cides. This bill also permits the Director to suspend or place conditions on the license of a qualified applicator pending a hearing if the Director finds that continuance of the license endangers the public welfare or safety.

Under existing law, the DPR Director or the county agricultural commissioner may issue a cease and desist order to the persons responsible, upon a finding that the use, handling, delivery, or sale of an economic poison violates the law, and that the activity, if allowed to continue, presents an immediate hazard or will cause irreparable damage. This bill permits the Director or commissioner to bring an action to enjoin the violation or threatened violation of such an order. This bill was signed by the Governor on September 30 (Chapter 624, Statutes of 1993).

SB 106 (McCorquodale). Under existing law, officials of specified recreation and park districts are exempt from having to obtain an agricultural pest control adviser license from the DPR Director in order to act, or offer to act, as an agricultural pest control adviser if they make a recommendation in writing as to a specific application of pesticide on a specific parcel. As amended June 21, this bill would continue that exemption until July 1, 1995. This bill would also permit the Director to adopt alternative minimum criteria based on education or technical expertise for applicants for an agricultural pest control adviser license who are officials of those recreation and park districts. *[A. Desk]*

AB 773 (Areias). Existing law prohibits any person from acting, or offering to act, as an agricultural pest adviser without first having secured an agricultural pest control adviser license from the DPR Director. As amended April 13, this bill would require the Director to develop a program for certifying the competency of pest control advisers in biologically intensive integrated pest management, as defined, on a voluntary basis. *[S. AWR]*

SB 532 (Hayden). Existing law authorizes the DPR Director to establish tolerances for a pesticide chemical in or on produce. As amended May 28, this bill would require the Director to determine if any adoption, amendment, revision, or extension of the tolerances adequately protects human health, including the health of infants, children, elderly, and other population categories and, if not, to take more stringent action, as specified.

Existing law requires the DPR Director to adopt regulations relating to restricting worker reentry into areas treated with pesticides determined by the Director to be hazardous to worker safety based on time limits and certain pesticide residue levels. This bill would require the Director to determine if any adoption, amendment, revision, or extension of the time limits and pesticide residue levels adequately protects human health, including the health of infants, children, elderly, and other population categories and, if not, to take more stringent action, as specified. *[S. Appr]*

SB 422 (Petris). The Occupational Carcinogens Control Act of 1976 establishes standards and safeguards for the use of carcinogens in California. As introduced February 24, this bill would prohibit, on and after January 1, 1995, any employer from engaging in, or causing any employee to engage in, the dispersed use, as defined, of extremely toxic poisons, as defined, except as authorized by the Director of Industrial Relations, or the director of another state agency designated by the Governor, where the DIR Director finds, pursuant to regulation, that prohibition will cause severe economic hardship due to the lack of feasible alternative substances or practices. It would repeal as of January 1, 2000, the provisions allowing the DIR Director to authorize the use of an extremely toxic poison on the basis of economic hardship unless a later enactment, enacted before January 1, 2000, deletes or extends that date. *[S. Appr]*

SB 475 (Petris), as amended June 8, would enact the Pesticide Use Reduction Act of 1993, requiring the Cal-EPA Secretary to develop and implement a program to achieve a significant reduction in the use of the active ingredients in pesticides in California by 2000, if funds are appropriated for that purpose in the annual Budget Act. *[A. Desk]*

AB 1111 (Sher), as amended April 27, would codify the changes made by the Governor's Reorganization Plan No. 1 of 1991, which created Cal-EPA, created DPR in Cal-EPA, and transferred to DPR the pesticide regulatory program of CDFA. *[A. W&M]*

AB 1480 (Johnson). Under existing law, DPR, the Department of Toxic Substances Control, and the State Water Resources Control Board are established within Cal-EPA. As introduced March 4, this bill would require all fees and penalties collected by those agencies to be deposited in a special account in the General Fund and would declare that all activities of those agencies shall be funded by appropriations from the General Fund. *[A. EnvS&ToxM]*

RECENT MEETINGS

At its August 11 meeting, DPR's Pest Management Advisory Committee (PMAC) discussed the Minor Crop Task Force report; the minor crops database (a survey of growers of minor crops to determine what pesticides they most often use) was given to DPR, the Western Agricultural Chemicals Association, and the Interregional-4 Pesticide Impact Assessment Program to determine if any pesticide registrations might be lost in the future. PMAC is exploring the potential usefulness of the database to DPR's pest management program and its Alternatives Task Force. Integrated Pest Management project personnel will also be reviewing the list from the minor crops database, to identify specific alternatives to these listed pesticides; it is expected that most of the identified host-pesticide combinations will have some available alternative. When materials have no promising alternatives, the information will be forwarded to appropriate commodity groups with the recommendation that they fund research to find alternatives.

At its September 17 meeting, DPR's Pesticide Advisory Committee (PAC) discussed the problem of research authorization, a permit program which was established to oversee experimental pesticide work in this state. Anyone who does experimental pesticide field work is required to obtain a research authorization in order to perform the work; however, exceptions are made in certain cases, such as for certain colleges and universities. The PAC heard from Dr. C.C. Chu, a research scientist with the U.S. Department of Agriculture in Imperial Valley, who requested that an exemption from the research authorization program be extended to USDA scientists; Dr. Chu contended that although federal scientists are no less qualified than collegiate scientists, the federal scientists must go through extensive paperwork to perform the same research as collegiate scientists. The PAC decided to look into the possibility of changing the regulations to allow federal scientists to have a similar exemption as universities.

FUTURE MEETINGS

DPR's PAC, PREC, and PMAC meet regularly to discuss issues of practice and policy with other public agencies. The committees meet in the annex of the Food and Agriculture Building in Sacramento. For meeting information, call (916) 654-1117.

WATER RESOURCES CONTROL BOARD

Executive Director: Walt Pettit
Chair: John Caffrey
(916) 657-0941

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 appropriative 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.

