



amended so that in its current form, it authorizes DFG, the regional water quality control boards, and the WRCB to enter and inspect lands where timber operations are conducted, if accompanied by CDF personnel. The bill is pending before the Assembly Committee on Natural Resources.

SB 1577 (Campbell), authorizing the Department of Justice to furnish records of arson convictions to requesting employers, died in committee.

AB 2079 (Baker), an appropriations measure to fund the training of firefighters and arson investigators, is pending in the Senate Appropriations Committee at this writing.

AB 2720 (Sher), which would appropriate funds for reforestation and capital improvements to the state's nonindustrial forestland, passed the Assembly on April 18 and is pending in the Senate Appropriations Committee. As amended, the bill would also authorize the utilization of camp inmates and wards, other inmates, and wards housed in forestry camps for performing reforestation projects and other specified work on nonindustrial forestland.

AB 2721 (Sher), which would appropriate funds for early activation of firefighting crews and equipment due to current drought-related hazardous conditions, was signed by the Governor (Chapter 247, Statutes of 1988).

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 harvesting plan 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.

A hearing on whether the temporary restraining order should be made permanent was expected to occur before the end of July. In the meantime, Pacific Lumber, which is owned by respondent Maxxam Corporation, announced in late May that it would return to selective-cutting methods in harvesting thousands of acres of old growth redwood stands it owns in Humboldt County. Although good news to environmentalist groups who have long opposed clear-cutting (the cutting of all timber within a specific area, as was planned for the Eureka acreage), the announcement had no immediate effect on EPIC's lawsuit.

In seeking to permanently enjoin the

implementation of Maxxam/Pacific Lumber's CDF-approved THP, EPIC is attacking the way in which CDF approved the plan as much as it is criticizing the plan itself. Specifically, EPIC claims that CDF abused its discretion under section 898.2(c), Title 14 of the CCR, by failing to require Pacific Lumber Company and Simpson Timber Company to "submit data and information about the past, present, and probable future logging activities in the same area." Moreover, EPIC asserts that section 1037.8, Title 14 of the CCR, deprives it of due process under the state and federal constitutions by enabling CDF to grant approval of immediate THP execution, whereas it must wait up to ten days under section 1037.8 for CDF's official response to public comments. Finally, EPIC claims that the Board's February emergency repeal of section 898.1(f) deprived it of its Public Resources Code section 21080.5 rights to publicly challenge regulatory programs such as CDF-approved THPs which "may have a significant effect on the environment." (See *supra* MAJOR PROJECTS for discussion of the Board's decision to forego permanent repeal of section 898.1(f).)

RECENT MEETINGS:

At the April 6 meeting, Executive Director Cromwell presented for the Board's approval a resolution commending Jean Atkisson for her six years of service as a DTAC member and four years as a Board member. The resolution acknowledges Atkisson's outstanding attendance and articulate participation in championing fire protection and timber development. The Board unanimously approved the citation, which will be presented to Atkisson at a yet-undetermined time.

FUTURE MEETINGS:

September 7 in Chico.

WATER RESOURCES CONTROL BOARD

Executive Director: James L. Easton
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 statu-

tory 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.

On June 3, WRCB Executive Director James L. Easton announced that he is resigning for personal reasons effective August 5. Easton, a former assistant director of the Los Angeles County Department of Public Works, has served as the Board's Executive Director since July 1, 1986.

MAJOR PROJECTS:

Kesterson Reservoir Clean-Up. On May 24-25, the WRCB conducted a public hearing to consider the U.S. Bureau of Reclamation's proposed alternatives to the Board's Clean-up and Abatement Work Order WQ 87-3. The Bureau requested the hearing to present new evidence regarding the reliability and permanence of alternative methods for cleaning up selenium contamination at the Kesterson National Wildlife Refuge and Reservoir. (See CRLR Vol. 8, No.



