



mental agencies, and educational institutions engaged in research or study of pest control, as specified. As amended July 15, this bill additionally exempts from the licensing requirement persons engaged in the live capture and removal of vertebrate pests, as defined, or bees or wasps, from structures without the use of pesticides, if the person maintains specified insurance coverage. The bill provides that the licensing exemption does not exempt a person from compliance with the California Endangered Species Act. The bill also makes related changes.

Existing law provides that the Board or certain commissioners, when properly designated, may suspend the right of a structural pest control licensee or registered company to work for three days or may levy a fine of up to \$500 for each violation of specified provisions and regulations. This bill increases the possible fine to \$1,000, and also makes that fine applicable to an unlicensed individual acting as a licensee. This bill was signed by the Governor on October 9 (Chapter 718, Statutes of 1995).

AB 816 (Murray). Under existing law, a person is not eligible to be examined for, or issued a license as a county agricultural commissioner or deputy commissioner or as a county agricultural inspector unless the person has a bachelor's degree, with a specialization in agricultural or biological sciences. Existing law exempts from those requirements a person who holds a certificate of qualification issued prior to January 1, 1985. As amended September 8, this bill also makes a person eligible for that examination or license who has a bachelor's degree with a specialization in chemical or physical science, or other appropriate disciplines. The bill also changes the exemption from that requirement to exclude persons holding a valid license of qualification in weights and measures under specified conditions.

Existing provisions of the Government Tort Claims Act provide, among other things, that a public employee is not liable for an injury resulting from the employee's act or omission when the act or omission was the result of an exercise of discretion. Existing law also provides that a public entity is not liable for an injury resulting from an employee's act or omission if the employee is immune from liability. This bill would make those provisions applicable specifically to decisions of a county department of agriculture and an employee of a county department of agriculture enforcing a state or local pest control or pest eradication statute, regulation, or ordinance. This bill was signed by the Governor on October 12 (Chapter 818, Statutes of 1995).

AB 124 (Rainey). Existing law requires each registrant of an economic poison to pay

to the DPR Director an assessment on all sales by the registrant of its registered and labeled economic poisons for use in this state. As introduced January 12, this bill would require DPR to study and report to the legislature on the revenue received pursuant to that provision, setting forth separately revenue received from the sale of registered agricultural economic poisons, and revenue received from the sale of registered nonagricultural economic poisons. The bill would permit DPR use any funds available to it for the preparation of the study and report. [A. *Appr*]

AB 1561 (Harvey). Existing law requires a thorough evaluation by DPR before a substance is registered as an economic poison for the first time in this state. As amended April 17, this bill also would require the evaluation to be timely. [S. *AWR*]

SB 802 (Monteith). Existing law prohibits the sale or distribution into or within this state of any economic poison products that have been registered by the DPR Director and that are labeled for agricultural use unless the person is licensed by the Director as a pesticide broker. Existing law requires each licensed pesticide broker to pay to the Director an assessment, as specified, for all sales by the broker into or within this state of registered economic poisons labeled for agricultural use, where the broker is the person who first sold the economic poison into or within this state. As amended April 17, this bill would instead require every person who is required to be licensed as a pesticide broker to pay this assessment. The bill would also make technical changes in those provisions.

The bill also would provide that every person who is required to be licensed as a pesticide broker and who is deficient in the payment of an assessment that is due and payable shall pay the assessment, as prescribed by the Director. In addition, the bill would authorize the Director to add a penalty of 10% of the amount that is due and payable to defray the cost of collecting the deficient payment. [A. *Agri*]

AB 179 (Battin). Existing law requires a thorough evaluation by DPR before a substance is registered as an economic poison for the first time in this state. As amended January 23, this bill would permit the DPR Director to issue an emergency exemption from registration for an economic poison under the conditions set forth in the bill. [A. *Appr*]

■ LITIGATION

In *Macias v. State of California*, No. S039245 (July 17, 1995), the California Supreme Court considered whether the defendant manufacturers and distributors of malathion—a chemical sprayed on areas

of California to combat Medfly infestation—had a duty to disseminate health warnings to the public or to take other measures to protect the general welfare, after they became aware of certain alleged deficiencies in CDFA's warnings. Reversing a decision of the Second District Court of Appeal [14:2&3 *CRLR* 172; 12:2&3 *CRLR* 196-97], the court concluded that no such duty devolved upon these defendants, and that it was reasonable for them to rely on CDFA to convey the requisite EPA-approved warnings to the residents of a Medfly spray area.

■ RECENT MEETINGS

At PAC's June 16 meeting, a representative of the Water Resources Control Board (WRCB) gave a presentation on how water quality standards are set and the interaction between the state and regional water boards. WRCB has created task forces to help it formulate a new inland surface waters plan and bays and estuaries plan. One such task force, the Chemical Specific Objectives task force, has listed ten pesticides that are of concern but for which EPA has set no objectives.

At PREC's November 17 meeting, Peggy Tarocco and Barbara Fry of the Air Resources Board (ARB) presented a report on the air emissions of volatile organic compounds (VOCs) from consumer products. A new regulation which becomes effective in January 1996 will reduce the amount of VOCs emitted from consumer products, some of which contain household insecticides, including general purpose cleaners, disinfectants, insect repellants, and other pesticides that can be purchased without a permit or special license. The new regulation calls for a reduction of 50-80% of the pesticide, depending on what category it falls into (see agency report on ARB for related discussion).

■ FUTURE MEETINGS

DPR's PAC, PREC, and PMAC meet every two months to discuss issues of practice and policy with other public agencies; the committees meet at 1020 N Street in Sacramento.