Governor Wilson recently appointed John Brown and Mary Jane Forster to WRCB. Brown is an associate at the engineering consulting firm of Camp Dresser and McKee, Inc., which provides services for water resource planning, design, and operations. Forster has been active in water issues for the past eighteen years, seven of which were spent as governmental affairs manager for the Municipal Water District of Orange County; since 1984, she has also served on the San Diego Regional Water Control Board, including one term as chair and two terms as vice-chair.

MAJOR PROJECTS

EPA Agrees to Issue Bay/Delta Water Quality Standards by December 15. In response to an action by the U.S. Fish and Wildlife Service (USFWS) granting special protection to the Delta smelt under the federal Endangered Species Act, Governor Wilson ordered WRCB to stop working on interim water quality standards for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary on April 1; the Governor stated he halted WRCB's efforts because USFWS' action had the effect of bringing the Bay/Delta water quality issue under the control of federal agencies. In an effort to prod the U.S. Environmental Protection Agency (EPA) to expedite the promulgation of water quality standards for the Bay/Delta region, the Sierra Club Legal Defense Fund and eighteen other environmental groups filed suit in U.S. District Court in Sacramento in April, alleging that EPA is in violation of the federal Clean Water Act by failing to issue its own standards after it declared WRCB's standards too weak in 1991. *[13:2&3 CRLR 177]*

On September 17, EPA announced that the parties had reached a settlement in the lawsuit. Under the terms of the settlement, EPA will complete and file proposed water quality standards for the Bay/Delta by December 15, and will receive and consider public comments for 90 days before adopting the standards in final form. The effect of EPA's settlement on water cost and flow is not yet clear; the agency declines to comment on how much the flow of fresh water through the Delta will be increased as a result of its standards. However, Sierra Club Legal Defense Fund attorney Stephan Volker is optimistic about the future of the Bay/Delta. According to Volker, "[w]e applaud the EPA decision to obey the law and protect Bay/Delta water quality. Our fish and wildlife could not stand another year of government inertia."

The announcement of the Bay/Delta settlement coincided with the settlement of another water policy lawsuit between the U.S. Bureau of Reclamation and the Natural Resources Defense Council; this settlement requires the federal agency to draft new regulations regarding western irrigation water subsidies in a manner that takes into account conservation and environmental restoration. The new regulations are expected to tighten conservation requirements and cut the amount of federal water subsidies to large farms, enabling smaller farms to be more competitive. The two settlements are being viewed as an important demonstration of the willingness of the Clinton administration to take action on environmental issues, and an indication of the future of California water policy. Commentators predict that a strong emphasis on protecting the environment backed by the power of federal regulatory agencies will lead to "greener" water policy.

WRCB Decides Not to Act on Bay/Delta Environmental Violations. In November 1992, WRCB held a hearing to review the circumstances under which salinity standards in Water Rights Decision 1485 were exceeded in the Bay/Delta during 1991 and 1992. On June 11, the Board announced that it had completed its review of the hearing record and has decided not to take any enforcement action regarding the violations of the salinity standards during those years. According to WRCB, its decision is based on a consideration of the reasons for and the magnitude of the exceedances, and the resulting impact on all beneficial uses caused by the exceedances. A group of environmentalists and state legislators expressed outrage at the Board's decision, contending that water quality violations must be punished to deter future violations; those who protested WRCB's decision have commented that Board's inaction reflects a growing indifference in the Wilson administration toward water quality issues and ecological problems.

Mono Lake Draft Environmental Impact Report. In May, WRCB issued an 1800-page draft environmental impact report (EIR) on modified water rights permits held by the City of Los Angeles to water in the Mono Lake Basin. Mono Lake is an ancient saline lake in the eastern Sierra Nevada Mountains which supports a unique invertebrate population of alkali fly and brine shrimp, as well as the annual migration and nesting of millions of birds. For more than 50 years, the City of Los Angeles has diverted water from creeks which flow from the snowy eastern Sierra into the Lake. By 1970, stream diversions were nearly total. In 1974, WRCB granted licenses to the City of Los Angeles confirming its rights to this water. From 1974–80, the Los Angeles Department of Water and Power (LADWP) obtained approximately 17% of its total water supply for 3.4 million people by diverting water from freshwater tributaries from the Lake. The City's actions have caused a decline in the Lake's surface elevation by 40 feet and in the Lake's surface area by 25%; resulted in increased salinity and alkalinity levels in the Lake; and resulted in the formation of a land bridge to an island on which birds nest, leaving the nests open to

predators. Another consequence of the decreasing water level at Mono Lake are dust storms caused when the wind blows up sand and particles from the dried-out portions of the lake bed. In fact, EPA has proposed to redesignate the Mono Lake Basin as being in violation of federal air quality standards because of these dust storms, which are believed to pose a danger to children, the elderly, and people with respiratory problems.

In 1983, in response to a suit filed by the National Audubon Society, the California Supreme Court held that the public trust doctrine requires WRCB to reconsider Los Angeles' water rights in the Mono Lake Basin; the court recognized the lake as a scenic and ecological treasure, and found that the City's water permits, which were granted without consideration of these issues, should be revisited. *[3:4 CRLR 71]* Subsequently, numerous courts ordered WRCB to modify LADWP's licenses in compliance with sections 5946 and 5937 of the Fish and Game Code. *[10:2&3 CRLR 195; 9:2 CRLR 110]* Later, the El Dorado County Superior Court ordered LADWP to allow sufficient water to pass its Mono Basin diversion facilities to maintain the water level at Mono Lake at 6,377 feet. In April 1990, the superior court entered another injunction establishing interim flow standards for the protection of fish in all Mono Lake Basin streams from which Los Angeles diverts its water. WRCB began its review of the diversions in 1989, following a court order staying further judicial proceedings regarding Mono Lake on the merits until completion of its review of Los Angeles' water rights or September 1, 1993; the Board's deadline to complete its review has since been extended to September 1, 1994.

The projects evaluated in the draft EIR include the establishment and maintenance of instream flow requirements in the Mono Lake tributaries from which Los Angeles diverts water; the instream flow requirements would be established in compliance with Fish and Game Code sections 5937 and 5946 and a court mandate to release sufficient water to establish and maintain fisheries that existed in the streams prior to the City's diversions. The draft EIR also evaluates the establishment and maintenance of water elevation requirements in Mono Lake to provide appropriate protection for public trust resources and beneficial uses of Mono Lake.

