



harvesting plans (THP) in Santa Cruz, Santa Clara and Mendocino Counties were recently decided. The suits alleged that the Forest Practice Act and rules are unconstitutional and that the Department of Forestry's THP review process is not in compliance with the California Environmental Quality Act (CEQA). The constitutional issues involve the public's right to appeal a THP, adequate public notice, and adequate review procedures. The non-compliance issues involve allegations of improper consideration of cumulative effects.

The trial courts in *County of Santa Cruz v. Partain, Lexington Hills Association v. State of California, Libeu v. Johnson, Laupheimer v. State of California*, and *Environmental Protection Center, Inc. (EPIC) v. Johnson* found that the Forest Practice Act and the challenged rules of the Board are constitutional, and are in compliance with CEQA. Appeals have been filed in all of these cases.

RECENT MEETINGS:

At its October 8 meeting in Monterey, Dr. Yee presented the Research Advisory Committee's report on forest and rangeland research in California. Board Chair Walt commented that discussions to arrange for schools involved in forestry study to coordinate and integrate their programs are ongoing. These discussions may lead to the creation of a School of Forestry or major Department of Forestry Studies at one institution. Presently, forestry studies are included as part of the school's agriculture departments. Establishing a School of Forestry would allow for concentration of research funds and coordination of all state forestry education. Chairperson Walt further stated that two professors at UC Davis specialize in logging engineering. Walt believes that this type of research must be supported, and that forest engineering education and research should be recognized as important to the industry, the Department of Forestry, and the Board.

The Board also appointed Roberta K. Smith-Evernden to fill the public member vacancy on the Southern District Technical Advisory Committee (DTAC). Ms. Smith-Evernden was recommended by the nominating committee because of her experience and expertise in geology. Board member Atkisson questioned whether DTAC members should reside in the districts they represent. No Board rule requires such residency, but Ms. Atkisson suggested that the nominating committee

keep residency in mind in future considerations.

The Board's November 15 meeting was held in conjunction with Cal Poly State University's symposium on "Multiple-Use Management of California's Hardwood Resources" in San Luis Obispo. Extensive time was dedicated to hearing public comments on the two hardwood reports (*see supra* MAJOR PROJECTS). The Department of Forestry reported to the Board that 1986 proved to be a very safe year for fire control. Through November 3, the Department attacked 7,920 fires which burned a total of 44,817 acres. This sets a new ten-year record low. The previous low year for the ten-year period was 1982, when 80,000 acres were burned by 7,936 fires.

FUTURE MEETINGS:

To be announced.

WATER RESOURCES CONTROL BOARD

Executive Director: James L. Easton
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The Water Resources Control Board, 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 reclama-

tion 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.

LEGISLATION:

AB 3500 (Hayden), which has been signed and chaptered, requires the Water Resources Control Board (WRCB) to formulate, adopt, and periodically review a water quality control plan for ocean waters to be known as the California Ocean Plan. The bill requires the Board to develop and adopt bioassay protocols and complimentary chemical testing methods to be used by specified entities in the monitoring of complex effluent ocean discharges.

AB 3506 (Hayden), signed by the Governor on September 30, requires any person causing or permitting the discharge of sewage or a hazardous substance to notify the WRCB or the appropriate regional water board in addition to the Office of Emergency Services.

AB 3823 (Leonard), which has been signed and chaptered, provides that guidelines adopted by regional water boards aimed at prevention and abatement of water pollution are ineffective until approved by the WRCB. Under previous law, each regional board was required to submit a regional water quality control plan to the WRCB, and the guidelines were effective prior to approval by the Board.

SB 1817 (Morgan). Existing law requires every person who digs, bores, or drills a water well or cathodic protection well, or abandons, destroys, or deepens any well to file with the Department of Water Resources a notice of intent to engage in such activity, and to file a report of completion. SB 1817, which was signed by the Governor on September 29, adds monitoring wells to the list of wells for which notices and reports are required.

LITIGATION:

In the Matter of Hallett Creek Stream Systems, 86 D.A.R. 4001, No. 3 Civ. 24355 (December 5, 1986). In December,



REGULATORY AGENCY ACTION

the Third District Court of Appeal held that the United States, as a landowner, may assert a riparian water right to a creek which crosses land reserved from the public domain for purposes of a national forest.

The proceeding began when a private claimant petitioned the WRCB for a statutory adjudication of the water rights in Hallett Creek. A number of parties submitted proof of claims to the water, including the United States acting through the U.S. Forest Service. The Board recognized that the United States has a reserved water right in the land withdrawn from the public domain for purposes of maintaining the forest land, but rejected its claim of riparian water right for wildlife purposes. The United States filed objections to the Board's order in Lassen County Superior Court. The trial court agreed with the United States' claim and held that the United States has an unexercised riparian right to water for wildlife purposes. The Board appealed from the judgment, and the appellate court affirmed.