WATER RESOURCES CONTROL BOARD

Executive Director: Walt Pettit
Chair: John Caffrey
(916) 657-1247

The state Water Resources Control Board (WRCB) is established in Water Code section 174 *et seq.* The Board administers the Porter-Cologne Water



Quality Control Act, Water Code section 13000 *et seq.*, and Division 2 of the Water Code, with respect to the allocation of rights to surface waters. The Board, located within the California Environmental Protection Agency (Cal-EPA), 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 water quality control board (RWQCB or "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. Most regional board action is subject to State Board review or approval.

The State Board has quasi-legislative powers to adopt, amend, and repeal administrative regulations for itself and the regional boards. WRCB's regulations are codified in Divisions 3 and 4, Title 23 of the California Code of Regulations (CCR). Water quality regulatory activity also 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 loans from state and federal sources are allocated for projects such as waste water treatment facilities.

WRCB also 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.

MAJOR PROJECTS

Board Adopts Bay/Delta Plan and Commences Its Implementation. After an often-interrupted marathon proceeding lasting almost a decade, WRCB on May 22 finally adopted the Water Quality Control Plan for Salinity which contains water quality standards for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay/Delta). [15:2&3 CRLR 149-50; 15:1 CRLR 138-39] The Plan, which had been the subject of an extensive comment period and numerous public hearings during the first half of 1995, reflects the *Prin-*

ciples for Agreement on Bay/Delta standards between California and the federal government signed in December 1994. The Board's adoption of the Plan ends and resolves some disputes but—as usual for this proceeding—has already led to others, including the filing of two lawsuits challenging WRCB's adoption of the Plan (see LITIGATION).

The Bay/Delta watershed supplies drinking water for two-thirds of California, provides water for agricultural areas, and is the main source of water for declining fish populations such as the endangered chinook salmon and Delta smelt. The Plan establishes beneficial uses to be protected in the Bay/Delta area, water quality standards which will adequately protect those uses, and a program of implementation.

California's two major water distribution systems—the State Water Project (SWP) operated by the California Department of Water Resources (DWR), and the Central Valley Project (CVP) operated by the U.S. Bureau of Reclamation (USBR)—must meet the requirements imposed by WRCB. So far, only SWP, CVP, and certain water rights holders have been required to take any action to implement the Plan. On June 8, WRCB adopted Water Rights Decision 95-6 to temporarily conform some of the terms and conditions of the water rights permits of SWP and CVP to the Plan's requirements; this allows both DWR and USBR to temporarily use each other's water diversion facilities under restricted circumstances. [15:2&3 CRLR 150-51]

During the summer, WRCB opened the water rights phase of the Bay/Delta proceeding by holding several workshops to discuss key issues relating to the Plan's implementation process and to establish terms and conditions for water rights permits. The workshops, which convened on August 29-30 and continued on September 18-19, began the scoping process under the California Environmental Quality Act (CEQA). Throughout the workshops, WRCB sought comments and recommendations on the proposed development of a water rights decision that accomplishes the following:

- identifies the responsibility of water rights holders in the Bay/Delta Estuary watershed to achieve the flow, operational, and water quality requirements in the Plan, and allocates responsibility according to established principles of water law;
- potentially authorizes the combined use of the CVP and SWP points of diversion in the Delta;
- requires actions to improve habitat conditions in the Central Valley; and

- requires measures to improve water supply reliability for users of water within and from the Bay/Delta Estuary watershed.

Among others, the following are issues discussed at the workshops: the status of efforts to achieve negotiated solutions to water rights issues associated with implementation of the Bay/Delta Plan; the process which should be used to identify the responsibility of diverters from the San Joaquin watershed to meet water quality and flow requirements at Vernalis in the absence of a negotiated settlement; specific San Joaquin River water quality or flow requirements for determining upstream water users' responsibilities to meet conditions at Vernalis; actions to achieve the Plan's salinity requirements in the southern Delta; actions to achieve the Plan's dissolved oxygen objective; potential construction and operation of barriers in the southern Delta; additional actions necessary in the Bay/Delta watershed to implement the Plan's narrative salmon requirement to double natural production of chinook salmon; water rights in the Bay/Delta watershed potentially subject to this water rights decision; potentially significant environmental and economic effects of alternative allocation methodologies in the Bay/Delta watershed; methods to be used in allocating responsibility to meet water quality and flow requirements in the Sacramento River, Delta, and Suisun Marsh to upstream water users; the possible combined use of the CVP and SWP points of diversion in the Delta, and conditions to be placed on such approval; the "no action" alternative; actions to improve habitat conditions in the Bay/Delta watershed; monitoring requirements to evaluate the effectiveness of actions taken as a result of this proceeding; and the establishment of working groups to aid WRCB in evaluating issues associated with Plan implementation.

At the September workshop, WRCB members and staff agreed that future workshops may be appropriate for further discussion of some issues such as the need for barriers in the southern Delta. WRCB also sought input from interested parties on how to carry out its responsibilities under CEQA.

As a follow-up to the August/September workshops, WRCB held a workshop on November 15 to consider the need for physical barriers in the southern Delta to protect the beneficial uses of water. The *Principles for Agreement* on Bay/Delta standards between California and the federal government included a provision to construct and operate a barrier at the head of Old River in the southern Delta region



to raise water levels and improve fish migration. WRCB's Bay/Delta Plan recommends that DWR and USBR evaluate the effectiveness of barriers as a means of improving fish survival in the Delta. DWR and USBR have jointly proposed the Interim South Delta Program, which provides for the construction of barriers in the southern Delta to improve water levels and prevent circulation problems in the Delta. Among other issues, November workshop participants discussed whether the proposed southern Delta barriers will provide salinity conditions adequate to protect agriculture in the southern Delta; whether the proposed southern Delta barriers will provide water levels in the southern Delta adequate to protect agricultural operations; whether the Old River Barrier will improve dissolved oxygen levels in the San Joaquin River during the fall; whether the Old River Barrier will improve salmon smelt migration in the San Joaquin River during spring; what concerns should be evaluated regarding the effect of the southern Delta barriers on beneficial uses in the southern and central Delta; and whether WRCB should require the installation of any or all of the proposed barriers or place conditions on their operation as a result of its water rights proceeding.

