



REGULATORY AGENCY ACTION

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SB 2714 (Roberti), which repeals superseded sections of the Public Resources Code regarding the length of time Board members may serve after their term ends, was signed by the Governor on July 1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



Bureau asked WRCB to reconsider WQ 87-3 because of new evidence suggesting that the Bureau's suggested alternative methods would be more effective than previously thought. Following several public and closed sessions, the Board revised its earlier clean-up order, and at its July 5 meeting accepted the Bureau's alternatives.

The Board's new approach considers two aspects of the problem at Kesterson. First and most serious is the environmental risk posed by ephemeral pools at the reservoir. These pools, filled with selenium which is spread by flooding and leaching, have already caused severe damage in the low-lying areas. The effect on wildlife in the "upland" areas is disputed. While the harm is less severe, high concentrations of selenium have been found in the upland areas. The second area of concern is groundwater contamination. However, extensive sampling has recently been completed and no significant contamination has been detected.

The Board's current plan is to fill the lowlands and ephemeral pools in the reservoir. By filling the pools with soil, the flooding and runoff can be controlled. This will halt the immediate spread of selenium by transforming all of the reservoir into upland. Toward this end, the Bureau has entered into a work agreement with a private firm; the reservoir was expected to be filled by the end of October. The Board plans to assess the situation after the filling is completed.

Another of the Bureau's suggested alternatives is still under consideration. The Bureau has repeatedly urged the use of an experimental process known as volatilization to aid in the clean-up. Volatilization attempts to use fungal growth to transform inorganic selenite into a gaseous state. Theoretically, gas would disperse without harm to the environment. The feasibility and effect of this process is still unknown. The Bureau will present a report to the Board on this alternative in December. In April, a habitat impact study will be conducted; and the Board will review these findings sometime after May 1989.

Phase II of the Bay-Delta Workplan. The Board is currently involved in the second phase of the San Francisco Bay/Sacramento-San Joaquin Delta Estuary Workplan (Bay-Delta), adopted by WRCB in 1987. (See CRLR Vol. 7, No. 2 (Spring 1987) p. 96 and Vol. 6, No. 4 (Fall 1986) p. 82 for background information.) The Workplan was established pursuant to the 1976 Water Quality Con-

trol Plan and Water Rights Decision 1485. Through it, the WRCB is attempting to evaluate beneficial water uses of Bay-Delta waters, set pollution and flow standards, and implement a policy which balances these factors.

The Workplan established three distinct phases: Phase I began in July 1987; Phase II was scheduled to begin in July 1988; and Phase III in April 1989. During Phase I, the state and regional boards gathered evidence to determine the beneficial uses of and protection needed to manage these waters. Prior to Phase II, the Board began to prepare the Draft Pollutant Policy Document and the Draft Water Quality Control Plan for Salinity in the Bay-Delta region. Phase II is designed to consider these draft documents and receive input via public hearings. The hearings will be quasi-legislative, not requiring an oath or cross-examination. However, the Phase II hearing process has been delayed. In July, the Board gave relevant parties notice that the Phase II hearings will start no sooner than November 1988. The two draft documents will be circulated for review at least sixty days prior to the hearings. Parties will be notified of the dates and location of hearings when the draft documents are released for review.

After Phase II, the Board will draft a final Salinity Control Plan and Pollutant Policy Proposal. The Board will then design alternative methods of implementing these policies. In Phase III, the Board will evaluate relevant data and formulate an Environmental Impact Report.

Proposition 65 Regulations. In its continuing effort to define the terms of Proposition 65, the Health and Welfare Agency (HWA) held a public hearing on July 29 in Sacramento to discuss emergency regulations adopted in February, which were valid for 120 days. (See CRLR Vol. 8, No. 2 (Spring 1988) pp. 110-11 for background information.)

Section 12901, Title 22 of the California Code of Regulations (CCR), concerns methods of detecting toxic chemicals. The Act prohibits the knowing discharge of detectable amounts of known carcinogenic chemicals into any source of drinking water, but does not define the term "detectable amounts".

As adopted by HWA on October 14, section 12901 defines a detectable amount as an amount detected by the methods of sampling and analysis described in the section. If specified government agencies have adopted or employ a method of analysis, or if a

method is generally accepted among scientists for detecting a listed chemical in a given medium, it must be employed for the purposes of Proposition 65. The section further provides that if no method has been adopted, a scientifically valid method must be used according to generally accepted standards of laboratory practice. (See *supra* agency report on DEPARTMENT OF FOOD AND AGRICULTURE for additional information.)

Proposition 65 also prohibits any person in the course of doing business from knowingly and intentionally exposing any individual to a known carcinogenic chemical without first giving a clear and reasonable warning. Businesses subject to the proposition exclude some small businesses, public entities, and public water systems. Section 12201 (discussed at the July hearing) defines the term "in the course of doing business" as any act or omission of a business subject to the Act, as well as any act or omission of any employee which furthers the purpose or operation of the business, or is authorized by the business.

Discharge Regulations Adopted. In June, the WRCB approved the addition of three new regulatory sections regarding the reportability of sewage and hazardous waste discharges. The new sections—2250, 2251, and 2260—will appear in Chapter 3, Title 23 of the CCR. (See CRLR Vol. 8, No. 3 (Summer 1988) p. 116 for background information.)

Section 2250 establishes 1,000 gallons of sewage as the minimum reportable discharge. This minimum was chosen based on data from regional water quality control boards which had been monitoring sewage discharges, and found that in regions where all discharges were reported, there were numerous reports below 100 gallons, with fewer reports around the 1,000 gallon level. Starting at approximately 1,500-2,000 gallons, the number of reports increased again. The WRCB decided that the 1,000-gallon figure would catch the major discharges while not inundating regional boards with a work overload.

