



1983). The resolution indicated the legislature's "intent to preserve, protect, restore and enhance California's wetlands and the multiple resources which depend upon them for the benefit of the people of the state." The legislature declared its desire that wetlands habitat acreage be increased by 50% by the year 2000.

Preemption. In September, the Attorney General issued an opinion (No. 86-607) that local governments may prohibit the use of steel-jawed leghold traps "where such action is necessary to protect the public health and safety and where the ordinance only incidentally affects the field of hunting preempted by the Fish and Game Code." The AG's opinion came in response to a DFG request concerning the issue of preemption.

According to the opinion, Article IV of the California Constitution divides the state into fish and game districts and directs the districts "to enact such laws for the protection of fish and game therein." Although the AG determined that the regulation of fish and game matters is reserved to the legislature under Article IV, the opinion suggested that subjects within the county's police power—health and safety, for example—may be regulated by counties and cities.

LEGISLATION:

Gill Net Legislation. A petition which would have put an initiative on the June ballot to ban gill nets and other fishing nets within three miles of the state's 840-mile coastline failed to obtain the necessary 590,000 signatures. However, DFG observers believe that the failed initiative will take the form of legislation in this session.

The following is a status update of two-year bills reported in CRLR Vol. 7, No. 4 (Fall 1987) at pp. 94-95:

AB 512 (Allen), regarding the monetary value of protected wildlife, remains before the Senate Committee on Natural Resources and Wildlife. No hearing date has been set as of this writing.

ACA 44 (Campbell), concerning qualifications of Fish and Game Commission members, was scheduled for hearing in the Assembly Committee on Elections, Reapportionment and Constitutional Amendments on February 10.

AB 33 (Harris, D. Brown) is pending before the Senate Committee on Revenue and Taxation as of this writing. No hearing date has been set for the measure, which concerns California taxpayers' tax-free contributions to the Rare and Endangered Species Fund.

AB 212 (Condit), which would exempt persons over the age of 65 from sports fishing licensure requirements, as specified, is pending in the Senate Rules Committee awaiting assignment.

AB 253 (Kelley), regarding specified duties of law enforcement members of DFG's Wildlife Protection Board, passed the Assembly on consent in January.

AB 271 (Allen, Killea), requiring DFG compliance with certain internal accounting and reporting procedures, passed the Assembly on January 27.

AB 369 (Allen, Chacon), regarding redirection of fishing from overexploited to underutilized areas, remains pending in the Senate Appropriations Committee with no hearing date scheduled.

LITIGATION:

In *Mountain Lion Coalition, et al. v. California Fish and Game Commission* (No. 875524, San Francisco Superior Court), Judge Lucy Kelly McCabe rejected as inadequate a DFG environmental report that she ordered on September 28. Judge McCabe's November 23 decision described the report as a "pro forma rehashing" of old information. (For background information, see CRLR Vol. 7, No. 4 (Fall 1987) p. 95; Vol. 7, No. 3 (Summer 1987) p. 118.)

Judge McCabe's ruling, which effectively blocks the first scheduled California mountain lion hunting season in fifteen years, is likely to be appealed by the DFG. The matter of appeal was scheduled for DFG executive session discussion on January 8.

FUTURE MEETINGS:

March 4 in San Diego.

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: Jean Atkisson, Harold Walt (chair), Carlton Yee, Clyde Small, and Franklin L. "Woody" Barnes.

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:

Preferential Conifer Stocking. At the request of CDF, the Board is considering amending sections 912, 932, and 952, Title 14 of the California Administrative Code, to designate certain "commercial species" to be replanted in each forest district in at least the same proportion as that which the species had occupied in the original stand. The protected "commercial species" would be fast-growing, economically-profitable pine species.

The Statement of Reasons on the proposed changes states that "[t]his standard is directed at maintaining the conifer composition of timber stands." Currently, timber operators can stock the coastal, northern, and southern forest districts with any "commercial species" enumerated in sections 912, 932, and 952, respectively.

Specifically, the proposal would design-



nate certain species of conifers as "Group A commercial species," and would list species of hardwoods and conifers indigenous to stands of Group A trees as "Group B commercial species." The proportion of Group A trees would be protected in private lands over three acres and in state forests. Group B trees which would be exempt from requirements for restocking with Group B commercial species include Oregon white oak, mountain hemlock, and Sierra redwood (*Sequoia-dendron giganteum*).

At the Board's November 4 meeting, Douglas C. Ferrier, an RPF with Forest Slopes Management of Dutch Flat, California, advocated maintaining the status quo which allows restocking with any commercial species. Ferrier, who specializes in tree evaluation, enhancement, and analysis, explained that many property owners and wildlife species prefer Group B hardwoods such as oak, spruce, and alder.

Board member Jack Shannon, range livestock representative, expressed concern that slower growing oaks, excluded from the restocking requirements, might be nevertheless more commercially profitable than pines.