2 (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. 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 requires the Bureau to bury the toxic waste in a double-sealed clay-lined landfill. At that time, WRCB unanimously rejected a Bureau-sponsored proposal to clean up Kesterson using alternative methods the Board considered unproven and inadequate. In April 1988, the Bureau submitted a request to WRCB to reconsider WQ 87-3 in light of new evidence suggesting that the Bureau-sponsored methods have greater reliability and permanence than previously thought. In its request, the Bureau proposes to pursue a combination of processes instead of the single on-site disposal approach approved by the Board in WQ 87-3.

At the May hearing, the Board heard Bureau evidence regarding the environmental hazards associated with ephemeral pools at Kesterson Reservoir, the potential for exacerbation of this problem if the on-site disposal plan is implemented, and research results regarding the viability of volatilization as a clean-up alternative. Bureau representatives also testified that the on-site disposal method might cost as much as \$144 million and still not be completely effective. On the second day of the two-day hearing, environmental groups such as the Sierra Club, the Environmental Defense Fund, and the Natural Resources Defense Council urged the Board to adhere to its earlier unanimous clean-up order.

As a result of the May public hearing, the Board scheduled an emergency closed session for May 31, and another public hearing for June 23, at which time it was scheduled to receive further evidence on the proposed adoption of amendments to the original clean-up order. Following the June public hearing, the Board was scheduled to vote on the proposed amendment on July 5.

"*Source of Drinking Water.*" In recent months, the WRCB has been attempting to formulate a state policy on the definition of the phrase "source of drinking water." (See CRLR Vol. 7, No. 4 (Fall 1987) p. 98 for background information.) The definition is needed to more clearly identify waters of the state which should be designated as suitable, or potentially suitable, for municipal or domestic water supply (MUN). At its

May meeting, the Board adopted draft policy language which defines all surface and ground waters as potential sources of drinking water, with specific criteria for determining certain exceptions from MUN designation.

Thus, the regional water quality control boards must revise their Water Quality Control Plans to incorporate the new policy. Any body of water which has a current specific designation previously assigned to it by a regional board may retain that designation at the regional board's discretion. Where a body of water is not currently designated as MUN but, in the opinion of a regional board, is presently or potentially suitable for MUN designation under the new policy, the regional board shall include MUN in the beneficial use designation.

Underground Storage Tank Pilot Program. In response to AB 853 (Sher) (Chapter 1317, Statutes of 1987), the WRCB and the Department of Health Services (DHS) have been cooperating in a project to develop and implement a pilot program to fund oversight by local agencies of the clean-up of leaking underground storage tanks by responsible parties. The statute requires the WRCB to adopt, as state policy for water quality control, administrative and technical procedures for the pilot program.

At a recent meeting, the Board adopted a policy incorporating the following elements related to the pilot program: (1) criteria for determining which leaking underground storage tank sites may be assigned to local agencies; (2) petition procedures by which responsible parties may request WRCB review of actions and decisions of the local agencies; (3) quantifiable measures to evaluate the pilot program; and (4) criteria for site investigation, risk appraisal, and clean-up activities.

The Board declined to adopt one aspect of the proposed policy, which would have required local agencies to consider the methods described in the *Leaking Underground Field Manual* (LUFT) when overseeing site investigation and remediation. LUFT was prepared by a WRCB/DHS task force, but because it mentions non-petroleum substances, it was not incorporated into the policy. The Board will consider whether to fund another LUFT manual to satisfy the concerns voiced at the public hearing on the policy.

Regulation Changes. Water Code section 13271 requires the WRCB to adopt regulations establishing reportable quantities of hazardous wastes, hazard-

ous materials, and sewage, for purposes of enabling persons who discharge reportable quantities of hazardous substances or sewage to notify the appropriate regional water quality control board. On February 3, the Board held a public hearing on the addition of proposed sections 2250 (reportable quantity for sewage), 2251 (reportable quantities for hazardous wastes or materials), and 2260 (reporting requirements) to its regulations, which appear in Chapter 3, Title 23 of the California Code of Regulations. (See CRLR Vol. 8, No. 2 (Spring 1988) p. 111 for background information.)

