INTRODUCTION

Each regulatory agency of California government hears from those trades or industries it respectively affects. Usually organized through various trade associations, professional lobbyists regularly formulate positions, draft legislation and proposed rules, and provide information as part of an ongoing agency relationship. These groups usually focus on the particular agency overseeing a major aspect of their business. The current activities of these groups are reviewed as a part of the summary discussion of each agency, *infra*.

There are, in addition, a number of organizations which do not represent a profit-stake interest in regulatory policies. These organizations advocate more diffuse interests—the taxpayer, small business owner, consumer, environment, future. The growth of regulatory government has led some of these latter groups to become advocates before the regulatory agencies of California, often before more than one agency and usually on a sporadic basis.

Public interest organizations vary in ideology from the Pacific Legal Foundation to Campaign California. What follows are brief descriptions of the current projects of these separate and diverse groups. The staff of the Center for Public Interest Law has surveyed approximately 200 such groups in California, directly contacting most of them. The following brief descriptions are only intended to summarize their activities and plans with respect to the various regulatory agencies in California.

ACCESS TO JUSTICE FOUNDATION/ VOTER REVOLT

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Access to Justice Foundation (AJF) is a nonprofit, nonpartisan citizen advocacy organization established to inform the public about the operation of the legal system; provide independent, objective research on the protection accorded citizens by laws; and guarantee citizens of California access to a fair and efficient system of justice.

In 1988, AJF and its campaign committee—the Voter Revolt to Cut Insurance Rates—sponsored and qualified Proposition 103, the only one of four competing insurance reform initiatives approved by the electorate in the November 1988 election.

MAJOR PROJECTS

Proposition 103 Auto Insurance Refund Battle Escalates. When yet another Office of Administrative Law (OAL) regulation disapproval brought Department of Insurance (DOI) auto premium rebate hearings to a grinding halt, the Senate Rules Committee responded on August 11 by refusing to confirm Marz Garcia as director of OAL. On August 21, Governor Wilson denied DOI's appeal of Garcia's disapproval of the rollback rules. (*See infra* agency reports on OAL and DOI for related discussion.)

For the third time since October 1991, OAL on June 8 disapproved DOI's emergency regulations designed to implement the rate rollback mandate of Proposition 103. *[12:2&3 CRLR 8–9, 169–70]* OAL Director Garcia said the rules were unfair to insurance companies. On July 15, OAL again refused to approve DOI's submission of the permanent version of the refund regulations. State Insurance Commissioner John Garamendi and VR's Harvey Rosenfeld both called on the Senate Rules Committee to reject Garcia's appointment. Justifying the Committee's action, Senate President pro Tem David Roberti told Garcia that it was "enormously important" to Californians that they get the refunds to which they are entitled under Proposition 103. Rather than quibble over legal differences, he said, Garcia as a state officer should have carried out the electorate's wishes by removing obstacles to Proposition 103's implementation.

On August 3, Garamendi asked Governor Wilson to overturn OAL's disapproval of the permanent regulations. Wilson had overruled OAL on two previous occasions but refused to do so again, calling Garamendi's appeal a "transparent and cynical maneuver that does nothing to advance the resolution of the issues." Resolution will come, Wilson said, only in the courts. Garamendi replied that the Governor had "derailed and tossed into the deep freeze" rebate hearings of major auto and homeowner insurers such as Geico, State Farm, and Aetna, which—stranded without guiding regulations—could not proceed.

Only two companies—20th Century Insurance Company and the Mercury Insurance Group—have completed administrative hearings on their challenges to DOI's rollback orders. In an agreement reached May 28, Mercury became the first major non-coop insurance company to comply with the law, announcing that it would rebate $46 million to policyholders. Mercury Chair George Joseph stated, "Proposition 103 is on the books. It's the law. Mercury is happy to be able to conclude this." The Automobile Club of Southern California was the first large insurer to agree to rebates when it returned $80 million last year. As part of the accord, Mercury will not raise its rates for one year and agreed to lower premiums on new policies by $10 million.

At the other end of the spectrum is 20th Century, which filed suit in Los Angeles County Superior Court on May 27 contesting DOI's $102 million rebate order. This lawsuit, *20th Century Insurance Co. v. Garamendi*, No. BS016789, is the test case Governor Wilson relied upon in denying DOI's appeal of OAL's disapproval. However, 20th Century attorney Gary L. Fontana suggested he may try to have the case and the underlying rollback order dismissed as moot now that the emergency regulations used in making the rebate determination have expired. "We can't have a situation where this company is the only insurer to ever have the regulations applied to it," Fontana stated. At this writing, *20th Century* is scheduled to go to trial on November 30.

DOI Regulations Governing Intervenor Compensation Disapproved by OAL. On August 20, OAL disapproved a package of permanent regulations setting forth policies and procedures for payment of compensation to representatives of consumers (such as Voter Revolt) in DOI proceedings. *[12:2&3 CRLR 171]* However, on the same date, OAL approved DOI's adoption of the intervenor compensation rules on an emergency basis; emergency regulations are valid for 120 days. OAL found portions of the proposed permanent rules unclear, inconsistent, unnecessary, incorrectly cited, and not in numerical sequence. (*See infra* agency report on DOI for related discussion.)

VR Opposes CMA's Health Care Initiative. On July 21, VR leaders held a news conference outside the offices of the California Medical Association (CMA) to denounce CMA's health care initiative, Proposition 166 on the November ballot. *[12:2&3 CRLR 20–21, 173]* They claimed

the measure is a "preemptive strike" aimed at heading off passage of a more meaningful health insurance proposal in 1994. VR Executive Director Harvey Rosenfeld said, "The CMA initiative is the medical lobby's way of locking out real reform." The initiative would require all California employers to provide at least bare-bones health coverage for their workers. VR and consumer advocacy groups complain that it would leave millions uninsured, allow costs to continue to rise, and lock out future changes in the health insurance system.

VR-Opposed No-Fault Bill Dies. No-fault automobile insurance is dead for 1992. SB 2060 (Hill) died in the legislature, and the Hill-Johnson no-fault initiative drive failed to collect the signatures necessary to place the measure on the November ballot. *[12:2&3 CRLR 9]*

AMERICAN LUNG ASSOCIATION OF CALIFORNIA

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The American Lung Association of California (ALAC) emphasizes the prevention and control of lung disease and the associated effects of air pollution. Any respiratory care legislative bill is of major concern. Similarly, the Association is concerned with the actions of the Air Resources Board and therefore monitors and testifies before that Board. The Association has extended the scope of its concerns to encompass a wider range of issues pertaining to public health and environmental toxics generally.

MAJOR PROJECTS

Proposition 99 Anti-Smoking Funds. Governor Wilson decided not to appeal his April 24 defeat when Sacramento County Superior Court Judge James Ford ordered that a suspended $16 million anti-smoking media campaign be restored. The Wilson administration had attempted to "redirect" anti-smoking education funds raised by Proposition 99 to Medi-Cal programs. *[12:2&3 CRLR 9–10]* In June, ALAC announced that the state had signed a media contract for 1992–93 that includes the $16 million originally designated for 1991–92.

Although the media campaign seems secure, ALAC reported that the Governor, throughout the long battle on the 1992–93 budget, continued his efforts to divert funds from Proposition 99's health education and research efforts into direct medical services accounts. ALAC strenuously countered his efforts, and ultimately prevailed in the main. In September, the organization reported that full funding continues for media and research, nearly full funding exists for in-school programs, and substantial funding was allocated for competitive grants; however, funding for local lead agencies was severely cut. By a fortuitous circumstance, a total of $16 million taken from Proposition 99 accounts was incorporated into the appropriation for community colleges. With the Governor's veto of this appropriation, the $16 million remains in Proposition 99 accounts, but there is no authority to spend it. ALAC hopes to convince the Governor and the Department of Health Services to restore these lost funds to anti-tobacco uses.

In May, a report funded by Proposition 99 health education account monies revealed that 78.8% of the public believes that tobacco education activities should be increased. The support is actually higher in Republican Assembly districts. There is also strong support for proposals outlawing cigarette vending machines which are accessible to minors (83.7%), and for strengthening laws banning sales to minors (81.4%). Opinion is split on the issues of increasing the tobacco tax and banning advertising in newspapers and magazines.

SCAQMD's RECLAIM Smog Exchange Program Moves Toward Realization. The Clean Air Coalition (CAC), which includes ALAC, reports that the South Coast Air Quality Management District is moving ahead with its Regional Clean Air Incentives Market (RECLAIM) approved in concept last March. *[12:2&3 CRLR 10]*

In its summer 1992 newsletter, CAC assessed mixed results so far. On the plus side, ALAC's Gladys Meade, ALAC board member Steve Sullivan, and the Natural Resources Defense Council's Mary Nichols are members of the steering committee that is guiding conceptual development of RECLAIM.

The CAC position on RECLAIM supports going forward with trading of nitrogen oxide (NOx) permits because NOx can be efficiently monitored with existing technology, exhibits a constant reactivity in forming ozone, and is not a carcinogen. The Coalition opposes a marketing program for reactive organic gas (ROG) permits because ROGs are "far more" difficult to monitor and exhibit widely variable reactivity characteristics. According to CAC, ROGs are also "virulent air toxics" and the Coalition fears toxic hot spots could result. CAC also maintains that models suggest that most of the projected savings in compliance costs from a pollution trading program will come from trading in NOx, not ROG. The Coalition believes SCAQMD is blinded because "[a]cknowledging the legitimacy of toxic trading concerns would expose the District's lack of comprehensive toxics regulations. Further, the Air District is loath to admit their inability to accurately measure existing ROG emissions...." At this point, "[t]he Coalition still supports the development of the RECLAIM concept, but [has] grave reservations about a wholesale switchover from the existing rulebook."

U.S. Supreme Court Decision Opening Up Tobacco Company Liability Has No Effect in California. On June 24 in *Cippolone v. Liggett Group, Inc.*, the U.S. Supreme Court allowed damage actions in state courts against cigarette companies for breach of express warranty, intentional fraud or misrepresentation of facts about smoking, and conspiracy to conceal facts about the hazards of smoking. However, SB 241 (Lockyer)—a notorious bill drafted in a Sacramento bar in the final hours of the 1987 legislative session and passed by the legislature with no public notice, no staff analysis, and no public hearing—granted manufacturers of "inherently unsafe" products, including tobacco products, a sweeping immunity from products liability lawsuits. The only exceptions are for actions based on breach of express warranty and manufacturing defect. SB 241 immunity has been held to be "automatic" by California courts. On June 27, Assemblymember Byron Sher introduced AB 3831, which would have eliminated tobacco from the list of products in SB 241 and expressed the legislature's intent to guarantee to Californians the right to sue tobacco companies to the extent not expressly barred by *Cippolone*. The bill was killed in the Assembly Judiciary Committee on July 1.

Legislative Update. ALAC supported AB 2728 (Tanner), signed by the Governor (Chapter 1161, Statutes of 1992), which authorizes the Air Resources Board to take action to regulate certain toxic air contaminants. The Association also supported AB 1378 (Connelly), signed by the Governor (Chapter 787, Statutes of 1992), which imposes additional limitations on rice straw burning in the Sacramento Valley.

ALAC strongly opposed SB 1879 (Craven), the Smokers' Rights bill, which would have amended the Unruh Civil Rights Act to make smokers a protected

class. The Governor vetoed SB 1879 on September 30.

NATIONAL AUDUBON SOCIETY

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The National Audubon Society (NAS) has two priorities: the conservation of wildlife, including endangered species, and the conservation and sound use of water. The society works to establish and protect wildlife refuges, wilderness areas, and wild and scenic rivers. To achieve these goals, the society supports measures for the abatement and prevention of all forms of environmental pollution.

MAJOR PROJECTS

California Chapters Set Priorities. The summer issue of the San Diego Audubon Society's *Sketches* newsletter reported that during the spring western regional conference, California NAS chapters set their top five legislative priorities: wetlands/riparian protection; state endangered species issues; parkland/habitat acquisition; biodiversity protection; and forestry. These priorities will guide John McCaull, Audubon's new California Legislative Affairs Director, during the next legislative session.

NAS Position on the Natural Community Conservation Planning Program. John McCaull is producing a new newsletter for Audubon called *California Legislative Update*. In the June issue, he presented a special focus on Governor Wilson's Natural Community Conservation Planning (NCCP) program. Touted as a voluntary, cooperative alternative to the mandatory prohibitions and protections imposed on developers and landowners when a species is listed as endangered or threatened under the California Endangered Species Act, the stated goal of the NCCP is the "establishment of biologically defensible multi-species reserves designed to protect species and natural communities for the long term, accomplished by a cooperative public and private effort." The state is currently attempting to implement the NCCP program on a pilot project basis in southern California coastal sage scrub habitat, to save the California gnatcatcher. *[12:2&3 CRLR 233–34]*

As expressed by McCaull, NAS believes that the NCCP in its current form is a poor alternative to existing endangered species laws because it fails to provide meaningful scientific standards and interim controls on habitat destruction during the planning process. Although the Resources Agency formed a credible Scientific Review Panel (SRP) to establish standards governing habitat protection agreements among landowners, local government, the state Department of Fish and Game, and federal officials, those standards are already in jeopardy. The City of San Diego's enrollment agreement submitted to the Resources Agency proposed that the city's scientific standards be used in lieu of the SRP's guidelines. Riverside County has also expressed difficulty complying with the various fiscal and scientific requirements of the NCCP program.

In addition, McCaull pointed out that, unlike endangered species laws, the NCCP program contains no interim development controls. Landowners voluntarily enroll lands of their choice in the program, which supposedly triggers an 18-month development moratorium. But at any time a landowner can withdraw from the program without penalty and without any residual protection for coastal sage scrub habitat. Thus, according to NAS, the NCCP in its current form involves attempting to "negotiate a system of habitat reserves and wildlife corridors with ongoing development constantly eroding the amount of land available."

NAS and the Planning and Conservation League initially proposed "control language" for the 1992–93 Budget Bill which would require the NCCP to adopt interim controls on development during the habitat protection planning phase, but—under threat of a "blue pencil" from the Governor—asked the Budget Conference Committee to remove the NCCP from the budget and instead link its funding to the passage of SB 1248 (McCorquodale), a clean-up bill to the original NCCP legislation. However, SB 1248 was defeated by a cavil of agricultural, timber, and oil interests apparently afraid it would set an ugly precedent. Ultimately, only $362,000 was appropriated for the NCCP in a last-minute budget scramble. Environmentalists do not believe this amount is sufficient to maintain the NCCP's credibility. (*See infra* reports on NATURAL RESOURCES DEFENSE COUNCIL and FISH AND GAME COMMISSION for related discussions.)

Delta Protection Act of 1992 Signed Into Law. In September, the Governor signed SB 1866 (Johnston), the Delta Protection Act of 1992 (Chapter 898, Statutes of 1992). NAS played a lead role in drafting and advocating SB 1866, which establishes a 19-member Delta Protection Commission (DPC) charged with a mandate to protect, enhance, and balance wildlife habitat, agriculture, and recreation in the Sacramento-San Joaquin Delta. The DPC must prepare a comprehensive resource management plan for a core "primary zone" by 1997. Amendments to local government general plans must be submitted to the DPC for review and approval as consistent with the regional resource management plan. Local governments are permitted to approve development within the primary zone only after making specified findings on the basis of substantial evidence in the record. The Act also establishes procedures for administrative appeals and judicial review. Initial funding is supplied by a $250,000 loan from the Environmental License Plate Fund.

Additional Legislative Activity. NAS supported SB 1669 (Hill), signed by the Governor (Chapter 959, Statutes of 1992), which provides drainage relief for the San Joaquin Valley by creating a voluntary program coordinated among federal, state, and local agencies to purchase 75,000 acres of San Joaquin Valley farmland for conversion to wildlife management by 2040. NAS successfully supported AB 2452 (Costa), signed by the Governor (Chapter 1012, Statutes of 1992), which creates a San Joaquin River Conservancy to acquire and manage lands within a newly created San Joaquin River Parkway. To take effect, the Conservancy needs approval from four-fifths of the Fresno City Council and the boards of supervisors of Fresno and Madera counties. NAS supported AB 3756 (Sher), signed by the Governor (Chapter 756, Statutes of 1992), which regulates the harvesting of Pacific yew trees (source of a cancer-fighting agent called taxol). NAS also supported AJR 59 (Lempert), signed by the Governor (Chapter 56, Resolutions of 1992), which memorializes Congress and the President to continue use of the existing federal wetlands definition and not adopt the Bush administration's proposed loosening of wetlands protections.

Cleveland National Forest Initiative Drive Proceeds. Unable to persuade the San Diego County Board of Supervisors to place an initiative on the ballot to downzone private land within the Cleveland National Forest, the San Diego Audubon chapter and local environmentalists have begun collecting signatures. *[12:2&3 CRLR 10–11]* The proposed ballot measure, termed the San Diego County Forest Conservation Initiative, is being circulated by a campaign organization

called "Save Our Forests" (SOF). The initiative would make 40 acres the smallest allowable lot size throughout roughly 55,000 acres of private inholdings. A spokesperson for SOF said, "Lots smaller than 40 acres would undermine wildlife habitats, obstruct animals' hunting ranges and increasingly pollute mountain runoff water, which is collected in reservoirs and consumed by urban dwellers."

