



Also at the March 3 meeting, the Board recognized Captain (U.S. Navy Retired) and Mrs. Anita Petrosky as American Tree Farm System 1988 State Tree Farmers of the Year. The Board of Forestry commended the Petroskys for 32 years of "sound forest management." The Petroskys addressed the Board, stating that they purchased their property near Twain Harte in 1955. In 1978, they cut approximately 250,000 board-feet of timber, and in 1987, selectively cut approximately 145,000 board-feet. Captain Petrosky recounted how he dug holes for his wife to plant 11,000 bare root trees. The American Tree Farm System's introductory letter cited the Petroskys as "an excellent example of a small forest-land owner."

FUTURE MEETINGS:

To be announced.

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 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 pol-

lution 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.

MAJOR PROJECTS:

Proposition 65. The Safe Drinking Water and Toxics Enforcement Act of 1986 (Proposition 65) places certain restrictions on persons doing business in California. (See *supra* agency report on DEPARTMENT OF FOOD AND AGRICULTURE and CRLR Vol. 6, No. 4 (Fall 1986) p. 83 for background information.) Its provisions include the following:

-Health and Safety Code section 25249.8 requires the Governor to publish and, at minimum, annually update a list of chemicals known to cause cancer or reproductive toxicity.

-Health and Safety Code section 25249.5 prohibits persons from contaminating drinking water with chemicals known to cause cancer or reproductive toxicity. Twenty months after the listing of a chemical under section 25249.8, no person in the course of doing business may discharge or threaten to discharge a listed chemical to a source or potential source of drinking water.

-Health and Safety Code section 25249.6 requires a warning before exposing individuals to chemicals known to cause cancer or reproductive toxicity. Twelve months after the listing of a chemical under section 25249.8, a person in the course of doing business must warn another person who may consume or come in contact with or otherwise be exposed to that chemical.

-Finally, Health and Safety Code section 25180.7 requires designated government employees to report violations of the Act. Any designated employee (typically those who must file conflict-of-interest statements) who obtains knowledge of an illegal discharge or threatened illegal discharge of a hazardous waste must report that information to the county board of supervisors and

local health officer for the location of the discharge.

On February 27, 1987, the first requirement of Proposition 65 was implemented with the Governor's publication of a list of 29 cancer-causing chemicals such as asbestos, benzene, lead, vinyl chloride, and arsenic. As of October 1 of last year, 54 more chemicals had been added to the list. The list is being developed and expanded by a scientific advisory panel appointed by the Governor. Environmental groups and business associations are assisting state agencies such as the Health and Welfare Agency and the WRCB in identifying other toxics and carcinogens to be included on the list. Several environmental groups insist that the list should include over 250 carcinogens and reproductive toxins. (See, e.g., CRLR Vol. 7, No. 2 (Spring 1987) pp. 15-16.)

State agencies are developing guidelines to determine the threshold level at which identified chemicals pose a "significant risk," and various methods which businesses may employ to meet requirements for "clear and reasonable" warnings regarding cancer-causing chemicals and reproductive toxins. Currently, acceptable methods include (1) labeling products containing chemicals identified by the Governor's scientific advisory panel; (2) installing toll-free telephone numbers to supply consumers with additional information on these substances; and (3) posting warning signs in and around gas stations, bars, and liquor stores to warn of certain hazards associated with gasoline and alcohol.

Violators of Proposition 65 are subject to fines of up to \$2,500 per day. The measure allows private citizens to file suit and collect 25% of the penalty if the suit is successful, provided that a state or local agency initially declined to prosecute.

The WRCB is involved in the implementation of Proposition 65 in a number of ways. First, the Board has proposed a policy to adopt water quality control plans defining the term "source of drinking water." (See CRLR Vol. 7, No. 4 (Fall 1987) p. 98.) In a January 1988 public hearing, various opinions were expressed regarding the appropriate definition. These public opinions prompted some revisions in the state plan which will be adopted by each regional board. This revised language was scheduled for consideration at a public hearing in April.

The WRCB is assisting the Health and Welfare Agency in devising a priority list of chemicals to be forwarded to the Governor's scientific advisory panel.



The Board is also devising a "point of application" plan which would adopt guidelines for discharge requirements, including acceptable levels of toxins and carcinogens, and would direct state officials to the appropriate location point from which to measure the discharge. This plan must satisfy both the Porter-Cologne Act and Proposition 65. The Board expects to have drafted a proposal to satisfy the requirements of these statutes in time for a public hearing in June.

Regulation Changes. The WRCB has adopted regulations creating Subchapter 13 of Chapter 3, Title 23 of the California Code of Regulations. These provisions include section 2250, which would establish reportable quantities for sewage, define the term "sewage", and restrict the applicability of the regulation to municipal or private-utility wastewater treatment plants, as defined in section 13625 of the Water Code.