The Court of Appeal found that Acts of Congress in 1866, 1870, and 1877 severed water rights from federal land and intended that water should be held available for appropriation separately from the land. Additionally, the United States may reserve both land and water from the public domain, and when land is reserved without an express reservation of water rights, an accompanying reservation of water will be implied, sufficient for the purposes of the land reservation. Water in excess of that essential to the express land reservation remains severed from the land and available for the free appropriation of the public, and the United States' riparian right is regarded as secondary to all other approved uses. However, to the extent that unappropriated and unused water remains, the United States is free to use such water as any other riparian user might.

In *Imperial Irrigation District v. State Water Resources Control Board*, 231 Cal. Rptr. 283 (1986), the Fourth District Court of Appeal held that the WRCB has authority to make binding adjudications in matters of unreasonable use of water.

A private landowner initiated the action by maintaining that the Imperial Irrigation District (IID) was responsible for flooding his land and destroying existing drainage. An investigation was conducted by the Department of Water Resources and the matter was referred to the Board. Hearings ensued, culminating

in Decision 1600, which found that IID's failure to implement additional water conservation measures was unreasonable and a misuse of water under the California Constitution, Article X, section 2. Pursuant to the finding, the Board ordered IID to undertake various conservation measures. IID sought declaratory relief in superior court, which held that the Board did not have statutory authority to adjudicate the matter of unreasonable use, since Water Code section 275 dictates that WRCB's remedy is to refer the matter to the Attorney General for legal proceedings in superior court.

The Court of Appeal reversed, in light of constitutional, statutory, and Supreme Court law which grants to the Board an all-encompassing adjudicatory authority on matters of water resource management. Section 275 of the Water Code reads: "The department and board shall take all appropriate proceedings or actions before executive, legislative, or judicial agencies to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water in this state." The court noted that no case has construed section 275 as a limitation on the Board's adjudicatory power. In *United States v. State Water Resources Control Board*, 182 Cal. App. 3d 82 (1986), which was decided after the trial court's decision, it was held that section 275 operates to grant the Board "separate and additional power to take whatever steps are necessary to prevent unreasonable use or methods of diversion." 182 Cal. App. 3d at 142.

RECENT MEETINGS:

At its December meeting, the WRCB ruled that absentee lessors are required to abide by mandates issued by it as a result of a lessee's actions. The issue, as presented to the Board, focused on the accountability of a property owner for groundwater pollution caused by a lessee.

The case involves a parcel of land in an industrial park in Cupertino. In 1970, the owner leased a portion of the parcel to Intersil, Inc. for a term of sixteen years. In the lease the tenant agreed to various conditions including a provision that the premises would not be used in violation of the "laws, ordinances, regulations or rules of any public authority." The landlord's remedy for a breach of the lease was to declare it in default and proceed to either arbitration or litigation.

Groundwater under the site was later found to be polluted with organic solvents commonly used in the electronics

industry. The source of the pollution on the site was traced to leaking underground storage tanks. The Board's waste discharge requirements require investigation activities and clean-up, and the lessees are undertaking the required actions.

In its conclusion, the Board held that the landowner is also responsible for ensuring compliance with waste discharge and site clean-up requirements, even though day-to-day control of the property was exercised by the lessee. The ultimate responsibility for the condition of the land rests with its owner. Hence, if the lessee fails to comply with clean-up orders, the Board places responsibility on the landowner.

Also at its December meeting, the WRCB adopted a resolution authorizing the Board's Executive Director to accept an underground storage tank (UST) grant offered by the Environmental Protection Agency (EPA). The purposes of the grant are to continue the UST notification process, provide the EPA with California's UST technical experience, and augment the existing state UST program.

A UST grant workplan set forth the activities to be performed by the WRCB during 1987. These activities include, but are not limited to: continued development of statutory and regulatory authority for the UST program; development and initiation of state or local programs for ensuring proper UST installation; promotion of compliance with state and federal laws by disseminating information and by providing training to local agencies; and augmentation of the WRCB's existing program to regulate USTs.

The revised workplan also includes the WRCB's new underground tank training program for regional board staff and local government officials.

