other counties comply with strict permit use requirements.

FUTURE MEETINGS:

DPR's Pesticide Advisory Committee and Pesticide Registration Evaluation Committee regularly meet to discuss issues of practice and policy with other public agencies; both committees meet in the annex of the Food and Agriculture Building in Sacramento. The Pesticide Advisory Committee, which meets every other months, is scheduled to meet September 18 and November 20. The Pesticide Registration Evaluation Committee is scheduled to meet September 18, October 16, November 20, and December 18.

WATER RESOURCES CONTROL BOARD

Executive Director: Walt Pettit
Chair: W. Don Maughan
(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 consists of five full-time members appointed for four-year terms. The statutory appointment categories for the five positions ensure that the Board collectively has experience in fields which include water quality and rights, civil and sanitary engineering, agricultural irrigation, and law.

Board activity in California operates at regional and state levels. The state is divided into nine regions, each with a regional board composed of nine members appointed for four-year terms. Each regional board adopts Water Quality Control Plans (Basin Plans) for its area and performs any other function concerning the water resources of its respective region. 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.

The Board 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.

MAJOR PROJECTS:

Salmon, Bay/Delta Salinity, and Water Rights. On March 3, WRCB began emergency hearings to consider whether it should take drought-related water rights actions this year to conserve water storage upstream of the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay/Delta) for protection of the endangered winter-run chinook salmon. To help the salmon, adequate cold water must be retained in Shasta Reservoir or in Trinity Reservoir to maintain a temperature of 56 degrees Fahrenheit in a reach of the upper Sacramento River during spawning and incubating. On March 19, WRCB approved an order temporarily amending the water rights permits of the federal Central Valley Project (CVP) and the State Water Project (SWP) to make it easier for them to meet their water rights permit terms and conditions for the Suisun Marsh and the Contra Costa Canal intake. This action came in response to the continuing drought and the decision of the National Marine Fishery Service to protect winter-run salmon by requiring closure of the Delta Cross Channel from February 1 through May 1, and closure of the Suisun Marsh salinity control gates from March 1 through April 15, unless documentation shows that no water would be diverted from Montezuma Slough through unscreened diversions during this period. These closures were expected to make it difficult or impossible for the CVP and SWP to meet their water rights permit terms and conditions for some of the Suisun Marsh standards and for the 150 milligram per liter chloride (salinity) standard at the Contra Costa Canal intake.

WRCB's Bay/Delta proceedings, on hold for months pending completion of an environmental impact report and resubmission of a water quality control plan for salinity to the U.S. Environmental Protection Agency (EPA) *[12:1 CRLR 154]*, were given new impetus by Governor Wilson's April 6 announcement of his new statewide water policy. Wilson announced that he will move to end five years of uncertainty by ordering Cal-EPA and WRCB to work with the federal EPA to set interim water quality standards by the end of this year. These salinity standards could either raise or lower the volumes of water that can be pumped to Central Valley farmers and southern California. WRCB scheduled a series of summer hearings to "determine what actions should be taken on an interim basis to ensure that the available water supply is reasonably used and that the public trust resources in the Bay-Delta Estuary are reasonably protected." Hearings were scheduled from June 22 to July 23, with the first two days and July 17 reserved for non-evidentiary statements, and the remaining dates for direct testimony that is evidentiary in nature.

Wilson's proposal called for a governor-appointed oversight council that would be given three years to recommend a long-term solution to environmental and plumbing problems in the Bay/Delta, with agricultural, urban, and environmental representation. The Governor also endorsed construction of three proposed reservoir projects that provoked fear among some environmentalists that he is setting the stage for a replay of the Peripheral Canal referendum that was defeated in 1982. (*See supra* reports on ENVIRONMENTAL DEFENSE FUND and SIERRA CLUB for related discussion.) The Governor's plan also included water conservation, recycling, better management of groundwater, and water marketing. Some critics pointed out that Wilson refused to support a "free market" approach to water sales by maintaining that local water districts must have a "strong role" in transfers.

In his April announcement, the Governor reiterated his desire to take state ownership of the federal Central Valley Project, which he first announced on February 27. More than twice as large as SWP, CVP is a giant federal water system that uses twenty dams and three major canals stretching from Lake Shasta to the Tehachapi Mountains to move as much as 25% of California's water supply. Currently, the U.S. Bureau of Reclamation controls the 56-year-old project, which remains $6 billion in debt due to the federal government's policy of selling water to farmers below cost.

Not only has CVP been a big money loser for taxpayers, but its hydroelectric dams have contributed to the destruction of many species of fish, such as the Sacramento River winter-run chinook salmon, whose recorded numbers have fallen from 300,000 twenty years ago to an appallingly low 191 last winter. (*See infra* agency report on FISH AND GAME COMMISSION for related discussion.)

Some environmentally concerned members of Congress have proposed changing the way the CVP distributes water in order to help prevent the extinction of endangered species. Senator Bill Bradley's bill (S. 586), which would have (among other things) provided more water for fish, was recently defeated in the Senate. However, a similar measure authored by California Representative George Miller continues to advance in the House. Farmers of the Sacramento and San Joaquin valleys, the major beneficiaries of the CVP, have traditionally opposed legislation designed to preserve endangered species. They view any change in CVP water allocations as a threat to the Project's long but turbulent history of subsidized water rates.

It appears that a major reason Governor Wilson wants the state to take control of the CVP is to help ensure continued future water deliveries to traditional farmer beneficiaries. Wilson, who claims the takeover could be accomplished at no cost to California taxpayers, proposed transfer negotiations to the Bush administration on February 28. Control of the CVP could be shifted through administrative action in as few as six months, but any future transfer of actual ownership would be more complicated, requiring full congressional approval. Governor Wilson's claim that state takeover could be accomplished at no direct cost to California taxpayers would seem to imply that all future consumers of CVP water and electricity will be paying much higher user fees.

Drought Update: Year Six. In keeping with California's sixth consecutive year of drought, April precipitation was well below average. The exceptions were the southeastern desert counties where some early April showers boosted average area precipitation above the very low average of 0.2 inches. Statewide precipitation since October 1, 1991, is about 85% of average, and precipitation in major Sierra watersheds is generally about 70%.

The state witnessed an example of the failure of economic rationality in February when heavy rains in southern California washed quickly into the ocean instead of into reservoirs. The Department of Water Resources keeps water reservoirs in southern California filled to the brim during the winter months, because it is cheaper to pump water to dry southern California through the SWP at night during the winter, and to store the water in reservoirs until summer, than it is to pump the water southward during the hotter summer months. As a result, the reservoirs in southern California did not have the capacity to hold significant amounts of the precious rainwater that fell between February 10–17, when, for example, 4.1 billion gallons of water had to be dumped from Castaic Lake into the Pacific Ocean in order to prevent local flooding. The tragically wasted 4.1 billion gallons of water could have supplied more than 60,000 people, a city the size of Redondo Beach, with water for an entire year.

This is the sixth consecutive year of below average runoff. Water runoff in 1992 is forecast to be about half of average, not much different from last year. SWP deliveries will be at 45% of requests and CVP deliveries will range anywhere from 25–75%, depending on the type of contract.