Section 2251 of the proposed regulations would establish reportable quantities for approximately 250 of the 791 hazardous wastes and materials listed in section 25140 of the Health and Safety Code. This list incorporates by reference reportable quantities of hazardous substances developed by the U.S. Environmental Protection Agency (EPA) pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980. (See 40 C.F.R. Part 302.)

A public hearing on the regulations was held in February and the rulemaking file was expected to be presented to OAL for review in March.

Kesterson Clean-up Halted. As reported in the *Sacramento Bee* on March 26, a congressional budget committee has ordered the U.S. Department of the Interior to halt clean-up of the Kesterson National Wildlife Refuge. (See CRLR Vol. 7, No. 3 (Summer 1987) p. 121 for background information.)

The clean-up of selenium contamination at Kesterson was stopped until Congress can review the matter. The committee also urged the Department of the Interior to seek WRCB reconsideration of the Board's controversial clean-up order issued in March 1987. (See CRLR Vol. 6, No. 3 (Summer 1986) p. 76 and Vol. 5, No. 4 (Fall 1985) p. 72 for related discussions.)

LEGISLATION:

AB 1413 (Cortese) requires "tank integrity tests" to be conducted on every underground storage tank containing substances. Such tests would be per-

formed by tank testers licensed by the WRCB. The bill imposes a state-mandated local program by providing that any unlicensed person who engages in tank integrity testing is guilty of a misdemeanor.

AB 1413 requires every person applying for a tank tester license to pass an examination and pay a fee; requires the WRCB to adopt emergency regulations necessary to implement tank tester licensing; and exempts these regulations from repeal by the Office of Administrative Law. This bill was signed by the Governor (Chapter 1372, Statutes of 1987.)

AB 1990 (Hayden) would require the WRCB to conduct a study of a standardized ocean monitoring and discharge reporting system for holders of national pollutant discharge elimination system (NPDES) permits who are required to file ocean, bay, or estuary discharge reports with the WRCB or any regional board. The bill would require the report of the study to be submitted to the Governor and the appropriate policy committees of the Assembly and the Senate on or before January 1, 1990.

The bill, which would appropriate \$175,000 from the General Fund to the WRCB for this purpose, is pending before the Senate Agriculture and Water Resources Committee as of this writing. No date has been set for a hearing.

AB 3668 (Bates) would create the Delta Advisory Commission, a nine-member board aimed at supervising water projects in the Sacramento-San Joaquin Delta east of San Francisco. In particular, the board would be concerned with providing solutions to existing Delta problems regarding the protection of drinking water quality, the risks to the state's economy due to possible interruption of state and federal water supplies derived from the Delta, and the restoration of fish and wildlife resources. This bill is pending before the Assembly Water, Parks and Wildlife Committee. No date has been set for a hearing.

AB 3947 (Brown) would require the state to define toxic hot spots in enclosed bays and estuaries and restore the productivity of these sites for beneficial uses. The measure would also require the WRCB to adopt, by January 1, 1991, sediment quality thresholds for toxic pollutants which have been identified in known or suspected toxic hot spots, based on a health risk assessment.

The bill would further require the WRCB to adopt general criteria for the assessment and priority ranking of toxic hot spots. Each regional board would be required to complete a toxic hot spot

clean-up program by January 1, 1992; and, within 120 days from the ranking of a toxic hot spot, to initiate a reevaluation of waste discharge requirements for dischargers who may be responsible for all or part of the pollutants which have caused the hot spot. This bill is pending before the Assembly Committee on Environmental Safety and Toxic Materials.

AB 4471 (Brown) is a companion bill to AB 3947. Enacting the Bay Protection and Toxics Clean-up Bond Act, the bill would authorize \$50,000 to clean up toxic contamination in California bays and estuaries. This bill is also pending in the Assembly Committee on Environmental Safety and Toxic Materials.

AB 2975 (Seastrand). Present law prohibits any discharge from an agricultural drain in the San Joaquin Valley into the waters of Monterey Bay or its tributaries. This bill would prohibit discharge into Morro Bay or the ocean between Morro Bay or any tributary draining into those waters. This bill is pending in the Assembly Committee on Water, Parks and Wildlife.

SB 34 (Boatwright). Existing law authorizes financial assistance to local agencies for maintenance and improvement of levees in the Sacramento-San Joaquin Delta which are not project facilities under the State Water Resources Law of 1945. This bill increases reimbursement from 50% to 75% for any costs incurred in excess of \$1,000 per mile of levee and deletes the \$2,000,000 per-year limitation. The bill also provides for an advance to an applicant, not to exceed 75% of the estimated state share.

The bill establishes, until January 1, 1998, the Delta Flood Protection Fund; declares legislative intent to appropriate \$12,000,000 each year to the Fund, through fiscal year 1997-98, from specified tidelands, oil, and gas revenues; and declares legislative intent to annually appropriate from the Fund \$6,000,000 for local assistance for maintenance of Delta levees and \$6,000,000 for special Delta flood protection projects. This bill passed the Assembly and was signed by the Governor on March 11 (Chapter 28, Statutes of 1988).