At the February hearing, much debate centered on section 2250's definition of a reportable quantity of sewage as "any unauthorized discharge resulting in 50 or more gallons coming within 50 feet of human habitation, schools, school yards, or places of business." Several witnesses testified that this threshold reporting level is far too low; the Board thus increased the figure to 100 gallons. At a subsequent May 4 workshop on the proposed regulations, many public members and state agency representatives characterized the 100-gallon reporting requirement as "ridiculously low." Public opinion at the hearings seemed to center on a threshold reporting level at between 750 and 1,000 gallons.

Following the May workshop session, the Board released a modified version of the proposed regulatory package for a fifteen-day comment period commencing May 16. Section 2250 was amended to provide that a reportable quantity for sewage is defined to be "any unauthorized discharge of 1,000 gallons or more." The Board was scheduled to discuss adoption of the revised regulations at a workshop on June 1-2.

LEGISLATION:

AB 3666 (Bates) would require the regional water quality board for the San Francisco Bay region to conduct unannounced inspections of waste discharges that could affect the quality of the waters of San Francisco Bay at least four times annually for major dischargers and twice annually for other dischargers to determine compliance with applicable requirements. The bill would also prescribe related duties of the regional board and would require the board to establish a schedule of annual fees, to be paid by dischargers, which is reasonably related to costs incurred by the regional board under the bill. AB 3666 failed passage on the Assembly floor in late June but may be



reconsidered.

AB 3123 (Hansen) would extend the termination date of the authority given to the WRCB to levy fees to be paid by any person requesting the certification of a laboratory. The original termination date was January 1, 1989. The bill passed the Assembly on May 12 and is currently pending before the Senate Appropriations Committee.

SB 2691 (Hart), as amended in June, would require the WRCB's California Ocean Plan to include, by January 1, 1991, a water quality component for bays and estuaries and to include, by January 1, 1993, numerical sediment quality objectives. The bill would also require the WRCB, by January 1, 1991, to transmit to the legislature a proposal for developing and maintaining a program to clean up toxic hot spots in the state's ocean, bays, and estuaries. SB 2691 passed the Senate on June 8 and is pending before the Assembly Committee on Water, Parks and Wildlife.

SB 2463 (Kopp) would make legislative findings and declarations concerning public involvement in a specified hearing process established by the WRCB for adoption of water quality standards for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary. (See CRLR Vol. 7, No. 2 (Spring 1987) p. 96 and Vol. 6, No. 4 (Fall 1986) p. 82 for background information.) SB 2463 would require the Board to place one copy of the transcript of the hearings in specified locations for inspection and use by the general public. The bill, which would declare that it is to take effect immediately as an urgency statute, passed the Senate on May 5, and is now pending before the Assembly Ways and Means Committee.

SB 997 (Mello) enacts the Clean Water and Water Reclamation Bond Law of 1988, which will provide, conditioned upon approval of the state electorate, for the issuance of state bonds in an amount not exceeding \$65,000,000 for purposes of financing a specified water pollution control and water reclamation program. The bill provides for the submission of the bond act to the voters at the November 8 ballot. This law will replace the Water Bond Law of 1974, the Clean Water and Water Conservation Bond Law of 1978, and the Clean Water Bond Law of 1984, each of which provided for the expenditure of the proceeds of state grants for the planning, research, development, and construction of treatment works. SB 997 became law on March 18 as urgency legislation (Chapter 47, Statutes of 1988).