WRCB to Prepare Environmental Impact Report for Bay/Delta Plan. In May 1995, WRCB completed an environmental report documenting its analysis of the needs for and effects of new water quality objectives for the protection of fish and wildlife in the Bay/Delta Estuary, as adopted in the Bay/Delta Plan (*see above*). WRCB prepared the document to substitute for an initial study, an environmental impact report (EIR), and/or a negative declaration under CEQA. After reviewing the environmental report prepared by WRCB, the Secretary of the Resources Agency certified that the Bay/Delta Plan meets the necessary criteria under CEQA (section 1521(g), Title 14 of the CCR), and concluded that the preparation of an EIR was unnecessary.

After much controversy, WRCB later determined that the preparation of an EIR is required under CEQA, and published a notice of preparation (NOP) of an EIR in July. However, comments on the notice indicated that it failed to provide sufficient details on the project; for example, the project map failed to include the Trinity River watershed and San Francisco Bay. As a result, WRCB released a revised notice on December 20. The revised NOP includes a preliminary set of project alternatives for implementation of the Bay/Delta Plan and a map of the entire project area,

and describes the following project alternatives: the "no project" alternative; objectives not requiring analysis in the draft EIR; objectives which are exclusively the responsibility of DWR and USBR; objectives subject to allocation among all relevant water users; and combined use of the SWP and CVP points of diversion. At this writing, WRCB is accepting additional comments on the NOP and the preparation of the draft EIR until April 1, 1996.

After publishing its revised NOP of an EIR, WRCB released a notice of public workshops to continue discussions of alternatives for achieving the water quality objectives contained in the Bay/Delta Plan. At this writing, WRCB is scheduled to hold hearings on January 30, February 20, and March 12; each workshop may spill over to a second day if necessary to accommodate all participants. At the January workshop, WRCB is scheduled to address the following topics: project description; description of the environmental setting; description of the environmental reference condition; description of the "no project" alternative; alternatives for achieving Delta outflow; and alternatives for achieving western and interior Delta salinity objectives. At the February workshop, WRCB is slated to discuss alternatives for achieving Vernalis flow objectives; alternatives for achieving southern Delta salinity objectives; alternatives for achieving the dissolved oxygen objective; and alternatives for providing for net Delta consumptive uses. At the final workshop in March, topics will include implementation of the narrative salmon objectives; implementation of the narrative and salinity objectives for Suisun Marsh; implementation of the export limit objectives; implementation of the Delta Cross Channel Gate objective; alternatives for combined use of SWP and CVP points of diversion; and economic effects of alternatives for project implementation.

WRCB Moves Closer to Adopting New Statewide Water Quality Control Plans. On November 1, WRCB held a public workshop to address the findings of eight public advisory task forces it established to assist in the development of a new Inland Surface Waters Plan (ISWP) and Enclosed Bays and Estuaries Plan (EBEP), both statewide water quality plans; WRCB's previous ISWP and EBEP were invalidated by the Sacramento County Superior Court, which instructed the Board to rescind them. [15:2&3 CRLR 151; 15:1 CRLR 139; 14:4 CRLR 164-65]

During the workshop, representatives from each task force presented an oral summary of their report and responded to questions from WRCB. The reports con-

tained recommendations for the development of a new ISWP, EBEP, and supporting environmental documentation in the form of a functional equivalent document (FED) to comply with CEQA. While this workshop concluded the formal task force process, it marked the first of several public meetings which will further address the two water quality control plans. Public participation was encouraged during the formal task force process, which was only the first step in WRCB's process. Once a draft ISWP, EBEP, and FED are released, the public will have the opportunity to review and comment on the drafts at a public hearing. At this writing, a comprehensive document containing the task forces' reports is available on WRCB's electronic bulletin board.

WRCB Adopts Final Strategic Plan. After almost a year of development and review, WRCB adopted its final strategic plan on June 22. Since October 1994, WRCB has been in the process of developing the plan for itself and its nine RWQCBs; the ultimate goal is to identify and address issues that will enable both the state and regional boards to become more efficient and better able to serve water rights holders and the public. [15:2&3 CRLR 152; 15:1 CRLR 140; 14:4 CRLR 161-62]

The strategic plan explains the planning process used by WRCB and RWQCB staff and proposes Board-wide mission, vision, and value statements. It also outlines the following five major Board goals to be pursued over the next five to seven years, as well as the strategies to reach these goals:

- to provide water resource protection, enhancements, and restoration while balancing economic and environmental impacts;
- to promote cooperative relationships and better assist the regulated community and public;
- to encourage balanced and efficient use of water through water transfers, recycling, and conservation;
- to continuously improve internal efficiency and effectiveness; and
- to establish a stable, flexible funding source.

WRCB plans to review its progress on the strategic plan in late 1996.

Mono Lake Restoration Update. As part of its historic 1994 Mono Lake decision, WRCB ordered the Los Angeles Department of Water and Power (LADWP) to prepare and submit for approval a stream and channel restoration plan, as well as a waterfowl habitat restoration plan, for Mono Lake and its tributaries. [15:2&3 CRLR 152; 15:1 CRLR 140] The scientists hired by LADWP to develop restoration recom-



mendations have released their reports and LADWP is now expected to produce draft restoration plans. Though the timeline for review of these draft plans remains somewhat unclear, the original Mono Lake decision required LADWP to submit a restoration plan to WRCB by March 1, 1996; because of delays suffered in the preparation of the scientists' reports, LADWP has proposed minor adjustments to this schedule.

Interim restoration has continued while the restoration plan is under development. The work necessary for the successful rewatering of a channel in the Rush Creek bottomlands took place this fall, and primarily consisted of excavating a large volume of gravel which had plugged the channel entrance. This 2,000-foot-long channel now carries about 20% of Rush Creek's flow, and riparian vegetation is expected to flourish along its banks.