WRCB is expected to incorporate the appropriate instream flow requirements, lake level requirements, and mitigation measures into Los Angeles' water rights licenses for diversion from the Mono Basin. During October, the Board is scheduled to hold three public hearings and several days of evidentiary hearings regarding Los Angeles' water rights in the Mono Basin.

State Water Quality Control Policies. AB 3359 (Sher) (Chapter 1112, Statutes of 1992) added sections 11352–11354 to the Government Code, to exempt WRCB's adoption of water quality control policies and several other types of decisionmaking actions from the rulemaking requirements of the Administrative Procedure Act (APA), Government Code section 11340 *et seq.*, and from the APA's requirement of review by the Office of Administrative Law (OAL). *[12:4 CRLR 190]* The legislature's enactment of the bill follows a 1991 decision by the San Francisco Superior Court that WRCB's amendments to the water quality control policy for the San Francisco Bay Region was invalid and unenforceable because it was not adopted pursuant to the rulemaking process required by the APA and approved by OAL; that decision has since been upheld by the First District Court of Appeal. *[13:2&3 CRLR 182]* WRCB and other supporters of AB 3359 argued that the Board's adoption of water quality control plans and other decisions are already subject to a comprehensive procedure set forth in the Porter-Cologne Water Quality Act, Water Code section 13000 *et seq.*; some decisions are also subject to the public participation requirements of the federal Water Pollution Control Act (WPCA), 33 U.S.C. section 1251 *et seq.*

Thus, Government Code section 11352 exempts entirely from the APA rulemaking requirements WRCB's issuance, denial, or waiver of any water quality certification under Water Code section 13160; and its issuance, denial, or revocation of waste discharge requirements and permits under Water Code sections 13263 and 13377 and waivers under section 13269.

Government Code section 11353 also exempts from the APA WRCB's adoption and revision of water quality control plans, policies, and guidelines, and creates a streamlined adoption and review process for these decisions as follows. For water quality control plans adopted or revised after June 1, 1992, the Board need only submit to OAL: (1) a clear and concise summary of any regulatory provisions adopted or approved as part of the Board's action, for publication in the CCR; (2) the administrative record for the proceeding; (3) a summary of the necessity for the proceeding; and (4) a certification by WRCB's chief legal officer that the action was taken in compliance with all applicable procedural requirements of Water Code section 13000 *et seq.* OAL may review only the regulatory provisions which are part of any water quality control policy, plan or guideline under the six criteria set forth in Government Code section 11349.1, and may review WRCB's (or a RWQCB's) responses to public comments to determine compliance with the WPCA. OAL must restrict its review to the regulatory provisions and to the administrative record of the proceeding. Under Government Code section 11353(b)(5), the policy, plan, or guideline shall not become effective until OAL approves the regulatory provisions submitted to it; upon OAL's approval of the regulatory provisions, it must transmit to the Secretary of State only the summary of those provisions provided by WRCB for publication in the CCR. Because WRCB's water quality control policies, plans, and guidelines are not being published in the CCR, Government Code section 11353(d) requires the Board to maintain at its Sacramento headquarters copies of all such policies, plans, and guidelines currently in effect; each RWQCB office must maintain a current copy of each policy, plan, or guidelines in effect in its respective region.

Pursuant to AB 3359, the Board took the following actions regarding its water quality control plans during the summer and early fall:

• ***Publication and Depublication of Water Quality Control Policies.*** On June 21, the Board submitted for filing and publication (but not review) the following water quality control policies which were briefly published in Title 23 of the CCR as follows: section 2900 (non-degradation policy); 2901 (state policy); 2902 (enclosed bays and estuaries); 2903 (use and disposal of inland waters used for powerplant cooling); 2904 (water reclamation); 2905 (sources of drinking water); and 2906 (Pollutant Policy for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary). The Board subsequently became concerned that the publication of these water quality control policies in the CCR would give the impression that they are regulations approved by OAL, and depublished them on August 5, effective September 4.

• ***Inland Surface Waters Plan and Enclosed Bays and Estuaries Plan.*** On May 18, OAL approved part of WRCB's Inland Surface Waters Plan, as amended (codified at section 3000, Titles 23 and 26 of the CCR), and its Enclosed Bays and Estuaries Plan, as amended (codified at section 3001, Titles 23 and 26 of the CCR). *[13:1 CRLR 109; 11:3 CRLR 177; 11:1 CRLR 131–32]* However, OAL severed

and disapproved WRCB's incorporation by reference of the "most recent edition" of a specified method for examination of water and wastewater in those plans; according to OAL, the disapproved portions failed to identify which version of the document is incorporated by reference. OAL noted that the incorporation by reference of an external document, or part of an external document, into a regulatory provision effectively makes the incorporated text a part of the regulatory provision, as though the incorporated text were printed in its entirety as part of the regulatory provision; according to OAL, WRCB's failure to specify the date of publication or issuance of the particular version incorporated by reference makes the rest of the regulatory provision difficult to understand, and thus fails to satisfy the clarity standard of Government Code section 11349.1. OAL also noted that a prospective incorporation by reference (one that automatically incorporates future changes to an incorporated document) is "of dubious validity," noting that it eliminates the opportunity for public participation in the decision to give regulatory effect to future changes.

On September 16, OAL depublished WRCB's Inland Surface Waters Plan and Enclosed Bays and Estuaries Plan and instead published summaries of the amendments made to those plans as approved by OAL on May 18.

• ***RWQCB Supervision of Investigation and Clean-Up of Waste Discharges.*** On September 3 (original decision) and September 10 (modified decision), OAL rejected WRCB's Resolution No. 92-49, which would establish policies and procedures governing regional board oversight and supervision of the investigation, clean-up, and abatement of waste discharges that threaten or impair water quality; a summary of the regulatory provisions in the resolution would appear as section 2907, Title 23 of the CCR. According to OAL, it is not clear from the record whether the resolution is subject to the public participation requirements of the WPCA; the administrative record submitted to OAL for review does not contain responses to comments submitted to WRCB regarding the resolution, and does not contain comments made to the Board on the resolution at WRCB's June 18, 1992 meeting; WRCB's resolution appears to compel innocent landowners or tenants to participate in the investigation, clean-up, and abatement of waste discharge in violation of Water Code section 13304, which WRCB is not authorized to do; and several provisions of the resolution fail to satisfy the clarity standard of Government Code section 11349.1.

