



management systems as one of the constraints to implementing integrated pest management.

■ FUTURE MEETINGS

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

WATER RESOURCES CONTROL BOARD

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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

EPA Sets December 1994 Deadline for WRCB Adoption of Bay/Delta Standards. In December 1993, a federal task force consisting of representatives from the U.S. Environmental Protection Agency (EPA), U.S. Bureau of Reclamation (USBR), U.S. Fish and Wildlife Service (FWS), and the National Marine Fisheries Service (NMFS) released a package of proposed water quality standards to protect declining wildlife in the San Francisco Bay/Sacramento-San Joaquin Delta Estuary; coordinated by EPA, the four federal agencies worked together to draft standards for the Bay/Delta region after the state failed to do so and pursuant to the settlement of a lawsuit filed by the Sierra Club Legal Defense Fund and several other environmental groups. Promulgation of Bay/Delta standards by the federal government is necessary because WRCB failed to adopt adequate standards after a marathon five-year proceeding and then abandoned the effort in April 1993 as directed by Governor Wilson. [14:1 CRLR 135; 13:4 CRLR 163]

EPA proposed three different sets of water quality criteria: salinity criteria of two parts per thousand in Suisun Bay, the productive nursery of the estuary; survival indices to protect migrating young chinook salmon; and salinity criteria to protect striped bass spawning on the lower San Joaquin River. According to EPA, each set of criteria is intended to protect a particular designated use or set of uses in the Bay/Delta Estuary. Additionally, FWS proposed to list the California splittail as threatened under the federal Endangered Species Act; identify critical habitat for the Delta smelt, which has been listed as threatened [13:2&3 CRLR 177, 189]; and, during 1994, allocate 800,000 acre-feet of Central Valley Project water for fish and wildlife use under the Central Valley Project Improvement Act. Also, NMFS announced final action to reclassify the Sacramento River winter-run chinook salmon from "threatened" to "endangered."

According to EPA, its proposed salinity standards are designed to reflect the natural hydrological variability of the Delta; the length of time that the standards

must be met at each location depends on whether it is a wet or dry year. The proposal requires that in wet years, the standard be met further downstream in Suisun Bay and for longer periods; in contrast, the standard for drier years would be maintained further upstream and for shorter periods.

As expected, the federal proposal will increase the amount of freshwater which must be retained in the Delta during certain times of the year, thus decreasing the amount available for export to farms and cities. The federal task force estimated that its proposal would reduce the amount of Delta water available for farms and cities by an average of 9% per year (220,000 acre-feet) in average years, and by up to 21% (1.5 million acre-feet) in drought years.

Although many environmental groups praised the federal proposal, Governor Wilson criticized it, claiming that it is too costly in terms of both water and jobs for the state; within hours after the federal agencies announced their proposal, Wilson called the standards "unbalanced and ill-considered." Wilson complained that the proposed standards are too rigid and will have the effect of driving business and jobs away from the state because of uncertainty about a steady water supply. Wilson directed WRCB—the same agency he ordered to abandon its five-year effort to establish interim Bay/Delta standards in April 1993 [13:2&3 CRLR 177]—to meet with the federal agencies in order to draft a new regulatory proposal. Responding to the Governor's quick criticism of the proposed standards, EPA emphasized that the proposals are only a draft and that input by state and local interests is encouraged. Environmentalists are concerned that Wilson's opposition to the proposed federal standards will cause delays in their implementation, leading to even further deterioration of the water quality in the Bay/Delta. [14:1 CRLR 135-36]

At public hearings on the proposed standards hosted by EPA in late February and early March, several interested parties commented on the proposal. In general, representatives from local government, businesses, water agencies, and the agriculture industry expressed concern and opposition to the plan, while environmental groups were generally supportive of the proposal.

On March 10, WRCB released its comments on the federal proposal. In its response, WRCB explained that, in September 1991, EPA disapproved its Water Quality Control Plan for Salinity because EPA found that the water quality objectives in the plan failed to adequately protect the estuarine habitat and other design-



REGULATORY AGENCY ACTION

nated fish and wildlife uses of the Estuary. [12:1 CRLR 154] The Board responded to EPA's rejection by stating that the Bay/Delta Plan is part of a larger package of protections for the Bay/Delta Estuary, that water quality objectives could not protect all the beneficial uses, that instream flow and operational requirements needed to protect these uses are appropriately accomplished through state law, and that WRCB was still in the process of considering water rights issues to determine what protections should be provided in terms of flow and operational constraints. WRCB contended that because the major causes of the fishery declines are water project operations and changes in freshwater flows, water quality criteria established by EPA are inappropriate; according to WRCB, "this is a water supply and facilities operations problem the solution to which Congress has reserved to the states." Among other things, WRCB also had the following comments about the federal plan:

-Assuming that EPA is authorized to adopt the proposed criteria, this promulgation does not comply with the federal Clean Water Act (CWA). According to WRCB, to make the proposed criteria adequate under the CWA, EPA must consider economic factors and other beneficial uses; EPA should explain quantitatively what level of protection is required by the CWA and the regulatory basis for that level; and to change the proposed level of protection, EPA must follow the process codified at 40 C.F.R. Part 131.10 for designation of uses.

-The EPA is not authorized to adopt water quality standards for pollution caused by reductions in freshwater flow. According to WRCB, the CWA "makes clear that salt water intrusion, like that in Suisun Bay, is a streamflow matter, not a 'water quality' matter, and that the regulation of streamflow is not to be determined by EPA."