SB 2829 (Bergeson). Under existing law, each report of waste discharge submitted to a California regional water quality control board is required to be accompanied by a filing fee not to exceed \$50,000 according to a fee schedule established by the WRCB. This bill would require each person for whom waste discharge requirements have been prescribed to submit an annual fee not to exceed \$10,000; would require each new report of discharge to be accompanied by a fee equal in amount to the annual fee; and would require the WRCB, on or before January 1, 1990, to adopt, by emergency regulations, a fee schedule. The measure would exempt facilities for confined animal feeding or holding operations from annual fees and would require the WRCB to establish filing fees for those facilities not to exceed \$2,000. The bill would also exempt any person operating or proposing to construct an oil, gas, or geothermal injection well from payment of the annual fees. SB 2829 is pending before the Assembly Ways and Means Committee at this writing.

The following bills were discussed in detail in CRLR Vol. 8, No. 2 (Spring 1988) at pages 111-12:

SB 269 (Kopp) would place its provisions before the voters on the November 9 ballot, requiring public agencies to conform to the prohibitions of Proposition 65, with specified exceptions. The measure is pending before the Assembly Ways and Means Committee. (For additional information about this bill, see *supra* agency report on DEPARTMENT OF FOOD AND AGRICULTURE.)

SB 1335 (McCorquodale) has been amended; in its current form, it would authorize the Department of Fish and Game, the regional water quality control boards, and the WRCB to enter and inspect lands where timber operations are conducted, if accompanied by Department of Forestry and Fire Protection personnel. The bill is pending before the Assembly Committee on Natural Resources.

AB 1990 (Hayden), which would require the WRCB to conduct a standardized ocean monitoring and discharge reporting system, is pending before the Senate Appropriations Committee.

AB 4471 (Brown), which would have enacted the Bay Protection and Toxics Clean-Up Bond Act, has been dropped.

AB 2975 (Seastrand), prohibiting any discharge into Morro Bay and Monterey Bay or any tributaries draining into those waters, passed the Assembly on May 12 and is pending in the

Senate Committee on Agriculture and Water Resources at this writing.

AB 3668 (Bates), which would have created a Delta Advisory Commission, died in committee.

AB 3947 (Brown), concerning bay protection and toxic clean-up, passed the Assembly on June 29. This bill will be heard in the Senate Committee on Toxics and Public Safety Management in August.

LITIGATION:

On May 23, a unanimous panel of the Third District Court of Appeal reversed a lower court ruling and ruled that the WRCB must begin proceedings to consider whether to revoke two water licenses which have allowed the Los Angeles Department of Water and Power (LAWP) to take 89,200 acre-feet per year from the Mono Lake tributaries. In *California Trout, Inc. v. State Water Resources Control Board (City of Los Angeles)*, No. C000713 (May 23, 1988), the court ruled that the permits, which were issued in 1974 after a sixty-year history of LAWP appropriation from the tributaries, are in violation of two sections of the Fish and Game Code enacted in 1953 to protect sizable fish populations in the tributaries.

LAWP had argued, *inter alia*, that the 1953 statutes did not apply to permits or licenses which involve the appropriation of water from dams constructed prior to the effective date of the statutes (two of the dams in question were completed by 1941); and alternatively that it had perfected its rights to the disputed water prior to the effective date of the statutes, and could not be retroactively divested of those rights.

The court held that Fish and Game Code section 5946 "forbids the issuance of a 'permit or license' after September 9, 1953, to 'appropriate water' in designated portions of Mono and Inyo Counties 'unless conditioned upon full compliance with Section 5937.'" Section 5937 provides that "[t]he owner of any dam shall allow sufficient water at all times to pass through the fishway, or in the absence of a fishway, allow sufficient water to pass over, around or through the dam, to keep in good condition any fish that may be planted or exist below the dam." The court found that the plain language of the statutes reveals a legislative intent that their provisions are to apply to all dams described in the statutes, whether or not completed prior to September 9, 1953. With regard to LAWP's alternative argument, the court held that LAWP had not perfected its



REGULATORY AGENCY ACTION

rights to the water to which it was entitled under several pre-1953 licenses prior to the September 9, 1953 effective date of the statutes, and thus was not being divested of any water rights.