Opposition is building among members of the County Board of Supervisors, who feel they are doing enough. Recently, the Board downzoned 34,000 acres of inholdings in its so-called "Central Mountain Update." Some 28,000 acres were limited to 20-acre lots, and the rest were allowed 40- and 80-acre lot sizes. The board says it plans similar rezonings for the northern and southern portions of the Cleveland National Forest where current zoning allows lots as small as four acres. The county planning effort was sufficient to convince the City of La Mesa to rescind its support of SOF's initiative on June 8.

SOF maintains that the county's moves are too little, too late. The organization has set up an office and reports broad support. Its goal is to gather more than 700 signatures per day over the last six months of 1992, collecting either 134,000 signatures needed to call a special election early next year or 67,000 signatures to qualify for the June 1994 ballot.

The Quick Red Fox. Los Angeles Audubon members find themselves at odds with animal rights activists over the fate of the red fox in the Ballona Wetlands. Reportedly, fox sympathizers have threatened, vandalized, and harassed environmentalists who support a six-year red fox euthanasia program. NAS member Sandy Wohlgemuth wrote in the *Los Angeles Times* that such animal rights activists are "undiscriminating sentimentalists" who fail to understand—or care—how ecosystems work. The red fox is not a native species, which means that endangered species such as the light-footed clapper rail have no natural defenses against it. As a result of the easy pickings, the fox population expands and native species diminish, some toward zero. Least terns in Ventura and Oakland, snowy plovers in Monterey and San Francisco, avocets and stilts at Moss Landing, and kit foxes in the San Joaquin Valley have all suffered severe losses to the red fox, according to Wohlgemuth. Choices must be made, she argues. Given the economic impossibility of neutering all the animals, and since California law forbids relocation of the foxes anywhere in the state and no other state will accept them, environmentalists feel trapping and death by injection is the only feasible solution to the problem.

CALIFORNIA COMMON CAUSE

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California Common Cause (CCC) is a 55,000-member public interest lobbying organization dedicated to obtaining a more open, accountable, and responsive government and decreasing the power of special interests to affect the legislature.

MAJOR PROJECTS

Supreme Court Agrees to Hear CCC Petition to Reinstate Proposition 68. On August 20, the California Supreme Court granted review of CCC's petition for a writ of mandate asking the court to reinstate Proposition 68. *[12:2&3 CRLR 12]*

Last March, CCC filed *Christopher v. Fair Political Practices Commission*, a petition seeking reinstatement of the campaign financing reform measure passed by the voters in 1988. Proposition 68 (which included campaign contribution limits, expenditure limits, and a public financing mechanism for statewide and legislative races) was held inoperative in its entirety by the California Supreme Court in 1990 because a competing measure, Proposition 73, had garnered a larger majority. *[11:1 CRLR 153]* Reinstatement of Proposition 68 became a possibility when the U.S. Court of Appeals for the Ninth Circuit upheld a district court decision that major portions of Proposition 73's campaign financing "reforms" unconstitutionally discriminate against electoral challengers. *[12:2&3 CRLR 273–74]*

CCC would like to see all of Proposition 68 implemented, including its public campaign financing provisions. If the court should decide that Proposition 73's larger victory margin reflects the public's opposition to public financing of campaigns, CCC argues that the court should nonetheless reinstate the contribution limits of Proposition 68.

On July 14, CCC demonstrated its point by releasing a report revealing a 28% one-year increase in total contributions to state legislative candidates during the 1992 primary cycle. In support of the organization's petition for a writ, CCC acting Executive Director Ruth Holton said, "In this current election we are seeing obscene amounts of money pouring into the races because there are now no limits on contributions....California desperately needs a way to control campaign spending."

The Supreme Court's agreement to hear the *Christopher* case became even more important when a CCC-supported package of bills designed to place a comprehensive campaign finance reform package on the November ballot—SCA 4 (Keene), SB 2035 (Keene), and AB 2951 (Vasconcellos)—failed to pass the legislature. *[12:2&3 CRLR 12]*

Court Rejects CCC Challenge to Wilson Welfare Reduction Initiative. On June 19, the Third District Court of Appeal upheld Governor Wilson's welfare reduction initiative against a "single-subject rule" challenge by CCC and the League of Women Voters. The measure later qualified for the November ballot.

In *League of Women Voters v. Eu*, No. C013250, CCC maintained that Wilson's so-called "Government Accountability and Taxpayer Protection Act" initiative violates the constitutional provision restricting ballot measures to a single subject. *[12:2&3 CRLR 12]* If passed by the voters, the Act would cut Aid to Families with Dependent Children benefits by 25%, deny increased AFDC benefits upon the birth of additional children, limit payments to poor families who move to California from states where benefits are lower, give county boards of supervisors discretion to set general assistance benefit levels according to available funds, alter rules for enacting the state budget, and delegate extraordinary budget power to the Governor.

The court held that all provisions in the Act are "reasonably germane" to the measure's underlying purpose of balancing the state budget. This includes the county general assistance provision even though funding is exclusively by local taxes. The court accepted the Governor's argument that someday the state might have to bail out counties if they are forced to meet the increased demand for services that can be expected to arise out of cuts in state benefits.

CCC Protests Bill Allowing Hard Liquor Sales at Sea World. On July 21, Governor Wilson signed AB 2711 (Floyd), which permits Sea World owner Anheuser-Busch to sell hard liquor at the marine park, over CCC's objection. The bill exempts the liquor company from a 60-year-old law prohibiting alcohol manufacturers from selling or distributing alcohol directly to the public. CCC noted that Anheuser-Busch has given half a million dollars in campaign contributions to California lawmakers over the past five years.

CALIFORNIANS AGAINST WASTE

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In 1977, Californians Against Waste (CAW) was formed to advocate for a recycling bill in the legislature which would require a minimum refundable deposit of five cents on beer and soft drink containers. After being repeatedly thwarted legislatively by well-financed industry opponents, CAW sponsored and organized a coalition for a statewide citizen initiative which appeared on the ballot in 1982 as Proposition 11. That measure failed after can and bottle manufacturers and their allies raised and spent $6 million to defeat it. CAW then worked for the 1986 passage of the "bottle bill" (AB 2020-Margolin), which for the first time established redemption values for glass, aluminum, and two-liter plastic beverage containers. As of January 1, 1990, under SB 1221 (Hart), redemption values increased from one cent per glass or aluminum container to five cents for every two containers returned. Two-liter plastic beverage containers are now worth five cents each. Under SB 1221, redemption values for aluminum, glass, and plastic beverage containers will increase if a recycling goal of 65% is not reached by 1993.

MAJOR PROJECTS

CAW Intervenes in Industry Lawsuit Challenging Truth in Environmental Advertising Law. In July, CAW intervened in a federal court lawsuit in which an advertising industry coalition is seeking to overturn AB 3994 (Sher), California's Green Marketing Law (Chapter 1413, Statutes of 1990).

AB 3994 added sections 17508.5 and 17580 to the Business and Professions Code, to provide clear statutory standards governing advertising claims that products are environmentally beneficial. The legislation passed the Assembly and Senate overwhelmingly and without industry opposition. At the eleventh hour, the American Paper Institute, Simpson Paper Company, and Burger King Corporation sent letters to then-Governor Deukmejian urging a veto. Governor Deukmejian signed the legislation but sent Assemblymember Sher a letter asking that certain language in the bill be clarified. Sher responded by introducing AB 144 in 1991 to refine and strengthen the law, but industry lobbyists killed the bill in the Senate Business and Professions Committee.

On February 5, ten manufacturing and advertising trade associations filed *Association of National Advertisers v. Daniel Lungren*, No. C-929660 MHP, in the U.S. District Court for the Northern District of California, alleging that the Green Marketing Law restricts commercial and non-commercial free speech in violation of the first amendment and that its definitions of prohibited conduct are impermissibly vague under the first and fourteenth amendments. At a September 18 hearing on the advertisers' motion for summary judgment, Judge Marilyn Hall Patel questioned state officials and lawyers representing environmental intervenors about the meaning of Business and Professions Code section 17508.5(d), which defines the term "recyclable" to mean that an article can be "conveniently recycled" in every California county with more than 300,000 residents. "Does that mean technologically convenient? Or convenient relative to access?" asked Patel. The judge declined to rule at the hearing, stating she would issue a written order in the case at a later date.

CAW Supports Alliance of Major Corporations to Encourage Recycling. CAW supports as "a significant step forward" an alliance of 25 major United States corporations that intends to encourage recycling on a national scale. On September 16, the Buy Recycled Business Alliance—which includes such large corporations as Sears, Coca-Cola, and McDonald's—pledged to increase their use of recycled materials and to recruit 5,000 other corporations to join the recycling effort within the next two years. According to CAW recycling expert Lance King, "Their purchases are likely to stimulate new investment in recycling industries." Evidence is beginning to accumulate that recycling efforts are being frustrated by a lack of demand for recycled materials. The Alliance—the constituent companies of which claim to already purchase $2.7 billion of recycled materials per year—will have a first-year budget of $325,000 and plans to develop a guide to suppliers of recycled materials, computer programs, and other technical aids. Some environmentalist organizations were skeptical. "Given the track record, we can't trust this," stated Joel Ario, policy director of the National Environmental Law Center.

1992 Legislative Efforts. Three bills supported by CAW were enacted into law late in the 1992 session. AB 2494 (Sher) (Chapter 1292, Statutes of 1992), among other things, allows cities and counties to form regional agencies to minimize duplication of effort and costs incurred in complying with the 1989 Integrated Waste Management Act. AB 3001 (Cortese) (Chapter 1291, Statutes of 1992) revises statutes relating to amendments to a region's countywide siting element when a new solid waste or transformation facility is proposed, and requires local governments to include a nondisposal element within the source reduction and recycling element of their countywide integrated waste management plan. AB 3348 (Eastin) (Chapter 1218, Statutes of 1992), among other things, increases funding to local household hazardous waste collection programs from the Solid Waste Disposal Site Clean-up and Maintenance Account.

Three CAW bills passed the legislature but were vetoed by the Governor. AB 2446 (Eastin) would have required the state Department of General Services to purchase specified percentages of recycled paper, compost, glass, oil, plastic, solvents and paints, and tires. AB 3689 (Gotch) would have required state agencies to develop a waste management program to identify and reduce waste. And SB 1523 (Killea) would have established a comprehensive foundation for the development of regulations to encourage the siting and operation of environmentally-sound composting facilities.

CAW helped to defeat five industry-backed bills that would have weakened recycling efforts. AB 2320 (Hansen) would have undermined the requirement that container manufacturers pay the costs of recycling their containers through processing fees. AB 2484 (Eaves) would have exempted out-of-state glass container manufacturers from California's minimum recycled content requirements. AB 3434 (Clute) would have allowed the burning of wood waste to count toward the state's statutory waste diversion goals. SB 1575 (Torres) would have allowed the use of unredeemed redemption funds (the nickels from consumers who don't recycle) to offset plastic beverage container processing fee costs. And SB 1955 (Morgan), according to CAW, would have "completely rewritten and undermined" California's Integrated Waste Management Act by, among other things, eliminating the requirement that 50% of solid waste be diverted from landfills by the end of the decade. One other bill opposed by CAW, SB 1668 (Beverly), which would have extended deadlines by one year for city and county preparation of source reduction and recycling and household hazardous waste elements of countywide integrated waste management plans, died

in committee. One CAW-opposed bill became law. AB 87 (Sher), among other things, weakens processing fee provisions of the state's beverage container recycling law.

CALIFORNIA PUBLIC INTEREST RESEARCH GROUP

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CalPIRG is a nonprofit statewide organization founded by students from several California universities. It is the largest student-funded organization of its kind in the state. There are CalPIRG chapters on four campuses of the University of California. CalPIRG now has approximately 120,000 members statewide, including thousands of citizen members.

MAJOR PROJECTS

Ward Valley Nuclear Waste Dump Moves Ahead. On June 19 in *New York v. United States*, No. 91-543, the U.S. Supreme Court upheld a provision of the Low-Level Radioactive Waste Policy Amendments Act of 1985 requiring states to either find a regional dump or build one of their own by January 1, 1993. Subsequent to the Act's passage, California joined Arizona, North Dakota, and South Dakota to form the Southwestern Low-Level Radioactive Waste Compact, and agreed to become the first member to provide a low-level radioactive waste dump for mutual use. Although Ward Valley in the Mohave Desert near Needles was tentatively selected by the state Department of Health Services (DHS) as the site, DHS agreed last April—under pressure from the state Senate—to hold a public adjudicatory hearing on the safety of the proposed dump prior to making its final decision. *[12:2&3 CRLR 13–14]*

By a 9-0 vote, the Court ruled that the find-or-build requirement of the Act does not violate the tenth amendment to the U.S. Constitution, which reserves to the states all powers not specifically granted to the federal government in Article I of the Constitution. There is no violation because Congress gave the states a choice: "States may either regulate the disposal of radioactive waste...by attaining local or regional self-sufficiency, or their residents who produce radioactive waste will be subject to federal regulation authorizing states [that have their own dumps] to deny access to their disposal sites."

In another part of the same decision, the Court struck down the so-called "take title" provision of the Act which requires any state that does not have a disposal site to take ownership of and legal responsibility for all low-level radioactive wastes produced in that state after 1996. The Court ruled that the "choice" here was between two unconstitutionally coercive alternatives: either accept ownership of the waste or regulate according to Congress' instructions. While it is proper for Congress to give states positive incentives to take on a regulatory activity, "[n]o matter how powerful the federal interest involved, the Constitution simply does not give Congress the authority to require the states to regulate," wrote Justice Sandra Day O'Connor for the 6-3 majority on this issue. Strong dissents were written by Justices White and Stevens with Justice Blackmun providing the other dissenting vote. Constitutional scholars noted that this decision marks only the second time since 1937 that the Court has struck down federal legislation on grounds it exceeds Congress' power under Article I of the Constitution. The tenth amendment is now a basis for declaring federal laws unconstitutional.

Thus, the state is moving forward to finalize plans to construct the dump. DHS has already selected U.S. Ecology (USE) as the dump operator, but its choice of Ward Valley as the site is subject to the public evidentiary hearing which it promised to hold last April. In mid-July, DHS asked the federal Bureau of Land Management (BLM) to transfer its ownership of the Ward Valley site to the state. DHS officials stated they were only trying to preserve the site because after September 19 it could be opened to mining and other private claims. However, dump opponents accused the state of acting in bad faith, because it has yet to even schedule the adjudicatory hearing at which it will take evidence on the safety of the proposed dump at the Ward Valley site, much less make its final decision.

A few days later, USE and a coalition of dump proponents filed a lawsuit seeking a court order blocking DHS from holding the hearing and requiring DHS to issue USE a permit to operate the dump. In *California Radioactive Materials Management Forum, et al. v. Health and Welfare Agency*, USE argues that DHS was "illegally coerced" into agreeing to hold the hearing by the Senate Rules Committee; plaintiffs claim that the Rules Committee improperly demanded the hearings as a condition of its approval of Russell Gould as Secretary of the Health and Welfare Agency, and further argue that DHS has no authority to hold the hearing. Attorneys for the Rules Committee insist that DHS is authorized to conduct the hearing, it agreed to conduct the hearing, and USE is only causing further delay by preventing DHS from scheduling the hearing (which is slated to last eight months). On September 17, the Third District Court of Appeal agreed to hear the case, ordering attorneys for the Senate Rules Committee to file responsive briefs by October 6 and blocking the scheduling of the adjudicatory hearing until it rules on plaintiffs' claims.

On a final front, the Governor vetoed AB 2500 (Sher), which would have required the operator of the low-level radioactive waste disposal site to acquire a minimum of $15 million in liability insurance; required the suspension of all new waste disposals if the operator at any time fails to maintain such insurance; required the operator to agree to indemnify the state for any liability that might arise from operation of the site; declared the operator, waste generators, and waste transporters absolutely liable, without regard to fault, for specified damages due to radioactive release; and established the Low-Level Radioactive Waste Facility Environmental Clean-up and Liability Response Fund to be maintained by an environmental remediation surcharge paid on a per cubic foot and per curie content basis by radioactive waste generators and set at a level which would have raised $25 million within ten years. (*See infra* reports on CAMPAIGN CALIFORNIA and PLANNING AND CONSERVATION LEAGUE for related discussions.)

Safety concerns about the Ward Valley site were boosted considerably when a 7.4 magnitude earthquake occurred during the summer, focused on an epicenter only 100 miles from the Ward Valley site.

Pesticide Watch. On July 4, the San Francisco branch of CalPIRG affiliate Pesticide Watch kicked off a new statewide campaign by obtaining over 400 signatures on a "Declaration of Independence from Deadly Pesticides." The Declaration calls for a phase-out of the most dangerous pesticides, recalculation of food tolerances for children, a reduction in the use of all pesticides, an increase in food testing to catch violators, and promotion of alternative pest control measures. The signatures will be delivered to Cal-EPA Secretary James Strock.