-The scope of the CWA does not extend to the regulation of water quantities. According to WRCB, "[a]ssuming that EPA can properly set standards that regulate water flow and facility operations, the proposed standards violate EPA policy because they directly and materially affect California's water rights systems even though reasonable alternatives are available."

-The actual level of protection afforded under EPA's draft standards exceeds the targeted level of habitat conditions.

-The EPA should set forth its biological goals in quantitative terms, not in generalities.

-Other alternatives can provide equivalent protection for fisheries at a substantially lower water cost.

-EPA's water supply impact analysis seriously underestimates the water costs; according to WRCB, EPA's estimate of the water supply impact "is based on optimism rather than responsible water supply analysis."

-EPA's discussion on salmon smolt survival is garbled and contains many serious inaccuracies and shortcomings" and should be revised.

-EPA's discussion on striped bass and the standards necessary for its protection contain several serious inaccuracies" and should be reconsidered.

Also in March, WRCB announced plans to hold a public workshop in late April to review its Water Quality Control Plan for Salinity, and to prepare a set of alternatives to evaluate in developing revised Delta requirements; based on the results of its review, WRCB expects to prepare a draft water quality control plan by the end of 1994. The Board's announcement came in conjunction with the announcement of a truce of sorts between the state and federal governments; under the agreement, both sides will attempt to develop proposals for protection standards by the end of the year. If, at the end of 1994, the federal government finds that California's plan does not comply with the CWA and the Endangered Species Act, it will impose its own standards.

In April, EPA signed an agreement with the Sierra Club Legal Defense Fund and sixteen other environmental groups, bringing to an end the litigation filed by the environmental groups seeking to require EPA to adopt standards for the region. Under the settlement agreement, EPA agreed that, no later than December 15, the Administrator will sign a notice of final rulemaking which takes final action on water quality standards for the Bay/Delta; upon signature of the final rule, the Administrator will promptly forward the notice of final rulemaking to the Office of the Federal Register for publication; and the parties jointly agreed to ask the court to stay the proceedings until December 15, pending the completion of EPA's obligation to adopt the final rule. However, the agreement, which was approved by U.S. District Court Judge Lawrence Karlton on May 5, recognizes that anytime before EPA promulgates its final standard, EPA could find that WRCB has adopted a revised or new water quality standard which the EPA Administrator determines to be in accordance with federal requirements. To the extent that EPA approves all or a portion of state-adopted water quality stan-

dards with respect to the disapproved portions of the state's 1991 Water Quality Plan before December 15, the parties agreed that the EPA shall have no further obligation to promulgate water quality standards for the Bay/Delta for that portion of the state plan which it approved.

Therefore, both the federal and state governments are currently drafting and/or revising water quality standards for the Bay/Delta region. As part of the state's effort, WRCB is expected to conduct a series of workshops through July to review and revise its 1991 Water Quality Control Plan for Salinity. California has until December 15 to adopt water quality standards acceptable to the EPA; if that does not occur, the federal proposal will be implemented.

Mono Lake Update. In February, WRCB completed the evidentiary hearings which it held to receive comments and recommendations to assist it in developing amendments to the water rights licenses held by the City of Los Angeles to divert water from the Mono Lake Basin. [14:1 CRLR 136; 13:4 CRLR 164] The information gathered at the hearings supplemented WRCB's Draft Environmental Impact Report for the Mono Lake Basin; pursuant to a court order, WRCB must complete its review of Los Angeles' water rights licenses by September 1.

Several interest groups presented evidence to the Board at the hearings. For example, the Mono Lake Committee and the National Audubon Society attempted to document to the Board the historic public trust values of the Lake, which they contend are continually being threatened due to the Lake's declining surface elevation; the Department of Fish and Game and California Trout testified as to the need to protect and restore the fish populations in Rush Creek and Lee Vining Creek; and EPA testified that the Mono Lake Basin is currently out of compliance with the Clean Air Act because of dust storms caused when winds whip up dried-out portions of the lake bed. [13:4 CRLR 164] At this writing, WRCB is expected to announce its decision on the water right licenses later this summer.

Review of Nonpoint Source Management Program. In February, WRCB began a year-long review of nonpoint source pollution in California. Comprised mainly of polluted runoff, nonpoint source pollution originates from a diverse array of sources including agriculture, abandoned mines, and urban development. WRCB has several objectives for its review, such as finding ways to better coordinate the complementary activities of various agencies and public interest groups which currently



manage or have an interest in water quality; identifying what measures are effective and reasonable to prevent nonpoint source pollution from various land uses; and helping to satisfy the nonpoint source management and control program requirements of the CWA and the 1990 Coastal Zone Act Reauthorization amendments. WRCB is encouraging landowners, the public, and water use agencies to participate in its review process.

Site-Specific Water Quality Objectives for the San Francisco Bay Basin. At an April 6 workshop, WRCB revisited the San Francisco Regional Water Quality Control Board's proposed amendments to the water quality control plan for the San Francisco Bay Basin; the proposed amendments would establish a site-specific water quality objective and plan for copper and confirm the existing water quality objective for nickel. [14:1 CRLR 138] At the April workshop, the Board was confronted with many of the same objections to the plan that were presented at an October 1993 workshop on the same issue; while environmentalists accept the standards as providing at least minimal protection to the Bay's aquatic life, several business leaders and political representatives from the Bay Area contend that the proposed standards are too harsh and will have devastating economic effects. At this writing, the Board has not yet taken action on the proposal.