Total in-state reservoir storage on May 1 was 20.2 million acre-feet, 72% of average. Because of a warm spring, much of the snowpack has already melted, with mountain stream runoff expected to recede rapidly compared with last year. May 1 snowpack was only 25% of average, while the snowpack last year at this time was 65% of average. This means that the current reservoir storage is likely to fade during the next two months, and late summer levels will probably be similar to those of last year.

The current focus on early 1992 drought impact is east of the Sierra in the North Lahontan area, where conditions are extremely dry. Seasonal precipitation has even been below last year's low level, and streamflow forecasts include 33% of average on the Walker River and 44% on the Truckee River. Further evidence of the North Lahontan drought is found in reports from fishery biologists and wardens who say that in the northeastern corner of California, 1992 appears to be one of the worst years ever. Department of Fish and Game biologist Paul Chappell of Susanville said the Eagle Lake fishery program is under stress as the lake level slips, and many Modoc and Lassen county reservoirs, which in wet years produce trophy-sized trout, are expected to be dry before the summer ends. Laird Marshall, assistant manager at Crystal Lake Hatchery, said an April 1 flight over the northeast showed half the lakes and reservoirs already low. He said the area is "the driest I've seen in six years of flights."

Six counties—Fresno, Kern, Kings, Lake, Sonoma, and Tulare—still have a local drought emergency in place and continue to request the Governor to proclaim a state of emergency. In addition, Madera County still has a local emergency declaration. The state of emergency proclaimed by Governor Deukmejian in 1990 for Santa Barbara City and County is still in effect. Unfortunately, there is no relief in sight for one of the worst droughts in California history.

San Diego Sewage Disaster. From February 2, when the U.S. Coast Guard discovered ruptures in a decrepit, 29-year-old sewage outfall pipe off Point Loma, until April 4, when the breaks were finally repaired at a cost of $11 million, each new day visited 180 million gallons of partially-treated sewage on the San Diego coastline. Twenty miles of beach were contaminated and closed from the U.S.-Mexico border to the mouth of the San Diego River. Water samples measured fecal coliform bacteria counts as high as 1,100 times the legal limit for safe ocean bathing.

On February 6, Governor Wilson declared a state of emergency in San Diego County and announced a $10 million state and federal aid package for immediate repairs. The state money came from WRCB in the form of a $2.5 million grant from the 1984 Clean Water Bond Act and $2 million in loans from the Board's Clean-up and Abatement Account. The federal share was to be taken from a $40 million grant that had previously been intended for an upgrade project for San Diego's sewage system.

Although City of San Diego officials had access to inspection reports in 1990 indicating that the sewage outfall pipe's connections were already corroded, they refused to accept any responsibility for negligence in the sewage disaster, and instead have tried to direct blame at various alternative culprits, ranging from turbulent waves to boat anchors. However, some San Diego County officials asserted that the San Diego City Council is guilty of ignoring warnings about the deteriorating condition of the sewage outflow pipe from the Regional Water Quality Control Board (RWQCB) as early as 1989. They pointed out that the sewage leak may be in violation of the City of San Diego's sewage discharge permit. If negligence is found, RWQCB is authorized to fine the city up to $10,000 per day of the sewage leak and $10 for every gallon spilled over 1,000 gallons. Pending the results of a full investigation of the breakdown in the outflow sewage pipe, RWQCB will defer a decision on possible fines.

Assemblymember Tom Hayden asserted that as the former mayor of San Diego, Pete Wilson had led the city's effort to intentionally avoid complying with federal Clean Water Act requirements, an effort that eventually became the subject of a federal lawsuit and resulted in substantial fines for the City of San Diego. (*See infra* LITIGATION.) If then-Mayor

Wilson had complied with the Clean Water Act, Hayden noted, San Diego would have constructed a new secondary sewage treatment plant long ago, which could have eliminated the dangerously high levels of bacteria contained in the discharged effluent.

Whoever is at fault, the citizens of San Diego have been saddled with a serious health risk. San Diego has a long and infamous history of sewage spills, but none of the past incidents has been as overwhelming as the February disaster. San Diegans were threatened with typhoid, dysentery, hepatitis, heavy metals, and toxins, some of which can accumulate and produce serious disease ten or fifteen years later. While the ruptured sewage pipe was finally repaired on April 4, the February 22 edition of the *Los Angeles Times* quoted Robert H. Sulnick, Executive Director of the American Oceans Campaign, as saying that even if the sewage outflow pipe is repaired in the near future, it will "at the very least take five years for waters to return to pre-spill conditions."

Anxious to avoid another such disaster, city officials considered building an expensive underground tunnel that would have run beneath the ocean floor for a distance of 4.4 miles. However, in March the city began receiving bids for extending the present type of outfall pipe by 2.5 miles, required under a consent decree in the still pending lawsuit, for as "little" as $55 million—far less than the estimated $700 million it might have cost to build an underground tunnel. The City eventually opted for an extension of the cheaper, above-ground outflow pipe.

Southern Pacific May Face Charges For Dunsmuir Spill. On January 24, the Central Valley RWQCB formally referred two civil charges against Southern Pacific Transportation Company to the state Attorney General's Office, which will decide whether to file those charges in court. Southern Pacific allegedly violated state water pollution laws when one of its freight trains derailed on July 14, 1991, on a bridge six miles north of Dunsmuir, dumping almost 20,000 gallons of metam sodium into the Sacramento River. *[12:1 CRLR 12; 11:4 CRLR 153, 164]*

Although frequently used as a herbicide, metam sodium has dangerous qualities which government agencies such as the EPA are only now beginning to discover. For example, only as recently as October 7, the EPA announced that it would prohibit homeowners from using metam sodium because exposure to the chemical might increase the risk of birth defects in human beings.

The spill killed virtually all aquatic life along a 42-mile stretch of the Sacramento River downstream from the spill site, including more than 100,000 fish. People living in the vicinity of the spill have suffered skin rashes, sores, difficulty breathing, burning eyes, headaches, unusual fatigue, and even miscarriages, and many of the long-term effects of metam sodium are simply not known yet. A summary report released by Attorney General Dan Lungren in October 1991 estimated that it will take at least twenty years for the aquatic life and fifty years for the forest life along the Sacramento River to return to pre-spill conditions.

The Attorney General may bring civil charges only upon recommendation of one of the state pollution authorities, such as the Central Valley RWQCB. One of the charges would require the Attorney General to prove that the railroad's negligence led to the wreck, while the other would require only proof that Southern Pacific's accident resulted in a spill. At this writing, the AG has not decided whether to pursue these charges. (*See infra* agency report on the PUBLIC UTILITIES COMMISSION for related discussion.)

Public Hearing Regarding Adoption of State Policy for Water Quality Control. On March 31, WRCB scheduled a June 1 public hearing in Sacramento to consider policies and procedures for the investigation, clean-up, and abatement of unauthorized discharges of hazardous substances. Water Code section 13307 requires WRCB to establish policies and procedures that its representatives will follow in the oversight of investigations, clean-up, and abatement activities resulting from unauthorized discharges of hazardous substances. A workshop will follow the hearing to discuss issues raised. The Board expected to make a decision as early as the June 19 meeting.