Also in July, Pesticide Watch stated that Caltrans was set to release its Final Environmental Impact Report, officially announcing the agency's commitment to reduce its use of pesticides 50% by the year 2000 and 85% by 2015. This will

mark the successful conclusion of Pesticide Watch's "Caltrans Campaign" begun in October 1991. *[12:1 CRLR 12]*

1992 Legislative Results. One bill supported by CalPIRG was enacted into law late in the session. AB 1659 (Speier) (Chapter 1317, Statutes of 1992) requires the state to survey public schools and child care facilities to determine if children are being exposed to lead. Other CalPIRG-supported bills did not fare as well. SB 711 (Lockyer), which would have prohibited the sealing of lawsuit settlements if public or environmental hazards are involved, was vetoed by the Governor. AB 1519 (Lee), which was originally the Toxics Truth Act requiring the largest industrial facilities to report amounts of toxic chemicals used onsite, was gutted on August 29; all former language was deleted.

Early in the summer, CalPIRG was optimistic that SB 51 (Torres) would prevail over SB 1731 (Calderon). SB 51 embodied CalPIRG's toxics *use* reduction concept; the group characterized SB 1731 as a weak toxics *risk* reduction bill favored by industry. SB 51 died in August. The legislature passed SB 1731 and the Governor signed it into law (Chapter 1162, Statutes of 1992). SB 44 (Torres), which would have limited incineration as a waste reduction option, also died in committee.

CAMPAIGN CALIFORNIA

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Founded in 1977 by Assemblymember Tom Hayden as the Campaign for Economic Democracy, Campaign California (CC) has over 25,000 members and helped lead the successful 1989 Sacramento campaign to close the Rancho Seco nuclear power plant. CC has played a significant role in statewide initiatives, including Propositions 65, 99, and 128.

CC supports efforts to frame workable progressive solutions to problems in the areas of child care, education, environment, transportation, personal safety, insurance, and health care. It targets the private entrepreneur as a source of economic growth, jobs, and innovation.

MAJOR PROJECTS

Nuclear Waste Dump Study Released. In July, CC and the Safe Energy Communications Council (SECC), a national energy watchdog group, co-released a report entitled *MYTHBusters #8: "Low-Level" Radioactive Waste*, which spells out the potential costs and health risks of the dump proposed for Ward Valley in the Mohave Desert near Needles. *[12:2&3 CRLR 13–14]* In a recent decision, the U.S. Supreme Court upheld the constitutionality of key provisions in the federal law requiring the states to provide disposal sites for "low-level" radioactive waste. (*See supra* report on CalPIRG for related discussion.)

The SECC report says the company chosen to run the Ward Valley dump, U.S. Ecology, has a poor safety record in other states. Only six such facilities currently exist in the United States and all have leaked radiation, according to the report; four are operated by U.S. Ecology. Two of U.S. Ecology's four facilities have been shut down, with the states left to bail out the company, which denies all financial responsibility. The report details several health and environmental risks associated with "low-level" nuclear waste and calls on Congress to repeal the law that requires states to set up such facilities.

"Low-level storage sites are a fable created by the Nuclear Regulatory Commission and the nuclear industry," said CC Executive Director Karl Ory. "Companies want to move in, make a quick buck, then stick taxpayers with the clean-up bill and health problems. They did it in Illinois. They've done it in Kentucky. If California is not careful, this fable will become a dark fact in our state's history," Ory said.

Consumers Will Finance Nuke Shutdown. On August 8, the Public Utilities Commission determined that Southern California Edison and San Diego Gas and Electric Company would be permitted to recover $460 million in costs not yet recouped—with interest—on San Onofre Nuclear Generating Station Unit #1. CC opposes burdening ratepayers with the utilities' failed investment. *[12:2&3 CRLR 15]* (*See infra* report on UTILITY CONSUMERS' ACTION NETWORK for related discussion.)

CC Opposes Proposition 166. In its summer newsletter, CC announced its opposition to Proposition 166, the California Medical Association's health care initiative on the November ballot. CC believes that the state "desperately needs progressive, updated health care programs," but stated that Proposition 166 is "deceptive" and would only preserve an inadequate status quo. CC specifically opposes placing the burden on employers and the initiative's failure to guarantee health care for all, leaving millions of Californians uninsured.

1992 Legislative Results. The results of CC's 1992 legislative efforts were mixed. AB 920 (Hayden), which would have required the California Energy Commission to develop a plan to reduce greenhouse gas omissions, and AB 1514 (Hayden), which would have required the Department of Health Services and the Air Resources Board to determine whether the state's ambient air quality standards adequately protect the health of infants and children and, if not, to take more stringent action, both died in committee. Also, AB 1519 (Lee), which as introduced was the Toxics Reporting and Use Reduction Act, was completely gutted on August 29 and is unrelated to its previous subject matter. However, two bills which CC opposed as threats to the initiative process—SCA 9 (Roberti) and SCA 10 (Killea)—died in committee.

CENTER FOR LAW IN THE PUBLIC INTEREST

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The Center for Law in the Public Interest (CLIPI), founded in 1971, provides public interest law services. CLIPI's major focus is litigation in the areas of environmental protection, civil rights and liberties, corporate reform, arms control, communications, and land use planning. Due to economic considerations, in 1988 CLIPI began using outside counsel instead of employing a full-time legal staff. Some legal services for the Center are provided by the law firm of Hall & Phillips, while a number of legal cases are handled on a contract basis by outside attorneys. CLIPI sponsors law student extern and fellowship programs, and periodically publishes a newsletter called *Public Interest Briefs*.

MAJOR PROJECTS

U.S. Supreme Court Affirms Proposition 13. On June 18, the U.S. Supreme Court upheld Proposition 13 against the equal protection challenge filed by CLIPI in *Nordlinger v. Hahn*, No. 90-1912. *[12:2&3 CRLR 15–16]*

The Court refused to apply the strict scrutiny test that is required when an alleged equal protection violation jeopardizes exercise of a fundamental right or categorizes on the basis of an inherently suspect characteristic. The Court ruled that Nordlinger lacked standing to litigate an infringement of her right to travel, a fundamental right, because her complaint did not allege that she had been impeded

from traveling or settling in California.

In the absence of heightened scrutiny, the Court applied a standard of review which asks only whether the difference in Proposition 13's property tax treatment between newer and older homeowners rationally furthers a legitimate state interest. The Court had "no difficulty" finding "at least" two rational reasons for the difference in treatment: a legitimate state interest in local neighborhood preservation, continuity, and stability, such as protection against gentrification; and the belief that the state legitimately can conclude that "a new owner at the time of acquiring his property does not have the same reliance interest warranting protection against higher taxes as does an existing owner....[A]n existing owner rationally may be thought to have vested expectations in his property or home that are more deserving of protection than the anticipatory expectations of a new owner at the point of purchase."

CLIPI attorney Carlyle Hall, Jr., said he was "outraged" by the decision. "The Court based its opinion on a new policy reason to support Proposition 13 that no one raised or briefed before the U.S. Supreme Court, that no California court has ever ruled on and that Howard Jarvis never even put before the voters in 1978," Hall commented, referring to the neighborhood preservation rationale.

The Court distinguished *Allegheny Pittsburgh Coal Co. v. Webster County*, 488 U.S. 336 (1989), relied upon by Hall and Nordlinger, as a "rare case where the facts precluded any plausible inference that the reason for the unequal assessment practice was to achieve the benefits of an acquisition-value tax scheme." As to claims that Proposition 13 "frustrates the 'American Dream' of home ownership for many younger and poorer California families," the Court said that it does seem that "California's grand experiment appears to vest benefits in a broad, powerful, and entrenched segment of society, and, as the Court of Appeal surmised, ordinary democratic processes may be unlikely to prompt its reconsideration or repeal." Nonetheless, the Court was not inclined to "upset the will of the people of California."

In lone dissent, Justice Stevens argued that neither of the state interests cited by the majority meets the rational basis test. Although he agreed that neighborhood preservation is a legitimate state interest, Justice Stevens concluded that a tax windfall for all persons who purchased property prior to 1978 does not rationally further that interest; it is "too blunt a tool to accomplish such a specialized goal." As for the second rationale, "if...a law creates a disparity, the State's interest preserving that disparity cannot be a '*legitimate* state interest' justifying that inequity....[A] statute's disparate treatment must be justified by a purpose *distinct* from the very effects created by that statute" (emphasis original). Stevens interpreted the Court's prior decisions as declaring irrational any attempt to treat similarly situated people differently on the basis of the date they joined a particular class. He stated that it would "obviously be unconstitutional to provide one with more or better fire or police protection than the other; it is just as plainly unconstitutional to require one to pay five times as much in property taxes as the other for the same government services."

Lenny Goldberg, Executive Director of the California Tax Reform Association, said that while the decision may resolve one legal issue, it does not resolve basic inequities in California taxation to which some aspects of Proposition 13 contribute. His organization placed Proposition 167 on the November ballot in an attempt to reduce regressivity in the state system of taxation. Its major effect on Proposition 13 would be to cause business property to be reassessed either every three years or whenever there is a change in the majority of stockholders.

CENTER FOR PUBLIC INTEREST LAW

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The Center for Public Interest Law (CPIL) was formed in 1980 after approval by the faculty of the University of San Diego School of Law. The faculty selected Professor Robert C. Fellmeth as the Center's director. CPIL is funded by the University and private foundation grants, including the Price Public Interest Law Chair endowment donated by philanthropists Sol and Helen Price in November 1990.

The Center's goal is to make the regulatory functions of state government more efficient and more visible by serving as a public monitor of state regulatory agencies. CPIL studies approximately seventy agencies, including most boards, commissions and departments with entry control, rate regulation, or related regulatory powers over business, trades, professions, and the environment.

CPIL's professional staff consists of public interest litigators, research attorneys, and lobbyists. Center staff members actively represent the public interest in a variety of fora, including the courts, the legislature, and administrative agencies.

Each year, approximately fifty law students participate as CPIL interns for academic credit. Students in the Center attend courses in administrative law, regulated industries, environmental law, and consumer law, and attend meetings and monitor activities of assigned regulatory agencies. Each student also contributes quarterly agency updates to the *California Regulatory Law Reporter*. After several months, the students choose clinic projects involving active participation in rulemaking, litigation, or writing.

The Center is headquartered in San Diego and has branch offices in Sacramento and San Francisco.

MAJOR PROJECTS

"60 Minutes" Airs Segment on California Physician Discipline. On June 14, CPIL Director Robert C. Fellmeth was featured in a "60 Minutes" segment critiquing the physician discipline system of the Medical Board of California (*see infra* agency report on MEDICAL BOARD for related discussion). For over twelve years, CPIL has monitored the activities of the Medical Board in the *Reporter* and, in 1989, issued *Physician Discipline in California: A Code Blue Emergency*—a 100-page report chronicling the failures of the Medical Board's enforcement system. *[9:2 CRLR 1]*

Using the *Code Blue* report as the basis for the segment, "60 Minutes"' Mike Wallace revealed that the Medical Board refuses to disclose to an inquiring consumer the facts that a physician has been convicted of felonies, suffered medical malpractice judgments or settlements, or had his/her admitting privileges revoked or suspended by a hospital. In the presence of Medical Board Executive Director Ken Wagstaff, Wallace even telephoned the Board's toll-free consumer hotline to inquire about several physicians who have been convicted of multiple felonies related to the practice of medicine. Wallace was told either that the subject physician had a "clean" license or that it had taken the Medical Board at least five years from the date of the convictions to remove the license.

Although the Medical Board has complained that "60 Minutes" focused only on sensational cases and that it has improved its enforcement system since the filming

of the segment, Professor Fellmeth told Wallace: "If you take an extreme case and the system doesn't respond, that tells you something about the less extreme cases. The system must respond not only to the extreme cases but also to the physician who's simply incompetent, who's lost his or her skills. This physician has got to be removed from the profession, and that's not happening." Further, recent improvements to the Board's system do not require the Board to disclose important information about physician convictions, malpractice, or privilege restrictions to inquiring consumers.

Events subsequent to the airing of the June 14 segment appear to vindicate the network and CPIL. In July, Department of Consumer Affairs Director Jim Conran ordered a formal investigation into what he called "serious allegations of misconduct" by upper staff of the Medical Board's Enforcement Unit, including orders to throw out consumer complaints rather than investigating them, irregularities in the promotional and recruitment process, and misuse of state time and vehicles. At this writing, that investigation is ongoing, with results expected by the end of October.

CPIL Awarded Telecommunications Privacy Grant. On June 17, the Public Utilities Commission's Telecommunications Education Trust (PUC-TET) awarded CPIL a one-year, $156,818 grant to conduct research into various privacy issues resulting from new telecommunications technologies and establish the Privacy Rights Clearinghouse (PRC), a depository of research and information on privacy issues, rights, and protection options.

The PRC will study privacy-threatening technologies such as Caller ID, which may soon be offered in California (*see infra* agency report on the PUC for related discussion). Additional areas to be studied by CPIL's privacy project staff include other new services such as Call Block, Call Trace, and Call Return, automatic number identification (ANI) for 800 and 900 numbers, cordless and cellular phones, direct mail and telemarketing, privacy safeguards when writing checks and using credit cards, access to personal records collected by government agencies and private companies, and workplace monitoring issues.

CPIL Program Manager Beth Givens is directing the privacy project, which will involve substantial factual, legal, and policy research; the development of a series of fact sheets on privacy issues; and the establishment of a toll-free 800 number and a computer bulletin board for consumers to report privacy abuses and request information on ways to protect their privacy. The PRC's toll-free hotline became operational on October 5 in the San Diego area and is scheduled to become available on a statewide basis in mid-November (1-800-773-PRIV). Through the hotline, project staff will collect data on common privacy concerns and abuses and distribute appropriate fact sheets to consumers who request them.

CPIL's Enforcement Reorganization Proposals Introduced. In early June, Assemblymember Delaine Eastin introduced AB 118, a major bill drafted by the Assembly Office of Research (AOR) to restructure the Department of Consumer Affairs (DCA) and reorganize the enforcement systems of the occupational licensing agencies within DCA. AOR analyst Lynn Morris drafted AB 118 and included within it several of CPIL's proposals to improve the disciplinary performance of these agencies, as well as its suggestion to create a Division of Consumer Advocates within DCA. *[12:2&3 CRLR 17, 50–52]* Although the bill was touted as a budget-cutting measure, it would actually have had little impact on the state's fiscal crisis and was quickly recognized as such. Preoccupied with the budget bill and declining to entertain major restructuring proposals, the legislature referred the bill to interim study. The bill and CPIL's enforcement proposals are scheduled to be the subject of public hearings later this fall.

CPIL Legislation. The following is a status update on legislation in which the Center was involved during 1992:

• SB 711 (Lockyer), the "Sunshine in the Courts Act" drafted and co-sponsored by CPIL, passed the legislature on August 26 only to be vetoed by Governor Wilson on September 11. The subject of a positive *Los Angeles Times* editorial on September 1, the bill would have limited the ability of tort litigants to unilaterally secrete evidence of product defects or environmental hazards in sealed settlements by requiring the court to review the record and refer evidence of conditions which pose a danger to the public to the appropriate regulatory agency. Although Governor Wilson's veto was expected, it was nonetheless a disappointment to CPIL's Bob Fellmeth and Steve Barrow, who have spent the last two years working to secure this important bill's enactment.

• SB 1405 (Presley), a follow-up to CPIL's 1988 bill which overhauled the State Bar's disciplinary system, was signed by the Governor on September 30 (Chapter 1265, Statutes of 1992). Among other things, the bill requires the State Bar to disclose to inquiring consumers public information about attorney misconduct which it collects in the course of operating its discipline system, including criminal charges and convictions, malpractice filings, judgments, and settlements, and discipline in other states. It also requires the Bar to file an Annual Discipline Report every April 30 containing detailed disciplinary statistics. Finally, it requires an attorney who enters into a contingency fee contract with a client or who expects to charge a client more than $1,000 for services rendered to disclose whether he/she maintains malpractice insurance applicable to the services to be rendered.

• AB 1801 (Frazee), as originally drafted by former CPIL intern Bill Braun, would have required all contracts for services between engineers and consumers to be in writing and strengthened the enforcement performance of the Board of Registration for Professional Engineers and Land Surveyors, which refuses to police billing abuses by its licensees. CPIL amended the bill several times due to persistent opposition by an engineers' trade association; in its final form, the bill would have required the Board to compile statistics on the number of complaints it receives from consumers alleging abusive billing practices and expressly placed such practices within the enforcement jurisdiction of the Board. Because of the pendency (and ultimate passage) of several bills suspending existing requirements on state agencies to perform specified studies and submit reports to the legislature (due to the state's fiscal crisis), AB 1801's author decided to drop the bill.