WRCB Initiates Rulemaking to Amend Underground Storage Tank (UST) Cleanup Fund Program. On July 7, WRCB published notice of its intent to amend Chapter 18, Division 3, Title 23 of the CCR, regarding the UST Cleanup Fund Program. Among other things, the proposed amendments to the regulations would extend significantly the deadline by which federally recognized Indian tribes which own USTs on Indian lands must comply with federal financial responsibility requirements; decrease the amount of financial responsibility that must be demonstrated by an owner or operator of a UST in order to use the Fund; extend the claimant's liability for fraudulent claims to include agents, servants, employees, or representatives of the claimant; and modify the appeal process by decreasing the time period in which the Board may take action on a petition from 270 calendar days to 90 days. WRCB held a public hearing regarding the proposed amendments on November 9; currently, the amendments are undergoing revisions and are expected to be resubmitted to WRCB for approval in the near future.

Nonpoint Source Pollution Management Program. At its September 21 meeting, WRCB approved the state's Coastal Nonpoint Pollution Control Program (CNPCP) and a document entitled *Initiatives in Nonpoint Source Management*, which are the culmination of a lengthy review of the state's Nonpoint Source (NPS) Pollution Management Program. The CNPCP was mandated by section 6217 of the federal 1990 Coastal Zone Act Reauthorization Amendments, which required WRCB and the California Coastal Commission (CCC) to prepare and submit to the U.S. Environmental Protection Agency (EPA) and the National Oceanic and Atmospheric Admin-

istration (NOAA), by September 30, a plan to reduce significant sources of NPS pollution into coastal waters.

NPS pollution (or "runoff") is that which originates from diffuse sources such as farms, dairies, and forests; these sources are more difficult to trace than those caused by an industrial plant or waste water treatment facility. To assist it in preparing the CNPCP, WRCB established several technical advisory committees (TACs) to review management of nonpoint sources for irrigated agriculture, nutrient application, pesticide application, confined animal facilities, grazing, abandoned mines, urban runoff, hydro-modification and wetlands, onsite sewage disposal systems, and boating and marinas. However, the initial TAC reports presented to WRCB in January did not address certain NPS areas, such as grazing on public lands; a revised grazing plan was therefore presented to WRCB at its July 20 meeting. [15:2&3 CRLR 153; 15:1 CRLR 140; 14:4 CRLR 163]

The draft of the CNPCP considered on September 21 does not contain any new regulatory programs for the management of NPS pollution, but instead describes and relies upon existing regulatory and voluntary programs being implemented at the state and local level. The CNPCP and *Initiatives* documents convey the following themes:

- Voluntary cooperation is preferred over prescriptive measures, particularly for agricultural activities.
- There is a need for better public education so that individuals can take responsibility and make the cooperative approach work.
- NPS pollution should be managed on a watershed scale, where local stewardship and specific, problem-responsive measures can be devised through a comprehensive watershed protection plan.
- There is a need to provide more comprehensive and directed technical assistance to local groups and individuals.
- The activities of the various resource management agencies should be better coordinated.

For its part, the Coastal Commission's staff worked closely with the TACs studying urban runoff, marinas, and hydromodification, and reviewed WRCB's draft CNPCP and the *Initiatives* document. In light of significant public comment at its September meeting, CCC declined to approve WRCB's submittal to the federal agencies. After further review in October, the Commission decided to submit a separate letter to EPA/NOAA noting several serious concerns with WRCB's submittal, including WRCB's failure to include several significant TAC recommendations in

either the CNPCP or the *Initiatives* document, the lack of adequate milestones to measure progress, and the lack of "trigger" mechanisms to effectuate enforcement (see agency report on CCC for related discussion).

Rulemaking Update. The following is a status update on WRCB rulemaking proceedings discussed in previous issues of the *Reporter*.

• On June 5, WRCB adopted, on a permanent basis, revisions to section 2200 and new sections 2200.1, 2200.2, 2200.3, and 2200.4, Title 23 of the CCR, articulating current annual fees for dischargers of releases other than stormwater. Pursuant to a 1992 amendment, these dischargers were assessed an annual fee of \$1,000 for general permits; however, the fixed fee has discouraged these dischargers from applying for coverage under a general National Pollutant Discharge Elimination System (NPDES) program permit because general permits are usually issued to dischargers with ratings that are low in threat to water quality and complexity. The changes to the regulations, which WRCB previously adopted on an emergency basis, require that each general NPDES permit or general waste discharge requirement (WDR) permit be rated according to threat to water quality and complexity. This will result in annual fees less than \$1,000 in almost all cases, and will ensure statewide consistency in annual fees for discharges covered by a particular type of general NPDES permit or general WDR. [15:2&3 CRLR 153] Pursuant to Water Code section 13260, WRCB's rulemaking action is exempt from review by the Office of Administrative Law (OAL).

• At its September 21 meeting, WRCB adopted proposed amendments to its conflict of interest code. [15:2&3 CRLR 153] Government Code section 87306 requires all government agencies to review their conflict of interest code every two years, and to update the code if necessary; the code designates agency employees who must disclose certain investments, income, interests in real property, and business positions, and who must disqualify themselves from making or participating in the governmental decisions affecting those interests. The appendix to WRCB's code lists the designated positions and disclosure categories for the Board and the nine RWQCBs; due to changes in WRCB and RWQCBs positions, WRCB updated its listings. At this writing, the changes are being reviewed by OAL.