Proposed Amendments to Regulations Governing Underground Storage of Hazardous Substances. On May 8, the Board published notice of its intent to amend several regulations governing the underground storage of hazardous substances, specifically sections 2611, 2621, 2631, 2642, 2643, 2646, 2680, and 2681, Division 3, Title 23 of the CCR. The proposed amendments will, among other things, modify certain definitions and terms; clarify which tanks and pipelines are exempt from regulation; state additional equipment requirements; clarify certain performance standards; specify mandatory disclosures and corrective actions; set forth upgrade requirements; delete certain existing requirements; and conform the regulations to state and federal statutes. No public hearing is scheduled. WRCB was scheduled to receive written comments on this proposal until June 23.

In a related matter, WRCB's Fifth Annual Underground Storage Tank Conference is scheduled at the Santa Clara Convention Center on September 9–11. WRCB hopes to provide an opportunity for state and local regulators, industry, and the regulated community to receive training and share ideas concerning problems associated with underground storage tanks. This is the fifth consecutive year of this conference; approximately 1,400 people attended in 1991.

Board Approves 1992 Water Quality Assessment. On May 18, WRCB adopted a resolution approving the 1992 Water Quality Assessment, which incorporates lists contained in federal Clean Water Act sections 303(d), 304(l), 314, and 319. The Water Quality Assessment (WQA) is a catalog of the water bodies in the state organized by region and by water body type. The WQA lists the water quality condition of each water body or portion of water body as good, intermediate, impaired, or unknown. The statewide WQA is a compilation of the nine adopted regional WQAs. Each California RWQCB adopted its regional WQA at a public meeting between November 1991 and March 1992. The 1992 RWQCB updates contain 2,859 water bodies. The last WQA, which was adopted in April 1990, contained 2,509 water bodies.

The WQA also serves the purpose of satisfying several CWA requirements for lists and reports, including sections 303(d) (Water Quality Limiting Segments) and 304(l) (Long List of Impaired Water Bodies). For the 1992 WQA update, the RWQCBs were asked to place special emphasis on reviewing information for the state's highest priority water bodies and those surface waters on the CWA sections 303(d) and 304(l) lists.

The section 303(d) list contains water quality limiting segments where standards are not attainable after implementation of technology-based requirements—Best Available Technology/Best Control Technology. The section 304(l) Long List contains waters that are not meeting standards, objectives, or goals of the CWA due to point and nonpoint source discharges of any pollutants. The section 303(d) and 304(l) lists both include listings of impaired water bodies. The differences between these two lists are primarily in the type of follow-up actions required, and time schedules for those actions.

Water bodies identified on the section

303(d) list will require Total Daily Maximum Loads (TDMLs) to be established for them. Subsequently, each point source and nonpoint source discharging pollutants to the listed water body will require a Waste Load Allocation or Load Allocation, respectively, assigned to it. The 303(d) requirements include establishing a time schedule for the development of TMDLs. WRCB staff is currently preparing a TMDL-water body priority list including a schedule of actions for the highest priority waters.

The 1990 WQA listed 245 water bodies on the 304(l) Long List. The EPA's final decision regarding the state's 304(l) list of impaired waters, transmitted to the WRCB in September 1990, added another 260 water bodies to the federal 304(l) Long List. For the 1992 WQA update, WRCB requested that supporting data for these additional 260 water bodies be sent to the RWQCBs from the U.S. Fish & Wildlife Service, California Department of Fish and Game, and the American Fisheries Society, since they had originally proposed the Long List additions to EPA. Where supporting data have been provided, water bodies have been added to the 304(l) Long List. The 1992 WQA contains 349 water bodies, which is 104 more than the 1990 WQA but is 156 less than the federal 304(l) Long List.

The regional boards were asked to review the 1990 WQA data for accuracy (primarily the water quality condition estimates) and to complete the pollutant and source characterizations for the 303(d) listed waters and those water bodies considered high priority in the Clean Water Strategy. The review of these lists has allowed the regional boards the opportunity to incorporate the most recent water quality data and make changes as appropriate.

Over 1,500 changes were made to the 1990 version of WQA. After considering the impacts that the RWQCBs would experience under these changes, WRCB finally decided to approve the Water Quality Assessment, incorporating federal Clean Water Act section 303(d), 304(l), 314, and 319 lists.

Certification of Wastewater Treatment Plant Operators and Classification of Wastewater Treatment Plants. On March 19, WRCB adopted regulations pertaining to wastewater treatment plants and wastewater treatment plant operators. The regulatory action amends Articles 1 and 2, repeals Articles 3 through 6, and adopts new Articles 3 through 9 in Title 23 of the CCR. The regulations reorganize and clarify existing regulations; require that agencies report more information concerning plant operators to the Board, including disciplinary action and change of employment of the plant's chief operator; propose slight changes to the classification of wastewater treatment plants; alter application and certification procedures and examination content; and add a new fee schedule for plant operators. At this writing, the Office of Administrative Law (OAL) is reviewing these proposed regulatory changes.

Governor Appoints Two New Board Members. During February, Governor Wilson appointed Marc Del Piero and James M. Stubchaer to fill vacant positions on the Board.

On February 1, the Governor appointed Monterey County supervisor Marc Del Piero to fill the attorney position on the Board, which had remained vacant for an entire year since Board member Darlene Ruiz's resignation in December 1990. WRCB is composed of five full-time members but, for the past year, the Board had to function with only four members due to Governor Wilson's inaction following Ruiz's resignation.

Widely viewed as an ally of southern California and Central Valley water development interests, Ruiz had been appointed to WRCB in 1984 by former Governor Deukmejian. Ruiz resigned her WRCB position before the expiration of a second four-year term amidst allegations of misconduct. The Sierra Club and other lobbying groups charged that Ruiz had secretly disclosed draft plans in the fall of 1990 to water contractors who were affected by water quality standards WRCB was devising for the Sacramento-San Joaquin River Delta. *[11:3 CRLR 180]* Ruiz later acknowledged that she had in fact distributed drafts of the plans to a number of water export interests, including the financially powerful Metropolitan Water District in southern California. Ruiz asserted that it is not unethical for WRCB members to engage in such communications with affected interests when the Board is taking part in quasi-legislative activity. Not all Board members agreed with her.

Shortly after making those communications to water export interests, Ms. Ruiz resigned from the WRCB and, for reasons unknown to the Board, Governor Wilson waited more than a year to appoint her replacement. Unfortunately for Ruiz's replacement, Marc Del Piero, his present four-year term will expire just three years from now, on January 15, 1995, due to the Governor's delay.

On a much less controversial note, Governor Wilson appointed James M. Stubchaer on February 20 to fill the sanitary engineering position vacated by Edwin H. Finster, whose four-year term expired in January. Stubchaer worked for many years as a water engineer for the Santa Barbara County Flood Control and Water Conservation District, and has served as a member of the California Water Commission. Governor Wilson's appointments of Del Piero and Stubchaer are subject to Senate approval within one year.