CPIL Litigation. The following is a status update on litigation in which the Center is involved:

• On July 2, the California Supreme Court issued a controversial 4–3 decision in *Bonnie Moore v. State Board of Accountancy*, in which the Center has appeared as an *amicus curiae* on behalf of Plaintiff/Appellant Bonnie Moore for over three years. In the case, Moore challenged a regulation adopted by the Board of Accountancy which prohibits anyone except CPAs from using the terms "accountant" or "accounting" to describe themselves or their services. Moore primarily challenged the rule on first amendment grounds as a violation of her commercial speech rights; as *amicus*, CPIL contended that the composition of the Board (eight CPAs and four public members) constitutionally disqualifies it from adopting and enforcing the rule, as the effect of the rule financially benefits the CPA profession.

In a confusing decision which is likely

to be taken up to the U.S. Supreme Court, a four-member majority of the California Supreme Court first ruled that the Board's adoption of the rule was lawful; however, the majority also found that, because Bonnie Moore and other non-CPAs do perform "accounting" work, their use of the term is truthful and any confusion could be cured by a more narrowly-tailored rule than that of the Board, which is a blanket ban on all use of the term by non-CPAs. Thus, the majority held that Moore must be permitted to use the terms accompanied by a disclaimer stating that the advertiser is not licensed by the state or that the services being offered do not require a state license. As the rule at issue expressly forbids non-CPAs to use the disputed terms with or without a modifier or disclaimer, the majority's express finding of constitutional infirmity would appear to require it to invalidate the rule; however, the majority left the rule intact.

Justice Ronald George, joined by Justice Joyce Kennard, dissented, noting that the legislature has expressly allowed many accounting tasks to be performed by non-CPAs and has never barred non-CPAs from using the terms "accounting" or "accountant" to describe themselves or their services. Also in dissent, Justice Stanley Mosk agreed with CPIL that the Board's rule "is of questionable validity" because the Board is dominated by CPAs, and "[t]he Board majority has an obvious pecuniary interest in preventing those without a license from advertising to the public that they are performing accounting services....The law has long looked with disfavor on rules adopted by a regulatory body the majority of which consists of members of a profession with a pecuniary stake in restricting the rights of competitors."

Due to the internal inconsistency in the majority's opinion, Bonnie Moore's counsel filed a motion for rehearing on July 17; CPIL filed a letter brief in support of that motion, urging the court to correct its error and strike the rule it had found to be invalid. In another 4–3 vote, the court denied that motion on August 27.

At this writing, Bonnie Moore's counsel is considering whether to ask the U.S. Supreme Court to review the California Supreme Court's decision. (*See infra* agency report on BOARD OF ACCOUNTANCY for related discussion.)

• On July 20, CPIL filed an action under the Public Records Act against the Board of Registration for Professional Engineers and Land Surveyors. For the past several years, the Center has attempted various means of compelling the Board to take enforcement jurisdiction over abusive billing practices by engineers. For example:

–in 1990, CPIL petitioned the Board to adopt rules governing unfair billing practices (denied due to the Board's refusal to acknowledge its jurisdiction over licensee billing practices) *[10:2&3 CRLR 119]*;

–in 1991, CPIL requested a regulatory determination from the Office of Administrative Law ruling that the Board's express disclaimer over licensee billing abuses is contrary to its enabling act (request still pending) *[11:3 CRLR 104]*; and

–in 1991, CPIL introduced AB 1801 (Frazee), which would have required all contracts for services between consumers and engineers to be in writing, and clearly placed abusive billing practices within the jurisdiction of the Board (bill dropped in 1992) (*see supra*).

Additionally, to provide empirical proof of the need for AB 1801 and its written contract requirement, CPIL requested records from the Board under the Public Records Act which would demonstrate the extent of the problem sought to be resolved by the bill. Board staff has already admitted in writing that more than half of the complaints it receives stem from the lack of a written contract. Among other things, CPIL requested copies of closed consumer complaint or enforcement files which were opened by the Board due to a consumer complaint alleging licensee breach of contract, fraud, billing disputes, and misrepresentation or deceit. The Board refused to produce these records under an exemption to the Public Records Act contained in Government Code section 6254(f), sometimes called the "investigatory files" exemption, which is designed primarily to protect the confidentiality of ongoing law enforcement investigations. CPIL contested the refusal on grounds that the Board could hardly open "investigatory files" on complaints over which it expressly and consistently refuses to take enforcement jurisdiction. The Board again declined to produce the records, leading to CPIL's lawsuit.

In the action, CPIL argues that the requested records are not exempt under Government Code section 6254(f), and that they cannot be classified as "investigatory files" as the Board refuses to investigate them. At this writing, the action is pending in Sacramento County Superior Court, with oral argument scheduled for December 18.

CPIL Welcomes Thirteenth Class of Interns. The Center recently welcomed 36 second-year law student interns to its yearlong clinic program aimed at opening up the processes of California regulatory agencies and teaching students administrative law and practice. Praised by consumer advocate Ralph Nader at the University of San Diego's May 1992 graduation as a "model program" to be followed by other law schools, CPIL has graduated almost 500 students from its program and is now in its thirteenth year of advocacy.

CONSUMER ACTION

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San Francisco's Consumer Action (CA) is a nonprofit consumer advocacy and education organization formed in 1971. Most of its 1,500 members reside in northern California but significant growth has taken place in southern California over the past year. CA is a multi-issue group which since 1984 has focused its work in the banking and telecommunications industries.

CA has filed petitions with and appeared before the California Public Utilities Commission (PUC) in the field of telephone rates. Statewide pricing surveys are published periodically comparing the rates of equal-access long distance companies and the prices of services offered by financial institutions. Once each year, CA publishes consumer service guides for the San Francisco Bay area and the Los Angeles area which list agencies and groups offering services to consumers and assisting with complaints. A free consumer complaint/information switchboard is provided by CA, and the group publishes a regular newsletter which includes its pricing surveys. More than 15,000 individual consumers requested CA publications during 1991. Consumer organizations requested bulk orders of CA publications in 1991 that exceeded 800,000 copies.

MAJOR PROJECTS

PUC Approves Caller ID With Stringent Consumer Safeguards. On June 17, the PUC ruled that local phone companies may offer the controversial Caller Identification (Caller ID) service, but conditioned that permission on requirements that the companies offer a comprehensive consumer education program on the new service and a choice of free blocking options. *[12:2&3 CRLR 19, 257–58]* CA and other consumer groups hailed the decision as a victory.

Caller ID is a service which displays the calling party's telephone number on a small screen attached to the subscriber's phone. The PUC's decision requires the companies to give customers the option of choosing one of three free blocking options: per-line blocking, per-call blocking, or per-line blocking with per-call enabling (which enables subscribers to block disclosure of their number on all calls except those for which they have disabled the blocking mechanism). The decision also requires phone companies to conduct extensive educational campaigns before offering Caller ID. The companies will have to consult with consumer groups and others in creating their campaigns.

In July, Pacific Bell asked the PUC to reconsider its decision. The company objects to the per-line blocking default option for customers with unlisted numbers on grounds that too many people will utilize this option. The effect will be to significantly reduce the value of the service to potential customers, and thus to the company. Approximately 40% of residential California telephone customers have unlisted numbers. PacBell also objects to the required educational campaign. CA Executive Director Ken McEldowney said that CA will file an opposition to the petition for rehearing. At this writing, the Commission has not yet ruled on PacBell's motion. (*See infra* reports on TOWARD UTILITY RATE NORMALIZATION, UTILITY CONSUMERS' ACTION NETWORK, and PUBLIC UTILITIES COMMISSION for related discussions.)

Checking Account Verification Control Legislation Dies Again. SB 1396 (Marks), CA's bill to regulate ChexSystems, died for the second time in August. ChexSystems is an unregulated virtual monopoly used by banks to determine whether to open checking accounts for new customers. *[12:2&3 CRLR 19]* Over the past year, CA's newsletter has included articles and letters from aggrieved consumers who have described their treatment by banks when trying to open bank accounts with such adjectives as "frightening," "Big Brother," and "Gestapo."

AB 3263 (Areias), supported by CA, also died in committee. This bill would have given credit card customers an opportunity to pay off balances at pre-existing interest rates when a bank merger or acquisition results in higher rates.

1992 Checking Account Survey Released. On August 25, CA released the 1992 version of its annual Checking Account Survey. The results indicate that, in the past year, banks and savings and loans in California have deeply cut rates on interest-bearing checking accounts while sharply increasing service fees. Some of the largest fee increases occurred at Bank of America, EurekaBank, Alameda Bank, and San Francisco Federal. For these reasons, CA believes that people with interest-bearing checking accounts should understand how charges accrue and avoid them scrupulously. Otherwise fees readily consume meager interest proceeds.

CA to Operate TET Repository. In June, the PUC awarded a two-year $144,000 Telecommunications Education Trust (TET) grant to CA to compile a repository of all items produced under the TET program. All TET grants contain language requiring that five copies of all consumer education materials produced under TET funding be submitted to the Trust Repository. The Repository is intended to be an archive and display of the history of TET as well as an active distribution center for consumer information. *[11:4 CRLR 32; 10:2&3 CRLR 33]*

CONSUMERS UNION

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Consumers Union (CU), the largest consumer organization in the nation, is a consumer advocate on a wide range of issues in both federal and state forums. At the national level, Consumers Union publishes *Consumer Reports*. Historically, Consumers Union has been very active in California consumer issues.

■ MAJOR PROJECTS

Health Care Update. The California Medical Association (CMA) succeeded in officially placing its "Affordable Basic Care" health insurance initiative on the November ballot as Proposition 166. CU opposes the CMA measure on grounds that it is preempted by federal law, is "uniquely regressive" in its financial impact, unnecessarily limits covered benefits, fails to cover all the uninsured, sets forth insurmountable barriers to future modification, and contains no effective employer enforcement or cost containment. *[12:2&3 CRLR 20–21]*

SB 308 (Petris), a CU-supported universal health care proposal modeled after the Canadian system and designed to control the growth of medical costs by requiring doctors and hospitals to negotiate with a state commission that would set fees annually, died its final death in August, when the Senate refused to concur in Assembly amendments. SB 308 contained the substance of SB 36 (Petris), a previous health care bill which failed in January. *[12:2&3 CRLR 20]*

Auto Insurance Reform Vetoed. SB 10 (Lockyer) was vetoed by the Governor on September 26. SB 10 would have reformed auto insurance by providing a $350 per year no-frills, reduced-coverage policy, and contained costs by limiting compensation to doctors and lawyers and requiring motorists to prove insurance coverage when registering a vehicle. In July, CU West Coast Regional Office Director Harry Snyder said that he would "urge the Governor to look kindly on the proposal." However, Snyder also said that CU as an organization would neither support nor oppose the bill. CU expressed concern that the "possible savings claimed in the system are not adequately documented."

1992 Legislative Results. The following is a status update on bills discussed in detail in CRLR Vol. 12, Nos. 2 & 3 (Spring/Summer 1992) at page 22:

Two bills supported by CU were enacted: AB 1474 (Speier) (Chapter 827, Statutes of 1992), which creates standard definitions of common cosmetic advertising terms; and AB 2049 (Isenberg) (Chapter 1251, Statutes of 1992), which repeals the California Residential Earthquake Recovery Act as financially inadequate and fatally flawed.

The Governor vetoed four bills supported by CU: AB 3103 (Connelly), which would have taxed manufacturers and wholesale distributors of designated poisonous products in order to establish a $13 million fund to support existing medical Poison Control Centers in the state; AB 3593 (Isenberg), which would have created financial pressure on the University of California to train more primary care physicians; AB 3825 (Brown), an omnibus measure which would have restored recently eroded civil liberties in California; and SB 1538 (Kopp), which would have made approximately 25 changes to the Brown Open Meeting Act, reducing bureaucratic barriers to understanding and attendance at local government agency meetings.

Two CU-supported bills died in committee: AB 3378 (Bates), which would have required political campaign and initiative advertisers to disclose the actual names, as opposed to misleading or fictitious names, of major contributors; and SB 2030 (Torres), which would have standardized insurance quotation forms and held insurers to their quotes even if they make a mistake.

Two bills opposed by CU were enacted into law: AB 2875 (Lancaster) (Chapter 1257, Statutes of 1992), which shortens the period of time in which the Insurance Commissioner must act before an insurer's application for a rate increase is deemed approved; and SB 1234 (Calderon) (Chapter 182, Statutes of 1992), a civil rights bill which CU viewed as competitive with, but inferior to, AB 3825 (Brown).

ENVIRONMENTAL DEFENSE FUND

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The Environmental Defense Fund (EDF) was formed in 1967 by a group of Long Island scientists and naturalists concerned that DDT was poisoning the environment. EDF was a major force behind the 1972 federal ban of DDT.

Staffed by scientists, economists, and attorneys, EDF is now a national organization working to protect the environment and the public health. Through extensive scientific and economic research, EDF identifies and develops solutions to environmental problems. EDF currently concentrates on four areas of concern: energy, toxics, water resources, and wildlife.

MAJOR PROJECTS

Proposition 65 Litigation Settlements. One day after the U.S. Ninth Circuit Court of Appeals rejected federal preemption arguments proffered by paint stripper manufacturers seeking to overturn Proposition 65's warning requirements *[12:2&3 CRLR 274]*, hardware retail giants—including Ace and True-Value—agreed to stop selling or shipping paint removers and similar products in California. The hardware stores agreed to the action in settlement of lawsuits brought by EDF under Proposition 65, which requires companies to give warning when they expose people to cancer-causing substances. The household products in question contain the carcinogen methylene chloride. In its June newsletter, EDF attorney David Roe stated, "This is the first effective action on the consumer product with by far the highest cancer risk in the market today."

EDF's Proposition 65 litigation against ceramic tableware manufacturers, filed in November 1991, remains in settlement negotiations. *[12:2&3 CRLR 23]*

Coalition Supports Pricing Strategies to Fight Smog and Freeway Congestion. In its June newsletter, EDF announced formation of a coalition of environmental, community, and business leaders to support market-based policies for combatting smog and freeway congestion in Los Angeles. Developed by an EDF economist, the proposal would charge fees for using freeways during peak periods of traffic use and establish a system of parking fees throughout the metropolitan area. It is hoped that such actions, analogous to peak-load pricing for use of telephone services, would shift some rush hour traffic to less congested times or to public transit. EDF contends that such measures must be tried because the cost of sufficient new freeways would "far exceed" federal, state, and local revenues available for highway construction.

GM and EDF Form Alliance. In July, the General Motors Corporation and EDF announced that they have formed an alliance for the purpose of finding ways for GM to cut automobile emissions that create air pollution. Specifics are not available at this writing; however, the new partners stated that GM will not pay EDF and has agreed not to use their relationship in any of its marketing activities.

Federal Central Valley Project Water Bill in Conference Committee. On September 15, U.S. Representative George Miller of California made a last-ditch attempt to reform the Central Valley Project (CVP) with a proposal to a House-Senate conference committee. The proposal would make saving threatened fish and wildlife a top priority of the CVP by reallocating one million acre-feet of water away from farms and cities to the environment and establishing a $50 million annual environmental restoration fund. While permitting CVP agricultural users to renew existing water contracts for another 20 years, Miller's legislation would for the first time allow contractors to sell water to any willing buyer in the state. Miller expressed optimism that Congress would approve his measure before the scheduled October 3 close of the session. *[12:2&3 CRLR 23]*

At this writing, state-federal negotiations continue on Governor Wilson's proposal for the state to take over the CVP. California Resources Agency Secretary Douglas Wheeler said that the two sides have agreed that the state would assume title by 1995. Democrats and environmentalists see the negotiations as a ploy to stop Miller's water legislation. They note that no progress has been made on the numerous and complex financial issues involved in a transfer of the CVP to the state. These include who assumes responsibility for the uncovered portion of the initial costs of construction, whether the price of water to farmers will continue to be subsidized under state ownership, and—if so—who pays for it and how much.

FUND FOR ANIMALS

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Founded in 1967, the Fund for Animals (FFA) works for wildlife conservation and to combat cruelty to animals locally, nationally, and internationally. Its motto is "We speak for those who can't." The Fund's activities include legislation, litigation, education, and confrontation. FFA has divisions in eighteen states, 200,000 members nationwide, and a $2 million annual budget. It also runs a 4.5-acre Wildlife Rehabilitation Center in Ramona, California. The Fund's New York founder, Cleveland Amory, continues to serve without salary as president and chief executive officer.

MAJOR PROJECTS

FFA Acts on Endangered Species. In its most recent newsletter, FFA highlighted a just-released report by the General Accounting Office (GAO), the investigative arm of Congress, which criticizes the Bush administration's implementation of the federal Endangered Species Act. Requested by Representative George Brown of California, the report supports the Fund's contention that the administration is "doing a miserable job of implementing the Act." The report states that the U.S. Fish and Wildlife Service (USFWS) has identified at least 600 unprotected species which are threatened or endangered with extinction. In addition, the report notes that another 5,000 species may be endangered or threatened with extinction. FFA believes it will take the USFWS 40 to 50 years to list currently threatened or endangered species at its present work pace. "In the meantime, many of these species are bound to go extinct—the final cruelty." FFA says that in the past ten years at least 34 species have disappeared without having received full benefit of the Act's protection. Included in the queue of animals awaiting protection are California's Nelson's antelope, ground squirrel and the mountain beaver.

