



REGULATORY AGENCY ACTION

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



heard suggested additions and deletions from the three regional DTACs, the CDF, the Department of Fish and Game (DFG), the Water Resources Control Board (WRCB), the California Timber Association, and the California Licensed Foresters Association. The Board agreed to annotate the various suggestions of the representative groups and send out a synopsis of the proposed changes to all interested persons. It continued the hearing on the proposed regulatory changes until its October 5 meeting in Santa Cruz, and set the deadline for adoption of the regulations for November 2.

Erosion Control Maintenance Regulations. Also pursuant to AB 1629 (Sher), the Board held another public hearing on September 7 on proposed regulatory changes which will add specific regulations for the maintenance of installed drainage facilities on skid trails, roads, and landings for a period of at least one year following the filing of a work completion report, provided it is approved.

Specifically, the Board is considering the addition of definitions to section 895.1 to clarify the implementation of changes to the Forest Practice Act (FPA) requiring maintenance of certain erosion control facilities after completion of timber operations. Definitions of "erosion controls", "abandonment", and "prescribed maintenance period" will be adopted. The forest district regulations on waterbreaks (sections 923.3, 943.3, and 963.3) would be amended to require the maintenance of waterbreaks and other erosion control facilities for at least one year after filing a work completion report if it is approved. The regulations on watercourse crossing for roads and landings (sections 923.3, 943.3, and 963.3) would be amended to specify treatment of areas where crossings have been removed. The maintenance regulations for roads and landings (sections 923.4, 943.4, and 963.4) would be amended to implement the change in the FPA requiring minimization of erosion on watercourses and lakes through the installation and maintenance of drainage facilities and soil stabilization treatments. The regulations on the use of roads during wet periods (sections 923.6, 943.6, and 963.6) would be amended to apply to maintenance activities. A new section setting forth specific standards for the planned abandonment of roads, watercourse crossings, and landings would be added to each district's regulations (sections 923.8, 943.8, and 963.8). Section 1022.3 is proposed to exempt those performing

erosion control maintenance from the requirement of a timber operator's license. Finally, section 1050 would be repealed and readopted to specify when erosion control maintenance is required, who is responsible for the maintenance, the period of time maintenance is required after completion of timber operations, and the criteria for setting the maintenance period.

At the end of the September 7 hearing, the Board agreed to continue the hearing until its October 5 meeting in Santa Cruz.

OAL Disapproves Education Program for New Timber Operators. On November 4, 1987, the Board adopted amendments to section 1024 and new section 1024.1, Title 14 of the CCR, to require persons applying for their first timber operator's license to complete an education program and to establish the standards for the education programs. (See CRLR Vol. 8, No. 1 (Winter 1988) p. 96 for background information.) The above-referenced regulatory action was submitted to the Office of Administrative Law (OAL) for review on June 2, 1988.

On July 11, the OAL disapproved the Board's proposal on grounds that the proposed sections were "unclear" and that the Board failed to provide a fifteen-day notice of substantial changes made to the originally-published language. At its September 7 meeting, the Board agreed to review the package and make the necessary changes in order to resubmit the proposed sections for OAL approval.

OAL Approves Preferential Conifer Stocking Amendments. The Board's amendments to sections 912, 932, and 952, Title 14 of the CCR, were recently approved by the OAL. These sections provide for the restocking of fast-growing, economically profitable Group A commercial species in the coast, northern, and southern forest districts. (See CRLR Vol. 8, No. 2 (Spring 1988) p. 109 and Vol. 8, No. 1 (Winter 1988) pp. 95-96 for background information.) The approved revisions allow CDF the discretion to approve THPs which increase the basal percentage of Group B commercial species after restocking. In order to increase the percentage of Group B trees, which include many slower-growing hardwoods, the THP must demonstrate with "clear and convincing evidence" that the intent of the Forest Practice Act is met, and that "there will not be an immediate significant and long-term harm."

LEGISLATION:

SB 1335 (McCorquodale), as amended August 17, would have authorized the DFG, the WRCB, and regional water quality control boards, if accompanied by CDF personnel and with 24-hour advance notice to the landowner, to enter and inspect land during normal business hours 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. This bill was vetoed by the Governor on September 26.

SB 2190 (Dills), which would have required cities and counties to identify areas subject to wild land fires in their state-mandated land use planning, was vetoed by the Governor on September 30.

AB 2720 (Sher), which would have appropriated \$1.1 million for reforestation loans and grants and for capital improvements to the state forest nursery system, was vetoed by the Governor on September 30.

AB 4070 (Farr) would have authorized county review teams to accompany CDF on inspections; and would have authorized the Board to adopt individual county rules and regulations relating to the processing of THPs. This bill was vetoed by the Governor on September 28.

AB 2721 (Sher), as amended June 14, appropriates \$2,272,000 to augment CDF's 1988 fire season budget for early activation of seasonal fire crews, stations, lookouts, and air attack operations. This bill was signed by the Governor on June 30 (Chapter 247, Statutes of 1988).

AB 3623 (Sher) revises the purposes for which state nurseries are maintained by including the provision of stock for damaged lands, maintenance of a state seed bank, and restoration of endangered native tree and plant species. This bill was signed by the Governor on August 20 (Chapter 429, Statutes of 1988).

AB 3820 (Bader) removes an exemption for southern California counties in Penal Code section 384.5, and now requires persons who remove minor forest products (including fuelwood) from property where the products were cut to possess specified documentation. This bill also prohibits movement of fuelwood infested with live Eucalyptus Longhorn Borers or their larvae. This bill was signed by the Governor on June 29 (Chapter 225, Statutes of 1988).