LEGISLATION:

AB 3359 (Sher). Under existing law, state agencies are generally required to adopt regulations in accordance with prescribed procedures and requirements, and OAL is required to review adopted regulations and to make specified determinations. Under existing law, the San Francisco Bay Conservation and Development Commission has adopted the San Francisco Bay Plan. As introduced February 21, this bill would exempt from the above requirements for adoption of regulations, the Plan and the adoption of any amendments thereto. The bill would also exempt from those requirements the adoption of specified waste discharge requirements and permits and the adoption of state policy for water quality control and water quality control plans and guidelines by WRCB and the RWQCBs. *[A. Floor]*

AB 2449 (Bentley). The existing Personal Income Tax Law and the Bank and Corporation Tax Law allow, by reference to a specified federal statute, a deduction for amortization of pollution control facilities; the state certifying authority, as defined, is required to certify to the federal certifying authority that the pollution control facility is constructed, reconstructed, erected, or acquired in conformity with the state program or requirements. Existing law defines the state certifying authority as the Department of Health Services. As introduced February 3, this bill would instead define WRCB as the state certifying authority in the case of water pollution. *[S. Rev&Tax]*

AB 2464 (Lee). The Porter-Cologne Act requires WRCB to, among other things, classify waste and disposal sites to ensure protection of water quality. As amended April 1, this bill would additionally require WRCB, within the limits of available resources, to adopt policies, guidelines, and standards for the disposal of dredged materials and for its utilization for various purposes, as specified. *[S. AWR]*

AB 2473 (Burton), as amended April 6, would require WRCB and the regional boards, on or before July 1, 1993, to iden-

tify prescribed dischargers which are not yet subject to waste discharge permits; require persons for whom waste discharge requirements have been prescribed and those identified dischargers to pay an annual fee pursuant to a prescribed interim fee schedule which would remain in effect only until legislation establishing a fee schedule is enacted, or until July 1, 1994, whichever is earlier; and require WRCB to set fees to generate the amounts appropriated from the Waste Discharge Permit Fund, which the bill would rename the Water Protection Fund. This bill would also authorize WRCB to enter into an agreement with the State Board of Equalization to collect the fees. *[S. Rls]*

AB 2533 (Alpert), as amended April 9, would require the RWQCBs to include, in all national pollutant discharge elimination system (NPDES) program permits issued on and after January 1, 1993, to dischargers that discharge directly into the ocean, the bacterial assessment and remedial action requirements included in the California Ocean Plan. *[S. AWR]*

AB 3180 (Woodruff), as amended April 21, would create the Leaking Underground Storage Tank Cost Recovery Fund in the general fund, and would authorize WRCB to expend the money in the Fund—upon appropriation by the legislature—for administrative expenses related to release detection, prevention, and correction with regard to underground storage tanks. *[A. W&M]*

AB 3323 (Hayden), as introduced February 20, would require WRCB to formulate and adopt water quality standards for marine bay, estuarine, and coastal waters to protect swimmers and coastal beach users, as prescribed. *[A. Floor]*

AB 3730 (Costa), as amended April 21, would require WRCB, the Department of Water Resources (DWR), and the Department of Fish and Game to annually prepare recommendations based on certain surveys, relating to the times, terms, and conditions for the short-term and long-term transfer of water from the Sacramento-San Joaquin Delta. The bill would prohibit WRCB from denying a proposed change for purposes of a water transfer on the grounds that the proposed change would, within the Delta, injure any legal user of the water or unreasonably affect fish, wildlife, or other instream beneficial uses if the times, terms, and conditions of the proposed transfer are in accordance with those recommendations. *[A. W&M]*

SB 1277 (Ayala). Existing law authorizes RWQCBs to require specified persons or entities discharging waste to submit certain technical or monitoring program reports; any person failing to furnish a required report is guilty of a misdemeanor. As amended April 9, this bill would make those provisions applicable to persons or entities who have discharged, discharge, or are suspected of discharging the waste.

Existing law provides that a person who discharges waste, or threatens to cause or permit the discharge of waste, into waters in violations of a waste discharge or other specified requirement is liable for reasonable costs incurred by a government agency taking remedial action to clean up or abate the effects of the waste. This bill would provide that the amount of these costs constitutes a lien on the affected property upon the recordation of a notice of lien. The bill would authorize the lien to be foreclosed by an action brought by WRCB for a money judgment, and would require that any money recovered be deposited in the State Water Pollution Clean-up and Abatement Account. *[S. Floor]*

SB 1380 (Ayala), as amended April 21, would enact the Water Recycling Bond Law of 1992, which would authorize, for the purpose of financing a water recycling program, the issuance of bonds in the amount of $70 million. The bill would also enact the Clean Water Bond Law of 1992, which would authorize, for purposes of financing prescribed water pollution control and reclamation programs, the issuance of bonds in the amount of $280 million. *[A. W&M]*

SB 1559 (Johnston), as amended April 21, would require WRCB to identify surface impoundments and the owners and operators of those surface impoundments which are exempted from specified provisions of the Toxic Pits Clean-up Act of 1984, and would require regional boards, within 90 days after the Board identifies such a surface impoundment, to issue an order to require the owner and operator of the surface impoundment to conduct a specified monitoring program and to submit a hydrogeological assessment report on or before January 1, 1994, to the regional board. *[S. Appr]*

SB 1669 (Hill), as amended May 12, would require DWR to carry out the San Joaquin Valley Drainage Relief Program, which the bill would establish. The bill would require DWR to enter into interagency agreements with WRCB, DFG, the Wildlife Conservation Board, and other appropriate agencies to provide for the purchase and management of prescribed agricultural land in the San Joaquin Valley. *[S. Appr]*

SB 1865 (Hart), as amended March 26, would require WRCB, on or before June 1, 1994, and annually thereafter, to conduct and publish a statewide survey on beach postings and closures due to threats to public health. *[S. Appr]*

SB 1866 (Johnston), as amended April 28, would enact the Delta Protection Act of 1992 to create the Delta Protection Commission consisting of nineteen members, and specify the powers and duties of the Commission, which would be required to prepare, adopt, review, and maintain a comprehensive long-term resource management plan for the Delta which meets specified requirements. *[S. Floor]*

The following is a status update on bills reported in detail in CRLR Vol. 12, No. 1 (Winter 1992) at page 155–56:

AB 2090 (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. As amended in September 1991, this bill would require WRCB, upon receipt of notification of the proposed temporary change, to notify in writing the Department of Fish and Game and the appropriate county board of supervisors of the proposed transfer.

Existing law authorizes WRCB to approve a petition for a long-term transfer of water or water rights involving a change of point of diversion, place of use, or purpose of use if WRCB determines that the transfer meets certain conditions, including a requirement that the change would not unreasonably affect fish, wildlife, or other instream beneficial uses. This bill would delete that requirement and instead include among those conditions the requirements that the proposed long-term transfer would not cause a significant adverse effect on the environment, and would not unreasonably affect the overall economy or the environment of the county from which the water is being transferred.