LEGISLATION

SB 572 (Kelley). The Porter-Cologne Water Quality Control Act generally requires the California RWQCBs to prescribe



waste discharge requirements (WDR) for individual waste discharges. The Act authorizes WRCB, pursuant to the petition of an aggrieved person, to prescribe WDRs if it finds a regional board's action or failure to act regarding the prescription of waste discharge requirements to be improper or inappropriate. As amended July 13, this bill authorizes WRCB to prescribe WDRs at its discretion. The bill authorizes WRCB and any regional board to prescribe general WDRs for a category of discharges if WRCB or that regional board finds or determines that specified criteria apply to the discharges in that category. This bill was signed by the Governor on August 10 (Chapter 421, Statutes of 1995).

SB 1108 (Leslie). Existing law authorizes WRCB and the RWQCBs to regulate the discharge of mining waste, and to exercise various enforcement powers for violations of WDRs for specified types of discharges. WRCB or a RWQCB may issue a cleanup or abatement order, perform the cleanup or remedial work itself or in conjunction with another government agency, or issue a cease and desist order upon a finding that a discharge of mine waste is taking place in violation of established requirements. Under existing law, a public entity attempting to control water contamination problems at an abandoned mine may, by virtue of undertaking that cleanup, incur a number of obligations under state and federal environmental laws [14:4 CRLR 165]; according to WRCB, the purpose of this bill is to encourage the cleanup of contamination at abandoned mines by providing that undertaking to clean up some of the contamination at a mine will not impose a legal obligation to cleanup all of the contamination.

As amended July 14, this bill authorizes a remediating agency, as defined, to undertake activities that have been approved by an oversight agency, as defined, to remediate the effects of any discharge of abandoned mine waste on or from abandoned mined lands, and provides that— notwithstanding any other provision of law—a remediating agency that has implemented an approved remediation plan, or a public agency effecting reclamation of a mine site pursuant to the Surface Mining and Reclamation Act of 1975 (SMARA), shall not be deemed, based on these remediation activities, to be the owner or operator of those lands or related facilities on those lands, and shall not be deemed, based on actions taken to implement the remediation plan or the reclamation, to be responsible for any discharge of abandoned mine waste on or from those lands. The bill limits the responsibilities of a remediating agency.

The bill requires the remediation plan for the Penn Mine property located in Calaveras County to include the terms and conditions set forth in a specified memorandum of understanding. This bill was signed by the Governor on October 13 (Chapter 878, Statutes of 1995).

SCR 20 (Kelley), as amended May 9, requests WRCB to review the appropriate rights granted to USBR for the federal Central Valley Project pursuant to state law to determine whether any evidence has been brought to the attention of the Board that may show that the Bureau has violated any terms or conditions contained in a permit or license for that project, and—if the Bureau has or may have violated any terms or conditions of a license or permit for the project—what enforcement action or other action, if any, WRCB has taken or commenced. The measure requests WRCB, in reviewing the appropriate rights granted to the Bureau for the project, to consider any information generated as a result of the memorandum of agreement for transferring title to the CVP from the U.S. Department of the Interior to the State of California. The measure requests WRCB to report the results of the review to the legislature on or before January 1, 1996. This measure was chaptered on September 6 (Chapter 84, Resolutions of 1995).

AB 1845 (Cortese). Existing law requires specified urban water suppliers to prepare and submit urban water management plans to the Department of Water Resources. As amended June 15, this bill requires every urban water supplier to include, as part of its urban water management plan, a prescribed water supply and demand assessment of the reliability of its water service to its customers during normal, dry, and critically dry water runoff years. The bill requires the urban water supplier to include specified information in the assessment. This bill was signed by the Governor on August 3 (Chapter 330, Statutes of 1995).

AB 563 (Harvey). Existing law requires any person who has discharged or discharges waste into the waters of this state in violation of any WDR or order, or who has caused or permitted, or threatens to cause or permit, any waste to be discharged or deposited where it is or may be discharged into the waters of the state and creates or threatens to create a condition of pollution or nuisance, upon order of a RWQCB, to clean up the waste or take other necessary remedial action. As amended May 4, this bill would provide that, with certain exceptions, a local public entity is excluded from liability for costs or damages as a result of a release,

or threatened release, of hazardous substances on or in a right-of-way, as defined, unless the release or threatened release was caused by actions or omissions of that local public entity, or the local public entity exacerbates the contamination as a result of the release or threatened release or impedes ongoing cleanup or abatement activities. [A. *Appr*]

AB 741 (Kuykendall), as introduced February 22, would prohibit WRCB or a RWQCB from subjecting the owner or operator of any publicly owned treatment works to certain enforcement actions undertaken pursuant to the Porter-Cologne Water Quality Control Act, if the waste was discharged into the publicly owned treatment works' collection system by a third party acting independently of the owner or operator of the publicly owned treatment works. [A. *EnvS&ToxM*]

AB 1415 (Setencich). Existing law requires the state policy for water quality control to be periodically reviewed and authorizes its revision. As amended April 27, this bill would authorize a local water entity to prepare recommendations regarding state policy for water quality control. [S. *Desk*]

AB 1527 (Richter). The Porter-Cologne Water Quality Control Act prohibits a person from dredging or otherwise disturbing a toxic hot spot site that has been identified and ranked by a RWQCB without first obtaining certification, and prohibits WRCB and RWQCBs on or after January 1, 1993, from granting approval for a dredging project that involves the removal or disturbance of sediment that contains specified levels of pollutants unless WRCB or a RWQCB makes specified determinations. As introduced February 24, this bill would make technical, nonsubstantive changes in those provisions. [A. *Desk*]

AB 1530 (Richter). Existing law requires WRCB to provide the legislature, by January 1, 1987, with a report containing information regarding the number of applications for exemption from prohibitions on the discharge of liquid hazardous waste into surface impoundments which meet specified criteria. As introduced February 24, this bill would delete that obsolete provision. [A. *EnvS&ToxM*]

AB 1533 (Cortese). Existing law requires the beneficial use of water, including, under specific circumstances, the reservation of water to instream uses to preserve and enhance fish and wildlife resources. Existing law authorizes WRCB to approve any change associated with a water transfer only if the Board finds that the change may be made without unreasonably affecting, among other things, fish, wildlife, or other instream beneficial



uses. As introduced February 24, this bill would require WRCB to prepare and maintain a registry of instream flow reservations and dedications to list all instream reservations and dedications. The bill would require the Board to establish a procedure to allow any interested party to challenge the Board's determination to make, or fail to make, an entry into the registry and whether an entry accurately reflects the judicial or administrative action or the contract which creates or affects an instream flow dedication or reservation.