The Board has 120 days from the date of disapproval in which to resubmit Resolution No. 92-49 to OAL for review. OAL made no comment on whether the summary of the regulatory provisions in the resolution submitted by WRCB is adequate.

• ***Policy for Regulation of Discharges of Municipal Solid Waste.*** On June 17, WRCB adopted Resolution No. 93-62, a water quality control policy for the regulation of discharges of municipal solid waste (MSW), which directs the RWQCBs to amend waste discharge requirements for MSW landfills to incorporate provisions of the federal Subtitle D regulations pertaining to MSW landfills; the provisions of Subtitle D become effective on October 9. *[13:2&3 CRLR 178]* (*See* agency report on CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD for related discussion.)

Among other things, Resolution 93-62 requires each RWQCB to amend its waste discharge requirements to require persons who own or operate MSW landfills in its region to comply with all applicable portions of the federal MSW regulations by October 9, with specified exceptions, and to achieve full compliance with Chapter 15, Title 23 of the CCR, and with the federal groundwater monitoring and corrective action requirements under 40 C.F.R. Parts 258.50–258.58 as follows: for all MSW landfills that are less than one mile from a drinking water intake (surface or subsurface) by no later than October 9, 1994; and for all other MSW landfills that have accepted waste prior to the effective date of the policy, by no later than October 9, 1995.

A summary of the resolution, codified at section 2908, Title 23 of the CCR, was approved by OAL on July 28.

Chevron to Pay $500,000 in Oil Spill Settlements. Over the summer, Cal-EPA announced settlements between state and local agencies and the Chevron Corporation stemming from a 20,000-gallon oil spill near El Segundo in 1991; the spill occurred when an underwater oil pipeline connected to a Chevron oil refinery was ruptured by an anchor from a tanker operated by Chevron Shipping. Under the terms of the settlements, Chevron USA, Inc., agreed to place $150,000 in an escrow account for use by the Los Angeles Regional Water Quality Control Board in funding worthy and appropriate pollution abatement and environmental mitigation projects and studies in the greater Santa Monica Bay; the RWQCB and Chevron USA will jointly decide what projects and studies to fund for development. Also, Chevron Shipping agreed to pay $200,000 in criminal penalties pursuant to the state Oil Spill Prevention and Response Act, and another $150,000 in restitution and costs which will be distributed among the State Lands Commission, the Department of Fish and Game, and the Santa Monica Bay Restoration Project for use in environmental studies and projects.

Governor Asks WRCB to Review Its Own Productivity. Governor Wilson has asked WRCB to undertake a programmatic review of its own productivity and that of the regional water boards to determine if the boards are operating in the most efficient and responsive manner possible; WRCB began the review in September by assembling review teams comprised of members of the regulated community, environmental groups, and other interests with a stake in the boards' work.

Some of the items the review teams are expected to address include consistency among the nine RWQCBs; efficiency and standardization among groundwater protection programs; reform of permit programs within the Board's core regulatory programs; and improvements in efforts to preserve the waters of the state. The teams are expected to develop recommendations on how to achieve existing mandates through operational efficiencies and regulatory reforms. These recommendations will form the basis for the development of a strategic plan which is projected to meet the boards' legal obligations while removing unnecessary red tape that could hinder the economic resurgence of the state. WRCB's final report is expected to be released in the spring of 1994.

WRCB Seeks to Amend Wastewater Treatment Plant Classification and Operator Certification Program. On July 23, WRCB published notice of its intent to amend Articles 1, 4, 5, 7, and 8, Title 23 of the CCR, pertaining to wastewater treatment plant operators, and adopt new Article 10, Title 23 of the CCR, establishing a registration program for wastewater treatment plant contract operators. Water Code section 13627.2 requires WRCB to register contract operators—those who contract to operate wastewater treatment plants—and to adopt regulations governing administration of the registration program.

Among other things, the amendments to Articles 1–8 would add definitions of the terms "contract operator" and "direct supervision"; establish a date by which applicants for examination must complete necessary educational requirements for the certificate; require applicants to take a subsequent examination if they fail to include proof of completion of education or

the required fee with their applications; require applicants to document their qualifications in the application for examination; establish the date of receipt of a completed application as the issue date; and add a provision for disciplinary action against a chief plant operator who fails to ensure that an operator-in-training is directly supervised. New Article 10 would establish registration procedures for contract operators, including guidelines for application, registration, renewal and reinstatement, grounds for discipline, and the appeals process.

At this writing, no public hearing is scheduled; WRCB accepted public comments until September 6. The proposed changes await adoption by WRCB and review and approval by OAL.

Board Seeks to Adopt Emergency Annual Fees for the Regulation of Discharges of Waste. The Porter-Cologne Water Quality Act authorizes WRCB to regulate discharges of waste which could affect the quality of the waters of the state, and permits the Board to assess fees to reimburse the state for some of the costs incurred to implement the Act. Water Code section 13260 requires that persons subject to waste discharge requirements pay an annual fee pursuant to a fee schedule adopted by WRCB. On September 17, WRCB published notice of its intent to adopt emergency amendments to the schedule of fees charged for the regulation of discharges of waste that could affect the quality of waters of the state. The proposed emergency action would amend the annual fees found in section 2200, Title 23 of the CCR, to clarify the language addressing the fees for area-wide urban National Pollutant Discharge Elimination System (NPDES) permits for storm water discharges. Under the current regulations, fees for NPDES permits are based upon the population which is served by the storm sewer system within the regional water board's jurisdiction. The amendments to section 2200 would provide that public entities which lie within more than one region shall be subject to an annual fee based upon its total population without regard to the number of area-wide urban storm water permits issued by a regional board.