SB 269 (Kopp, et al.). Proposition 65 prohibits any person in the course of doing business from knowingly discharging toxins into water and prohibits any such person from knowingly exposing any individual to such a chemical without giving a specified warning. This bill would include cities, counties, districts, and state and federal agencies within these discharge or exposure prohibitions,



REGULATORY AGENCY ACTION

except discharges or releases which are exclusively governed by federal law; certain discharges or releases by public water systems; discharges or releases or surface runoff from a watershed; and releases of stormwater runoff.

SB 921 (Rosenthal) would have required motor vehicle fuel storage tanks to meet specified requirements concerning the containment and transportation of methanol fuel, depending upon the date of the tank's installation and the capacity and location of the tank. The bill would have prohibited a local agency from issuing a permit for the operation of a motor vehicle fuel storage tank which does not meet the specified requirements. WRCB would have been authorized to adopt regulations to implement this provision. The bill was vetoed by the Governor.

SB 1335 (McCorquodale) would allow the Department of Fish and Game and the WRCB to enter and inspect timber lands during harvesting. The bill is in the Assembly, pending before the Natural Resources Committee. No date has been set for a hearing.

LITIGATION:

In *In Re Water of Hallett Creek Stream System*, No. SF 25133 (Feb. 18, 1988), the California Supreme Court held that the federal government has riparian rights on federal lands reserved for national forest purposes, and that these rights are no more defeasible than the riparian rights of other California landowners.

The dispute focused on control of Hallett Creek, a system of streams in Lassen County which flow from Honey Lake into the Plumas National Forest north of Lake Tahoe. The United States claimed a "reserved" water right under federal law for "primary" forest purposes, such as firefighting. That right was not seriously disputed and the Water Resources Control Board authorized the U.S. Forest Service to use up to 95,000 gallons of water per year for firefighting.

The federal government also claimed riparian rights for "secondary" forest purposes such as "wildlife enhancement." The Forest Service asked to draw 1,500 gallons per day to supply water ponds for wildlife, but the WRCB rejected that request on grounds that the federal government does not have riparian rights.

California recognizes both riparian rights, under which owners of land adjacent to a stream have rights to divert and use the water, and appropriative rights, under which those who have first diverted and used the water continue to

have rights to it even though their land does not adjoin the stream. Generally, riparian rights are superior but appropriators still have a chance for priority when water is put to "reasonable and beneficial" use.

In an opinion by Justice Kaufman, the court held that the federal government does have riparian rights. Federal riparian rights may, however, be limited in that the WRCB may decide when a riparian water claim loses its priority because it has not been exercised. "Thus the United States must apply to the Board whenever it proposes to exercise its riparian right, so that the Board may evaluate the proposed use in the context of other uses and determine whether the riparian use should be permitted in light of the state's interest in promoting the most efficient and beneficial use of the state's waters."

According to Assistant State Attorney General Roderick Walston, this decision could have a destabilizing effect on California water rights law since it opens the door for the federal government to claim riparian rights which may be paramount to rights being used by private appropriators.

RECENT MEETINGS:

At its January 21 meeting, the Board approved a resolution extending a multi-site cooperative agreement (MSCA) deadline from January 1988 to June 1988. The deadline requires that by June 1988, a community development project in Santa Clara County must be functioning to the satisfaction of the Board or the project will be terminated. Originally approved in May 1985 (Resolution No. 85-35), this South Bay MSCA between the WRCB, the Santa Clara Regional Board (Regional Board), the Santa Clara Valley Water District (SCVWD), and the EPA is critical to the Santa Clara

groundwater basin, which provides approximately 50% of the water supply for the 1.5 million residents in the area. The complexity and extent of groundwater contamination requires all four agencies to participate.

Although the EPA funding of this program has accelerated the groundwater investigation and clean-up (at the November meeting, the Board was informed that 12 of 16 task sites identified in the original workplan were completed), the Board commented on the EPA's uncooperative spirit. The state and regional boards were placed in a difficult position when the Inspector General of the EPA was critical of the program in a final audit report (No. E5eH6-09-0226-71928) released in September 1987. This audit concluded that the WRCB, the Regional Board, and SCVWD had delayed contaminated groundwater clean-up. The WRCB adopted this audit conclusion in the current policy statement of the MSCA clarifying program objectives and shortcomings. While recognizing the community relations and educational benefits of the MSCA, the WRCB stated that if the program is not in effect by the June 1 deadline, the Board will remove the program from its project list.

The Board accepted additional EPA funds of \$700,000 to continue work on the program until June 1988, with the added stipulation of a two-month and six-month Board review to consider the effectiveness and continued desirability of the program.

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,