Earlier this year, FFA initiated a lawsuit challenging President Bush's 90-day moratorium on rulemaking as it applied to listing of endangered species. The Fund won, and USFWS resumed its glacially-slow process.

FFA also announced that it has joined 35 animal and environmental protection groups in the Endangered Species Coalition, which seeks to reauthorize and strengthen the Endangered Species Act and adequately fund the Endangered Species Program. The Coalition has united behind H.R. 4045 introduced by Representative Gerry Studds. At this writing, H.R. 4045 is still pending in Congress.

FFA Sues to Stop Bear-Bait Hunting. On July 21, FFA filed suit in federal court challenging regulations adopted by the U.S. Forest Service (USFS) in March. The rules eliminate the requirement that hunters obtain permits before placing bait to attract bears in the Medicine Bow National Forest in Wyoming. FFA is asking the court to halt bear-baiting until USFS files an environmental impact statement and takes other actions it says are required by law.

FFA Takes a Position on California FGC and DFG Appointees. In its July–August action alert, FFA came out in support of confirmation of Boyd Gibbons as director of the Department of Fish and Game. FFA opposes confirmation of Gus Owen, a real estate developer, to the Fish and Game Commission on grounds that he "is not an environmentalist and represents the interests of resource exploitation, not protection." Owen was confirmed by the Senate on August 19, and Gibbons was confirmed on September 1.

1992 Legislative Results. The following is a status update on bills discussed in detail in CRLR Vol. 12, Nos. 2 & 3 (Spring/Summer 1992) at page 24:

One bill supported by FFA passed the legislature and was signed into law by the Governor. SB 1332 (Hill) (Chapter 888, Statutes of 1992) prohibits confined wildlife from being killed in "canned" hunts. Two FFA-supported bills were vetoed by the Governor: AB 500 (Farr), which would have provided minimum standards for the transport of horses to slaughter; and AB 3088 (O'Connell), which would have required dogs and cats over the age of six months adopted from animal shelters to be spayed or neutered within 60 days.

The following bills supported by FFA failed in the legislature: AB 1660 (Speier), which would have required a licensed veterinarian to be present at all rodeos to treat injured animals; AB 1835 (Chandler), which would have required tuna sold in California to be labeled "not dolphin safe" if caught in a manner harmful to dolphins; AB 3145 (Campbell), which would have renamed DFG as the Department of Fish and Wildlife; AB 3175 (Lempert), which would have required exercise for horses, donkeys, mules, and ponies; and AB 3259 (Campbell), which would have required labeling of any product produced with the use of "growth promoting compounds."

The following bills opposed by FFA died in the legislature: AB 145 (Harvey), which would have increased the minimum fine for persons interfering with hunting activities; AB 1443 (Areias), which would have authorized the California Department of Food and Agriculture to set animal husbandry standards; AB 1740 (Harvey), which would have added ostriches to the list of poultry recognized as meat products; AB 2450 (Baker), which would have prohibited DFG from listing any species as endangered or threatened unless there is a specific plan for its recovery; AB 2817 (Clute), which would have declared horses in the state to be "commodities" for export purposes; AB 3064 (Mountjoy), which would have liberalized the possession of endangered species products; AB 3432 (Knowles), which would have required DFG to publicize the time and place of roadblocks set up to catch unlicensed hunters; AB 3668 (Harvey), which would have prohibited DFG from processing a petition to list a species as threatened or endangered for three years after the federal government has denied a petition to list that species; AB 3817 (Knowles), which would have provided a mission statement for DFG requiring that wildlife be "preserved for use and enjoyment by the people of this state" and that "species maintenance" (hunting) is an "integral part of...wildlife conservation"; and SCA 39 (Rogers), which would have amended the state constitution to declare that people have the right to keep and bear arms for purposes that include hunting. AB 3429 (Brulte), which would have weakened the law prohibiting purchase of stolen horses, was amended to become a different bill.

One bill opposed by FFA became law. AB 3421 (Mountjoy) (Chapter 255, Statutes of 1992), permits the sale of inedible parts of domestically-raised game birds, elk, deer, and antelope.

LEAGUE FOR COASTAL PROTECTION

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Created in 1981, the League for Coastal Protection (LCP) is a coalition of citizen organizations and individuals working to preserve California's coast. It is the only statewide organization concentrating all its efforts on protecting the coast. The League maintains a constant presence in Sacramento and monitors Coastal Commission hearings.

MAJOR PROJECTS

Former Coastal Commissioner Pleads Innocent. On May 27, former Coastal Commissioner Mark Nathanson pleaded innocent to eight federal corruption charges. If convicted of charges of extortion, racketeering, obstruction of justice, and tax evasion, Nathanson could receive 79 years in prison and $1.5 million in fines. *[12:2&3 CRLR 25]* Ann Notthoff of LCP expressed hope that without Nathanson the Commission will swing toward environmental positions. "[H]e just poisoned the commission," she said. Notthoff also remarked that for this to happen, Los Angeles realtor Diana Doo, Nathanson's hand-picked successor, must "distinguish herself from Nathanson's record."

Monterey Bay National Marine Sanctuary Designated. In September, the Bush administration formally designated the Monterey Bay National Marine Sanctuary stretching from Marin County south to near San Simeon. As LCP had urged, the administration chose the largest alternative size. *[12:2&3 CRLR 25]*

The sanctuary designation permanently bans offshore oil and gas drilling and dumping of dredge spoils at new locations, and requires towns along the coast to provide secondary treatment of sewage discharged into the water. At the same time, sanctuary advocates note that the fight has only begun against sewage and dredge dumping along the edge of the sanctuary, including in state waters, unregulated passage of oil tankers through the sanctuary, and polluted runoff water from cities and farms along the coast. In addition, a 71-square-mile area was notched out of the sanctuary's boundaries near San Francisco where the city's sewage is dumped into the ocean and dredge spoils from the Bay are deposited.

LCP Chair Expresses Concern for California's Wetlands. In August, LCP

chair Melvin Nutter expressed uncertainty about the fate of the state's wetlands over the next ten to fifteen years. The future of coastal wetlands is "hopeful and frightening," he said. While there is increased public awareness and state funding for coastal restoration, two dark clouds appear on the horizon, according to Nutter. One is the U.S. Environmental Protection Agency's proposed redefinition of wetlands that would remove federal protection from about half of California's remaining coastal marshes. The other is the U.S. Supreme Court's recent decision in *Lucas v. South Carolina Coastal Council*, which requires compensation for a landowner under certain circumstances in which coastal regulation denies all economic use of property. (*See infra* reports on PACIFIC LEGAL FOUNDATION and CALIFORNIA COASTAL COMMISSION for related discussions.)

NATURAL RESOURCES DEFENSE COUNCIL

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The Natural Resources Defense Council (NRDC) is a nonprofit environmental advocacy organization with a nationwide membership in excess of 170,000 individuals, more than 30,000 of whom reside in California.

NRDC's stated goal is a world in which human beings live in harmony with the environment, a harmony NRDC believes is predicated on two ethical imperatives: human health (including pure air and water and safe food for every human being) and a belief in the sanctity of the natural environment.

Since 1972, NRDC's western office in San Francisco has been active on a wide range of California, western, and national environmental issues. NRDC focuses on six program areas: air and energy; water and coastal; land; international and nuclear; public health; and urban. On behalf of the underrepresented interests of environmental integrity, NRDC attorneys and scientists appear before numerous state and federal forums.

NRDC has been a leading force in seeking to combat global warming through enhanced energy conservation and renewable energy alternatives to new fossil fuel power plants and offshore oil drilling. NRDC has actively pursued resource-conserving land use policies in California's coastal counties and federally-managed lands. Notable recent achievements include leadership of coalitions that have developed broadly-supported federal legislative initiatives on pesticide regulation and efficiency standards for household appliances. Forest, desert, and prairie protection and cooperation with environmental groups in the former Soviet Union are taking on growing significance within the organization.

NRDC's unique commitment to urban ecological issues and "environmental justice" is reflected in the growing activities of its branch office in downtown Los Angeles, which opened in October 1989. NRDC headquarters is located in New York City, with additional branch offices in Washington, D.C. and Honolulu.

MAJOR PROJECTS

FGC Ordered to Reconsider Gnatcatcher Listing Denial. On August 27 in *NRDC v. California Fish and Game Commission*, No. 368042, Sacramento County Superior Court Judge William R. Ridgeway held that FGC failed to provide evidence to support its reasons for rejecting NRDC's petition to list the California gnatcatcher as an endangered species, and ordered FGC to reconsider its decision.

NRDC filed suit in September 1991 after FGC denied its petition to list the gnatcatcher. *[11:4 CRLR 37, 181–82]* At an FGC hearing on the issue in August 1991, Undersecretary of Resources Michael Mantell persuaded the Commission to give Governor Wilson's new Natural Community Conservation Planning (NCCP) program time to work instead of listing the gnatcatcher. *[12:2&3 CRLR 26–27, 233–34]* Judge Ridgeway ruled that the six reasons cited by FGC for denying the petition amounted to little more than opinions of individual commissioners and were not supported by evidence in the record. Under the standard applied by the court, FGC may not reject a petition if it contains "relevant and credible evidence which, considered with other evidence before the commission, a reasonable mind might accept as adequate to support a conclusion that listing was necessary."

NRDC hailed the decision as an important victory and predicted that the Commission would be forced to approve the petition the second time around. "If the Commission is determined to be an outlaw, it will reach the same decision again," said NRDC senior attorney Joel Reynolds. "But if it intends to comply with this order, it's my view that it will have to accept the petition to list the gnatcatcher." Reynolds also maintained that the decision showed the Commission was not concerned with the evidence, and that the three members who voted "no" based their decisions on considerations other than the facts. Laer Pearce, executive director of a coalition of ten major Orange and San Diego County developers, including the Irvine Company, Santa Margarita Company, and the Baldwin Company, said he considered the decision a victory because the judge did not order FGC to list the bird. He characterized NRDC's lawsuit as "just a delaying tactic."

Although fighting an endangered listing of the gnatcatcher, developers such as Irvine and Santa Margarita have enrolled land in the NCCP, which to date involves a voluntary 18-month building moratorium on development of between 300,000 and 700,000 acres of coastal southern California lands. An unprecedented coalition of developers and environmentalists came together in support of SB 1248 (McCorquodale), which would have provided $1.5 million in funding for the NCCP and enacted more stringent oversight of development projects affecting coastal sage scrub. However, the bill was defeated at the end of the legislative session by a cavil of agricultural, timber, and oil interests. Although the bill expressly exempted agricultural land from the heightened review to be applied to projects within the wildlife habitat, and few oil or timber companies would have been affected by the proposed legislation, they appeared to be afraid the measure would set an ugly precedent. Ultimately, only $362,000 was appropriated for the NCCP in the last-minute budget scramble. Environmentalists do not consider this amount sufficient for NCCP to maintain viability. (*See* reports on NATIONAL AUDUBON SOCIETY and FISH AND GAME COMMISSION for related discussions.)

On the federal front, the U.S. Fish and Wildlife Service (USFWS) announced on September 17 that it would postpone a decision on NRDC's petition to list the gnatcatcher under the federal Endangered Species Act (ESA) for up to six months. USFWS said a scientific question remains: whether the California gnatcatcher constitutes a subspecies distinct from varieties in central and southern Baja California. A top USFWS official said that people within the agency believe the bird is a distinct subspecies, but they decided after much internal debate to obtain the concurrence of the American Ornithologists' Union (AOU). The chair of the AOU committee that defines subspecies, Burt Monroe, said that the AOU had advised USFWS in recent years of its determination that the California gnatcatcher is dis-

tinct. The *Los Angeles Times* reported on September 18 that an influential group of Orange County and San Diego County developers opposed to the listing raised the subspecies question and requested the extension of time.

NRDC's Joel Reynolds characterized the decision as based on nothing but politics. Environmentalists charged that the White House pressured USFWS to delay the decision until after the November presidential election. On September 22, NRDC called the delay illegal and filed notice of its intention to sue USFWS. The ESA allows an extension of a listing decision only when there is a "substantial disagreement regarding the sufficiency or accuracy" of the scientific data about the species.

On September 23, AOU's Monroe reconfirmed to USFWS his committee's prior opinion that the California gnatcatcher is indeed a distinct subspecies. The developers' argument is based on the opinion of a Utah biological consultant hired by the Chevron Land Company and has no scientific validity, Monroe said. USFWS responded with an estimate that its decision would not be made before late November.

NRDC Joins Environmental Business Venture. A group that includes the former head of the military's "Star Wars" program and representatives of small business, local government, large aerospace firms, universities, nuclear research institutions, and electric utilities, as well as NRDC attorney Mary Nichols, has begun an effort to make California a world center for electric vehicle manufacturing. Lockheed has donated two years of rent-free space at its 155,000-square-foot Burbank complex where the Stealth fighter was built.

The so-called "Calstart" effort, which hopes to replace some of the business lost to military cutbacks, is based on the state Air Resources Board's requirement that automakers sell 40,000 zero-emission vehicles annually in California by 1998 and 200,000 annually by 2003. *[11:1 CRLR 113]* Southern California Edison president Michael Peevey said, "We are at the center of the first major usage of electric vehicles, so we can have an environmental win, an economic win, and a technology win altogether....We're playing for world pre-eminence in this area." Calstart's immediate aim is to raise $20 million for a development effort that would include building a prototype advanced electric vehicle for a worldwide marketing effort, developing advanced electric bus propulsion systems, building a short-journey "neighborhood" electric car prototype, and setting up a network of service facilities and recharging stations for electric vehicles. Calstart officials believe global demand for electric cars could reach 850,000 by 2000, and California could produce 300,000 of them, providing 55,000 jobs and $2.2 billion in income. Calstart has already raised $14 million.

NRDC Victorious Over EPA in Pesticide Regulation Lawsuit. On July 8, the U.S. Ninth Circuit Court of Appeals held that the federal Environmental Protection Agency (EPA) unlawfully permitted use as food additives four pesticides that are known carcinogens. In *Les v. Reilly*, argued by NRDC attorney Albert Meyerhoff on behalf of five farmworker and consumer petitioners, the court ruled the EPA policy violated the Delaney Clause of the Federal Food, Drug, and Cosmetic Act of 1958 (FFDCA). *[11:3 CRLR 37]*

For 34 years, the $5.8 billion agricultural chemicals industry and the EPA have ignored the FFDCA's Delaney Clause with regard to pesticides, relying instead on the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), which health and food safety advocates and environmentalists have criticized for years as far too weak. FIFRA requires use of risk assessment methodology to balance risks and benefits of a pesticide. Opponents believe this approach overstates the easily quantifiable economic benefits of chemicals that maximize the farmers' crop yields, but vastly understates or ignores so-called "externalities," including polluted waters, eroded soils, and hazards to workers. In addition, according to NRDC, "the system for *measuring* risks and benefits is itself subject to enormous political manipulation. And devising precise human 'tolerances' to chemicals is, at best, an inexact science."

In contrast, the Delaney Clause states that "no additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal." Although FFDCA allows tolerance regulations setting maximum permissible levels of pesticides—and some exemptions—in *raw* agricultural commodities, when such pesticide residues "flow through" to *processed* foods, they will be allowed only if the concentration of the pesticide in the processed food is not greater than that in the raw food. Otherwise, use of the pesticide is an "additive" that is banned under the Delaney Clause.

The pesticides at issue were benomyl, a fungicide used on raisin grapes and tomatoes intended for processing; mancozeb, a fungicide found in raisins and flour; phosmet, an insecticide detected in cottonseed oil; and trifluralin, another insecticide detected in peppermint and spearmint oils. The EPA has for many years approved these chemicals for use—even after 1988 when they were included on a list of carcinogenic substances published by the agency.

In addition to claiming that these pesticides are better regulated by FIFRA methodology, EPA exempted them from FFDCA by finding that they pose only a *de minimis* risk of actually causing cancer. At the June 8 oral argument, in response to queries from the bench as to the statutory source of this *de minimis* exception, EPA maintained it is inherent in the administrative authority of all agencies in order to bring about a sensible regulatory scheme. Writing for the majority, Judge Mary Schroeder pointed out that the language of the Delaney Clause is clear on its face, its legislative history indicates that it is intended to apply to pesticides as written, and a 1987 case, *Public Citizen v. Young*, applied the literal language of the Delaney Clause to ban carcinogenic color additives from foods.

EPA officials said that because growers often do not know whether their crops will eventually be processed, the ruling would effectively discontinue the use of many pesticides on certain food crops altogether. NRDC's Meyerhoff concluded, "This is going to provide the overdue catalyst for the agricultural community to get off the pesticide treadmill and move away from using toxic chemicals in agriculture." At this writing, EPA has not decided whether to appeal. The chemical industry responded that the Delaney Clause is a "scientific anachronism" and should be "updated." The industry believes trillions of dollars are being jeopardized by "cancer-prone mice."