The bill would require WRCB, in considering whether a diversion, change in point of diversion, place of use, purpose of use or water transfer, lease, or conveyance will unreasonably affect fish, wildlife, or other instream beneficial uses, to consider the instream flow reservations and dedications reflected in the registry. [A. *Appr*]

AB 1654 (Ducheny), as amended May 18, would authorize DWR to enter into an agreement with the state of Nevada for the purposes of conducting studies and investigations of an interstate groundwater basin, and undertaking groundwater management within that basin, if that basin is not otherwise subject to regulation by a local water entity in the state. The bill would require DWR to enter into an agreement with the state of Nevada, with regard to the Ivanpah Groundwater Basin, to prevent the overdraft of that basin and to require the extraction of groundwater in the state be for irrigation, domestic, municipal, or mining purposes. The bill would require DWR to prepare and submit to the legislature a prescribed annual report and make a statement of legislative intent concerning that basin. [A. *Appr*]

AB 1834 (Figueroa). Existing law provides that the Director of Employment Development shall permit certain public agencies to make specified use of information in the Director's possession. As introduced February 24, this bill would provide that the Director shall release information regarding employers to WRCB for the purpose of regulating the discharge of stormwater. [A. *Ins*]

SB 562 (Thompson). The Barry Keene Underground Storage Tank Cleanup Trust Fund Act of 1989 requires owners and operators of petroleum underground storage tanks to establish and maintain evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage arising from operating an underground storage tank. Existing law requires every owner of an underground storage tank to pay a storage fee of six mills for each

gallon of petroleum placed in the tank. The fees are required to be deposited in the Underground Storage Tank Cleanup Fund. The money in the Fund may be expended WRCB, upon appropriation by the legislature, for various purposes, including payment of a RWQCB's or local agency's corrective action costs, and the payment of claims to aid owners and operators of petroleum underground storage tanks who take corrective action to clean up unauthorized releases from those tanks. WRCB is required to award the claims in accordance with a specified priority ranking, which ranks first those owners of tanks located on property used only for residential use, or property which the owner demonstrates is not used for agricultural purposes, as specified, and secondly, tank owners or operators that meet eligibility requirements for small businesses, or a specified city, county, district, or nonprofit organization. When corrective action is required, the owner, operator, or responsible party is required to prepare a workplan that details the specific actions required to be taken to achieve the required corrective action. An administrative agency delegated the authority to oversee a site investigation and remedial action pursuant to specified provisions is authorized to issue a certificate of completion which prohibits a public agency from taking specified enforcement actions, except as specified.

As amended August 21, this bill would require WRCB, by July 1, 1996, to delegate to the RWQCBs the authority to preapprove corrective action costs. The bill would require WRCB, on or before July 1, 1996, to provide personnel hired by the Board to implement the Act to assist regional boards, local agencies, and responsible parties for purposes of preapproving corrective costs. The bill would allow a responsible party to seek preapproval of corrective action costs from the Board, local agency, or regional board. The bill would also require WRCB to adopt a uniform closure letter for corrective actions which have been completed in accordance with an approved workplan and would require the letter to contain provisions that are consistent with specified exemptions from the prohibition on public agency enforcement resulting from the issuance of a certificate of completion.

The bill would require WRCB, if it determines that a site is an emergency site and the responsible party is eligible for reimbursement from the Fund, to provide financial assistance if the financial assistance is necessary to correct the emergency. If a site is not determined by WRCB to be an emergency site at the request of an eligible responsible party, the Board

would be required to suspend corrective action work at the site until it provides the responsible party eligible for reimbursement with a letter of commitment that the party will receive reimbursement for the corrective action work, the responsible party requests continuation of the work, or the Fund is no longer in existence.

The bill would authorize WRCB to pay a claim for the costs of corrective action to a person who owns property on which is located a release from a petroleum underground storage tank which has been the subject of a completed corrective action and for which additional corrective action is required because of newly discovered contamination from that tank. The bill would provide that for purposes of ranking reimbursement claims, an owner or operator of a tank that meets the definition of small business, but is domiciled or has the principal office outside the state, is to be classified in that small business category if the owner or operator otherwise meets the small business requirements.

The bill would require WRCB to determine an applicant's eligibility for a claim for corrective actions costs and notify the applicant of this determination within sixty days of the receipt of the claim application, and prohibit the Board from revoking that determination of eligibility, except as specified.

Existing law requires WRCB to develop and implement a local oversight program for the abatement of, and oversight of the abatement of, unauthorized releases of hazardous substances from underground storage tanks by local agencies. WRCB is required to enter into an agreement with a local agency to implement the local oversight program. Under existing law, the responsible party is liable for the site-specific oversight costs, calculated as specified, which are incurred in overseeing the cleanup of an unauthorized release from an underground storage tank and the Board is required to adopt procedures for assessing and recovering money from responsible parties.