This bill would also authorize every local or regional public agency to sell, lease, exchange, or otherwise transfer water, the use of which is foregone during the transfer period by an agency water user, for use inside or outside the agency. This bill would also authorize a water user to transfer its water allocation received from a public water agency, with specified exceptions. *[S. AWR]*

ABX 15 (Kelley) would authorize WRCB to make loans or grants to fund eligible water reclamation projects, as defined, in order to relieve emergency drought situations. *[A. Floor]*

AB 614 (Hayden) would make legisla-

tive findings and declarations relating to marine pollution. *[S. inactive file]*

AB 88 (Kelley) would provide that the adoption or revision of state policy for water quality control and water quality control plans and guidelines, the issuance of waste discharge requirements, permits, and waivers, and the issuance or waiver of water quality certifications are exempt from the requirements of the Administrative Procedure Act. AB 88 would instead require WRCB and the regional boards to provide notice to specified persons and organizations, prepare written responses to comments from the public, and maintain an administrative record in connection with the adoption or revision of state policy for water quality control and water quality control plans and guidelines. *[S. AWR]*

SB 685 (Calderon) would require WRCB to adopt a fee schedule which assesses a fee on any owner or operator of a solid waste disposal site who has not submitted a complete and correct solid waste water quality assessment test to the appropriate regional board by a specified date. *[A. NatRes]*

AB 231 (Costa) would declare that, when the holder of an appropriative right fails to use any part of that water as a result of conjunctive use of surface water and groundwater involving the substitution of an alternative supply for the unused portion of the surface water, any cessation of, or reduction in, the use of appropriated water is deemed equivalent to a reasonable, beneficial use of the water, as prescribed. *[A. inactive file]*

AB 1103 (Bates) would, among other things, require specified regional boards to conduct unannounced inspections of waste discharges that require a NPDES permit and which could affect the waters of specified bays. *[S. AWR]*

AB 24 (Filante), as amended April 20, would enact the Water Resources Bond Law of 1992, the Water Recycling Bond Law of 1992, and the Clean Water Bond Law of 1992. *[S. Appr]*

The following bills died in committee: ***ABX 8 (Katz)***, which would have prohibited a local water district from preventing, prohibiting, or delaying a temporary change petitioned for pursuant to these provisions; ***AB 2004 (Cortese)***, which would have enacted the Water Quality and Water Conservation Bond Law of 1992, authorizing the issuance of bonds in the amount of $200 million for purposes of financing a specified program to aid in the acquisition and construction of groundwater treatment and recharge facilities and water conservation programs; ***AB 1132 (Campbell)***, which would have declared that it is the policy of this state to protect and preserve all reasonable and beneficial uses of the Bay/Delta Estuary and to operate the SWP to mitigate the negative impacts on the Estuary from the operation of the Project; ***AB 13 (Kelley)***, which would have provided that water which has not been reclaimed to meet prescribed safe drinking water standards is not deemed to constitute wastewater, but would authorize prescribed agencies to limit the use of that water; ***AB 1737 (Campbell)***, which would have required WRCB, DWR, and local public agencies to promote specified water practices in a prescribed order of priority, and to maximize the use of all feasible water conservation and wastewater reclamation options; ***AB 1802 (Eaves)***, which would have required WRCB to adopt, by regulation, energy conservation standards for plumbing fittings; ***SB 69 (Kopp)***, which would have required WRCB, in any proceedings for the establishment of salinity standards or flow requirements applicable to the SWP or the federal CVP, to include independent water quality objectives and water rights permit terms and conditions specifically for protection of the beneficial uses of the water of the San Francisco Bay; and ***SB 79 (Ayala)***, which would have prohibited WRCB, in implementing water quality control plans or otherwise protecting public trust uses of the waters of the Bay/Delta, from imposing on existing water rights permits or licenses new terms or conditions requiring Delta flows in excess of those in effect on January 1, 1991.

LITIGATION:

In ***City of Sacramento, et al. v. State Water Resources Control Board***, Nos. C007450, C007941 (Jan. 17, 1992), the Third District Court of Appeal held that annual rice pesticide plans devised by the California Department of Food and Agriculture (CDFA) and approved by the regional water quality control board for implementation in California's Central Valley are not subject to the California Environmental Quality Act (CEQA).

In 1975, the regional board formulated, and WRCB approved, a water quality plan covering the three basins of the Central Valley. Among the objectives in this plan for the Sacramento-San Joaquin Delta Basin was a determination that the total concentration of all pesticides should not exceed 0.6 parts per billion (ppb). At a December 1987 meeting of the RWQCB, the City of Sacramento, Assemblymember Lloyd Connelly, and the Sacramento Environmental Health Coalition (SEHC) presented comments regarding CDFA's proposed 1988 rice pesticide plan. The City of Sacramento obtains its water supply downstream from the discharge point used by rice growers. On February 26, 1988, SEHC filed a petition with WRCB objecting to the 1988 rice pesticide plan and claiming that the regional board failed to comply with CEQA. The City of Sacramento filed a petition in support of SEHC's position. WRCB took no action until October 21, 1988, when it notified SEHC that its petition would not be considered.

SEHC, the city, and Connelly filed suit on April 21, 1989, alleging that WRCB and RWQCB effectively amended the 1975 basin plan by repeatedly failing to enforce the 0.6 ppb objective for cumulative pesticide concentrations and were further attempting to formally amend the basin plan, in both cases without complying with CEQA. The trial court agreed, granting petitioners' writ of mandate requiring the regional board to comply with CEQA in its review of 1990 and subsequent rice pesticide plans and further ordered the regional board, in the event proposed discharges exceeded the 0.6 ppb objective, to include in its analysis of the plan any potentially significant environmental effects caused by failure to enforce the objective. The trial court also granted $50,000 in attorneys' fees to Connelly and SEHC. *[10:2/3 CRLR 195–96]*

On appeal, the Third District held that CDFA has been exempted from CEQA since December 28, 1979 when the Secretary of the Resources Agency certified the exemption under Public Resources Code section 21080.5(a). Further, WRCB and the regional board are also exempt from CEQA requirements, under either Water Code section 13389, as the lead agency, or pursuant to section 15253, Title 14 of the CCR, if CDFA was the lead agency. Since petitioners were no longer the prevailing party, the court of appeal also reversed the award of attorneys' fees.

