



# REGULATORY AGENCY ACTION

sion to provide and maintain affordable housing in the coastal zone. Developers were required to build a percentage of their units for low-cost housing purposes. Only qualified buyers were allowed to purchase the units, and resale controls were imposed to assure that the units would continue to meet affordable housing needs. The Orange County Housing Authority (OCHA) agreed to administer the program, whereby it would find qualified buyers when the units were to be resold. In 1984, OCHA withdrew from the program. The Commission asked Community Housing Enterprises (CHE) to administer the program. CHE agreed and served as administrator until 1987. In mid-1987, CHE withdrew, citing a lack of resources and unmanageability of the program. The Commission was unable to implement the program itself due to a lack of expertise, funding, and staff. No other agency would accept the burden, and the possibility of losing over 500 units of low-cost housing became more certain.

The homeowners, who were still subject to the resale controls, no longer had an agency which would find qualified buyers. Unable to sell their units, several owners petitioned the Commission to remove the controls from their units. In February 1988, the Commissioner released thirteen units whose owners complained they were suffering from undue hardship. This release prompted petitions from other owners seeking a similar exemption. On May 9, Deputy Attorney General Anthony Summers issued an opinion stating that because the release of the units appeared to be "a complete abandonment of the housing conditions in Orange County" which "might give millions of dollars to private purchasers who obtained units subject to resale controls," it may have violated the gift clause of the California Constitution. A footnote to the opinion advised that an alternative procedure where excess profits from the resale of the units would be placed in escrow for housing purposes would not run afoul of the gift clause, and would be within the Commission's power.

At its September 16 meeting, the Commission rejected several homeowners' petitions to delete the resale controls. It gave the homeowners the option of finding qualified buyers and keeping the controls intact, or finding a "normal" buyer and giving all profits up to \$10,000 to the Commission. This "recaptured" money would be placed in an escrow account and would be used for affordable housing purposes. If the

sale does not generate \$10,000 in profit, subsequent sellers of the property would be forced to give up profits until that sum is met. Whichever option a homeowner chooses, he/she will have to find their own buyer. The Commission will issue a list of buyers who are qualified under the resale control program, but the Commission has neither the funds nor the personnel to procure buyers under the original resale program.

Efforts continue in the legislature to obtain funding for the continuation of the resale program. If the funding is provided and an agency is appointed to administer the program, resale controls will be reinstated on the properties which have not yet been sold under the escrow account procedure.

The fate of the property released in February remains unclear. According to the Deputy Attorney General, it is possible that the Commission could be sued for the value of the low-cost housing that was released.

## FUTURE MEETINGS:

December 13-16 in San Francisco.

January 10-13 in Marina del Rey.

February 7-10 in San Francisco.

March 7-10 in Marina del Rey.

April 11-14 in San Diego.

## 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 policy-making 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:

*OAL Approves Bighorn Sheep, Tule Elk, and Mountain Lion Hunting Seasons.* The Office of Administrative Law (OAL) has approved proposed sections 263, 364, and 369, Title 14 of the California Code of Regulations (CCR), adopted by the FGC in April. The approved regulations would establish the hunting seasons for bighorn sheep, tule elk, and mountain lions. (See CRLR Vol. 8, No. 3 (Summer 1988) pp. 111-12; Vol. 8, No. 2 (Spring 1988) pp. 107-08; Vol. 8, No. 1 (Winter 1988) p. 95; Vol. 7, No. 4 (Fall 1987) p. 95; and Vol. 7, No. 3 (Summer 1987) p. 118 for detailed background information.) OAL's approval is the last regulatory hurdle the DFG must overcome in order to institute these hunts in the state. However, several lawsuits have been filed to stop the hunts. (*See infra* LITIGATION.)

According to DFG, it has authorized the hunts because the animal populations of these groups have increased dramatically. However, several groups challenge official state estimates of these populations. They claim that several methods used by DFG to determine animal populations have been unreliable in the past. Further, the groups claim that



animal populations vary significantly depending on which method is used.

The hunting of large game as sport has stirred an enormous amount of debate, and interest is expected to run high as the start of the season nears. Because of the pending lawsuits, DFG officials predict that no mountain lion hunt will take place this year, and doubt whether the tule elk hunt will occur as well.

**Condor Conservation Program Approved.** FGC has been approached by the U.S. Fish and Wildlife Service to institute a program in California which involves the release of Andean Condors into the former habitat and range of the California Condor. It is hoped that this program will give scientists critical information in determining whether the California Condor will survive in the wild. At present, California Condors are known to exist only in captivity. These animals were removed from the wild because of their decreasing numbers and the fear that they would soon become extinct. They have been captured and placed in captive breeding programs at the San Diego and Los Angeles zoos. (See CRLR Vol. 7, No. 4 (Fall 1987) p. 94 and Vol. 7, No. 3 (Summer 1987) p. 119 for background information.)