Thus, the appellate court ordered the trial court to issue the appropriate writs commanding the WRCB to "exercise its discretion to conduct proceedings for revocation of licenses 10191 and 10192, subject to its authority to reissue them consistent with section 5946, as construed in this opinion."

On June 22, however, the court granted LAWP's motion for reconsideration and temporarily withdrew its May 23 opinion, in order to consider LAWP's objections to alleged factual errors in the court's original opinion. If the appellate court reinstates its opinion, LAWP has suggested it will appeal the ruling to the California Supreme Court.

RECENT MEETINGS:

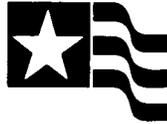
At its May meeting, the Board considered a proposed extension of the State Mussel Watch program (SMW), which it has funded since 1977 in conjunction with the DFG. SMW began as a renewable interagency agreement to monitor and analyze mussels for absorbed toxic metals and organics. (See CRLR Vol. 6, No. 3 (Summer 1986) p. 74 for background information.) The program is also designed to provide long-term information on the existence and relative quantities of toxic pollutants such as pesticides. Information from the program is used to track temporal trends and geographic distribution of toxic substances along the California coast. If the Board refunds SMW, the interagency agreement would extend to July 1989. Proposed survey sites for the 1988-89 program tentatively include a continuation of research in ocean areas near the Diablo Canyon Power Plant, the Elk River Treatment Plant, the U.S. Naval Weapons Station at Seal Beach, the San Diego Creek, and San Diego Bay.

Also at its May meeting, the Board considered whether to extend its toxic substances monitoring program (TSMP) designed to detect toxic pollutants in fish and other aquatic organisms. By examining fish livers for metals analysis and flesh for mercury and synthetic organics analyses, TSMP provides the state and regional boards with long-term trends of pollutants and their quantities in fresh surface waters. TSMP also identifies potential problems in inland water areas which might warrant further study. This program also oper-

ates through an interagency agreement with the DFG, which expires in 1989. Streams and lakes sampled under the TSMP include the Russian River, the New River, the Kesterson Reservoir, the Sacramento Slough, the Salton Sea, San Diego Creek, Sweetwater Marsh, and the Tijuana River.

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.

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 Regulations Rejected. On May 2, the Office of Administrative Law (OAL) rejected the Commission's proposed section 3527, Chapter 35, Title 16 of the California Code of Regula-

tions, requiring specific disclosures on consignor contracts. (See CRLR Vol 8, No. 2 (Spring 1988) p. 113; Vol. 8, No. 1 (Winter 1988) p. 99; and Vol. 7, No. 4 (Fall 1987) p. 99 for complete background information.) This marks the second time that OAL has rejected the proposed wording for lack of clarity. According to OAL, consumers may become confused when they are informed that licensed auctioneers are "bonded to the Commission in the amount of \$10,000 for all occurrences." OAL believes this may be construed to mean either that the total maximum bonding coverage is \$10,000, or that the licensee is bonded for \$10,000 for each and every occurrence.

The Commission was scheduled to discuss the rejection and whether to resubmit the language to OAL at its June 30 meeting.

Warnings to Licensees. In May, the Commission warned licensees to carefully review their contracts to assure compliance with section 5776(k) of the Business and Professions Code. Failure to include the information required by section 5776(k) could result in a \$250 fine. Licensees were also cautioned to prominently post the sign required by section 5775(c) at the main entrance of each auction sale. Fines of \$50 for a first violation are being assessed whenever such a violation is observed by the Executive Officer. The sign must be 18" x 24" and state "The [or "this"] auction is being conducted pursuant to section 2328 of the Commercial Code, section 235 of the Penal Code, and the provisions of the California Auctioneer and Auction Licensing Act. California Auctioneer Commission, 1130 K Street, Suite 1120, Sacramento, CA 95814."

FUTURE MEETINGS:

To be announced.