WRCB Releases External Program Review Report. In July 1993, Governor Wilson asked WRCB to undertake an "external" programmatic review of its own mandates and programs and those of the nine RWQCBs, in order to identify how the boards can best meet their mandates to protect California's water resources while removing unnecessary red tape. [13:4 CRLR 165] The Board's effort has focused on four major programmatic areas—regional board consistency, groundwater protection, permit reform, and water resources. WRCB assigned a task force to investigate each program area; each task force is conducting a detailed review of the legal mandates, policies, and program activities related to its assigned program area. [14:1 CRLR 137]

The Regional Board Consistency Task Force considered the following issues: consistency of regional boards with respect to process, uniform enforcement, water quality monitoring, privatization, and regional board boundaries. The Permit Reform Task Force divided its focus into four categories: permit reform, fees, general permits, and watershed management; furthermore, the Task Force agreed that Cal-EPA is not an appropriate body to

handle water quality permitting in California, and that issuance of water quality permits is an appropriate function of WRCB and its regional boards. The Water Resources Task Force focused its review in the areas of coastal water quality protection from nonpoint source pollution and water reclamation. The Groundwater Protection Task Force investigated the following five specific areas: remediation issues, remediation responsibilities, responsible party issues, private sector issues, and protection and prevention issues. Finally, the Program Review Committee, which includes the chair and vice-chair of each task force, as well as selected members of the legislature, is responsible for the timely development and submittal to the Governor of the individual task force reports, as well as its own report identifying major areas of concern and overlapping issues. [14:1 CRLR 137]

In mid-May, WRCB released a draft of its external program review report for comment; WRCB also scheduled public forums for May 17 in San Francisco and May 24 in San Diego in order to receive public comment. Among other things, the draft report recommended that the state take the following actions:

- develop a comprehensive watershed management program to protect water quality in a cost-effective manner;

- give priority to issuing new national pollutant discharge elimination system (NPDES) permits over reissuance of expired ones and push for amendments to the federal CWA to require that permits be reviewed and not renewed every five years;

- require regional boards to justify a more stringent discharge permit than required by state and regional board standards with site-specific scientific reasoning;

- develop a data management plan among the boards to help resolve permit issuance problems;

- develop handbooks to guide permit applicants, and standardized permits for routine conditions;

- retain water quality and water rights regulation within WRCB and the RWQCBs;

- establish an Office of Statewide Consistency to provide consistent scientific, legal, and administrative information to the regional boards;

- adopt a statewide violation and enforcement reporting system;

- establish statewide guidelines for permit-based monitoring requirements and general guidelines for monitoring for discharges in similar circumstances;

- amend Water Code section 13350 to provide strict liability for groundwater

discharge violations as they pertain to surface water discharge violations;

- form a task force to eliminate the overlap between WRCB, RWQCB, and Department of Toxic Substances Control regulations governing groundwater protection, hazardous waste management, and remediation of contaminated groundwater;

- adopt consistent methodology for guiding remediation of petroleum-contaminated sites and prioritizing cleanup by severity of the threat to public health;

- apply monitoring of groundwater to all activities that may affect groundwater quality;

- allow wellhead treatment at water supply wells as an alternative to pump-and-treat technology under specified conditions;

- remove liability for a landowner or site operator who was not responsible and had no knowledge of contamination caused by a third party;

- insulate lenders from liability; and

- consolidate the Integrated Waste Management Board and WRCB's financial assurance program requirements for solid waste disposal facilities as mandated by AB 1220 (Eastin) (Chapter 656, Statutes of 1993). [13:2&3 CRLR 163, 178]

At this writing, the External Review Committee is scheduled to submit its final report to the Governor and the legislature on June 17.

Policies and Procedures for Investigation, Cleanup, and Abatement of Discharges. In June 1992, WRCB adopted Resolution No. 92-49, entitled *Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304*, in order to implement Water Code section 13307. [12:4 CRLR 189-90] According to WRCB, the policy will make it easier for cleanup directives issued by RWQCBs to qualify as "applicable or relevant and appropriate requirements" for remedial actions at federal Superfund facilities; also, the policy provides procedures for all RWQCBs to follow in overseeing investigation, cleanup, and abatement.

Pursuant to the Administrative Procedure Act (APA), WRCB submitted the policy to the Office of Administrative Law (OAL) for review and approval. In September 1993, however, OAL determined that certain sections of the policy did not meet the APA's standards for clarity, and raised several legal issues with regard to the policy. [13:4 CRLR 165] Accordingly, WRCB amended the policy, and approved those amendments at its April 6-7 meeting; WRCB has until May 26 to submit the revised policy to OAL for approval.



REGULATORY AGENCY ACTION

Rulemaking Update. The following is a status update on other rulemaking proceedings initiated by WRCB and described in detail in previous issues of the *Reporter*:

• **Underground Storage Tank Regulations.** On April 5, OAL approved WRCB's numerous changes to Articles 1-10, Chapter 16, Division 3, Title 23 of the CCR, pertaining to the regulation of underground storage tanks (UST). The revisions reflect procedural and equipment requirement changes in current UST regulations. [14:1 CRLR 138; 13:4 CRLR 166; 13:2&3 CRLR 179]

• **Underground Storage Tank Testers.** At this writing, OAL is reviewing WRCB's proposed changes to Articles 1-8, Chapter 17, Division 3, Title 23 of the CCR, regarding the regulation of underground storage tank testers. [14:1 CRLR 138; 13:4 CRLR 166] Among other things, the amendments would require applicants for tank tester licenses to have completed six months of qualifying experience during which at least 50 USTs were tested.