At this writing, no public hearing is scheduled; public comments are accepted until November 1.

WRCB Proposes Underground Storage Tank Tester Regulations. On June 11, WRCB published notice of its intent to amend sections 2731, 2740, 2760, 2761, 2763, 2770.5, 2771, and 2773, Title 23 of the CCR, regarding the licensure of underground storage tank testers. Among other things, the changes would have the following effects:

–require that a written examination be administered to all students who participate in a course of study, and remove the current requirement for "hands-on" tank testing in the field as part of an approved course of study;

–include within the definition of the terms "fraud" or "deception" the filing of a false tank test report with a state or local agency or tank owner or operator, manipulating or misreading test data, providing a report for a pipeline or tank which was not actually tested, and accepting or agreeing to accept compensation for false or favorable test results;

–require applicants to have six months of tank testing experience in addition to attending an approved course of study, to implement Health and Safety Code section 25284.4;

–require applications to be postmarked three weeks before the examination date;

–reduce various timeframes within which the Office of Tank Testing Licensing must notify applicants of their examination results, send renewal notices to licensees, require licensees to renew their licenses, and notify applicants of deficiencies in their applications;

–require tank testers to sign their tank test reports and include their license numbers on the reports;

–require tank testers to supply the Office of Tank Tester Licensing with a copy of the manufacturer's certificate or other proof of training before using certain equipment to test tanks; and

–provide that disciplinary action may be taken for providing test results for a pipeline or tanks which was not actually tested, failing to follow protocol as evaluated by a third-party evaluator to meet EPA standards, and using pipeline and tank testing equipment which does not meet specified requirements.

At this writing, no public hearing is scheduled; the Board accepted public comments until July 26. At this writing, these amendments await adoption by WRCB and approval by OAL.

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

• ***FPPC to Review WRCB's Conflict of Interest Code Amendments***. On August 27, the Fair Political Practices Commission (FPPC) announced that it would review WRCB's proposed 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. *[13:2&3 CRLR 179]* The FPPC also announced that it would provide a 45-day public comment period, from August 27 to October 11, after which time the amendments will be submitted to the FPPC's Executive Director for review, unless any interested person timely requests that a hearing be held before the full Commission; if a hearing is requested, the proposed amendments will be submitted to the full Commission for review.

• ***Underground Storage of Hazardous Substances***. At this writing, WRCB has not yet adopted its proposed amendments to sections 2610, 2611, 2621, 2630, 2631, 2632, 2634, 2636, 2641, 2644, 2646.1, 2650, 2652, 2660, 2661, 2662, 2664, 2670, and 2672, Title 23 of the CCR, regarding the regulation of underground storage tanks. *[13:2&3 CRLR 179]*

• ***Water Rights Change Petitions***. At its June 17 meeting, WRCB adopted a modified version of its proposed changes to regulations in Articles 15, 16, and 17, and its addition of Article 16.5 to Title 23 of the CCR. These regulations pertain to urgent, temporary, and long-term changes in water rights resulting from transfers of rights and changes in the point of diversion, place of use, and purpose of use. *[13:2&3 CRLR 179; 13:1 CRLR 109]* OAL disapproved these proposed changes on August 16; among other things, OAL found that WRCB made what OAL deemed a substantial change to the text of section 793 after the May 21 final notice of opportunity to comment on the proposed revisions; OAL also objected to the format of WRCB's rulemaking package.

In response to OAL's findings, WRCB released a modified version of section 793 for an additional fifteen-day public comment period which, at this writing, is scheduled to end on October 5; the Board is scheduled to consider readopting the changes to section 793 at a special meeting on October 6.

LEGISLATION

AB 1220 (Eastin). The California Integrated Waste Management Act of 1989 requires the California Integrated Waste Management Board (CIWMB) to adopt regulations which set forth minimum standards for solid waste management and require assurance of financial ability to pay for specified injury and property damage claims resulting from the operation of a disposal facility. The Board is required to inspect each solid waste facility in the state each year. Under the Act, each oper-

ator of a solid waste facility is required to pay a quarterly fee to the State Board of Equalization, based upon the amount of solid waste disposed of at each site, but the fee is prohibited from exceeding $1 per ton. The revenue from the fee is required to be deposited in the Integrated Waste Management Account in the Integrated Waste Management Fund and may be expended by the Board, upon appropriation by the legislature, to carry out the Act. As amended September 2, this bill prohibits CIWMB's regulations from including aspects of solid waste handling or disposal which are solely within the jurisdiction of the state Air Resources Board, WRCB, or a RWQCB, and provides that, if an owner or operator of a solid waste landfill is in compliance with certain air pollution requirements, the owner or operator is deemed to be in compliance with the Board's landfill gas migration regulations. The bill requires WRCB and CIWMB to develop, by January 1, 1994, a workplan for combining specified financial assurance requirements.

The bill also enacts the Solid Waste Disposal Regulatory Reform Act of 1993, which makes a statement of legislative intent and requires WRCB and CIWMB to develop an implementation plan by July 1, 1994, to implement the bill and to adopt emergency regulations for implementation of the bill. Among other things, the bill also requires CIWMB and WRCB to revise certain regulations, by June 30, 1994, to consolidate the closure and postclosure maintenance requirements of CIWMB and WRCB. *[13:2&3 CRLR 178–79]* This bill was signed by the Governor on October 1 (Chapter 656, Statutes of 1993).

AB 385 (Hannigan). Existing law requires WRCB to establish annual fees applicable to all point and nonpoint dischargers who discharge into enclosed bays, estuaries, or any adjacent waters in the contiguous zone or the ocean. As amended May 25, this bill prohibits the Board from imposing these fees on dischargers who discharge from lands managed solely to provide habitat for waterfowl and other water-dependent wildlife. This bill was signed by the Governor on July 26 (Chapter 203, Statutes of 1993).