In a related matter, the U.S. District Court for the Eastern District of Washington recently dismissed a suit against NRDC brought by thirteen Washington state apple growers. The growers sought $250 million in damages for "product disparagement" contained in NRDC's 1989 publication *Intolerable Risk: Pesticides in Our Children's Foods*, and its campaign against the carcinogenic apple growth regulator Alar. *[11:2 CRLR 34–35]* In his June order dismissing the case, Judge William Neilsen wrote that, contrary to the growers' assertions, "*Intolerable Risk* is not a polemical tract preying on raw emotions and irrational fears." It is not even about apples per se; the report, he wrote, is about the EPA's failure to assess the hazards of pesticides by considering the distinct hazards faced by preschoolers, who consume more food

per body weight and more fruit than adults. EPA banned Alar in 1989, based on its own studies that it caused cancer in human beings.

PACIFIC LEGAL FOUNDATION

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The Pacific Legal Foundation (PLF) is a public interest law firm which supports free enterprise, private property rights, and individual marketplace freedom. PLF has been particularly active and influential in defending the rights of owners whose ability to benefit economically from their property has been circumscribed by government regulations. The firm has also fiercely defended Proposition 13's limits on taxation.

MAJOR PROJECTS

U.S. Supreme Court Enlarges Fifth Amendment Takings Requiring Compensation.... PLF claimed "a major victory for private property rights" following the U.S. Supreme Court's June 29 decision in *Lucas v. South Carolina Coastal Council*, No. 91-453. PLF, which filed an *amicus curiae* brief on behalf of landowner David Lucas, expects the decision to expand the types of government actions requiring compensation of affected property owners under the fifth amendment's takings clause. *[12:2&3 CRLR 28, 228–29]*

Eighteen months after Lucas purchased two residentially zoned beachfront lots for $975,000, South Carolina enacted the Beachfront Management Act which barred construction on beachfront property in order to prevent erosion. Although a state court awarded Lucas $1 million in damages, the South Carolina Supreme Court reversed, finding that the Act was a valid exercise of the state's police power to prevent a "serious public harm"; as such, there was no "taking" deserving of just compensation under the fifth amendment.

Prior to *Lucas*, takings law was understood to require compensation if all economically viable use of property is foreclosed by government edict, unless the state is using its police powers to enjoin the owner from harmful or noxious uses akin to public nuisances. *See Mugler v. Kansas*, 123 U.S. 623 (1887). In *Lucas*, a 6–2 majority rejected the South Carolina Supreme Court's belief that it was bound by the state's legislative findings that new construction would be harmful. Otherwise, "...departure [from the categorical rule that total regulatory takings must be compensated] would virtually always be allowed," wrote Justice Scalia for the majority. The correct approach, according to the majority, is that the general rule requiring compensation may be resisted "only if the logically antecedent inquiry into the nature of the owner's estate shows that the proscribed use interests were not part of his title to begin with." In other words, "[a]ny limitation so severe [*i.e.*, regulations that prohibit all economically beneficial use of land] cannot be newly legislated or decreed (without compensation), but must inhere in the title itself, in the restrictions that background principles of the State's law of property and nuisance already place upon land ownership." This means that *common law* principles of nuisance, not legislative findings, shall determine whether compensation is required. The Court cited two examples of circumstances in which public regulation prohibiting all economic use of property will *not* require compensation under the nuisance exception: denial of a landfill permit where it would flood the land of another, and a directive to remove a nuclear power plant that is discovered to sit astride an earthquake fault.

Applying this rule to the *Lucas* facts, the majority commented that "it seems unlikely that common-law principles would have prevented the erection of any habitable or productive improvements on [his] land; they rarely support prohibition of the 'essential use' of land." However, the Court left it to the South Carolina courts to determine whether Lucas could be restrained in a common law action for public nuisance under the state's laws. Only by such a showing, the Court ruled, can the state fairly claim that it has taken nothing.

In its fall newsletter, PLF emphasized dicta (appearing in *Lucas* footnotes) in which the majority suggested that the undefined concept of "reasonable investment-backed expectations" could not only be utilized to determine the specific property interest against which the loss of value is to be measured, but—more importantly—to decide if an owner deprived of less than 100% of the economic value of property is nonetheless entitled to compensation. However, the greatest proponent of the reasonable expectations analysis, Justice Kennedy, gave no indication of the latter possibility in his concurrence. Instead, he mildly complained that the Court's common law nuisance standard could prove too narrow in some cases, such as "[c]oastal property [that] may present such unique concerns for a fragile land system that the State can go further in regulating its development and use than the common law of nuisance might otherwise permit."

Justices Blackmun and Stevens, in separate dissenting opinions, expressed alarm at what they saw as an unnecessarily wide-sweeping decision. Justice Blackmun pointed out that the majority reversed the factual burden associated with legislative restrictions on property use. Heretofore, the Court presumed the existence of facts supporting a legislative judgment, and imposed on plaintiffs challenging the constitutionality of such laws the burden of providing "some factual foundation of record" that contravenes the legislative findings. Now, said Blackmun, "the Court decides the State has the burden to convince the courts that its legislative judgments are correct" and that the regulation is not a taking. Furthermore, Justice Blackmun stated that by ennobling the common law of nuisance, the majority unwisely invests something "magical in the reasoning of judges long dead."

Justice Stevens argued that the majority opinion "effectively freezes the State's common law, denying the legislature much of its traditional power to revise the law governing the rights and uses of property....Arresting the development of the common law is not only a departure from our prior decisions; it is also profoundly unwise." He noted, as an example, the time when it was crucial to fundamentally redefine the term "property" after "the Nation came to understand that slavery was morally wrong." He concluded: "We live in a world in which changes in the economy and the environment occur with increasing frequency and importance. If it was wise a century ago to allow Government 'the largest legislative discretion' to deal with 'the special exigencies of the moment' [quoting *Mugler*], it is imperative to do so today. The rule that should govern a decision in a case of this kind should focus on the future, not the past."

Both Justice Blackmun (in dissent) and Justice Souter (refusing to vote on the substantive issue) also strongly protested the majority's acceptance of the "unreviewed...and implausible" (Blackmun), "unreviewable" and "highly questionable" (Souter) finding of the trial court that Lucas' land became completely worthless when he was prohibited from building a home. The reason for this leap of faith, Blackmun concluded, is "[c]learly, the Court was eager to decide this case." Justice Kennedy also found accep-

tance of zero value troubling, and noted that on remand the South Carolina Supreme Court need not accept it as so.

In PLF's fall newsletter, PLF president Ronald A. Zumbrun agreed with Justice Stevens that one effect of the decision is likely to be efforts by courts, lawmakers, regulators, developers, and/or investors to alter their practices either to avoid or take advantage of the new rule. Zumbrun and Stevens both noted that state courts may try to limit the impact of the decision: Zumbrun is concerned they may expand the definition of nuisance, perhaps including attempts to fit the public trust doctrine into the majority's concept, while Justice Stevens expects to see some courts defining property more broadly so that some value remains after regulation. Stevens also mentioned the possibility that developers may begin to tailor projects narrowly to make it more likely that any regulatory changes will effect a total taking. He illustrated this notion with the example of an investor who purchases the right to build a multi-family home on a specific lot, "with the result that a zoning regulation that allows only single-family homes would render the investor's property interest 'valueless.'" Justice Stevens believes no good can come of these "distortions of our takings jurisprudence."

...And Upholds Proposition 13. Also on June 29, the U.S. Supreme Court affirmed the legality of California's property tax limitation law, Proposition 13, passed in 1978. *[12:2&3 CRLR 15–16, 28]* In its fall newsletter, PLF announced that it will continue to oppose inventive efforts by state and local governments to avoid Proposition 13's two-thirds voter approval requirement for new taxes. PLF is actively filing lawsuits as well as friend of the court briefs challenging these practices. (*See supra* report on CENTER FOR LAW IN THE PUBLIC INTEREST for an expanded discussion of this case.)

PLF Sanctioned for Abuse of the Court System. On September 10, the U.S. Court of Appeals for the Ninth Circuit upheld most of a lower court's imposition of sanctions against PLF for actions of its attorneys in a ten-year legal battle against local government officials.

In 1982, PLF organized several owners of undeveloped land in Bolinas to file a lawsuit against the Bolinas Community Public Utility District (BCPUD) and various present and former directors and private individuals. By enacting a water hook-up moratorium in the 1970s, PLF alleged, BCPUD had prevented the plaintiffs from developing their land, and thus committed a regulatory taking, substantive and procedural due process and equal protection violations, and violations of the antitrust laws. They sought a total of $30 million in damages ($10 million trebled under the Sherman Act).

In 1984, the district court dismissed certain claims and defendants on BCPUD's motion, and in 1987 granted summary judgment in favor of defendants on all remaining claims. Although the Ninth Circuit affirmed in part and reversed in part on appeal, the remaining claims were dismissed in May 1991 with prejudice at plaintiffs' request. The defendants sought sanctions against the plaintiffs, PLF, and PLF's attorneys. The district court awarded $136,434.50 in sanctions, levied only against PLF as an organization.

On appeal, PLF claimed (among other things) that it had only supplied logistical support to the lawsuit, and the district court erred in sanctioning the organization instead of individual attorneys who had signed the abusive pleadings and motions. The district court had found plentiful evidence that the organization should be held responsible: PLF's name and address were on the heading of each court paper filed; the "constantly changing cast" of attorneys were all PLF employees, and included its president; PLF funded the litigation in its entirety; and PLF's president had made statements vaunting the importance of the Bolinas suit for the organization. The Ninth Circuit affirmed on this issue.

The court reversed two instances of conduct the district court had found objectionable; however, it upheld sanctions for failure to comply with the district court's order to make pleadings more specific; bringing "factually frivolous" antitrust claims; "subjective bad faith" in deliberately avoiding to specify its theories underlying one claim; and bad faith in submitting improper affidavits and other supporting materials in a countermotion to strike.

The Ninth Circuit remanded for recalculation of the amount of sanctions. PLF staff attorney Anthony Caso contended the decision effectively eliminated 80% of the monetary amount of sanctions, but stated the organization would nevertheless appeal to the California Supreme Court.

Keller Update: PLF Sues State Bar. On June 29, PLF attorneys filed suit in Sacramento County Superior Court, challenging arbitrator David Concepcion's decision upholding the State Bar's calculation of non-chargeable political expenses. *[12:2&3 CRLR 28–29, 270]*

The case, *Brosterhous v. State Bar*, No. 527974, grows out of the U.S. Supreme Court's decision in *Keller v. State Bar*, which held that the Bar may not use compelled membership dues for political or ideological uses. Interpreting *Keller*, the Bar created an arbitration mechanism that allows attorneys who disagree with the amount of the Bar's refund for non-chargeable political expenses to challenge the calculation. On April 7, Concepcion concluded that the $3 refund set by the Bar for 1991 was more or less correct; PLF had represented 200 attorneys who claimed the Bar owed them $87 of their $480 annual dues. PLF attorney Anthony Caso stated that *Brosterhous* proposes to "define the specific activities that people can be compelled to pay for." The suit specifically attacks legislation-related and affirmative action-connected activities of the Bar.

This year's $4 deduction is being challenged by 162 attorneys. Another round of arbitration will be set up to hear the protests.

PLF Loses Again on Mandatory Developer Fees. In its fall newsletter, PLF expressed resolve to continue opposing "improper" developer fees despite the U.S. Supreme Court's refusal to review its appeal of *Commercial Builders of Northern California v. City of Sacramento*. In August 1991, the Ninth Circuit held that the City of Sacramento may require commercial developers to pay development fees that are used to provide low-income housing in exchange for approval of the developers' projects. *[11:4 CRLR 38–39]*

PLF is currently representing developers challenging a county development fee being used to finance general fund services and capital improvements, and has submitted a friend of the court brief in a case involving "arbitrary" fees attached to approval of a developer's project to remove a fitness center and construct a condominium in its place. PLF believes these cases are good candidates for U.S. Supreme Court review under *Nollan v. California Coastal Commission* and *Lucas* on grounds that the fees are designed to provide the public a benefit and not to mitigate some harm caused by the development. "Eventually, the High Court must deal with this issue. PLF will simply keep knocking on their door until they answer," states the fall newsletter.

State Supreme Court Denies Proposition 140 Attorney Fees. In late August, the California Supreme Court denied PLF's motion for $370,000 in attorneys' fees for its intervention in *Legislature v. Eu*, the legislature's unsuccessful challenge to Proposition 140's term limits. *[12:1 CRLR 20, 196–97]*

PLF filed the attorneys' fee motion on

July 20, arguing that its representation of proponents and supporters of the initiative resulted in the enforcement of important rights affecting the public interest and conferred a significant benefit on the public. Attorneys for the state argued that PLF had added "nothing either unique or even helpful to the Attorney General's defense of the case." The justices' denial came less than a week after final briefs were filed; none of the justices voted in favor of the motion.

PLF Receives Grants. In its fall newsletter, PLF announced it had met the $50,000 challenge grant awarded by the S.H. Cowell Foundation last May. This puts $104,000 at the disposal of the organization's Property Rights Project, which—according to a June 10 press release—is dedicated to broadening the *Nollan* decision, "ending uncompensated taking of private property to finance government programs, overturning local no-growth policies..., and assisting efforts to reform unfair laws concerning wetlands and endangered species protection."

The M.J. Murdock Foundation recently awarded PLF a two-year grant that the organization expects will generate $200,000 to support its Pacific Northwest Project. PLF recently opened a litigating office in Bellevue, Washington, to handle cases arising in Washington and Oregon. The June 10 press release states that PLF intends to play a key role in "the delicate balance between the protection of potentially threatened species (*e.g.*, spotted owl) and man's competing interest to embody a healthy economy through the creation of jobs."

PLANNING AND CONSERVATION LEAGUE

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The Planning and Conservation League (PCL) is a nonprofit statewide alliance of several thousand citizens and more than 100 conservation organizations devoted to promoting sound environmental legislation in California. Located in Sacramento, PCL actively lobbies for legislation to preserve California's coast; prevent dumping of toxic wastes into air, water, and land; preserve wild and scenic rivers; and protect open space and agricultural land.

PCL is the oldest statewide environmental lobbying group. Founded in 1965 by a group of citizens concerned about uncontrolled development throughout the state, PCL has fought for over two decades to develop a body of resource-protective environmental law which will keep the state beautiful and productive.

Since its creation, PCL has been active in almost every major environmental effort in California and a participant in the passage of numerous pieces of significant legislation, including the California Environmental Quality Act, the Coastal Protection Law, the act creating the Bay Conservation and Development Commission, the Lake Tahoe Compact Act, the Energy Commission Act, the Wild and Scenic Rivers Act, and laws which enhance the quality of urban environments.

PCL is supported by individual and group membership fees, with a current membership of more than 9,500 individuals. PCL established its nonprofit, tax-deductible PCL Foundation in 1971, which is supported by donations from individuals, other foundations, and government grants. The Foundation specializes in research and public education programs on a variety of natural resource issues. It has undertaken several major projects, including studies of the California coast, water quality, river recreation industries, energy pricing, land use, the state's environmental budget, and implementation of environmental policies.

MAJOR PROJECTS

Auburn Dam Defeated Again. In a startling victory for PCL and environmentalists, the U.S. House of Representatives voted overwhelmingly to kill a $698 million version of the Auburn Dam on September 23. Earlier in the year, another version of the dam project was killed by defeat of SB 39 (Ayala), which would have placed a $1.2 billion bond measure on the state ballot to build an Auburn Dam. Although the dam is intended to provide flood protection for the Sacramento Valley, environmentalists argue that it would irreparably damage 48 miles of scenic river canyons. *[12:2&3 CRLR 30]*

In the August issue of its *California Today* newsletter, PCL reported its opposition to the latest "dry dam" version proposed by California representatives Vic Fazio and Bob Matsui, which would have stored water only during floods, avoiding damage to the river canyon upstream. Although the dry dam notion is smaller than the Bureau of Reclamation's original "killer high" dam proposal, PCL believes it could still seriously damage the canyons upstream during periods of substantial flooding. PCL took the position that if a dry dam is to be built, it must include "a large unconstricted passage at the base of the dam to prevent long-term inundation of the canyons." PCL also wants upstream lands permanently protected and managed as a national recreation area. PCL General Counsel Jennifer Jennings and Executive Director Jerry Meral provided extensive comments on the proposed legislation, complete with alternatives designed to solve Sacramento's flood control concerns without building the Auburn Dam.

Work on the foundation for a massive high dam began in 1967 but was stopped by environmental opposition and earthquake concerns. Congressional authority to build the dam was never revoked but funding has not been provided.

The Fazio-Matsui bill had the support of Governor Wilson and U.S. Senator John Seymour, but was opposed by environmentally-concerned Democrats led by Representative George Miller and by Republican House members such as William Dannemeyer and John Doolittle who opposed the flood control dam on grounds that it was too small. The lopsided 2–1 defeat effectively kills the dam for this year and places its future in jeopardy.

Proposition 156 on November Ballot. Another link in PCL's multi-year, multi-bond rail package successfully qualified for the November ballot. *[12:2&3 CRLR 30]* Proposition 156 would provide $1 billion to build new rail lines, stations, and equipment, and to acquire rights of way throughout California. Light rail systems in Los Angeles, San Francisco, San Jose, Sacramento, and San Diego would benefit, as well as commuter rail in southern California, the new Capital Corridor between the Bay Area and Sacramento, the Amtrak corridor down the San Joaquin Valley, and BART.