The FGC hopes that the information obtained from the Andean Condor release program, which it has approved, will provide enough information to enable the state to release the California Condors with confidence that they will survive in the wild. DFG will attempt to determine whether the size of the condor's habitat should be reduced; the best area in which to release the birds; and whether the population will be able to avoid man-made hazards. The program is set to run for two to three years; FGC hopes to reintroduce the California Condors to the wild in three to four years.

**River Water Replacement.** The DFG, the U.S. Bureau of Reclamation, the Environmental Defense Fund, Anglers United, the Grasslands District and Ducks Unlimited, and representatives of the commercial salmon industry and state water contractors have cooperated in a project to obtain water to fill rivers and wetlands which are badly depleted due to the recent drought.

Water will be poured into rivers and wetlands in the San Joaquin Valley to provide salmon and waterfowl with water they need to survive. The water will come from the New Melones Reservoir on the Stanislaus River in the Sierra foothills east of Modesto. DFG Director Pete Bontadelli emphasized

that extra water for fish and ducks will not shortchange farmers, municipalities, or anyone else who contracts to buy state and federal water.

**OAL Disapproves Proposed Regulations.** OAL recently disapproved two regulatory actions adopted by the Commission. First, FGC adopted an emergency amendment to section 508, Title 14 of the CCR, on July 1. The amendment revised FGC's regulation governing hunting clubs feeding migratory water fowl. On July 11, OAL disapproved the amendment because FGC did not show that an emergency exists warranting the change.

In April, FGC amended five sections and repealed three sections of Title 14 of the CCR governing the importation of live aquatic plants and animals. On July 7, OAL disapproved the regulatory package for failure to meet the necessity and clarity standards in Government Code section 11349.1. FGC is reviewing the package to see whether it can cure the problems with technical changes and resubmit the changes to OAL.

## LEGISLATION:

**AB 2940 (Quackenbush)** increases the maximum fine from \$2,000 to \$5,000 for certain violations relating to endangered or fully protected species. This legislation also sets standard penalties for those who intentionally maim, mutilate, or torture animals. This offense is punishable by a fine of not more than \$20,000, imprisonment for one year, or both. AB 2940 was signed by the Governor on June 1 (Chapter 127, Statutes of 1988).

The following is a status update on bills reported in CRLR Vol. 8, No. 3 (Summer 1988) at pages 112-13 and Vol. 8, No. 2 (Spring 1988) at pages 107-08:

**SB 2021 (Green)** amends a provision of existing law which exempts, from the prohibition against taking certain species of fish, giant sea bass incidentally taken in certain commercial fishing operations. The restriction would be lowered from two to one fish per vessel. SB 2021 was signed by the Governor on July 7 (Chapter 308, Statutes of 1988).

**SB 2022 (Green)**, prohibiting the taking of rockfish and lingcod in waters less than 70 fathoms deep, was signed on August 25 (Chapter 589, Statutes of 1988).

**AB 512 (Allen)** authorizes DFG to impose civil liability on persons who perform specified acts in violation of the Fish and Game Code or related regulations. The bill exempts certain forestry, agriculture, or government-permitted

development and maintenance activities. AB 512 was signed by the Governor on September 21 (Chapter 1059, Statutes of 1988).

**AB 2891 (Jones)** makes forfeiture of license tags for mountain lions and bears effective upon a conviction for specified violations of the Fish and Game Code or rules, regulations, or orders promulgated under it. Persons so convicted will be guilty of a misdemeanor if they reapply for the respective license tags the following year. The purchase, possession, and sale of certain bear parts is also prohibited. This bill was signed on August 23 (Chapter 556, Statutes of 1988).

**AB 3094 (Allen)**, regulating DFG employees who issue punch cards, licenses, license stamps, and license tags, was signed on July 13 (Chapter 340, Statutes of 1988).

**AB 3330 (Costa)**, which reenacts the Fish and Game Commission's authority to revoke or suspend boat registrations and commercial fishing licenses for specified commercial fishing violations, was signed on July 15 (Chapter 379, Statutes of 1988).

**SB 2619 (Marks)**, which would have increased personalized environmental license plate fees, was vetoed on September 28.