This bill would require RWQCBs to instead enter into the agreement with the local agency to implement the program. The bill would require WRCB to implement a procedure which does not assess an owner, operator, or responsible party taking corrective action pursuant to the act for the costs of a local oversight program, and would require WRCB to institute an internal procedure for assessing, reviewing, and paying those costs directly between the Board and the local agency. [A. *EnvS*]

SB 796 (Hayden). Existing law prohibits a person from being a member of WRCB or a RWQCB if he/she receives or



has received during the previous two years a significant portion of his/her income directly or indirectly from any person subject to WDRs or applicants for WDRs. As amended April 17, this bill would instead prohibit a person from being a member of those boards if the person receives or has received during the previous two years any income directly or indirectly from a person subject to WDRs or an applicant for WDRs. [S. AWR]

SB 818 (Hayden). Existing law prescribes the qualifications required to be met for appointment to WRCB or a RWQCB. As amended April 17, this bill would require each member of WRCB who is required to be qualified or experienced in a specific category, and each member of a RWQCB who is required to be associated or from a specific category, to have demonstrated knowledge and experience in that category. [A. WP&W]

SB 900 (Costa). Under existing law, various bond acts have been approved by the voters to provide funds for water projects, facilities, and programs. As amended April 17, this bill would enact the Water Resources and Delta Restoration Act of 1996, which—if adopted—would authorize for the purpose of financing prescribed water programs, the issuance of bonds in an unspecified amount of pursuant to the State General Obligation Bond Law. The bill would provide for the submission of the bond act to the voters at the November 5, 1996, general election in accordance with specified law. The bill would declare that it is to take effect immediately as an urgency statute. [S. Appr]

AB 120 (Katz), as introduced January 12, would declare that, upon the completion of the term of an agreement to transfer water, or the right to the use of water, that is available as a result of specified water conservation efforts, the right to the use of that water shall revert to the possessor of the water right as if no change in the point of diversion, place of use, or purpose of use had occurred. [A. WP&W]

SB 6 (Hayden), as amended May 23, would prescribe procedures by which any person or entity may bring an action for civil penalties, declaratory relief, or equitable relief to enforce certain provisions of the act involving violations regarding state ocean and coastal waters and enclosed bays and estuaries. The bill would authorize a court to award costs to a prevailing party, including expert witness fees and reasonable attorneys' fees. [S. Inactive File]

LITIGATION

Two cases filed over the summer challenge different aspects of WRCB's Bay/Delta Plan (see MAJOR PROJECTS). In

San Joaquin Tributaries Association, et al., v. WRCB, filed in Sacramento County Superior Court on June 16, petitioners seek to have the Bay/Delta Plan set aside, and in *County of San Joaquin, et al., v. WRCB, DWR and USBR, Real Parties in Interest*, filed in Sacramento County Superior Court on July 7, petitioners seek to have Water Rights Order 95-6 set aside. In the first matter, a court hearing is set for September 30, 1996. In the second matter, a hearing is set for January 26, 1996, regarding jurisdictional matters, among other things.

In *Putah Creek Council, et al. v. Solano Irrigation District, et al. and Solano Irrigation District, et al. v. All Water Users* (Judicial Council Coordination Proceeding No. 2565), originally filed in Sacramento Superior Court in 1990, more than 5,000 people are parties to this proceeding regarding a determination of rights to the use of water in the Putah Creek stream system located in Lake, Napa, and Solano counties. The Solano Project, constructed by the U.S. Bureau of Reclamation (USBR) in the 1950s, consists of Monticello Dam, which forms Lake Berryessa, situated at the junction of Napa, Solano, and Yolo county lines. Water is released from Lake Berryessa into Putah Creek and is rediverted at the Putah Diversion Dam into the Putah South Canal for use primarily within Solano County; water is also bypassed at the diversion dam to lower Putah Creek to protect paramount claims for water and fish.

In 1957, WRCB adopted Decision 869, approving USBR's applications for water rights permits for the Project; the permits are subject to a 33,000 acre-feet per year reservation for development above the Monticello Reservoir in Lake and Napa counties. The upstream reservation is terminated either when Solano puts Project water to full beneficial use within the Project service area or when the reservation is depleted.

Solano's contract with USBR for the entire project yield expires in 1995, and consequently Solano has been seeking federal legislation to authorize the sale of USBR's Project to it. However, U.S. Representative Vic Fazio has stated that neither he nor any other area representative will carry such legislation unless Solano has made peace with other constituents (upstream and downstream) affected by the operation of the Solano Project.

Solano is thus seeking a determination of all water use rights in the stream system and a determination that no additional water may be developed in Putah Creek above Monticello Dam under permits and licenses issued by WRCB. DFG is seeking to preserve instream flow for fish; other parties, including the Putah Creek Coun-

cil, the City of Davis, UC Davis, and DFG are seeking more water below the Putah Diversion Dam for instream beneficial uses and riparian habitat.

Among the legal issues to be settled are whether congressional directives preempt application of the public trust doctrine to the operation of USBR's project, and whether all individual rights to the use of groundwater must be determined in the same proceeding. At this writing, this matter is set to go to trial on March 4, 1996.

In *Golden Gate Audubon Society, et al. v. State Water Resources Control Board*, No. 366984 (Sacramento County Superior Court), originally filed in 1991, several environmental groups sought to set aside WRCB's 1991 adoption of the Water Quality Control Plan for Salinity, one component of the ongoing Bay/Delta proceeding (see MAJOR PROJECTS). [11:4 CRLR 167, 172] Between 1991-93, the primary issue in the case concerned a court order against WRCB to produce handwritten annotations which reflected the Board's deliberations regarding the Plan. The Board appealed the order and, in 1993, the California Supreme Court denied WRCB's petition for review. WRCB released the documents in March 1993.

In March 1995, the petitioners filed a motion to amend their original petition for writ of mandate to add a cause of action for violation of the Administrative Procedure Act, and to allege that the *Principles of Agreement* signed by state and federal agencies in December 1994 are void and of no effect. On March 30, the court approved an *ex parte* order withdrawing and dismissing one of the petitioners—the Environmental Defense Fund (EDF)—from the proceeding; EDF was one of the signatories to the *Principles of Agreement*. On April 25, the remaining petitioners requested that respondents stipulate to the filing of the amended petition. [15:2&3 CRLR 156]

On May 22, the Attorney General responded that WRCB would not stipulate to the filing of the amended petition, and filed a motion for summary judgment or dismissal for delay of prosecution. On August 8, three days prior to a scheduled hearing on the Attorney General's motion, petitioners dismissed all causes of action except for its claim for attorneys' fees, and agreed to file its motion for attorneys' fees by October 1. However, three extensions to file that motion have been granted, and the motion is now due on January 19; the Attorney General has advised petitioners that WRCB will not agree to any further extensions.