Section 2251 simply incorporates U.S. Environmental Protection Agency regulations found at 40 C.F.R. section 302, concerning hazardous waste discharges. The regulations allow for specific discharge amounts of listed hazardous materials.

Section 2260 provides that if a discharge covered by sections 2250 and



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2251 occurs, it must be reported to the regional water quality control board or to the Federal Emergency Response Center. The regulations apply to government or private utility facilities which treat or reclaim sewage and industrial wastes.

At this writing, the approved regulations had not been sent to the Office of Administrative Law for review; the WRCB is still responding to the public comments.

LEGISLATION:

The following is a status update of bills described in detail in CRLR Vol. 8, No. 3 (Summer 1988) at pages 116-17:

SB 2691 (Hart) would have required the inclusion of a water quality component for bays and estuaries, and numerical sediment quality objectives in the WRCB's California Ocean Plan by specified dates. The bill also would have required the WRCB to send a proposal for developing and maintaining a program to clean up toxic hot spots in the state's ocean, bays, and estuaries to the legislature by January 1, 1991. This bill was vetoed by the Governor on September 28.

AB 1990 (Hayden), which was vetoed on September 23, would have required the WRCB to conduct a standardized ocean monitoring and discharge reporting system.

AB 2975 (Seastrand) would have prohibited any discharge into Morro and Monterey Bays or any tributaries draining into them. It was vetoed on September 29.

AB 3947 (Brown), which would have required the WRCB, in consultation with other agencies, to develop and maintain a comprehensive program to identify and characterize toxic hot spots in enclosed bays and estuaries, was vetoed by the Governor on September 28.

SB 269 (Kopp) was vetoed by the Governor on August 12. If signed, it would have been placed on the November 8 ballot for approval by the voters. The bill would have required public agencies to conform to the prohibitions of Proposition 65, with specified exceptions.

SB 1335 (McCorquodale) would have authorized WRCB to enter and inspect lands where timber operations are conducted; it was vetoed on September 26.

SB 2463 (Kopp) makes legislative findings and declarations concerning public involvement in the hearing process established by the WRCB for adoption of water quality standards for the San Francisco Bay/Sacramento-San

Joaquin Delta Estuary. This bill was signed on September 16 (Chapter 971, Statutes of 1988).

SB 2829 (Bergeson), which changes the existing fee structure established by the WRCB for persons subject to waste discharge requirements, was signed on September 20 (Chapter 1026, Statutes of 1988).

AB 3666 (Bates), which would have required the regional water quality control board for the San Francisco Bay area region to conduct unannounced inspections of waste discharges in the Bay, was defeated in the Assembly Ways and Means Committee on August 1.

AB 3123 (Hansen), regarding WRCB's authority to levy fees to be paid by persons requesting laboratory certification, died in the Senate Appropriations Committee's inactive file.

RECENT MEETINGS:

At its September 7 meeting, WRCB adopted an order requiring the Imperial Irrigation District (IID) to develop a plan by the end of the year to save

100,000 acre-feet of water per year. The District has five years to implement the plan or it may risk losing part of its water appropriation from the Colorado River.

WRCB's Decision 1600 in 1984, which found that IID was unreasonably wasting water through its irrigation system, has led to negotiations between the Metropolitan Water District (MWD) and IID for the transfer of water from the Imperial Valley to urban and suburban southern California.

The negotiations broke down in 1987 when MWD rejected IID's offer to sell 100,000 acre-feet of water at \$250 per acre-foot. The difficulty over price and other issues is holding up a plan by which MWD will pay for fixing the IID's irrigation systems in return for use of the water saved.

FUTURE MEETINGS:

Workshop meetings are generally held the first Wednesday and Thursday of the month. For exact times and meeting locations, contact Maureen Marche at (916) 445-5240.



INDEPENDENTS

AUCTIONEER COMMISSION

*Executive Officer: Karen Wyant
(916) 324-5894*

The Auctioneer and Auction Licensing Act was enacted in 1982 (AB 1257, Chapter 1499, Statutes of 1982) and established the California Auctioneer Commission to regulate auctioneers and auction businesses in California.

The Act was designed to protect the public from various forms of deceptive and fraudulent sales practices by establishing minimal requirements for the licensure of auctioneers and auction businesses and prohibiting certain types of conduct. Duayne Epele was recently appointed by Governor Deukmejian to fill a public member position on the Board. Mr. Epele is employed by San Diego County Purchasing and Contracting, which coordinates cooperative auctions.

The Auctioneer and Auction Licensing Act provided for the appointment of a seven-member Board of Governors, composed of four public members and three auctioneers, to enforce the provisions of the act and to administer the

activities of the Auctioneer Commission. Members of the Board are appointed by the Governor for four-year terms. Each member must be at least 21 years old and a California resident for at least five years prior to appointment. In addition, the three industry members must have a minimum of five years' experience in auctioneering and be of recognized standing in the trade.

The Act provides assistance to the Board of Governors in the form of a council of advisers appointed by the Board for one-year terms. In September 1987, the Board disbanded the council of advisers and replaced it with a new Advisory Council (see CRLR Vol. 7, No. 4 (Fall 1987) p. 99 for background information).

MAJOR PROJECTS:

Proposed Regulation Withdrawn. On June 30, the Board of Governors decided that the need has not been established for a regulation requiring disclosure of the \$10,000 bonding limit in consignor contracts. Consequently, proposed section 3527, Chapter 35, Title 16 of the California Code of Regula-