• **Annual Fees for the Regulation of Discharges of Waste.** On February 18, OAL approved WRCB's emergency amendments to section 2200, Title 23 of the CCR, which establish a schedule of annual fees payable by all persons subject to regulated waste discharge requirements. [13:4 CRLR 166] The amendments had an immediate effect on three permittees in Orange, Riverside, and Contra Costa counties and reduced funding for the state and regional boards' core regulatory programs by \$15,000; in comparison to the \$7.35 million in fees collected for these programs, this loss in revenue is expected to have minimal effect on the boards' ability to meet program objectives.

• **Wastewater Treatment Plan Classification and Operator Certification Program.** At its January meeting, WRCB adopted its proposed amendments to Articles 1, 4, 5, 7, and 8, Chapter 26, Title 23 of the CCR, pertaining to wastewater treatment plant operators, and new Article 10, Chapter 26, Title 23 of the CCR, establishing a registration program for wastewater treatment plant contract operators. At this writing, the rulemaking file is pending at OAL. [13:4 CRLR 165]

• **Conflict of Interest Code.** The Fair Political Practices Commission approved WRCB's amendments to its conflict of interest code, which designates 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 making, of governmental

decisions affecting those interests; the amendments were filed by OAL on February 14. [14:1 CRLR 138; 13:4 CRLR 166]

■ LEGISLATION

AB 3673 (Hauser). The Barry Keene Underground Storage Tank Cleanup Trust Fund Act of 1989 requires any owner or operator of an underground storage tank containing petroleum, or other responsible party, to take corrective action in response to an unauthorized release in compliance with specified regulations adopted by WRCB and specified provisions of the Act. As introduced February 25, this bill would require the Board, in adopting those regulations, to develop cleanup standards for health hazards based on the severity of the hazard. [S. *Tox&PSM*]

SB 1935 (Marks). The Bagley-Keene Open Meeting Act, with certain exceptions, requires all meetings of a state body to be open and public. That act authorizes a state body to hold a closed session to deliberate on a decision to be reached based on evidence introduced in a prescribed adjudicatory hearing. As amended May 9, this bill would generally require WRCB's meetings to be open and public in accordance with that Act. The bill would prohibit WRCB from holding a closed meeting, relating to the adoption or implementation of water quality standards, plans, or policies, to deliberate on a decision to be reached based on evidence introduced in that prescribed adjudicatory hearing. The bill would authorize WRCB to hold a closed session to deliberate on prescribed matters. [S. *AWR*]

SB 1933 (Marks). Under existing law, state agencies generally are required to adopt regulations in accordance with prescribed procedures and requirements, and the Office of Administrative Law is required to review adopted regulations and to make specified determinations. As amended May 17, this bill would exempt from the above requirements the issuance, denial, and appeal of specified permits for development in the San Francisco Bay and the Suisun Marsh, as defined.

Under existing law, the Metropolitan Transportation Commission Act provides for regional transportation planning for the San Francisco Bay Area, the McAteer-Petris Act establishes the San Francisco Bay Conservation and Development Commission to regulate development affecting the San Francisco Bay, the Suisun Marsh Preservation Act of 1977 provides for Suisun Marsh Preservation, and the Porter-Cologne Water Quality Control Act establishes WRCB and the California regional water quality control boards to reg-

ulate water quality control. This bill would require Cal-EPA and the Resources Agency to jointly review those provisions in regard to any conflicting, overlapping, duplicative, or redundant regulatory or planning responsibilities for the San Francisco Bay, and to submit the results of its review to the Legislative Analyst not later than July 1, 1995. This bill would require the Legislative Analyst, not later than October 1, 1995, to recommend legislation to the legislature for the regulation of San Francisco Bay. The bill would prohibit the San Francisco Bay Conservation and Development Commission from exercising any water quality control function that is vested in WRCB or the regional boards under the Porter-Cologne Water Quality Control Act. [S. *NR&W*]

SB 1511 (Kelley). Existing law prohibits a person from being a member of WRCB or a regional board if the person receives or has received during the previous two years a significant portion of his/her income from any person that is subject to waste discharge requirements or applicants for waste discharge requirements. As introduced February 15, this bill would declare, for purposes of that provision, that "applicants for waste discharge requirements" and "persons subject to waste discharge requirements" do not include counties or municipalities that are subject to general NPDES permits for storm water discharges associated with industrial activity. [A. *WP&W*]

SB 1578 (Thompson). The Sonoma County Flood Control and Water Conservation District Act (Chapter 994, Statutes of 1949) creates the Sonoma County Flood Control and Water Conservation District and grants specified authority to that District. As amended April 12, this bill would grant additional authority to that District relating to the treatment, disposal, or reuse of sewage, wastewater, or storm water, as prescribed, and the provision of sanitation services. [A. *LGov*]

AB 3603 (Sher). Existing law prohibits the ownership or operation of an underground storage tank used for the storage of hazardous substances unless a local agency issues a permit for its operation; imposes various design and installation requirements with regard to those underground storage tanks; and provides that those design and installation requirements apply to the construction, operation, maintenance, monitoring, and testing of underground storage tanks which are required to obtain hazardous waste facilities permits from the Department of Toxic Substances Control. The Department is required to adopt regulations to implement these requirements with regard to the stor-



age of hazardous waste. Under existing law, used oil is required to be managed as a hazardous waste until it has been shown to meet specified purity standards or is excluded from regulation as a hazardous waste because it is a recyclable material. For purposes of the provisions regulating underground storage tanks, the term "storage" is defined as excluding the storage of hazardous wastes in an underground storage tank if the person operating the tank has been issued a hazardous waste facilities permit by the Department. Certain violations of the provisions regulating underground storage tanks are crimes.