Committee to Save the Mokelumne River, et al. v. State Water Resources



Control Board and Regional Water Quality Control Board, Central Valley Region is a state court action to determine—among other things—whether the Central Valley RWQCB was acting in its regulatory capacity when it participated in construction and operation of the impoundments on the Mine Run Dam; whether Mine Run Dam Reservoir is a point source of pollution subject to an NPDES permit; whether the RWQCB should be held liable as a discharger at the Penn Mine facility; whether the RWQCB was authorized to grant the East Bay Municipal Utility Department an exemption from the Toxic Pits Cleanup Act (TPCA); and whether the Committee should be required to exhaust administrative remedies before bringing suit in connection with other impoundments at Penn Mine. [14:4 CRLR 165] In a December 1994 ruling on the Committee's motion for partial summary judgment, the court found that the state had a duty to apply for the NPDES permit. [15:2&3 CRLR 156; 15:1 CRLR 141] The parties recently agreed to stay these proceedings for eighteen months; at this writing, a hearing is scheduled for August 18, 1997.

In *People of the State of California, Department of Fish and Game, and the Regional Water Quality Control Board, Central Coast Region, et al. v. Unocal*, No. CV75194 (San Luis Obispo County Superior Court), state prosecutors contend that Unocal Corporation engaged in long-term discharges of diluent, a petroleum-based thinner used by Unocal to thin crude

oil still in the ground to facilitate its recovery at the company's Guadalupe Oil Field. In October 1994, the court overruled Unocal's demurrer. [15:2&3 CRLR 156; 15:1 CRLR 141; 14:4 CRLR 165] On September 14, the parties attended a settlement conference which resulted in the postponement of the jury trial, previously scheduled to commence on October 2; at this writing, the matter is off calendar and no new trial date has been scheduled.

United States and California v. City of San Diego, No. 88-1101-B (U.S.D.C., S.D. Cal.), is an action initiated by EPA more than eight years ago to force the City of San Diego to comply with Clean Water Act standards for sewage treatment. The City has argued that the standards are unnecessarily stringent, because they were developed for discharges into lakes and inland waterways rather than for ocean discharges, such as those made by the City. [15:2&3 CRLR 157; 15:1 CRLR 142; 14:4 CRLR 165] On November 10, EPA issued San Diego a five-year renewable waiver from federal sewage-treatment standards, and announced its intent to drop the part of its lawsuit accusing San Diego of inadequately treating its sewage.

RECENT MEETINGS

At its October 11 meeting, WRCB presented an update on the Water Quality Protection Program (WQPP) for the Monterey Bay National Marine Sanctuary. The WQPP is an interagency effort to protect and enhance the valuable resources of the Sanctuary and its watershed. Currently, 27

federal, state, and local agencies are working together to develop a comprehensive program to address a variety of water quality issues, including urban and agricultural runoff, marina and boating activities, point sources of pollution, and water management. WRCB, as well as the San Francisco Bay and Central Coast RWQCBs, are represented on the WQPP committees.

The Sanctuary plan is being developed using "integrated coastal management," a process that creates a consensus among the region's resource managers, scientists, landowners, businesses, environmental groups, and the public. A key goal of the WQPP is to improve coordination between over 170 existing water quality management and monitoring programs already operating in the region. The agencies participating in the WQPP are in the process of finalizing a detailed action plan for addressing urban runoff; among the strategies recommended in this action plan are programs for comprehensive storm water management, education, technical training, and storm drain inspections. Over the next year, the WQPP will work with local jurisdictions to assist in the implementation of the urban runoff plan, and will also help develop action plans on additional water quality issues.

FUTURE MEETINGS

For information about upcoming workshops and meetings, contact Maureen Marché at (916) 657-0990.



RESOURCES AGENCY

CALIFORNIA COASTAL COMMISSION

Executive Director:

Peter Douglas

Chair: Carl Williams

(415) 904-5200

The California Coastal Commission was established by the California Coastal Act of 1976, Public Resources Code (PRC) section 30000 *et seq.*, to regulate conservation and development in the coastal zone. The coastal zone, as defined in the Coastal Act, extends three miles seaward and generally 1,000 yards inland. Except for the San Francisco Bay area (which is under the independent jurisdiction of the San Francisco Bay Conservation and Develop-

ment Commission), this zone determines the geographical jurisdiction of the Commission. The Commission is authorized to control development of, and maintain public access to, state tidelands, public trust lands within the coastal zone, and other areas of the coastal strip through its issuance and enforcement of coastal development permits (CDPs). Except where control has been returned to local governments through the Commission's certification of a local coastal plan (LCP), virtually all development which occurs within the coastal zone must be approved by the Commission.

The Commission is also designated the state management agency for the purpose of administering the federal Coastal Zone Management Act (CZMA) in California.

Under this federal statute, the Commission is authorized to review oil exploration and development in the three-mile state coastal zone, as well as federally sanctioned oil activities beyond the three-mile zone which directly affect the coastal zone. The Commission determines whether these activities are consistent with the federally certified California Coastal Management Program (CCMP). The CCMP is based upon the policies of the Coastal Act. A "consistency certification" is prepared by the proposing company and must adequately address the major issues of the Coastal Act. The Commission then either concurs with, or objects to, the certification.

A major component of the CCMP is the preparation by local governments of LCPs, as mandated by the Coastal Act of 1976.