In a related matter, trial was scheduled to begin on July 17 in ***City of Sacramento v. State Water Resources Control Board; California Regional Water Quality Control Board for the Central Valley Region; Rice Industry Committee as Real Party in Interest***, No. 363703 (Sacramento County Superior Court). In this proceeding, filed March 16, 1990, as the third in a series of lawsuits on this subject *[10:2/3 CRLR 195–96]*, plaintiff alleges that the boards violated state environmental and water quality laws when they adopted and approved a new pollution control plan in January and February 1990. The new plan for the Sacramento-San Joaquin Delta Basin invalidated the prior standard that

prohibited pesticide residues in the Sacramento River from exceeding 0.6 ppb. The Board contends that it complied with CEQA and the Porter-Cologne Act. The parties are currently attempting to negotiate a settlement. *[12:1 CRLR 156; 11:3 CRLR 181]*

On February 19, WRCB and the San Francisco RWQCB filed an opening appellants' brief in their appeal of the May 1991 judgment in ***State Water Resources Control Board and the Regional Quality Control Board, San Francisco Region v. Office of Administrative Law (San Francisco Bay Planning Coalition, Real Party in Interest)***, No. A054559. On May 6, the San Francisco Bay Planning Coalition (SFBPC) filed its responding brief and opening cross-appellant's brief. OAL also filed a responding brief in early May. In this case, the trial court held that WRCB's San Francisco Bay wetlands policies are regulations within the meaning of the Administrative Procedure Act (APA) and are not exempt from the Act; since the rules were not adopted pursuant to the APA, they are unenforceable. *[12:1 CRLR 156; 11:3 CRLR 180–81; 10:2/3 CRLR 196–97]* The trial court also denied SFBPC's cross-motion for an injunction enforcing OAL's decision and halting all implementation of WRCB's wetlands policies for the San Francisco Bay. This action of the trial court is also before the court of appeal for review.

WRCB's four main arguments are: (1) the legislature has repeatedly treated the state and regional boards' water quality planning authority as a separate and distinct function from the Board's authority to adopt regulations; (2) irreconcilable conflicts between the Porter-Cologne Act and the APA preclude application of the APA's rulemaking procedures to the water quality planning process; (3) extensive public participation in WRCB's water quality planning process distinguishes the process from any other state agency activity reviewed by OAL; and (4) the legislature's repeated amendments to the water quality planning process affirm the exclusion of plan amendments from the APA.

WRCB's reply was expected in July, and SFBPC is permitted a subsequent reply as cross-appellant.

In ***United States Department of Energy v. Ohio***, No. 90-1341 (Apr. 21, 1992), the U.S. Supreme Court held that the federal government is immune from liability for fines for violation of the Clean Water Act. Originally, the State of Ohio brought an action against the U.S. Department of Energy (DOE) for violations of the Clean Water Act and other state and federal pollution laws in operating its uranium processing plant in Fernald, Ohio. The issue before the Supreme Court was whether Congress has waived the federal government's sovereign immunity from liability for civil fines imposed for past failure to comply with the Clean Water Act, the Resource Conservation and Recovery Act of 1976, and state law supplanting the federal regulation.

The Court noted that "any waiver of the National Government's sovereign immunity must be unequivocal." Although the United States is specifically mentioned in the acts as subject to suit, the Court concluded that the United States is not subject to the civil penalty provisions of the above-mentioned statutes. A dissenting (in part) opinion by Justice White, with Justices Blackmun and Stevens concurring, termed the majority opinion "mental gymnastics" and stated that "[i]t is one thing to insist on an unequivocal waiver of sovereign immunity. It is quite another 'to impute to Congress a desire for incoherence' as a basis for rejecting an explicit waiver."

WRCB has filed an answer to the petition for writ of mandate and complaint for attorneys' fees filed by a group of environmentalists in May 1991 in ***Golden Gate Audubon Society, et al. v. State Water Resources Control Board***, No. 366984. The environmentalists allege that WRCB's Water Quality Control Plan for Salinity does not satisfy the statutory duties of the Board as mandated in the Porter-Cologne Act and the Clean Water Act. *[11:3 CRLR 180]* These statutes impose an obligation on WRCB to adopt water quality standards to protect beneficial uses of water. The environmentalists allege that WRCB has failed to fulfill its statutory mandates because the Water Quality Control Plan for Salinity fails to establish standards which will protect fish and other marine wildlife. In its answer, the Board claimed that the writ of mandate should be dismissed for lack of ripeness, failure to exhaust administrative remedies, and failure to state facts sufficient to sustain any claim for relief. Pretrial discovery motions were heard throughout the spring, with a discovery hearing scheduled for May 29. A trial date has not been set.

In May, Earth Island Institute proposed to amend its complaint in ***Earth Island Institute v. Southern California Edison***, No. 90-1535 (U.S.D.C., S.D. Cal.), in which the environmental organization alleges that SCE is operating the San Onofre Nuclear Generating Station (SONGS) in a manner that violates the federal Clean Water Act. Earth Island sought to join the federal EPA as a co-defendant and to add two counts of fraud against SCE. *[12:1 CRLR 154]* The same month, SCE filed a motion for summary judgment seeking to have the case dismissed. A decision was expected in July.

In addition, Earth Island Institute appealed to WRCB a San Diego RWQCB decision that the evidence presented to it does not clearly indicate that SONGS is damaging the ocean ecosystem in violation of the federal Clean Water Act. In so ruling, the RWQCB rejected the recommendations of its own staff, the California Coastal Commission, and the Commission's Marine Review Committee, which concluded after a 15-year study that SCE's operation of SONGS kills literally tons of fish and kelp each year and discharges debris-filled water into the ocean, reducing natural light on the ocean floor by as much as 16%. (*See infra* agency report on COASTAL COMMISSION for related discussion.)

On March 20 in ***United States and California v. City of San Diego***, No. 88-1101-B (U.S.D.C., S.D. Cal.), Judge Rudi Brewster granted the City of San Diego a 72-day extension in which to draft a final plan for extending its existing sewage outfall pipe to 4.4 miles offshore, a plan now preferred by city officials because of unexpectedly low construction bids. City officials had been leaning toward an expensive plan for tunneling 500 feet down and running the entire 4.4-mile outfall beneath the ocean floor. However, in March the city began receiving bids for the outfall extension project which were as low as $55 million, much less than the estimated $700 million cost of an underground tunnel.

This decision is part of a pending lawsuit brought by the federal and state governments against San Diego based on the city's longtime failure to comply with several provisions of the Clean Water Act. *[12:1 CRLR 156–57; 11:3 CRLR 181]* Judge Brewster had originally ordered the City to start building a 2.5-mile extension onto its 2.2-mile underwater sewage outflow pipe by May 1992, but suspended the deadline following the February 2 rupture of the outflow pipe (*see supra* MAJOR PROJECTS). The city ultimately will be obligated to find a means of discharging its waste water farther out into the ocean whether it be through a tunnel, a new pipe, or an extension of the existing outfall. Judge Brewster ordered all parties back to court on May 22 for the city's progress report.

Under a 1989 consent decree, the City of San Diego must build seven new sewage water reclamation plants by 1998.

The city is currently in the middle of a one-year period of testing a cheaper alternative treatment and reclamation process, and is scheduled to report the results to the court late this year. At this writing, Judge Brewster has fined the City of San Diego $3 million for violating the Clean Water Act; ordered the City Council to adopt a water conservation ordinance, which the Council did in November 1991, requiring, effective January 1, the retrofitting of water-saving plumbing fixtures whenever buildings are reconstructed or sold and whenever bathrooms are remodeled; and ordered the City to eventually build a 2.5-mile extension onto its 2.2-mile underwater sewage outflow pipe. The remaining major issue is the determination of how much of the reclaimed water the seven new reclamation plants will produce should be used beneficially instead of simply discharged into the ocean.