As amended May 16, this bill would, instead, provide that the design and installation requirements for underground storage tanks apply to those tanks used for the storage of hazardous wastes, but would exempt from the regulations adopted by the Department pursuant to that provision a tank used for the storage of used oil. The bill would specify that used oil which is stored in an underground storage tank is exempt from those regulations but is subject to regulation pursuant to the provisions regulating underground storage tanks. The bill would revise the definition of the term "storage," for purposes of the underground storage tank provisions, to include the storage of used oil. [A. W&M]

AB 3394 (Sher), as amended May 2, would make legislative findings and declarations concerning water quality protection and pollution prevention programs, and the sale, use, and discharge of copper-based root control chemicals, copper-containing cooling water additives, and tributyltin-containing cooling water additives. The bill would authorize WRCB or a regional board to require a person or entity that manufactures or supplies a product that may be discharged to waters of the state to disclose the fraction, by weight, of toxic pollutants contained in the product and would make that information available to the public. The bill would authorize a RWQCB to prohibit, within the region, the sale, use, and discharge of copper-based root control chemicals, copper-containing cooling water additives, and tributyltin-containing cooling water additives, if the RWQCB determines that restricting the sale, use, and discharge of those substances will contribute to the attainment of water quality objectives or compliance with NPDES permits.

The following is a status update on bills reported in detail in CRLR Vol. 14, No. 1 (Winter 1994) at pages 139-40:

AB 2054 (Cortese), as amended March 9, authorizes a RWQCB that determines there is a threatened or continuing violation of certain orders to issue an order

establishing a time schedule and prescribing a civil penalty, and extends that authority to WRCB under certain circumstances.

Existing law provides that no person may be excused from testifying or producing evidence in an investigation, inquiry, or hearing before WRCB on the ground that testimony or evidence may tend to subject the person to a penalty; and prohibits the criminal prosecution of a person for any matter under investigation by WRCB, concerning which the person has been compelled to testify or to produce evidence. This bill authorizes WRCB to grant immunity to a person who is compelled to testify or to produce documentary evidence before WRCB and who invokes the privilege against self-incrimination. The bill requires WRCB, if it does not grant the immunity, to excuse the person from giving any testimony or from producing any evidence to which the privilege against self-incrimination applies, and requires WRCB to dismiss, continue, or limit the scope of the proceedings, as prescribed. The bill prohibits the criminal prosecution of a person who is granted immunity by WRCB for any matter under investigation by WRCB, concerning which the person has been compelled to testify or produce evidence pursuant to the granting of immunity. This bill was signed by the Governor on April 19 (Chapter 45, Statutes of 1994).

AB 1222 (Cortese). The California Wildlife Protection Act of 1990 created the Habitat Conservation Fund, which is required to be used for, among other purposes, the acquisition, restoration, or enhancement of aquatic habitat for spawning and rearing anadromous salmonids and trout resources. The Act generally requires a four-fifths vote of the legislature for amendment, which amendment is required to be consistent with and further the purposes of the Act. As amended July 15, 1993, this bill would include the purchase of water to augment streamflows as a means of acquisition, restoration, or enhancement.

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 requires the Department of Fish and Game (DFG), in consultation with specified persons, to prepare proposed streamflow requirements for each stream or watercourse for which minimum flow levels need to be established to protect stream-related fish and wildlife resources. Existing law authorizes WRCB to approve any change associated with a water transfer only if

WRCB finds that the change may be made without unreasonably affecting, among other things, fish, wildlife, or other instream beneficial uses. The bill would require WRCB to establish and maintain a Registry of Instream Flow Reservations and Dedications to list all instream reservations and dedications; require WRCB 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 require DFG, in developing the requirements for each stream or watercourse, and WRCB, in making a finding whether a water transfer will unreasonably affect fish, wildlife, or other instream beneficial uses, to take into account the sufficiency of streamflow for each stream or watercourse as reflected in the Registry. [S. *Appr*]

AB 2110 (Cortese), as amended August 17, 1993, would enact the Bay-Delta Fish and Wildlife Protection Act of 1993 and create a Bay-Delta Fish and Wildlife Advisory Committee with prescribed membership; and require the Committee to consult with and advise specified state agencies with regard to the use of funds derived from the imposition of the mitigation and monitoring fees and also with regard to the implementation of the federal Central Valley Project Improvement Act. [S. *Appr*]

SB 548 (Hayden). Existing law requires WRCB and the regional boards to develop and maintain a comprehensive program to identify and characterize toxic hot spots in enclosed bays, estuaries, and adjacent waters, to plan for the cleanup of the sites, and to amend water quality plans and policies relating to those sites. As amended January 14, this bill would require the Director of Cal-EPA's Office Environmental Health Hazard Assessment (OEHHA) to prepare a comprehensive plan for an aquatic pollution health risk assessment program. The bill would require WRCB to adjust and increase the total amount of fees collected pursuant to a prescribed provision of the Water Code, when WRCB next adjusts those fees, in order to fund OEHHA to carry out the aquatic pollution health risk assessment program. The bill would require WRCB, upon appropriation by the legislature, to allocate \$200,000, or an annually adjusted amount, generated from the adjustment in the prescribed fees, to OEHHA to carry out that program. [A. *EnvS&PSM*]

AB 97 (Cortese). Existing law authorizes every local or regional public agency authorized to serve water to the inhabitants of the agency to transfer, for use outside the agency, water that is surplus to the needs of the water users of the agency. As amended June 29, 1993, this bill would



authorize those public agencies to transfer, for use outside the agency, water, the use of which is voluntarily foregone, during the period of the transfer, by a water user of the agency.