AB 697 (Bowen). The Carpenter-Presley-Tanner Hazardous Substance Account Act requires the Department of Toxic Substances Control or a RWQCB to prepare or approve remedial action plans which specify, among other things, removal and remedial actions selected for the clean-up of all hazardous substance release sites identified and categorized pursuant to a specified procedure. Existing law requires the Department and WRCB to each develop, by July 1, 1992, policies and procedures to be used by each agency in overseeing the investigation and taking of removal and remedial actions at hazardous substance release sites, in the case of the Department, and in overseeing the investigation of, and cleaning up or abating the effects of, discharges of a hazardous substance, in the case of WRCB. As amended June 20, this bill instead requires the Department and WRCB to concurrently establish consistent policies and procedures to be used by each agency in overseeing the investigation and taking of removal and remedial actions at hazardous substance release sites, in the case of the Department, and in overseeing the investigation of, and cleaning up or abating the effects of, discharges of a hazardous substance, in the case of WRCB. The bill requires the Department and WRCB to jointly review and revise the policies and procedures established prior to the enactment of this bill and to jointly develop, and send to the legislature, recommendations for revisions to make consistent the hazardous substance release clean-up policies and procedures followed by the Department, WRCB, and the regional boards. This bill was signed by the Governor on September 26 (Chapter 523, Statutes of 1993).

AB 2091 (Takasugi). Existing law requires the Office of Oil Spill Prevention Administrator to direct prevention, removal, abatement, response, containment, and clean-up efforts related to oil spills in the marine waters of the state. Existing law requires WRCB and the RWQCBs to issue waste discharge requirements and dredged or fill material permits as required or authorized by the federal Water Pollution Control Act with any more stringent effluent standards or limitations that are needed to prevent nuisance, protect beneficial uses, or implement water quality control plans. As amended August 17, this bill requires the Administrator, by May 15, 1994, to enter into a memorandum of understanding (MOU) with WRCB's Executive Director to address discharges, other than dispersants, that are related to the response, containment, and cleanup of an existing or threatened oil spill conducted in accordance with specified provisions of existing law. The bill requires the MOU to address any permits, requirements, or authorizations that are required for those discharges, and requires the MOU to be consistent with requirements that protect state water quality and beneficial uses and with specified laws regarding water quality, and to expedite efficient oil spill response. This bill was signed by the Governor on October 2 (Chapter 736, Statutes of 1993).

SB 417 (Marks), as amended August 16, enacts the Shellfish Protection Act of 1993; requires the RWQCBs, if a commercial shellfish growing area, as defined, is determined to be threatened, as specified, to form, within 90 days of the effective date of the Act, or within 90 days of the date that a threat is subsequently identified, a technical advisory committee with prescribed membership, devoted solely to the threatened area; requires the technical advisory committee to advise and assist that RWQCB in developing an investigation and remediation strategy in accordance with specified law to reduce pollution affecting that area; requires the regional boards to develop, with the assistance of the technical advisory committee, water quality investigation projects for affected areas if the technical advisory committee makes a specified determination and, with the advice of the local technical advisory committee, to order appropriate remedial action to abate the pollution affecting the commercial shellfish growing area; requires the regional board to monitor water quality in the threatened area during the implementation of pollution abatement measures to ensure that the measures are effective and to provide the results of the monitoring to the technical advisory committee; requires the regional board, if agricultural sources of pollution have been identified as contributing to the degradation of a shellfish growing area, to invite specified representatives of agricultural interests to work with affected shellfish growers to develop and implement remediation strategies to reduce pollution affecting the area; and requires WRCB and the regional boards, when they are rating specified project proposals, to give timely notice to the California Aquaculture Association and to provide shellfish growers in affected commercial shellfish growing areas with the opportunity to comment on specified proposals. This bill was signed by the Governor on October 10 (Chapter 1081, Statutes of 1993).

SB 1084 (Calderon). The Bay Protection and Toxic Clean-up Program administered by WRCB, which expires on January 1, 1994, requires WRCB to impose annual fees applicable to all point and nonpoint dischargers who discharge into enclosed bays, estuaries, or any adjacent waters in the contiguous zone or the ocean, as defined. Existing law requires WRCB, on or before January 1, 1993, to make a prescribed report to the legislature. As amended August 16, this bill extends that repeal date on the Program to January 1, 1998, prohibits WRCB from imposing a fee on any agricultural nonpoint source discharger, and extends the due date applicable to the report to January 1, 1996.

Existing law requires each RWQCB that has regulatory authority for any enclosed bay or estuary to develop, by January 1, 1992, for each such bay or estuary, a consolidated database that identifies and describes all suspected toxic hot spots. This bill instead requires those regional boards to develop, by January 30, 1994, a consolidated database that identifies and describes all potential hot spots.

Existing law requires WRCB to adopt, by July 1, 1992, general criteria for the assessment and priority ranking of toxic hot spots. This bill extends that date to January 30, 1994.

Existing law requires each regional board to complete and submit to WRCB, by July 1, 1993, a toxic hot spots clean-up plan. Existing law requires WRCB to submit to the legislature, by January 1, 1994, a consolidated statewide toxic hot spots clean-up plan. This bill extends the due date applicable to the toxic hot spots clean-up plan to January 1, 1998, and the due date applicable to the consolidated statewide toxic hot spots clean-up plan to June 30, 1999.

Existing law requires WRCB to adopt sediment quality objectives for toxic pollutants. This bill requires the Board to consider prescribed federal sediment criteria for toxic pollutants, take specified action in connection with the adoption of sediment quality objectives, and establish a prescribed advisory committee to assist WRCB board in carrying out specified water quality functions relating to bays and estuaries.

The bill requires WRCB, in consultation with the state Department of Health Services, to contract with an independent contractor to conduct a study to determine the adverse health effects of urban runoff on swimmers at urban beaches, as prescribed. This bill was signed by the Governor on October 10 (Chapter 1157, Statutes of 1993).