The Statement of Reasons asserts that "[n]o significant environmental impact will result from the actions," citing a 1982 report of the Board's Study Committee and a 1983 Preliminary Report of the Board's Hardwood Task Force as the only relevant supporting documents.

Conduct pursuant to Forest Practice Act regulations is exempt from California Environmental Quality Act (CEQA) Impact Statement reporting. THPs, however, must be prepared by RPFs and approved by the CDF.

The Board planned to continue discussion on the proposed amendments at its January 6 meeting.

THP Exemptions—Defining "Minimum Impact". At its November 4 meeting, the Board heard testimony regarding a proposed amendment to section 1038(b), Title 14 of the California Administrative Code, defining "minimum impact" for purposes of determining when a THP is required. The amendment would affect the cutting of dead, diseased, and dying trees which amount to less than 10% of the average volume per acre, and the harvesting of trees for fuelwood and woodchips where "there will be only minimum impact on the forest resources."

The proposed amendment sets forth nine activities which exceed "minimum impact," including road construction, stream disruption, heavy equipment op-

eration on slopes greater than 50%, and endangered species habitation cutting.

The Statement of Reasons justifies the proposed definition of "minimum impact" due to the increased value of fuelwood and woodchips as well as the lack of a descriptive limit regulating the amount of fuelwood and split products which may be removed without a THP. Furthermore, the Statement of Reasons contends that fuelwood and woodchip production is encouraged at the expense of saw logs, which require a THP to harvest.

Ross Johnson, CDF Assistant Chief for Forest Practices, stated that the Department intended the nine activities exceeding "minimum impact" to comprise a checkoff list for CDF use before issuing a certificate of THP exemption.

Georgia Pacific forester Jere Melo questioned when operators should file an exempt notice as opposed to a THP. Furthermore, he doubted the industry could economically file before removing dying wood from stands. Board member Jack Shannon noted that dead trees are economically worthless as saw wood.

The Board postponed further discussion until its January 6 meeting.

Licensed Timber Operator (LTO) Education Program Adopted. At its November 4 meeting, the Board unanimously approved a requirement that first-time LTO applicants attend a CDF-approved educational program covering Forest Practice Act regulations.

Upon OAL approval, the proposed amendment to section 1024, Title 14 of the California Administrative Code, would charge CDF with developing and providing education materials. In addition, the amended regulation would require that CDF-approved instructors furnish attendees with certificates of completion. (For a discussion of the Board's consideration of LTO educational testing, see CRLR Vol. 7, No. 4 (Fall 1987) p. 96.)

LEGISLATION:

The following is a status update on two-year measures reported in CRLR Vol. 7, No. 4 (Fall 1987) at pp. 96-97:

SB 4 (Presley) would enact the Wildlife and Natural Areas Conservation Act of 1988, which would place a bond issue on the June 1988 ballot to finance purchase of habitat for endangered species. (See CRLR Vol. 7, No. 2 (Spring 1987) p. 95 for background information.) On September 2, the bill was placed in the Assembly Ways and Means Committee suspense file. Senator Presley is actively pursuing passage of this measure.

SB 495 (Davis), which would allow CDF to use parabolic microphones in investigating arson, remains pending in the Assembly Public Safety Committee as of this writing.

SB 1335 (McCorquodale), which would have mandated CDF inspection of all timber operation areas in which an RPF has not assumed operational responsibility, was defeated in the Senate Appropriations Committee in January.

SB 1539 (Keene), which would have prohibited the State Board of Equalization and the CDF from assessing any surcharge to recoup administrative costs incurred in the collection and disbursement of the Timber Tax Fund, died in the Senate Revenue and Taxation Committee.

SB 1577 (Campbell) would require the Department of Justice to furnish requesting employers with records of convictions involving arson crimes perpetrated by persons applying for positions with "supervisory or disciplinary power over a minor." The bill passed the Senate on January 28.

LITIGATION:

In *Libeu v. Johnson* (No. A035144/A034872), a unanimous First District Court of Appeal reversed a Sonoma County Superior Court denial of a writ of mandate to enjoin CDF from issuing two THPs. The Court of Appeal held that CDF did not adequately consider public comments in approving the THPs, as required by section 1037, Title 14 of the California Administrative Code. Petitioners contended that execution of THPs for the Freezeout Creek and Kolmer Gulch watershed areas would increase streambed sedimentation in the spawning and nursery habitat for steelhead trout and coho (silver) salmon.

In addition, the appellate court held that "only a nominal injunction bond should be imposed in environmental litigation, even when the enjoined defendant may suffer substantial economic loss as the result of the injunction...[where] the plaintiff has established a probability of success on the merits." Relying on a series of federal decisions, the court reasoned that otherwise an environmental plaintiff, "often a relatively impecunious, nonprofit public interest group," would effectively be denied judicial review.

FUTURE MEETINGS:

March 2 in Nevada City.