The following bills died in committee or were dropped by their authors: **AB 1960 (Farr)**, which would have authorized DFG to issue a raptor propagation permit to a licensee to sell or barter any lawfully possessed bred raptor, raptor egg, or raptor semen; **AB 2007 (Kelley)**, concerning duties of persons whose property is licensed as a private wildlife management area; **AB 2605 (Seastrand)**, which, as amended August 1, would have established a local Marine Fisheries Impact Program; **AB 212 (Condit, et al.)**, which would have exempted any state resident 62 years of age or older from the requirement for a sport fishing license, and would also have authorized a disabled veteran to receive a hunting license from DFG for a fee of \$2; **AB 253 (Kelley)**, which would have required the DFG to report to the legislature on warden staffing patterns and responsibilities; **AB 271 (Allen, Killea)**, which would have required that all state agencies comply with certain administrative reporting procedures; **AB 2725 (Chacon)**, which would have required the DFG to conduct a study on the impact of commercial crayfishing on lakes and reservoirs; and **SB 2020 (Green)**, which would have created a Southern California Citizens Advisory Committee on Ocean Habitat



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and Fishery Restoration within DFG.

## LITIGATION:

In *Mountain Lion Preservation Foundation, et al. v. California Fish and Game Commission*, Judge Lucy McCabe of the San Francisco Superior Court blocked the Commission's effort to allow mountain lion hunting in California for the second consecutive year. (See CRLR Vol. 8, No. 3 (Summer 1988) p. 113; Vol. 8, No. 2 (Spring 1988) p. 108; Vol. 8, No. 1 (Winter 1988) p. 95; Vol. 7, No. 4 (Fall 1987) p. 95; and Vol. 7, No. 3 (Summer 1987) p. 118 for background information.) Judge McCabe ruled that the agency had failed to comply with her 1987 order to study the environmental impact of the sport hunt. FGC plans to appeal the ruling. However, because the appeal will take time, FGC concedes that mountain lion hunting will probably not take place this year.

In other litigation, the Committee for the Preservation of the Tule Elk filed suit in Sacramento Superior Court to block the first hunt of the small elk in 117 years. The group challenged DFG's population estimates. In late September, Judge Cecily Bond enjoined the planned October hunt, ruling that an environmental impact report prepared by DFG failed to meet the standards of the California Environmental Quality Act.

In *Martinet v. Department of Fish and Game*, No. D006073, 88 D.A.R. 10476 (July 25, 1988), the Fourth District Court of Appeal upheld the constitutionality of the Drift Gill Net Shark and Swordfish Fishery Law (sections 8560-8583 of the Fish and Game Code) against a challenge that it violates equal protection under the law. The court held that the DFG may limit the number of shark drift gill net permits issued, and that the statutes protect against overfishing while also protecting the fishing industry and those persons who have invested in and practiced drift gill net fishing of shark and swordfish in the past.

## RECENT MEETINGS:

At its September meeting, the DFG heard public testimony on whether duck hunting organizations should be allowed to continue their feeding programs. The debate centered on whether feeding is an unfair way for duck hunting organizations to attract waterfowl. In light of the decrease in water from the recent drought, this issue may be decided by the DFG in light of whether the feeding programs actually provide waterfowl with needed grain, rather than whether

the feeding of waterfowl by duck hunting organizations is used to "bait" ducks.

Also at its September meeting, the DFG established steel shot zones for the upcoming waterfowl season; and decided to set mallard and pintail duck bag limits as liberally as possible within the federal guidelines.

## 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 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 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:

*Site Preparation Regulations.* On September 7, the Board conducted a public hearing on proposed changes to numerous sections of its regulations, which appear in Title 14 of the California Code of Regulations (CCR). The rulemaking will add specific regulations to control aspects of preparing an area for the planting of tree seedlings after harvesting. The site preparation regulations must be adopted by November 1988, pursuant to AB 1629 (Sher) (Chapter 987, Statutes of 1987) (see CRLR Vol. 7, No. 4 (Fall 1987) p. 96 for background information). That bill requires the Board to adopt regulations on site preparation which involves post-harvest disturbance of soil or the burning of vegetation.

Specifically, the Board proposes to add several relevant site preparation definitions to section 895.1; amend Technical Rule Addendum Number One for the procedures on estimating surface soil erosion hazard rating (sections 912.5, 932.5, and 952.5); amend its regulations for each forest district which deal with harvesting practices and erosion control to include site preparation activities (sections 914, 914.2, 914.7, 934, 934.2, 934.7, 954, 954.2, and 954.7); and amend its regulations dealing with protection of the beneficial uses of water and hazard reduction to address site preparation activities (sections 916.3, 916.4, 917.3, 936.3, 936.4, 937.3, 956.3, 956.4, and 957.3). Additionally, a new article (Article 5) is being proposed for each forest district which will set specific standards for the use of motorized equipment in site preparation, the treatment of vegetative matter, the protection of natural resources, and the contents for addendum to the THP on site preparation. The Board is also considering section 1022.2, which specifies when a timber operator's license will be required for site preparation activities. Finally, the Board proposes to amend the regulations specifying the responsibilities of the THP submitter.

At the September hearing, the Board