RECENT MEETINGS:

On January 23, WRCB adopted a list of three clean-up and abatement projects for the 1991–92 fiscal year. In accordance with the recently approved Administrative Procedures Manual (Chapter 4.4), WRCB's Division of Clean Water Programs surveyed the regional boards in August 1991 to obtain a list of clean-up and abatement projects that the regional water boards feel should be funded from the Clean-up and Abatement Account (CAA). The Division requested the regional boards to supply a list of projects and their expected costs that would be used to manage the CAA funds in the 1991–92 fiscal year. Until January, the Division had received only one response to the survey.

The single respondent, the Lahontan RWQCB, submitted a list of six projects to be considered for the 1991–92 fiscal year list, of which the Board selected three for funding: (1) the Victorville "E" Street project is an investigation of the sources of TCE, PCE, and EDB contamination of groundwater beneath the old downtown area of Victorville; (2) the South Lake Tahoe "Y" project will investigate the extent of a plume of PCE/TCE contamination of the vicinity's groundwater; and (3) the Leviathan Mine project will fund an engineering study of treatment alternatives to clean up toxic leakage at the Leviathan Mine. The EPA has determined that the Leviathan Mine is a contributing point source for dangerous overflow and uncontrolled seeping of acid mine drainage which contains arsenic, among other deadly toxins.

Also at its January 23 meeting, WRCB adopted an order stating that Peery/Arrillaga is responsible for the cost of oversight activities under the Underground Storage Tank Local Oversight Program in the amount of $29,134.77. Pursuant to Health and Safety Code section 25297.1, WRCB had entered into an agreement with the Santa Clara Valley Water District under which the Board provided funding to the District for the reasonable costs of its oversight activities at sites such as Peery/Arrillaga, where there had been unauthorized releases of petroleum from underground storage tanks. In August 1988, pursuant to this agreement with WRCB, the District placed Site No. 52D belonging to Peery/Arrillaga in its local oversight program and notified Peery/Arrillaga that the company would be responsible for the direct and indirect costs of all state and local agencies involved in oversight activities at Site No. 52D. Between August 17, 1988 and January 5, 1989, the District's oversight resulted in costs amounting to $29,134.77. WRCB's Division of Clean Water Programs reimbursed the District for this amount from Bond Acts funds provided by the Department of Health Services, and billed Peery/Arrillaga on July 19, 1989.

Unwilling to face its responsibility, Peery/Arrillaga proceeded to contest the validity of the charges assessed against it on the grounds that WRCB lacked the authority to recover the disputed amount. The Board agreed that Peery/Arrillaga's contention regarding authority was correct. The original version of section 25297.1 was repealed on January 1, 1990, depriving WRCB of any further right to enforce recovery under that statute. Furthermore, a reenacted version of section 25297.1 became effective only as of January 1, 1991, and could not be applied retroactively to Peery/Arrillaga. However, WRCB concluded that although it no longer had a basis of recovery under section 25297.1, the costs at issue are recoverable by the state Attorney General pursuant to section 25360 of the Health and Safety Code. Thus, WRCB adopted an order on January 23 referring Peery/Arrillaga's debt of $29,134.77 to the AG for collection if not paid in full by February 7.

At its January meeting, WRCB authorized a loan to the Ramona Municipal Water District in the amount of $4.9 million. The loan will be used by the Santa Maria Water Reclamation Facility to provide 1,120 acre-feet per year of reclaimed water for irrigation of avocado and citrus groves and a golf course. The money for the loan is provided under the Clean Water Bond Law of 1984, which established the Water Reclamation Account to be used for wastewater reclamation projects, and the Clean Water and Water Reclamation Bond Law of 1988. In 1989, the Board adopted a policy implementing both of these laws, making funds available for wastewater reclamation projects. Under these laws, no single project can receive more than $5 million.

Also in January, WRCB considered a petition by Senator Art Torres requesting that it review a waste discharge order issued by the Los Angeles RWQCB. The order allowed the disposal of untreated ash at the Puente Hills landfill, which is inadequate to handle such waste. The regional board has allowed the dumping of untreated ash into the Puente Hills landfill contingent on the development of a treatment plan to treat the ash before it is dumped into the landfill. The treatment plan has not been forthcoming, and the regional board has continually granted extensions allowing disposal of the untreated ash. The Board decided that the untreated ash should not be dumped into the Puente Hills landfill because the landfill is incapable of handling such waste. However, on the advice of the California Integrated Waste Management and Recycling Board (CIWMB), WRCB will continue to allow the disposal of the untreated ash into the Puente Hills landfill with certain conditions. The ash must be dumped into Canyon 9 of the landfill, which is not contiguous with the rest of the landfill, and can more adequately handle the disposal of the untreated ash. WRCB based this decision on the advice of the CIWMB that transport of the untreated ash to a different landfill that is capable of handling such waste would pose significant pollution problems and would be impractical. WRCB has also ordered that the treatment plan for the ash be developed no later than September 30, and has instructed the regional board not to grant any further extensions on this time limit. The regional board must issue a cease and desist order if the discharger does not comply with the time limit.

At the February 20 meeting, WRCB approved a State Revolving Fund (SRF) loan of $2.3 million for the Mission Springs Water District's expansion of the Alan L. Horton Wastewater Treatment Plant. In accordance with the WRCB's "Policy for Implementing the State Revolving Fund for Construction of Wastewater Treatment Facilities," WRCB approves certain projects from an adopted priority list to receive SRF loans. After the Division of Clean Water Programs has approved a project report and its accompanying environmental documents and draft revenue program, WRCB can ap-

prove the SRF loan. Debtors repay the loans to the revolving fund according to a predetermined schedule so that new loans can be continually distributed to new water treatment projects.

The Mission Springs Water District's Horton Wastewater Treatment Plant is located in the city of Desert Hot Springs. It provides secondary treatment for a design capacity of 600,000 gallons of effluent per day. The outflowing secondary effluent is discharged to percolation basins and the sludge to dewatering beds and then to landfill. During the past five years, Desert Hot Springs has experienced a population increase of over 50%, with the resulting average dry weather flow of wastewater exceeding the plant's design capacity. The Mission Springs Water District proposed to construct an additional 400,000 gallons per day of treatment plant capacity. The resulting expansion would bring the total plant capacity to 1 million gallons per day and enable it to accommodate the service area's forecasted flows for at least the next twelve years. After determining that the proposed expansion project would have no significant effect on the environment, the Division of Clean Water Programs gave all of the necessary approvals. Subsequently, WRCB approved an SRF loan for the full estimated cost of $2.3 million, with a repayment period of twenty years.

On March 19, WRCB denied Silver Star Hydro, Ltd.'s petition for reconsideration of the WRCB Executive Director's denial of water quality certification for the Sonora Peak Water Power Project. In accordance with section 401 of the Clean Water Act, Silver Star had filed in February 1989 a request for certification that its proposed power project on Silver Creek and Wolf Creek in Mono county complies with applicable water quality requirements. Under section 3838, Title 23 of the CCR, WRCB's Executive Director may exercise WRCB's authority over water quality certification. On January 19, 1990, the Executive Director informed Silver Star of his denial of certification without prejudice, because Silver Star had failed to provide sufficient engineering and environmental information necessary for certification. Silver Star requested reconsideration on February 19, 1990. However, there was considerable uncertainty about the size of the proposed project and the location of facilities to be utilized. After considering Silver Star's failure to submit such important items as required project maps, engineering drawings, and concrete environmental impact data, WRCB affirmed the Executive Director's decision, denying without prejudice the request for water quality certification. In addition, WRCB refused to grant Silver Star's request to apply the previous application fee to any future application for water quality certification that Silver Star might submit.