PCL Backs Broad Growth Management Coalition. In the August issue of *California Today*, PCL announced that a year of discussions to find common ground on growth management among people concerned about housing, environment, social justice, development, and local government resulted in a coalition supporting limited legislative goals. These goals included support for then-pending SB 929 (Presley), legislation that would enact statewide conservation and development policies to guide public plans and investments. The coalition would also seek to establish a state infrastructure bank to provide loans and matching grants to local agencies for natural resource protection, housing, and infrastructure projects consistent with state and local capital improvement plans and the statewide policies. A conceptual

goal is to present to the public a single bond measure for development of California infrastructure, which would include funding for parks, housing, and the new state infrastructure bank. The coalition also endorsed ACA 44 (Farr), which would have allowed local voters to approve bonds for infrastructure purposes by a majority vote rather than the two-thirds presently required. The PCL Foundation recently produced a report indicating that such bonds usually receive majority support but rarely two-thirds. However, all of the growth management coalition's legislative efforts failed in the 1992 session.

NCCP: "A Failing Process." In the June issue of *California Today*, PCL termed the Governor's Natural Community Conservation Planning (NCCP) program "a failing process," and charged that the concept of voluntary multi-species habitat conservation plans to protect large habitat areas is being used to weaken existing statutory protections for wildlife. *[12:2&3 CRLR 26–27, 233–34]* PCL reported that it is working closely with other environmental groups to make certain that the NCCP "does not provide a cover for developers to eradicate habitat while failing to provide real protection for wildlife." PCL noted that the Wilson administration's approach allows developers to choose the lands to set aside, and provides no penalties for failure to participate in the process, withdrawal of lands slated for protection, or actual destruction of habitat. The 1992 legislative session ended with less than $400,000 budgeted for NCCP in 1992–93—an amount which most environmentalists believe undermines the credibility of the program. PCL vowed to work for funding legislation that will strengthen the state's protection of affected species. (*See* reports on NATIONAL AUDUBON SOCIETY, NATURAL RESOURCES DEFENSE COUNCIL, and FISH AND GAME COMMISSION for related discussions.)

Diluted Water-Efficient Landscaping Ordinance Approved. On July 31, the Office of Administrative Law approved the Department of Water Resources' model water-efficient landscaping ordinance. The ordinance, adopted pursuant to the mandate of AB 325 (Clute) (Chapter 1145, Statutes of 1990), will apply to all cities and counties that fail to adopt their own similar ordinance by January 1, 1993, or to make findings stating why such an ordinance is unnecessary.

Initially, water-availability standards supported by PCL had been incorporated into the proposed model ordinance *[12:1 CRLR 22]*, but pressure from the sod industry resulted in the inclusion of an allowance for 25% of average annual precipitation. *[12:2&3 CRLR 31]* This means that plants and landscaping that are less water-efficient may be installed under the model ordinance. The regulations are applicable to all new and rehabilitated landscaping for public agency projects, private development projects that require a permit, and developer-installed residential landscaping. Homeowner landscaping is not subject to the regulations.

PCL Strives for Grand Accord to the Bitter End. PCL remained committed to the doomed "Grand Accord" forest practices reform bill throughout the 1992 legislative session, with General Counsel Jennifer Jennings working hard for passage of AB 641 (Hauser). *[12:2&3 CRLR 29–30, 241]* PCL lamented the bill's failure, stating that the result has been the clearcutting of hundreds of acres of ancient forests that passage of the bill would have prevented. (*See infra* reports on SIERRA CLUB and BOARD OF FORESTRY for related discussions.)

Other 1992 Legislative Efforts. PCL made passage of SB 1866 (Johnston) a major priority for 1992 and was rewarded by its enactment into law late in the session. SB 1866 (Chapter 898, Statutes of 1992) creates a Delta Protection Commission to protect, enhance, and balance wildlife habitat, agriculture, and recreation in the Sacramento-San Joaquin Delta. The 19-member Commission will prepare a comprehensive long-term resource management plan for the Delta that meets specified requirements for a core primary zone. Local government general plans must be consistent with the long-term regional plan and must be submitted to the Commission for approval. Local government may approve development within the primary zone only after making specified findings on the basis of substantial evidence in the record. The bill provides for administrative appeal and judicial review by aggrieved persons.

PCL supported a package of three unsuccessful bills aimed at the proposed Ward Valley "low-level" nuclear waste dump *[12:2&3 CRLR 13–14]*: AB 3798 (Katz), which would have required recycling of radioactive tritium, a major component of the radioactivity in "low-level" waste, and AB 2500 (Sher), which would have made the Ward Valley dump operator and the waste generators partially liable for the dump and established a response fund for accidents, were both vetoed by the Governor; and AB 3811 (Friedman), which would have required a public hearing to resolve questions concerning the dump's safety, died in committee. PCL also strongly supported the unsuccessful AB 1556 (Friedman), which would have required cities and counties to adopt ordinances to protect "heritage" oak trees.

PCL gave high priority to the defeat of SB 1596 (Maddy), which died in committee. SB 1596 would have allowed the California Environmental Protection Agency to approve or deny environmental permits without any set guidelines or hearings unless a state or local agency acts on the permits very quickly.

PCL-sponsored AB 3207 (Campbell) passed the legislature and was signed by the Governor (Chapter 840, Statutes of 1992). It requires ships to follow Coast Guard guidelines regulating coastal ballast water dumping in order to prevent further introduction of alien fish and invertebrates into state waters. SB 1469 (Calderon), also passed and signed (Chapter 852, Statutes of 1992), makes California's toxic dumping fee structure "more fair" and reduces incentives to ship toxic wastes to environmentally-lax out-of-state sites.

The following PCL-supported bills died in committee: AB 72 (Cortese), which would have placed a $578 million bond issue on the November ballot for wildlife protection and parks; AB 2899 (Isenberg), which would have prohibited federally regulated dam operators selling water from using the California Aqueduct if they violate state water quality standards; AB 3800 (Bates), which would have provided $3 billion for rail transportation development by doubling the state gasoline tax; ACR 107 (Lee), which would have required the Metropolitan Transportation Commission to study a $178 million plan (called TRAC) to run trains across the San Francisco Bay Bridge; and SB 959 (Presley), which would have imposed a modest fee on urban water users to create a fund for groundwater clean-up and restoration of fish and wildlife. PCL is currently considering whether to place AB 3800 and SB 959 before the voters in the form of initiatives.

PUBLIC ADVOCATES

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Public Advocates, Inc. (PA) is a nonprofit public interest law firm whose mission is to fight the persistent, underlying causes and effects of poverty and discrimination against low-income, minority, and immigrant residents of California. PA has concentrated its efforts in the areas of

education, employment, health, homelessness, insurance, public utilities, and banking. Since its founding in 1971, PA has filed over 100 class action suits and represented more than 70 organizations, including the NAACP, the League of United Latin American Citizens, the Filipino-American Political Association, Chinese for Affirmative Action, the National Organization for Women, and the World Institute of Disability. In addition, PA has helped to form major and now independent organizations such as the Health Access Coalition, Latino Issues Forum, Urban Strategies Council, and HomeBase.

MAJOR PROJECTS

PUC President Publicly Reprimands PA Attorney in Furor Over Commissioner Shumway's Anti-Multilingualism Actions. On August 19, Public Utilities Commission (PUC) President Daniel Wm. Fessler partially granted a PA motion to investigate an "anti-Hispanic press conference in PUC's courtyard" featuring PUC Commissioner Norman Shumway, but also publicly reprimanded PA attorney Mark Savage and Latino Issues Forum attorney Edith Adame.

On July 8, Commissioner Shumway held a press conference in the PUC building's courtyard with the aid of PUC staff and resources on behalf of an organization called U.S. English, of which Shumway is president. At the press conference, Shumway allegedly pronounced a "threat" to California and the nation from bilingualism and multilingualism. On July 30, Savage and Adame filed a motion with the PUC questioning Shumway's conduct and fitness to preside over the ongoing Alternative Regulatory Framework (ARF) telecommunications proceeding, in which PA has been participating for years. Among other things, the ARF proceeding is examining proposed changes in rate design that could increase the charge for basic residential telephone service by 60% and will determine the scope of the telcos' failure to provide lifeline service to Spanish-speaking households. *[12:2&3 CRLR 31–32, 258–59]* Shumway is the assigned commissioner in the ARF proceeding. The two attorneys alleged that Shumway's action violates the California Code of Judicial Conduct and the Government Code's prohibition on conflicts of interest and use of state resources for campaign or personal purposes. The motion requested that the PUC immediately investigate this use of the Commission's resources; publicly announce immediately whether Commissioner Shumway's position is the official position of the PUC; determine immediately whether Shumway has a conflict of interest in the ARF proceeding or has shown the appearance of impropriety or actual impropriety; and publicly report its findings within fifteen days.

President Fessler's August 19 ruling ordered an investigation pursuant to the first request, but required the results to be sealed until they can be presented to a new commissioner who has yet to be appointed to a vacancy on the Commission. He also ordered the PUC's executive director to keep a record of the time spent on the investigation in order "to make a fair determination of the costs imposed upon the ratepayers by this exercise."

On the conflict of interest allegation, Fessler ruled that the issue had been resolved by Shumway's assigned commissioner's ruling dated August 4, finding no conflict of interest, and that this finding is supported by a 1981 California Supreme Court decision, *Andrews v. Agricultural Labor Relations Board*, 28 Cal. 3d 781 (1981), which held that it takes more than expressed political or legal views to disqualify a trier of fact. Fessler derided Savage and Adame for "selective amnesia" since PA was "intimately involved" in the *Andrews* case.

Fessler then purported to discipline the attorneys for asking whether Shumway's conduct reflects the official position of the PUC. He stated, "I have determined that no reasonable construction of the tone and content of this second request can evade the conclusion that it is asserted for inflammatory and vexatious purposes only." Fessler said that Savage and Adame, as attorneys, know the proper way in which the Commission assumes official positions. "Given their responsibility for this knowledge they are hereby reprimanded for a course of conduct which is unprofessional and tends to confuse the public."

PA, joined by the NAACP Legal Defense Fund and the Mexican American Legal Defense and Education Fund, filed a motion for reconsideration on September 18. The motion argued that the Savage/Adame request merely provided ethically-required effective representation and charged that Fessler's action produces a chilling effect on attorneys who represent consumer groups before the Commission. Further, Fessler's reprimand violates the separation of powers doctrine by ignoring the state constitution's reservation of attorney discipline to the California Supreme Court and the State Bar. Even if Fessler had the power to discipline, his action effectively denied the attorneys' right to procedural due process by failing to afford them notice of the charges and an opportunity to defend themselves, be represented by counsel, cross-examine witnesses, or issue subpoenas. This lack of due process, argued the movants, is "particularly egregious" because there is no guaranteed right of review of a PUC decision—appeal is made directly to the Supreme Court, which need not grant review. PA also argued that the discipline was excessive, as well, in contrast with the State Bar's disciplinary procedures, under which public reprovals are issued to punish serious actions such as forgery, commingling of funds, and false statements to court under penalty of perjury.

The motion for reconsideration asks that the PUC determine the reprimand to be void as outside the Commission's authority and in violation of both constitutional and statutory law; state specifically that the conduct on which the reprimand was based was legitimate advocacy and is to be commended or, alternatively, refer the matter to the State Bar for investigation; answer the question originally asked with regard to the Commission's position on Shumway's statements at this press conference; and "fully disclose whether the Commission and the President were aware that they had no legal authority for the reprimand."

In light of Fessler's disciplinary action, the motion for reconsideration stated the public's lack of confidence in the sealed, in-house investigation Fessler ordered. The motion requests that the investigation be expeditious, public, and performed by "a respected outside, independent party." Finally, although the movants did not directly dispute Fessler's dismissal of the original motion's conflict of interest allegation, they stated in a footnote that both Fessler and Shumway, in his August 4 assigned commissioner's ruling, misinterpreted *Andrews*.

Other public interest advocates came to the defense of the two attorneys. In a letter brief in support of the motion for reconsideration, Center for Public Interest Law Director Robert C. Fellmeth described the attorneys' question as "somewhat gratuitous and perhaps even rhetorical," but said it was invited by "the baffling behavior of Commissioner Shumway," whose press conference Fellmeth described as an "attractive nuisance." Fellmeth, who served a five-year term as State Bar Discipline Monitor, also reminded Fessler that although the Commission has some jurisdiction to control attorney conduct in PUC proceedings, attorney discipline is exclusively the province of the State Bar and the California Supreme Court.

In a related matter, PA continues to

accuse PacBell Chair Sam Ginn of engaging in unreported ex parte contacts with PUC decisionmakers on ARF issues, including an alleged visit to President Fessler on April 15. In his August 19 ruling, Fessler also ordered an investigation of this incident. It, too, is to be sealed until a new commissioner is appointed. Last March, PA charged that Ginn had discussed ARF matters with Fessler at a dinner party, but the PUC declined to investigate that allegation. *[12:2&3 CRLR 32, 259]*

Insurance Commissioner Releases "Redlining" Regulations. On September 17, Insurance Commissioner John Garamendi published a revised version of the regulations proposed by PA and the Minority/Low-Income/Consumer Coalition in 1991. These regulations are designed to end insurance companies' redlining against California's low-income, minority, and inner-city communities by creating a simple but effective set of incentives operating through the marketplace. *[11:4 CRLR 40]* The regulations offer insurers an opportunity for greater profit as an incentive to provide equal service to California's underserved communities. On the other hand, the regulations would decrease the allowable profit commensurately, as a penalty, for inferior or discriminatory service. According to PA's Mark Savage, "The revised regulations continue to be the first of their kind in the nation, demonstrating courageous leadership by Commissioner Garamendi on behalf of California's consumers." On December 3, the Commissioner will hold a public hearing on the proposed rules, at which PA will present comments and testimony. (*See infra* agency report on DEPARTMENT OF INSURANCE for related discussion.)

In a related matter, the *Los Angeles Times* reported an in-house study showing that only 100 home mortgage loans were approved to African-Americans in Los Angeles County in 1990. Wells Fargo, for example, the state's second largest bank, approved only 13 loans to African-Americans, with an aproval rate of 31.7%. Wells Fargo approved 28 loans to Hispanics (approval rate 35.0%), 58 loans to Asians (52.7%), and 509 to whites (59.6%). "We find the statistics appalling," said Robert Gnaizda, PA attorney and general counsel for the Greenlining Coalition, a statewide organi-zation of community groups active in financial issues. The study indicated that some small savings and loan institutions, including several that failed, made more loans to African-Americans than did banks.

PUBLIC INTEREST CLEARINGHOUSE

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The Public Interest Clearinghouse (PIC) is a resource and coordination center for public interest law and statewide legal services. PIC is partially sponsored by four northern California law schools: Hastings College of the Law, University of Santa Clara School of Law, Golden Gate School of Law, and University of California at Davis School of Law. The Clearinghouse is also funded by the California Legal Services Trust Fund and a subgrant from the Legal Services Corporation.

Through the Legal Services Coordination Project, PIC serves as a general resource center for all legal services programs in California and other states in the Pacific region. Services include information on funding sources and regulations, administrative materials, and coordination of training programs.

PIC's Public Interest Users Group (PUG) addresses the needs of computer users in the public interest legal community. Members include legal services programs in the western region of the United States, State Bar Trust Fund recipients, and other professionals in various stages of computerization. PUG coordinates training events and user group meetings, and serves as a clearinghouse for information shared by public interest attorneys.

PIC's biweekly *Public Interest Employment Report* lists positions for a variety of national, state, and local public interest organizations, including openings for attorneys, administrators, paralegals, and fundraisers. There is no charge for listing jobs in the employment report. A job resource library at PIC's office is available to employment report subscribers and to the general public.

PIC's public interest law program at the four sponsoring law schools helps prepare students to be effective advocates for the poor and other disadvantaged members of society. A project known as "PALS"—the Public Interest Attorney-Law Student Liaison Program—matches interested law students with practitioners in the field for informal discussions about the practice of law. PIC publishes *The Advocate*, a newsletter of its public interest law program. The newsletter prints information on part-time and summer positions available to law students. It is published August through April for law students in northern California. Listings are free and must be received by the tenth of the month.

PIC's Academic Project promotes and facilitates the interaction of law school faculty and legal services attorneys in furtherance of law in the public interest. Faculty members assist practicing attorneys with legal services cases, and staff attorneys help faculty with research and course materials.

PIC publishes the *Directory of Bay Area Public Interest Organizations*, which lists over 600 groups and information on their services and fees. PIC also publishes *Public Interest, Private Practice*, which lists over 250 for-profit law firms which devote a substantial portion of their legal work to the public interest.