In November, the Board approved a temporary urgency permit to divert and use unappropriated water pursuant to Chapter 6.5, Part 2, Division 2 of the California Water Code. The permit allows Caleron Oil to divert water at a rate of 0.3 cubic feet per second, not to exceed a total of 17 acre-feet, from the Sisquoc River underflow. The water is to be used for the hydrostatic testing of a 30-mile section of a 30-inch crude oil pipeline which extends from a point commencing approximately 2.5 miles east of Gaviota to a point approximately six miles east of the Sisquoc River. The entire length of the pipeline extends cross-country from the offshore oil fields in Santa Barbara County to Texas.

Caleron Oil claims it has a temporary,



immediate and pressing need to divert and use water to pressure the crude oil pipeline. An alternative source of water is not available to the permittee.

The effects of the diversion on fish, wildlife and other instream uses were considered by the staff. Department of Fish and Game (DFG) representatives believe the proposed water diversion will not unreasonably affect fish, wildlife or other instream beneficial uses. The Sisquoc River at the point of diversion is presently in underflow; no surface flow exists at this time.

Additionally, DFG staff indicated that no significant impacts to fish and wildlife will occur provided that, upon last completion, the water is discharged in a manner which will reduce the potential for stream bank erosion.

Because there will be no significant adverse impact as a result of the diversion, the Board accepted the recommendations of the staff and approved the temporary permit.

At its December meeting, the WRCB adopted a resolution authorizing an amendment to a contract for the provision of water rights services between the Board and the U.S. Bureau of Reclamation (USBR).

The amendment was considered neces-

sary because the general delegation to the WRCB Executive Director to execute this type of contract is limited to \$100,000.

Pursuant to Water Code section 1560, the federal government is specifically exempt from paying fees on applications to appropriate water which will be used to further projects under the supervision of the USBR. However, under section 1560, state boards may enter into contractual arrangements with the USBR for reimbursement, in whole or in part, for services provided in connection with or for protection of rights under applications, permits, or licenses of the USBR.

In 1985/86 federal fiscal year (October 1 to September 30), the contract between the WRCB and USBR for such services was \$98,268. The Board staff negotiated a proposed contract amount for reimbursement of \$99,876 for 1986/87. USBR staff prepared a proposed contract amendment to include this reimbursement, which brought the cumulative amount under amended contract to \$348,504 for federal fiscal years 1982/83 through 1986/87.

FUTURE MEETINGS:

To be announced.

MAJOR PROJECTS:

Recovery Fund. Auctioneers are currently required to be bonded, and surety bonds are generally available at affordable premiums. The recovery fund concept, which would require that fees be paid to a Commission recovery fund rather than to private bonding companies, has been considered by the Board of Governors to be a viable alternative method of insuring claims against auctioneers. (See CRLR Vol. 6, No. 4 (Fall 1986) p. 85.) However, opposition to the recovery fund concept among auctioneers has become increasingly vocal. On November 14, the Board of Governors met in San Diego, and was greeted by a large public turnout because the controversial concept was on the agenda and because the California State Auctioneers Association convention was held in the same hotel. After hearing public comment from the highly partisan audience, the Board voted against any further action to create a recovery fund.

Standard Definitions. The Commission continues to work on the development of definitions for commonly-used industry terms. The Commission receives many questions and complaints about the practice of "reserve" bidding by owner/consignors. (See CRLR Vol. 6, No. 4 (Fall 1986) p. 85.) To ensure that buyers are not misled, staff will propose legislation to define "absolute auction," "sold to the highest bidder," and "no minimum" as meaning that there are no reserve bids.

Enforcement and Practices. Some auctioneers believe they have a duty to protect their consignors by refusing to accept bids at certain prices, even if the owners/consignors have not set minimum prices for the items. The Commission is presently investigating whether auctioneers may engage in such practices, and if so, under what conditions.

Reciprocity. California law requires that in order for an auctioneer's license issued in another state to be recognized in California, the other state's requirements for licensure must be at least as stringent as those in California. The Commission is currently deciding what criteria to consider when making a reciprocity determination, and whether to grant reciprocity to licensees from Alabama and Pennsylvania.

Disciplinary Process. Presently, it takes nine to twelve months to complete a disciplinary action against an auctioneer who has failed to pay consignors. It takes even longer for consignors to be paid from the surety bond. Commission staff is presently drafting legislation



INDEPENDENTS

AUCTIONEER COMMISSION

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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 Board of Governors is assisted by a council of advisors appointed by the Board for one-year terms. The council's functions are: (1) to assist the Board in carrying out its duties, such as accepting/denying applications, preparing and grading examinations and receiving or designating complaints involving misconduct or issues of professional competence; (2) to act as a liaison between the Board and the industry/public by providing the latter with assistance and information; and (3) to provide input to the Board based on contact with the public and industry.