At its March 19 meeting, WRCB upheld an earlier revocation of a water rights permit and cancellation of a water use application. The original permit was issued in 1962 to Baxter Ranch for the proposed Birch Creek hydroelectric plant in Inyo County, which was to be completed by the end of 1986. The petitioner was unable to put the water to beneficial use because it was unsuccessful in obtaining the Bureau of Land Management's permission to divert water from the source on BLM land and was equally unsuccessful in obtaining a Federal Energy Regulatory Commission permit to construct a hydroelectric plant. Since the petitioner did not show diligence in its pursuit of the project, WRCB revoked the permit. The accompanying application for year-round diversion of a total of six cubic feet per second of water from four different sources was denied because, among other things, the petitioner failed to comply with WRCB demands for an environmental document under CEQA. Failure to provide the required information is grounds for denial of an application. Baxter Ranch moved for reconsideration, and the matter was placed on the Board's June 18 meeting agenda.

Also on March 19, WRCB reviewed a San Francisco RWQCB clean-up order. Under Water Code section 13304, the regional boards are authorized to issue orders requiring clean-up of materials that have leaked from corroded storage tanks. On February 21, the San Francisco RWQCB issued such an order against landowners and a prior tenant, U.S. Cellulose, which had used the storage tanks while leasing the land from the owners. The parties listed in the clean-up order sought review from WRCB. They contended that two other prior tenants, Pacific States Chemical and Haz-Control, should also be named in the clean-up order. WRCB agreed with the regional board that Pacific should not be named in the order because Pacific did not use the tanks. Although Haz-Control used the tanks while Pacific was leasing the land, all negotiation as to Haz-Control's right to the tanks was handled directly through the landowners. WRCB added Haz-Control to the clean-up order because the substance most prevalent in the soil was the substance Haz-Control had stored in the tanks.

On April 16, WRCB concluded that the fiscal year 1992–93 annual fee for facilities subject to the Toxic Pits Clean-up Act (TPCA) would not increase over last year's rate, remaining at $4,500 for each facility, plus $450 for each additional surface impoundment at any facility. Dischargers pay for the actual cost of implementing the TPCA, and WRCB sets annual facility fees on or about May 1 of each year.

On April 16, WRCB approved a SRF loan to the City of Marysville for sewage treatment facilities upgrade, expansion, and water reclamation. The proposed project includes upgrading and expanding headworks, trickling filters, secondary sedimentation tank, and sludge handling system to meet waste discharge requirements in the future, and installing a tertiary system to reclaim treated wastewater for irrigation.

Also on April 16, WRCB approved a $1.46 million Small Community Grant and a $151,000 Water Quality Control Fund (WQCF) loan to Sutter County for the community of Robbins. The Clean Water and Water Reclamation Bond Law of 1988 provides grant funds to small, needy communities for wastewater treatment works. To be eligible, a community must have a population of 3,500 or less and the annual median household income must be below $32,000. Robbins is a small unincorporated community, located approximately twenty miles southwest of Yuba City in Sutter County. Population is 280 and the median household income in 1990 was $14,500. At present, all sewage treatment and disposal have been handled by onsite septic tanks and leach fields. Because of high groundwater and tight soil, many residents have been experiencing problems with their septic systems. A 1990 pollution study revealed that some septic tank effluent was being illegally routed to drainage ditches which are tributary to the Sacramento River.

Sutter County recommended the construction of a cluster collection system, a wetland system for wastewater treatment, and an evaporation wetland for effluent disposal. Total projected costs have been estimated to be $1.62 million, $1.46 of which will now be covered by the Small Community Grant. In order to fund the remainder of the expenses, Sutter County submitted an application for a $175,000 WQCF loan. After reviewing available funds, WRCB decided to approve a WQCF loan of $151,000, to be repaid within 25 years.

On April 16, WRCB adopted a resolution approving an update to the Federal Fiscal Year (FFY) 1992 State Revolving Fund Priority List, giving eight additional nonpoint source (NPS) and storm water

projects that are ready to proceed the opportunity to compete for the remaining FFY 1992 funds. WRCB, which administers the NPS and storm water SRF program, has received a number of requests to update the FFY 1992 SRF Loan Program Priority List. WRCB concluded that, since NPS and storm water SRF projects generally do not require extensive planning or design, several projects currently not on the FFY 1992 SRF Priority List could be ready for funding prior to the October 1, 1992 effective date of the FFY 1993 SRF Priority List. WRCB approved the following NPS and storm water projects to compete for the $101 million in FFY 1991 and 1992 funds still available for SRF projects in FFY 1992: the City of Santa Monica's Prio-Kenter Storm Drainage Ozonization Program; the City of Torrance's Urban Runoff Program; Amador County's Waste Disposal Site Program; San Luis Water District's Irrigation Improvement Project; City of Sutter Creek's Waste Disposal Site Program; City of Corona's Santa Ana River Discharge Program; and City of Santa Monica's Disinfection Treatment Facility to Treat Low Storm Drain Flow Using Ozone.

At its April meeting, WRCB issued a temporary water permit to Pacific Gas Transmission—Pacific Gas and Electric. Pacific is in the process of constructing 845 miles of pipeline from the U.S.-Canadian Border to Pacific's Panoche Metering Station in Fresno County. The California Public Utilities Commission requires hydrostatic testing of all pipeline sections. Water is necessary to conduct such testing and to install the pipeline. The temporary permit allows Pacific to divert water from the San Joaquin River and Dutch Slough crossings.

On May 18, the Board approved up to $10,000 from the Clean-up and Abatement Account to fund expert witness evaluation of how much oil was discharged as a result of the 1990 accident involving the American Trader oil tanker. WRCB and the Santa Ana RWQCB are presently engaged in litigation to collect damages occasioned by the American Trader oil spill off the coast of Huntington Beach. *[10:2/3 CRLR 176]* There is a dispute about how much oil was actually spilled. The Coast Guard believes that 800,000 gallons were involved. The defendants argue that "only" 400,000 gallons were spilled. Because this action is brought under Water Code sections 13350 and 13385, the number of gallons involved directly affects the amount of recovery. In this case, it is a matter of several million dollars.

The deputy attorney general handling the case for WRCB would like to hire an expert witness to evaluate how much oil was discharged. The expert's fee will not be more than $10,000. WRCB Chief Counsel William Attwater concluded that WRCB has implicit authority in its role as administrator of the Clean-up and Abatement Account to expend up to $10,000 to assist in collection of several million dollars. WRCB agreed, and thus appropriated up to $10,000 for this purpose.

FUTURE MEETINGS:

Workshop meetings are generally held the first Wednesday and Thursday of each month. For exact times and meeting location, contact Maureen Marche at (916) 657-0990.