The bill would set forth provisions relating to the transfer of water appropriated pursuant to the Water Commission Act and the Water Code and groundwater, as prescribed. The bill would authorize a water supplier to establish a water user-initiated program to enable its water users to transfer all or a portion of their water allocation for use outside the water supplier's service area; authorize a water user receiving water from a water supplier to submit to the water supplier a request to transfer all or a portion of the user's allocation of water for use outside the service area of the water supplier, as prescribed; require the water supplier to either approve or deny the transfer request; authorize the possessor of the water right to approve or deny the transfer, or approve the transfer subject to conditions, as prescribed; authorize the water supplier and the water user to enter into a specified water transfer agreement and would authorize the water user to transfer water pursuant to other provisions of law, as prescribed; and prescribe related matters and define terms.

The bill would authorize a water supplier that supplies water appropriated or diverted under appropriative rights initiated before December 19, 1914, to establish a program for the transfer of water for use outside its service area. The bill would repeal these provisions on January 1, 1999. [S. AWR]

AB 898 (Costa), as amended July 8, 1993, 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. [S. AWR]

AB 2014 (Cortese). Existing law provides that if a person entitled to the use of water fails to beneficially use all or part of the water for the purpose for which it was appropriated for five years, the unused water may revert to the public. Existing law declares that if any person entitled to the use of water under an appropriative right fails to use all or any part of the water because of water conservation efforts, any cessation or reduction in the use of that appropriated water shall be deemed equivalent to a reasonable and beneficial use of water. As amended February 16, this bill

would prohibit the forfeiture of the appropriative right to the water conserved because of the nonuse or the transfer of the conserved water in accordance with those provisions of existing law. The bill would revise the definition of "water conservation," for purposes of those provisions, to include reductions in the amount of water reasonably lost during the conveyance of water from the source to the place of use. The bill would prohibit the loss or forfeiture of any portion of an appropriative water right if the water user is determined, by virtue of conveyance losses, to be misusing water, or to have historically misused water, as defined, if the water user undertakes subsequent conservation efforts, as specified. [S. AWR]

AB 173 (V. Brown), as amended August 30, 1993, would limit the amount of salary paid to the chair and each member of WRCB, on and after July 1, 1994, to an amount no greater than the annual salary of members of the legislature, excluding the Speaker of the Assembly, President pro Tempore of the Senate, Assembly majority and minority floor leaders, and Senate majority and minority floor leaders. [S. Inactive File]

The following bills died in committee: **SB 824 (Hayden)**, which would have, among other things, required the Board of Forestry to adopt any mitigation measures that are proposed by a RWQCB or the Department of Fish and Game unless the Department of Forestry demonstrates that its own proposed mitigation measures would result in greater protection for water and wildlife resources; **AB 2167 (Areias)**, which would have, among other things, required WRCB and each regional board to develop a small business unit in each region to develop and distribute information concerning the legal rights of small businesses with regard to the investigation and remediation of the discharge of hazardous substances; **SB 481 (Johnston)**, which would have, among other things, prohibited WRCB from imposing a fee on any agricultural nonpoint source discharger unless certain requirements are met; and **AB 52 (Katz)**, which would have deleted existing law which authorizes a permittee or licensee to temporarily change the point of diversion, place of use, or purpose of use due to a transfer or exchange of water or water rights if WRCB determines that the transfer meets prescribed conditions, including that the proposed change would not unreasonably affect fish, wildlife, or other instream beneficial uses, and instead required that the proposed change not unreasonably affect the environment.

LITIGATION

On March 31, in *United States and California v. City of San Diego*, No. 88-1101-B (U.S.D.C., S.D. Cal.), Judge Rudi Brewster refused to enter a consent decree, signed by the EPA and the San Diego City Council, which would have required the City of San Diego to construct a \$5 billion sewer system upgrade. [14:1 CRLR 140; 13:4 CRLR 170; 13:2&3 CRLR 182] Contending that EPA is "trying to enter a Rolls Royce in the Grand Prix," Judge Brewster found that the consent decree's proposal "overbuilds, wastes money and wastes water" and "would sentence the supervising court to constantly hearing motions attempting to modify the Rolls Royce into a Formula-1." According to Brewster, the proposal "should be rejected and the parties should agree on a Formula-1 of their choice."

On April 25, Judge Brewster rejected a Justice Department request to order San Diego to perform secondary sewage treatment; instead, Brewster ordered EPA and the City to develop interim effluent standards and scheduled a January 19, 1995, hearing to evaluate their progress. At this writing, it is not known whether the EPA will appeal Brewster's ruling.

