteer for a position which involves supervisory or



disciplinary power over a minor.

FUTURE MEETINGS:

To be announced.

WATER RESOURCES CONTROL BOARD

Executive Director: James W. Baetge

Chair: 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.

The State Board and the regional boards have quasi-legislative powers to adopt, amend, and repeal administrative regulations concerning water quality issues. Water quality regulatory activity also includes issuance of waste discharge orders, surveillance and monitoring of discharges and enforcement of effluent limitations. The Board and its staff of approximately 450 provide technical assistance ranging from agricultural pollution control and waste water reclamation to discharge impacts on the marine environment. Construction grants from state and federal sources are allocated for projects such as waste water treatment facilities.

The Board administers California's water rights laws through licensing appropriative 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.

On July 6, the Senate confirmed the reappointment of W. Don Maughan as Chair of the State Board by a 25-6 vote. Maughan, a registered civil engineer, was first appointed as the Board's Chair in May 1986 by Governor Deukmejian. Prior to that, Maughan acted as a part-time consultant to the California Department of Water Resources and served on the Board from 1973-1979. He was Assistant State Engineer and Deputy Director of the Arizona Department of Water Resources from 1979-1985.

MAJOR PROJECTS:

Kesterson Reservoir Clean-Up Order Issued. The controversy over Kesterson Reservoir dates back to April 1984, when Robert James Claus, owner of land adjacent to the Reservoir, presented a petition to WRCB. In his petition, Claus alleged that the Central Valley Regional Board had improperly failed to regulate the discharge of subsurface agricultural drainage into the Reservoir. The Reservoir, part of a 5,900-acre wildlife refuge, also served as an evaporation pond for drainage water from farmlands in the Westlands Water District.

The State Board ordered an investigation into the condition of the Reservoir. High levels of selenium, heavy metals, and other trace elements were found in the drainage water. Studies showed that the selenium contamination had wreaked havoc on the wildlife in the refuge throughout the food chain, and had particularly affected the migratory bird population.

In February, WRCB directed the federal Bureau of Reclamation (Bureau), an agency of the U.S. Department of the Interior, to clean up the pollution at the site. The Bureau, as owner and operator of Kesterson Reservoir, ordered the Reservoir closed and terminated all discharge of drainage into the Reservoir in 1986. The State Board directed the Bureau to propose a final clean-up plan by December 1986. The Bureau's Onsite Disposal Plan, adopted by the Board in March 1987 as Order No. WQ 87-3, called for the removal and disposal of contaminated soil in double-sealed clay-lined landfills within the refuge itself.

However, subsequent data compiled by the Bureau forced it to reevaluate this plan. High concentrations of selenium were discovered in the ephemeral pools (seasonal wetlands) at the Reservoir. The Bureau decided the Onsite Removal Plan would not adequately address this problem. In response, the

Board requested the Bureau to perform four tasks within a certain time schedule. The tasks included: (1) fill all ephemeral pool areas in the Reservoir to six inches above rising ground water by January 1, 1989, and submit a report to the Board by April 1, 1989 evaluating the success of the fill program; (2) submit a report by December 1, 1988 on the viability of microbial volatilization as a clean-up technique; (3) complete an upland habitat assessment by April 1, 1989; and (4) submit a final clean-up plan by April 1, 1989. The Bureau completed all these tasks as required by the Board. (For a complete and detailed discussion of the Kesterson Reservoir clean-up, see CRLR Vol. 9, No. 3 (Summer 1989) p. 114; Vol. 9, No. 2 (Spring 1989) p. 108; Vol. 9, No. 1 (Winter 1989) p. 95; Vol. 8, No. 4 (Fall 1988) pp. 108-09; Vol. 8, No. 3 (Summer 1988) pp. 115-16; Vol. 8, No. 3 (Spring 1988) p. 111; Vol. 7, No. 3 (Summer 1987) p. 121; Vol. 6, No. 3 (Summer 1986) p. 76; Vol. 5, No. 4 (Fall 1985) p. 87; and Vol. 5, No. 1 (Winter 1985) p. 72.)

On June 28, 1989, the Board held a public hearing to hear evidence and comments on the viability of the Bureau's proposed final clean-up plan. The plan notes that all drainage discharge at the site has ceased, and that the ephemeral pool areas have been successfully filled as ordered. The Bureau's study of volatilization has resulted in strong reservations about its feasibility on a full-scale basis. Thus, the Bureau's final clean-up plan consists of three components: active site management, continued monitoring of the site, and continued research. The Bureau decided on these three approaches as it has concluded there is no reasonable short-term means of removing the selenium-contaminated soil from Kesterson. The Bureau intends to conduct specific site management actions at the Reservoir, and will focus this year on the problem of persistent rainwater puddles and elevated selenium levels in vegetation in open areas. Other aspects of the plan will involve active monitoring of the site for selenium contamination and continued research into techniques to dissipate the presence of selenium at the reservoir.

Representatives from various government agencies and environmental organizations and interested individuals presented testimony at the June 28 hearing. The Board made no decision at that meeting, but took all comments under advisement, and issued a draft order regarding the final clean-up plan which incorporated some of the concerns ex-