SB 1185 (Bergeson), as amended September 10, enacts the Environmental Protection Permit Reform Act of 1993, and requires the Cal-EPA Secretary, on or before January 1, 1995, to establish an administrative process which may be used, at the request of a permit applicant, to designate a consolidated permit agency, as defined, for projects that require permits from two or more environmental agencies, as defined; requires the Secretary to adopt, by December 31, 1994, regulations establishing an expedited appeals process by which a petitioner or applicant may appeal procedural violations with regard to the issuance of environmental permits, as defined; and requires the Secretary to submit, by April 1, 1996, a report to the appropriate policy committees and the fiscal committees of both houses detailing specified information concerning implementation of specified law. This bill was signed by the Governor on September 20 (Chapter 419, Statutes of 1993).

SB 919 (Dills). The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare an environmental impact report (EIR) on any project which it proposes to carry out or approve that may have a significant effect on the environment, with specified exemptions. As amended September 9, this bill provides that, in certain cases, an EIR is not required for specified activities relating to an existing facility. The bill requires an EIR to be prepared if there is substantial evidence in light of the whole record before the agency that the project may have a significant effect on the environment.

CEQA prohibits a public agency from carrying out or approving a project for which an EIR has been completed which identifies one or more significant effects on the environment unless the agency makes one or more of specified findings, which may include a finding that specific economic, social, or other considerations make infeasible the mitigation measures or alternatives identified in the EIR. This bill includes legal and technological considerations and provides that those considerations include considerations for the provision of employment opportunities for highly trained workers.

CEQA requires the lead agency to determine whether a project may have a significant effect on the environment based on substantial evidence in the record, and requires a court, in an action or proceeding challenging an action of a public agency on the grounds of noncompliance with the Act, to determine whether the action of the agency is supported by substantial evidence in light of the whole record. State guidelines adopted by the Secretary of the Resources Agency to implement CEQA require the preparation of an EIR if it can be fairly argued on the basis of substantial evidence that the proposed project may have a significant effect on the environment. This bill requires the lead agency to make its determination based on substantial evidence in light of the whole record, as specified.

The bill requires the court to make a specified finding before issuing an order requiring a public agency or real party in interest to suspend activity relating to a project in an action or proceeding under CEQA, as specified. The bill prohibits the bringing of an action or proceeding under CEQA unless the alleged grounds for noncompliance with the Act were presented to the public agency, and unless the person bringing the action or proceeding objected during the public comment period or prior to the close of the public hearing on the project.

Existing law prohibits a lead agency under the Act, in establishing criteria for the completeness of an application for a development project, from requiring the informational equivalent of an EIR as a prerequisite for completeness of the application. This bill also applies that prohibition to a responsible agency, and prohibits the lead or responsible agency from otherwise requiring proof of compliance with CEQA as such a prerequisite. The bill requires certain state agencies, including WRCB, to perform an environmental analysis containing specified information at the time of adopting a specified rule or regulation, or performance standard, or treatment requirement. This bill was signed by the Governor on October 10 (Chapter 1131, Statutes of 1993).

SB 235 (Ayala). Existing law, which is to be repealed on January 1, 1994, requires the registration of an appropriation of water for a small domestic use and requires WRCB to submit a prescribed report, by January 1, 1993, to the Governor and the legislature. As introduced February 8, this bill deletes the reporting provision and the repeal date. This bill was signed by the Governor on June 22 (Chapter 38, Statutes of 1993).

SB 7 (Kelley), as amended March 22, provides that described water suppliers may acquire, store, provide, sell, and deliver reclaimed water for any beneficial use, including but not limited to municipal, industrial, domestic, and irrigation uses, if the water use is in accordance with specified statewide reclamation criteria and regulations. This bill was signed by the Governor on June 29 (Chapter 53, Statutes of 1993).

SB 990 (Kelley). The Porter-Cologne Water Quality Control Act requires WRCB to classify wastes and disposal sites to ensure the protection of water quality. The Board is required to adopt standards and regulations for waste disposal sites. Existing regulations define "designated waste." As amended August 31, this bill includes a similar definition in the Water Code. The bill also authorizes WRCB, after consultation with CIWMB and the Department of Toxic Substances Control, to adopt policies with regard to designated wastes, as prescribed. This bill was signed by the Governor on October 1 (Chapter 705, Statutes of 1993).

AB 1641 (Cortese). Existing law authorizes a local or regional public agency

authorized by law to serve water to sell, lease, exchange, or transfer, for use outside the agency, water that is surplus to the needs of the water users of the agency. As introduced March 4, this bill additionally authorizes the local or regional public agency to sell, lease, exchange, or 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. This bill was signed by the Governor on July 26 (Chapter 188, Statutes of 1993).

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, 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]*

SB 824 (Hayden). Under the Z'berg-Nejedly Forest Practice Act of 1973, a person is prohibited from conducting timber operations unless a timber harvesting plan prepared by a registered professional forester has been submitted to the California Department of Forestry and Fire Protection (CDF) and reviewed by the CDF Director to determine if the plan is in conformance with the Act and the rules and regulations of the state Board of Forestry. Upon receipt of the plan, CDF is required to place the plan, or a true copy, in a file available for public inspection in the county in which timber operations are proposed under the plan, and to transmit a copy of the plan to DFG, the appropriate RWQCB, the county planning agency, and, if within its jurisdiction, the Tahoe Regional Planning Agency, and to invite, consider, and respond in writing to any comments received from those agencies. As amended April 12, this bill would require the Board of Forestry to adopt any mitigation measures that are proposed by a RWQCB or DFG unless CDF demonstrates that its own proposed mitigation measures would result in greater protection for water and wildlife resources.

Under the Act, the Director of DFG or WRCB is authorized to file an appeal with the Board of Forestry on the approval of a plan by the CDF Director, under specified circumstances. This bill would authorize the appropriate RWQCB to so appeal, rather than WRCB, and would make related changes.