County of Sacramento, et al. v. State Water Resources Control Board; City of San Jose v. State Water Resources Control Board; City of Sunnyvale v. State Water Resources Control Board; Simpson Paper Company v. State Water Resources Control Board; and City of Stockton v. State Water Resources Control Board are coordinated actions pending in Sacramento County Superior Court, concerning the April 1991 adoption by WRCB of two statewide water quality control plans which established water quality standards for 68 priority pollutants affecting California's inland surface waters and its bays and estuaries [11:3 CRLR 177-78]; the petitioners contend that these plans are unduly stringent and were not developed in compliance with applicable laws. In October 1993, Sacramento County Superior Court Judge James Long issued a tentative decision in which he ruled that the plans are invalid because WRCB failed to comply with the Administrative Procedure Act, the California Environmental Quality Act, and the Porter-Cologne Water Quality Act; on November 15, the court granted WRCB's motion for an extension of time to file objections to the tentative decision. [14:1 CRLR 141]

On January 21, the court heard WRCB's objections to the tentative decision; on March 23, the court issued its final decision, essentially affirming its tentative de-



cision. However, the court's final ruling did accept WRCB's contention that it would be impossible to consider the environmental characteristics and beneficial uses of each of the state's bodies of water under Porter-Cologne; instead, the decision requires WRCB to consider "on a more general basis information reasonably available to it unless evidence of beneficial uses and environmental characteristics of individual hydrographic units is presented to suggest that certain hydrographic units should be treated differently."

Because the court's ruling invalidated the state's water quality standards plans, EPA is in the process of drafting water quality standards for the state; EPA is expected to propose such standards by November.

In *Committee to Save Mokelumne River v. East Bay Municipal Utility, et al.*, 13 F.3d 305 (9th Cir. 1993), defendants East Bay Municipal Utility District and the members of the Central Valley Regional Water Quality Control Board appealed an order of the U.S. District Court for the Eastern District of California, which granted partial summary judgment in favor of the Committee to Save the Mokelumne River; the district court found that defendants own and operate the Penn Mine facility, and that the facility discharged pollutants into the Camanche Reservoir and Mokelumne River without a permit in violation of the Clean Water Act. On appeal, defendants contended—among other things—that Mine Run Dam, part of the Penn Mine facility, is not subject to the discharge permit requirements of the Clean Water Act; RWQCB is immune from liability under the Act; and summary judgment was improper because a triable issue of material fact exists whether there has been an "addition of pollutants" within the meaning of the Clean Water Act.

On December 29, the U.S. Ninth Circuit Court of Appeals affirmed. Among other things, the court found that defendants' admissions that acid mine drainage from the abandoned mine site is channelled into the Penn Mine facility and collects in the Mine Run Dam Reservoir, and that "water and drainage collected in Mine Run Dam Reservoir had, from time to time, passed over the spillway or through the valve into the Mokelumne River and Camanche Reservoir" conclusively establish that defendants "discharged a pollutant" from the Penn Mine facility within the meaning of the Clean Water Act, making them subject to the Act's permit requirements.

The court also found that the CWA does not impose liability only where a

point source discharge creates a net increase in the level of pollution; rather, the Act categorically prohibits any discharge of a pollutant from a point source without a permit. According to the court, by admitting that acid mine drainage is channelled into and collects in the Penn Mine facility, and then is released over the Mine Run Dam's spillway or through its valve into the Camanche Reservoir and the Mokelumne River, defendants "have admitted to each of the elements needed to establish liability under the Clean Water Act."

The court also rejected defendants' argument that—although no case has so held—the state may not be held liable under the Clean Water Act for the activities which it has performed pursuant to its regulatory responsibilities; defendants contended that cases decided under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) support their position. However, the court explained that in the cases cited by defendants, the absence of governmental liability under CERCLA rested on express statutory exemptions, and noted that "the Clean Water Act contains no such exemption."

At this writing, defendants are expected to file a petition for certiorari with the U.S. Supreme Court.

In *County of San Diego v. U.S. Department of Interior, et al.*, 847 F. Supp. 768 (Mar. 2, 1994), San Diego County sought an injunction against the Department of the Interior's Bureau of Indian Affairs (BIA) and the Campo Band of Mission Indians; the injunction would rescind federal approval of a landfill on the Campo Indian Reservation. Among other things, San Diego County alleged that the federal government's approval of the project violates the National Environmental Policy Act (NEPA) because the environmental impact statement (EIS) did not adequately address the landfill's effects on a sole source drinking water aquifer and on air quality. On March 2, however, U.S. District Court Judge Irma Gonzalez granted defendants' motions for summary judgment, finding that "NEPA's requirements have been satisfied," "the EIS provides sufficient detail to inform the decisionmakers of the environmental impact of the Project," and the "BIA's approval of the Project was neither 'arbitrary or capricious,' nor undertaken 'without observance of procedure required by law.'"

Two other cases filed in June 1993 challenge the state's findings that the Campo landfill project meets California's environmental standards; the two cases—*Backcountry Against Dumps v. Water Resources Control Board, et al.*, No. 952871 (San

Francisco Superior Court), and *County of San Diego v. Water Resources Control Board*, No. 665874 (San Diego County Superior Court)—are still pending at the trial court level at this writing.

In *California v. Union Oil Company of California*, No. CV75194, filed on March 23 in 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 the crude oil still in the ground to facilitate its recovery, at the company's Guadalupe Oil Field. Five days earlier, Unocal agreed to pay \$1.5 million as part of a plea agreement to resolve criminal charges brought by the San Luis Obispo County District Attorney's Office. According to the Central Valley Regional Water Quality Control Board, 28 separate plumes of the contaminant have tainted groundwater reserves at the site; and an estuary of the Santa Maria River, sand dunes, the beach, and ocean water have also been contaminated with 4.6 million to 8.5 million gallons of diluent. The maximum allowable fines for the violations cited in the state's civil action exceed \$200 million.