SB 2550 (Keene), which would have required CDF to prepare a data base of



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California vegetation as part of the forest and rangeland resources assessment program, failed passage in the Assembly Natural Resources Committee.

SB 2714 (Roberti), which repeals superseded sections of the Public Resources Code regarding the length of time Board members may serve after their term ends, was signed by the Governor on July 1 (Chapter 257, Statutes of 1988).

AB 2079 (Baker) was amended on August 12 and no longer relates to the Board or CDF.

AB 3601 (Sher) would have prohibited the clearcutting of any old-growth timber stand, as defined, or the use of any silvicultural method which has the effect of a clearcut. *AB 3601* died in the Assembly Natural Resources Committee.

SB 1572 (Campbell), which would have provided that CDF is not required to reimburse counties for increased fire protection costs in state responsibility areas if CDF has not budgeted those funds for those increased costs, died in the Assembly Ways and Means Committee.

SB 1641 (Keene), which would have authorized the DFG or the WRCB to appeal an approval of a THP by the CDF Director to the Board, was defeated on the Assembly floor on August 29.

SB 1835 (Ayala), which would have amended section 4203 of the Public Resources Code to require CDF to notify county boards of supervisors of CDF's designation of a fire hazard severity zone sixty days in advance of that designation, died in the Senate Committee on Natural Resources and Wildlife.

The following bills died in the Senate Appropriations Committee: *AB 3630 (Sher)*, which would have authorized the DFG and the WRCB to appeal an approval of a THP by the CDF Director to the Board, under specified conditions; *SB 2044 (Campbell)*, which would have required the State Fire Marshal to cooperate in the establishment of a program for training fire department personnel in arson investigation and detection; *SB 2045 (Campbell)*, which would have required the State Fire Marshal to coordinate the development of a model juvenile arson and fire setter program and transmit recommendations to the legislature by January 1, 1990; and *SB 2399 (Royce)*, which would have required CDF to take action against the Eucalyptus Borer and the Pine Pitch Canker, including the removal of infected trees.

LITIGATION:

In April, a Humboldt County Superior Court judge granted a temporary restraining order to block timber cutting on 700 acres of trees near Eureka. Pacific Lumber Company's THP for the region had already been approved by CDF when petitioners filed *Environmental Protection Information Center (EPIC) v. Maxxam Corporation, et al.* (No. 79879) in March.

The restraining order was lifted in a subsequent hearing in July, and EPIC appealed the decision. The First District Court of Appeal then issued a writ ordering the Superior Court to reissue the restraining order and remanded the case for rehearing on a yet-undetermined date. The appellate court ruled that the restraining order remain in effect until the parties had an opportunity to reargue the case on the merits.

RECENT MEETINGS:

At its September 7 meeting, the Board discussed the current status of the Yellowstone National Park fires as they affect the CDF. In conjunction with the U.S. Army, over 1,000 CDF employees battled the Wyoming fires. As of September 7, there had been 5,241 wildfires in the state of California in 1988; the leading cause of fires is equipment use (28%). The percentage of fires caused by arson rose 18% this year.

FUTURE MEETINGS:

To be announced.

WATER RESOURCES CONTROL BOARD

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

The Water Resources Control Board (WRCB), established in 1967 by the Porter-Cologne Water Quality Control Act, implements and coordinates regulatory action concerning California water quality and water rights. The Board consists of five full-time members appointed for four-year terms. The statutory appointment categories for the five positions ensure that the Board collectively has experience in fields which include water quality and rights, civil and sanitary engineering, agricultural irrigation and law.

Board activity in California operates at regional and state levels. The state is divided into nine regions, each with a regional board composed of nine members appointed for four-year terms.

Each regional board adopts Water Quality Control Plans (Basin Plans) for its area and performs any other function concerning the water resources of its respective region. All regional board action is subject to state Board review or approval.

Water quality regulatory activity includes issuance of waste discharge orders, surveillance and monitoring of discharges and enforcement of effluent limitations. The Board and its staff of approximately 450 provide technical assistance ranging from agricultural pollution control and waste water reclamation to discharge impacts on the marine environment. Construction grants from state and federal sources are allocated for projects such as waste water treatment facilities.

The Board administers California's water rights laws through licensing appropriate rights and adjudicating disputed rights. The Board may exercise its investigative and enforcement powers to prevent illegal diversions, wasteful use of water and violations of license terms. Furthermore, the Board is authorized to represent state or local agencies in any matters involving the federal government which are within the scope of its power and duties.

Following the resignation of James Easton in August, the Board appointed James W. Baetge as Executive Director of the WRCB. Mr. Baetge served as Assistant Director of the WRCB since October 1987. Prior to that, he was chief of the WRCB's Division of Water Quality.

MAJOR PROJECTS:

Kesterson Reservoir Clean-Up. After a July 5 hearing, the WRCB granted the U.S. Bureau of Reclamation's proposal to implement alternatives to the Board's Clean-up and Abatement Work Order WQ 87-3. The Bureau had requested the hearing to present new evidence regarding the reliability and effect of alternative methods for cleaning up selenium contamination at the Kesterson National Wildlife Refuge and Reservoir. (See CRLR Vol. 8, No. 3 (Summer 1988) pp. 115-16; Vol. 8, No. 2 (Spring 1988) p. 111; Vol. 7, No. 3 (Summer 1987) p. 121; Vol. 6, No. 3 (Summer 1986); Vol. 5, No. 4 (Fall 1985) p. 72; Vol. 5, No. 3 (Summer 1985) p. 87; and Vol. 5, No. 1 (Winter 1985) p. 72 for complete background information.)

In March 1987, the Board adopted WQ 87-3, which required the Bureau to seal the toxic waste in a double-sealed clay-lined landfill. In April 1988, the