Under the Act, the Board of Forestry is required to adopt forest practice rules and regulations. This bill would require the Board to review recommendations for any rule changes that are submitted to it by RWQCBs and DFG at least twice each calendar year and to act on those recommendations within 120 days. The bill would prescribe related matters. *[S. NR&W]*

AB 2167 (Areias), as amended May 19, would require 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; to provide information on cost-effective methods for site investigations and affordable technologies with regard to the investigation and remediation of those discharges; and to provide an informal resolution process, including a technical ombudsperson, by which small businesses may appeal decisions of regional boards with regard to the investigation and remediation of those discharges. *[A. W&M]*

AB 2110 (Cortese), as amended August 17, 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 481 (Johnston). Existing law, which is to be repealed on January 1, 1994, requires WRCB to impose fees on all point and nonpoint dischargers who discharge into enclosed bays, estuaries, or any adjacent waters in the contiguous zone or the ocean; prohibits WRCB from imposing a fee that exceeds $30,000 per discharger; and makes any person who fails to pay the fee when requested to do so by WRCB guilty of a misdemeanor and subjects that person to civil liability. As amended April 27, this bill would delete the penalty provision, prohibit WRCB from imposing a fee on any agricultural nonpoint source discharger unless certain requirements are met, and limit the fee to not more than ten cents per acre per year. The prohibition would have retroactive effect and would require WRCB to make any necessary credits or refunds when funds are appropriated for that purpose. The bill would make the maximum fee that WRCB may impose on a local public agency that pays the fees on behalf of the agricultural nonpoint source dischargers $30,000. The bill would provide that a local public agency that pays the fees on behalf of agricultural nonpoint source dischargers is not responsible for the quality of any of those discharges.

The North Delta Water Agency Act prescribes the powers and purposes of the North Delta Water Agency. This bill would authorize the Agency to pay the fees described above that are imposed on the agricultural nonpoint source dischargers located within the boundaries of the Agency and to impose a benefit assessment to pay for those fees and related administrative costs. The bill would prohibit the Agency from regulating the activities of persons or entities that discharge wastes into the waters of the state. *[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 clean-up of the sites, and to amend water quality plans and policies relating to those sites. As amended May 27, this bill would require

the Director of Environmental Health Hazard Assessment to prepare a comprehensive plan for an aquatic pollution health risk assessment program, as prescribed; require WRCB to adjust and increase the total amount of fees collected pursuant to a prescribed provision of the Water Code in order to fund the Office of Environmental Health Hazard Assessment to carry out the aquatic pollution health risk assessment program; and 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 the Office to carry out that program. *[S. Appr]*

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, 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, 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 2054 (Cortese), as amended June 29, would authorize 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; extend that authority to WRCB under certain circumstances; make an appropriation by requiring that the money that is raised in connection with the imposition of a civil penalty be deposited in the continuously appropriated State Water Pollution Clean-up and Abatement Account of the State Water Quality Control Fund; and authorize WRCB to apply to the clerk of the appropriate court in the county in which the civil penalty was imposed for a judgment to collect the penalty.

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. This bill would repeal that provision.

Existing law 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 would delete that provision and would instead authorize WRCB, in any Board proceeding, to grant immunity to a witness who is compelled to testify or to produce evidence and who invokes the privilege against self-incrimination. The bill would require 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 would require WRCB to dismiss, continue, or limit the scope of the proceedings, as prescribed. *[S. Floor]*

AB 52 (Katz). Existing law 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. As introduced December 15, this bill would—among other things—delete that requirement and instead require that the proposed change not unreasonably affect the environment. The bill would require WRCB, upon the receipt of notification of the proposed temporary change, to notify the appropriate county board of supervisors of the proposed transfer and other interested persons or entities. *[13:1 CRLR 110] [A. WP&W]*

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 May 10, 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 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 as a result of waste, unreasonable method of use, or unreasonable method of diversion of water if the water user undertakes subsequent conservation efforts, as specified. *[S. AWR]*

AB 173 (V. Brown), as amended August 30, 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]*

LITIGATION

In ***United States and California v. City of San Diego***, No. 88-1101-B (U.S.D.C., S.D. Cal.), EPA is appealing Judge Rudi Brewster's decision allowing the City of San Diego to build only a part of the huge sewage treatment project it agreed to build in a previous consent agreement with EPA. *[13:2&3 CRLR 182; 13:1 CRLR 110]* At this writing, the U.S. Ninth Circuit Court of Appeals is scheduled to hear oral argument from the parties on October 6.

RECENT MEETINGS

At its June 17 meeting, WRCB authorized its Executive Director or his/her designee to accept two federal fiscal year 1994 grants; one is for leaking petroleum

underground storage tanks, and the other is for underground storage tanks. The Board also authorized its Executive Director to amend the contract with the City of San Diego to extend the time to December 31, 1998, for resolving the San Diego/Tijuana border water quality problem. WRCB also approved a loan of $26.1 million from the State Revolving Fund to the Santa Ana Watershed Project Authority for the construction of a regional tertiary treatment system for the cities of San Bernardino and Colton.

At its July 22 meeting, WRCB approved the following loans: $2.1 million to the City of Loyalton for treatment plant improvements; $1.5 million to the Stege Sanitary District for the Moeser/Stockton relief sewer; $6.94 million to the Padre Dam Municipal Water District for the construction of tertiary process facilities at the Santee Water Reclamation Plant; $275,000 to the Nevada County Department of Sanitation for the Cascade Shores Waterwaste Project; $5 million to the Orange County Water District for the construction of the City of Tustin desalter project; $12.2 million to the San Elijo Joint Power Authority for its water reclamation system; and $20 million to the City of Escondido for a water reclamation project.

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, 81 (64%) have received certification from the Commission at this writing.

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 line 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).

MAJOR PROJECTS

Commission Monitors Chevron's Compliance With Conditions of Tankering Permit. Last January, the Commission approved a controversial permit allowing Chevron and several other oil companies to ship up to 2.2 million gallons of crude oil per day by tanker from the Point Arguello oil project off Santa Barbara to Los Angeles until January 1, 1996. *[13:2&3 CRLR 183–84; 13:1 CRLR 113; 12:4 CRLR 195]* The Arguello oil producers, which include Chevron, Texaco, and Phillips Petroleum, began to tanker crude under the permit on August 9; by September 3, the producers had shipped approximately 461,000 barrels by tanker (two tanker loadings).

The producers prefer tankering to shipping oil via pipeline because of lower costs and greater market flexibility. Environmental groups, however, fear that excessive oil tankering through the Santa