In *Tahoe Keys Property Owners' Association v. State Water Resources Control Board*, 23 Cal. App. 4th 1459 (Mar. 30, 1994), Tahoe Keys Property Owners' Association (TKPOA) brought an action against WRCB, the Lahontan Regional Water Quality Control Board and the Resources Agency for relief based on its contention that a mitigation fee charged as a condition for obtaining building permits is unlawful. At the trial court level, the El Dorado County Superior Court denied the Association's motion for a preliminary injunction which would have precluded the defendants from collecting further mitigation fees and would have prevented them from making expenditures from the fund created by those fees which were previously collected. On March 30, the Third District Court of Appeal affirmed the trial court, holding that TKPOA is not entitled to a preliminary injunction. In reaching its decision, the court balanced the risk of irreparable harm to TKPOA against the RWQCB's attempts to mitigate the degradation of Lake Tahoe caused by development; the court found little evidence of any irreparable harm to the Association and also found that there would be significant risk of harm to the Lake if the preliminary injunction were granted.

City of San Diego v. California Regional Water Quality Control Board, San Diego Region, and State Water Resources Control Board, No. 00673979, filed on February 22 in San Diego County Super-



rior Court, concerns an assessment of civil liability against the City of San Diego by the San Diego RWQCB. Specifically, RWQCB assessed \$830,000 in civil liability for the City's failure to report sewage spills in a timely or accurate manner; the City is seeking to stay the assessment of civil liability and rescind the RWQCB's assessment order.

RECENT MEETINGS

At its March meeting, WRCB approved the newly revised Water Quality Control Plan for the Colorado River Regional Water Quality Control Board; the Plan has been submitted to OAL for approval and copies should be available during the summer. The Board also approved a \$1.5 million loan to the City of Cloverdale in Sonoma County to expand its wastewater treatment facility; issued a \$13 million low-interest loan to the City of Livermore to be used to expand the city's present wastewater treatment facility; approved a \$7.04 million loan for construction of sewers and pump stations in the Canyon Lake service area in Riverside County; and approved \$450,000 from its Cleanup and Abatement Account for continuing remediation efforts at the Penn Mine facility, an abandoned copper mine near Sacramento, being conducted by the Central Valley Regional Water Quality Control Board (see LITIGATION).

At WRCB's April 6-7 meeting, staff reported that the Bay Protection and Toxic Cleanup Program's External Advisory Committee held its first meeting on February 23; the twelve-member committee consists of representatives from the California Association of Sanitation Agencies, Western States Petroleum Association, Los Angeles County Department of Public Works, Port of Long Beach, Bay Planning Coalition, Northern California Marine Association, Lower Cosumnes Resource Conservation District, California Aquaculture Association, San Francisco Department of Public Health, Save San Francisco Bay, Planning and Conservation League, and the general public. The committee will meet quarterly to discuss topics such as toxic hot spot cleanup plans and coordination among program activities. The next meeting is scheduled for May 25 at WRCB, and is open to all interested parties.

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: Thomas Gwyn
(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. This zone, except for the San Francisco Bay area (which is under the independent jurisdiction of the San Francisco Bay Conservation and Development Commission), determines the geographical jurisdiction of the Commission. The Commission has authority 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. Except where control has been returned to local governments, 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 has authority 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 local coastal programs (LCPs), mandated by the Coastal Act of 1976. Each LCP consists of a land use plan and implementing ordinances. Most local governments prepare

these in two separate phases, but some are prepared simultaneously as a total LCP. An LCP does not become final until both phases are certified, formally adopted by the local government, and then "effectively certified" by the Commission. Until an LCP has been certified, virtually all development within the coastal zone of a local area must be approved by the Commission. After certification of an LCP, the Commission's regulatory authority is transferred to the local government subject to limited appeal to the Commission. Of the 126 certifiable local areas in California, 82 (65%) have received certification from the Commission at this writing. In October, the Commission certified the Mendocino County LCP (minus the Town of Mendocino segment).

The Commission meets monthly at various coastal locations throughout the state. Meetings typically last four consecutive days, and the Commission makes decisions on well over 100 items. The Commission is composed of fifteen members: twelve are voting members and are appointed by the Governor, the Senate Rules Committee, and the Speaker of the Assembly. Each appoints two public members and two locally elected officials of coastal districts. The three remaining nonvoting members are the Secretaries of the Resources Agency and the Business and Transportation Agency, and the Chair of the State Lands Commission. The Commission's regulations are codified in Division 5.5, Title 14 of the California Code of Regulations (CCR).

On March 9, Assembly Speaker Willie Brown appointed Supervisor Sam Karas of Monterey County to a four-year term on the Commission. Karas, a supervisor since 1986 and longtime opponent of offshore oil drilling, will represent the central coast on the Commission.

MAJOR PROJECTS

Commission Compromises on Beach Curfew Issue. Bombarded by complaints from numerous coastal cities, criticism from Governor Wilson, a lawsuit, and several pieces of legislation which would strip it of authority to invalidate a local government's beach curfews, the Commission in February considered a set of guidelines for the imposition of late-night beach curfews in urban beach areas beset by crime problems and—for the first