MAJOR PROJECTS

PIC Going South. In the summer issue of its *Legal Services Bulletin*, PIC announced receipt of a multi-year grant from the Commission on National and Community Service to expand its public interest law program to law schools in southern California. PIC's eventual goal is to open a fully-staffed satellite office in southern California within the next few years. PIC also announced that the University of San Francisco Law School has become a member of the public interest law program, joining Hastings, UC Davis, Santa Clara, and Golden Gate. The Program offers career counseling services, the *Public Interest Advocate* newsletter, job-hunting assistance, career panels with legal services attorneys and other public interest advocates, and a "generally supportive environment for those working toward public interest careers."

PIC Computer Project Expanding. PIC's Computer Project (PIC-CP) publishes a quarterly ten-page newsletter entitled *Public Interest Computer News*. Its spring 1992 issue requested volunteers for PIC-CP's Technical Assistance Project (TAP). TAP matches skilled volunteers from the private bar with Bay Area legal services programs in need of expert advice. In the past, volunteers have helped programs install local area networks and make decisions related to long-range computer planning. PIC-CP has also developed a free four-page guide to HandsNet and Legal Aid/Net.

PIC-CP co-sponsored a "Training of Trainers" workshop in Chicago on September 23, with the goal of helping legal services staff nationwide to make the most of the HandsNet system in their advocacy work.

SIERRA CLUB

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The Sierra Club has 185,000 members in California and over 530,000 members nationally, and works actively on environmental and natural resource protection issues. The Club is directed by volunteer activists.

In California, Sierra Club has thirteen chapters, some with staffed offices. Sierra Club maintains a legislative office in Sacramento to lobby on numerous state issues, including toxics and pesticides, air and water quality, parks, forests, land use, energy, coastal protection, water development, and wildlife. In addition to lobbying the state legislature, the Club monitors the activities of several state agencies, including the Air Resources Board, Coastal Commission, Department of Health Services, and Department of Parks and Recreation. The Sacramento office publishes a newsletter, *Legislative Agenda*, approximately fifteen times per year. The Sierra Club Committee on Political Education (SCCOPE) is the Club's political action committee, which endorses candidates and organizes volunteer support in election campaigns.

The Sierra Club maintains national headquarters in San Francisco, and operates a legislative office in Washington, D.C., and regional offices in several cities including Oakland and Los Angeles.

MAJOR PROJECTS

Last-Gasp Timber Bill Defeated. The final hope of Governor Wilson's "Grand Accord" package on logging "reform" arose from the dead in the last days of the legislative session, only to be soundly defeated by a coalition of conservative Republicans and liberal Democrats in the Assembly.

After months in a holding pattern, Sierra Club fears were realized when AB 641 (Hauser) was amended to incorporate the contents of three bills defeated earlier—AB 714 (Sher), SB 300 (Leslie), and SB 854 (Keene)—which, along with AB 641, composed the original version of the Grand Accord. *[12:2&3 CRLR 33–34, 241]* Hollywood millionaire and Disney Company President Frank Wells became a leading proponent, lobbying behind the scenes for passage of AB 641. In an August 17 letter to Assemblymember Lloyd Connelly, Wells warned that he would consider serious action if the bill failed. Since Wells has been a key bankroller of previous timber reform initiative efforts, including the unsuccessful 1990 Forests Forever campaign, some observers thought he was threatening to return to the ballot with a new forestry measure.

Conservative Republicans opposed AB 641 on grounds that logging would be so restricted lumber mills would be forced to close and thousands of jobs would be lost. Liberal Democrats adopted the Sierra Club's position that the bill was so vague and lax—for example, it would have permitted 68% of ancient forests to be harvested in 20 years—that forests would be better off without it. In its September 11 *Legislative Agenda* newsletter, the Sierra Club lamented the sorry affair, but felt defeat of AB 641 was necessary in light of its "scheduled decimation of the forest." The Club said the worst fault of the Wilson timber plan was its definition of the critical term "sustained yield," which was so "convoluted with technical wording that it covered up the fact that it did nothing less than legalize the destruction of the forest."

Spotted Owl: To Be Or Not To Be? Federal Courts Choose Life. On July 23, U.S. District Judge William Dwyer refused to stay a permanent injunction he issued on July 2 prohibiting timber sales in national forests that serve as spotted owl habitat in Washington, Oregon, and northern California.

In December 1991, the U.S. Court of Appeals for the Ninth Circuit affirmed Judge Dwyer's earlier order in *Seattle Audubon Society v. Evans*, an action litigated by the Sierra Club Legal Defense Fund on behalf of eleven conservation organizations, which enjoined timber sales until the government prepared a management plan designed to protect the owl from extinction. *[12:1 CRLR 24–25, 175]* Judge Mary Schroeder's caustic opinion stressed that the U.S. Forest Service (USFS) had engaged in a "systematic refusal to follow the law" and that the endangered species list under the federal Endangered Species Act (ESA) "is not a list of animals to be written off." The Ninth Circuit's decision left intact Judge Dwyer's ruling requiring USFS to prepare and submit a forest management plan by March 5.

On May 29, Judge Dwyer held that the management plan USFS submitted to him was inadequate because the agency had failed to consider new scientific evidence showing the spotted owl is declining faster than previously thought. He also cited the "God Squad's" May 14 decision to override ESA protections and permit logging on 1,700 acres of spotted owl habitat in Oregon. *[12:2&3 CRLR 34–35]* Judge Dwyer noted that USFS' environmental impact statement, which was prepared before the God Squad's decision, repeatedly stated that its assessment of owl survivability would need to be re-examined if the committee voted to allow the timber sales. On July 2, he made the injunction on logging permanent.

The government decided to appeal to the Ninth Circuit once again, and asked Judge Dwyer for a stay of his injunction until the appeal could be heard. On July 23, Judge Dwyer held that allowing the timber sales to go ahead would cause irreparable damage to the owl's old-growth forest habitat. The ruling rejected the government's argument that the court has no power to order it to perform specific tasks or to set a timeline. "To hold that the courts cannot do this would invite lawlessness; an agency could escape its statutory duties simply by procrastinating," Dwyer concluded. He set an August 4 date for USFS to submit a timetable for preparation of a new environmental impact statement.

On August 1, USFS filed a declaration in U.S. District Court in Seattle setting forth a timetable of 24 months to comply with the court's requirements. Environmentalists labeled the two-year period an exaggeration designed to support Bush administration attempts to dilute federal environmental laws. The Sierra Club Legal Defense Fund estimates it should take the government less than a year to complete a supplemental impact statement.

On August 26, the government filed a motion with the Ninth Circuit for a stay of Judge Dwyer's injunction on the ground that it is "wholly unnecessary" to save the owl from extinction. "We have a scientifically credible management strategy in place that protects the long-term viability of the northern spotted owl," stated Acting Assistant Agriculture Secretary John Breuter. If the logging ban is lifted, the government plans to allow harvesting of 1.8 to 2.3 billion board-feet of timber on the affected lands next year.

In a related matter, congressional investigators reported in June that the government is using "phantom forests" to justify timber sales. The report accused USFS of exaggerating both the success of tree-planting efforts and the amount of timber remaining in national forests. These exaggerated numbers then serve as a rationale for approving excessive timber harvesting, and result in forests being overlogged, according to the report.

California Desert Protection Act. On September 22, U.S. Senator Alan Cranston announced defeat of his California Desert Protection Act. *[12:2&3 CRLR*

36] The Senate Energy and Natural Resources Committee had been considering a version of the bill that would have set aside four million acres as wilderness; that version had been passed by the House and was supported by a majority of the Committee members. However, Senator John Seymour used a parliamentary tactic similar to that utilized by then-Senator Pete Wilson in 1990 to once again block a vote on the Act. Seymour opposed the bill for protecting too much land; he supports the Bush administration's proposal, which would designate only 2.3 million acres as wilderness.

Debbie Sease, director of public lands for the Sierra Club, predicted that the bill will be "resurrected very, very quickly next year." Opponents concede their chances of stopping it are very slim if California sends two Democratic senators to Washington and if President Bush, who promised a veto, loses in November.

Batiquitos Lagoon. On May 26, a San Diego County Superior Court judge dismissed *Sierra Club, et al. v. California Coastal Commission*, No. 637550, ruling that the Los Angeles Port District may proceed with its planned dredging of the Batiquitos Lagoon in Carlsbad. The Sierra Club/Audubon Society lawsuit against the Coastal Commission had contended that the dredging will destroy the existing shallow water habitat that supports nesting birds, including endangered species, and replace it with something altogether different. In public statements, the Club has suggested that the Port District is simply motivated by a need to mitigate its San Pedro Bay dredging program, and that Hillman Properties, which is developing a resort hotel and 2,000 homes on the lagoon's north shore, is solely interested in the revenue-enhancing views provided by blue water. *[12:2&3 CRLR 36, 224–25; 12:1 CRLR 25, 162]* At this writing, the environmental organizations are considering an appeal.

Judge Rewards San Diego's Backtracking on Sewage Treatment. On August 28, U.S. District Judge Rudi Brewster affirmed his July 9 order approving the City of San Diego's decision to renege on its 1990 agreement with federal and state authorities. In a federal Clean Water Act lawsuit in which the Sierra Club has been participating for some time, the city had agreed to spend $1.2 billion to upgrade its Point Loma Wastewater Treatment Plant to meet federal sewage treatment standards and to construct eight new sewage treatment plants, seven of which could reclaim wastewater for use on golf courses and lawns. Judge Brewster's order permits the city to delay the Point Loma plant upgrade while it tests new, cheaper methods of sewage treatment at the plant. A March 1993 deadline set for testing new treatment methods also gives San Diego officials time to lobby Congress for relaxation of Clean Water Act requirements.

The court order reinstated an earlier ruling requiring the city to begin construction of an extension of its undersea sewage disposal pipe from 2.2 miles offshore to about 4.5 miles. Construction was to have begun in May but was delayed by the February sewage spill that was not contained until April 4. *[12:2&3 CRLR 36, 215–16]* The city approved $1.3 billion for this portion of the project on June 1.

At the August 28 hearing, Sierra Club attorney Robert Simmons argued that the city should be held in contempt of court for adopting its revised plan before presenting it to the court for approval. Judge Brewster denied the motion, stating his belief that the city has acted in good faith. The judge also refused to allow Professor Simmons to question the director of the city's clean water program about the results of a study it commissioned to determine the cause of the massive February spill. San Diego officials have withheld preliminary findings from the public on grounds that it could compromise the city's position in pending legal claims for damages. Simmons termed the city's position "utter nonsense." Nevertheless, the Regional Water Quality Control Board (RWQCB) on August 17 rescinded its earlier demand that the city submit to it the report on causes of the break. The RWQCB had reportedly been considering the possibility of fining the city for negligence. *[12:2&3 CRLR 215]*

Ninth Circuit Sides With Sierra Club on Los Angeles Smog Controls. On July 1, the U.S. Court of Appeals for the Ninth Circuit ordered the federal Environmental Protection Agency (EPA) to prepare a federal implementation plan (FIP) to control ozone (O_3) and carbon monoxide (CO) in the South Coast Air Basin.

In *Coalition for Clean Air v. U.S. Environmental Protection Agency*, the Sierra Club successfully maintained that the Clean Air Act Amendments of 1990 did not relieve EPA of its statutory duty to implement a FIP after disapproving earlier state implementation plans (SIPs). The 1970 amendments to the Clean Air Act of 1963 gave the Act the basic structure it has today; specifically, it directed EPA to establish National Ambient Air Quality Standards (NAAQS) for any air pollutants that might endanger the public health or welfare. States were required to submit SIPs by 1972 that would provide for the attainment of NAAQS by 1975. The amendments obligated the EPA to review SIPs and, if disapproved, to adopt a FIP that would meet the Act's requirements and take the place of the SIP. California's South Coast SIP was disapproved by EPA in 1972, 1981, and 1988 (after initial approval and subsequent reversal by the Ninth Circuit). On February 22, 1988, the Coalition for Clean Air and the Sierra Club filed suit to force EPA to implement FIPs for ozone and carbon monoxide in the South Coast Air Basin. In a March 1989 settlement agreement, EPA agreed to finalize the FIPs by February 28, 1991. But on November 30, 1991, EPA filed a motion asking the district court to vacate the settlement on the basis that 1990 amendments to the Act contain new criteria and new timetables that replace previous obligations of the state. The district court agreed; on appeal, the Ninth Circuit reversed.

The EPA must now prepare a plan to control O_3 (a primary constituent of smog at low atmospheric levels) and CO that will fill unreachable gaps in pollution reduction required by the South Coast Air Quality Management District. Such pollution sources out of reach of regional authorities include airplanes and trains engaged in interstate transportation. Ozone is formed in smog by a complex interaction involving sunlight, nitrogen oxides (NOx) and hydrocarbons. In the Los Angeles region, such forms of transportation are responsible for 13% of NOx and 6% of hydrocarbons released daily. The court order requires the district court to set "an expeditious schedule" for an EPA plan to take effect.

Coalition Sues Federal Government for Killing Salmon. On September 10, the Sierra Club Legal Defense Fund brought suit in U.S. District Court for the Eastern District of California against the U.S. Bureau of Reclamation on behalf of a coalition of environmentalists and fishers in a last ditch attempt to save fast-disappearing salmon in the Sacramento River.

Plaintiffs are seeking an order to force the Bureau, which runs the Central Valley Project, to hold additional water in Shasta and Trinity reservoirs to protect spawning salmon. The coalition alleges the Bureau violated Sacramento River water temperature requirements on 60% of all days during the previous five months. The water temperature requirements are contained in the Sacramento River Basin Plan, adopted under the federal Clean Water Act. Mike Sherwood, attorney for the Sierra Club Legal Defense Fund, accused the Bureau of "murdering Sac-

ramento salmon runs," and said the coalition seeks to require the Bureau to keep the river as cold as possible through November and to retain more water during the summer 1993 irrigation season.

In a related development, the state recently released the 1992 preliminary count of the fall-run salmon, which indicates that numbers have fallen to about one-sixth of the count in 1991. (*See infra* agency report on FISH AND GAME COMMISSION for related discussion.)

Recycling Petition Submitted to Judicial Council. On July 15, the Sierra Club Legal Defense Fund submitted a petition to the California Judicial Council calling for rules requiring most legal documents filed in state courts to be printed on paper with at least 10% recycled content and, after five years, mandating double-sided printing on each page. At this writing, the Council is still considering the proposal.

Economic Growth Versus the Environment. Several bills intended to streamline the environmental permitting process were considered by the legislature before it finally adjourned. SB 1596 (Maddy), which was opposed by the Club, would have established specific statutory deadlines for processing permit applications (except those involving California Environmental Quality Act review), but died in committee. Two Club-supported alternative "bottom up" permit-streamlining strategies were enacted into law. AB 2781 (Sher) (Chapter 1096, Statutes of 1992) and AB 3790 (Gotch) (Chapter 1126, Statutes of 1992) encourage streamlining strategies initiated by local agencies, such as air pollution control districts with long-standing expertise in permitting. *[12:2&3 CRLR 35]*

Four comprehensive growth management bills which the Club monitored but refrained from taking a position on—AB 3 (Brown), SB 929 (Presley), AB 76 (Farr), and SB 434 (Bergeson)—all died in committee.

In its July 13 *Legislative Agenda*, the Sierra Club announced that an "unprecedented alliance of legislative, environmental, civil rights, business and labor leaders" had reached agreement to support a plan to simultaneously address California's economic and environmental woes. Termed the "Economic and Envi-ronmental Recovery Act," the plan would have created a state infrastructure bank to fund local agencies for infrastructure, housing, and natural resource protection projects that meet specified environmental criteria. However, the scheme never got off the (legislative) ground in 1992. (*See supra* report on PLANNING AND CONSERVATION LEAGUE for related discussion.)

Club-Supported Electric Car and Alternative Fuels Package Scrambled. A Sierra Club-supported five-bill package designed to stimulate the electric car and alternative fuels industries in California ended with mixed results in the 1992 session. Only AB 3049 (Polanco) passed and was signed by the Governor (Chapter 309, Statutes of 1992). AB 3049 requires the South Coast Air Quality Management District to establish mechanisms for expediting permit review of facilities directly related to research and development, demonstration, or commercialization of electric and other clean-fuel vehicle technologies. The Governor vetoed AB 3050 (Polanco) and AB 3051 (Polanco). AB 3050 would have required the Department of Commerce, in collaboration with the Energy Commission and the Business, Housing and Transportation Agency, to establish the California Electric and Clean Fuel Vehicle Interagency Consortium. AB 3051 would have required the Energy Commission to study the potential of overseas markets to support production and commercialization by small and medium-sized California firms of electric and other clean fuel vehicles and components, and report findings to the Governor. AB 3054 (Polanco), which would have slightly increased the tax credit allowed for conversion of a vehicle to a low-emissions system, died in committee. AB 3053 (Polanco) was amended to become a different measure.

Other 1992 Legislative Results. Seven bills supported by the Club were enacted into law: AB 455 (Cortese) (Chapter 631, Statutes of 1992), which requires local governments to consult with water districts to determine whether there is a long-term and reliable supply of water when approving development projects of statewide, regional, or areawide significance; AB 2109 (Katz) (Chapter 554, Statutes of 1992), which phases out employer state tax deductions for costs of providing free employee parking; AB 3207 (Campbell) (Chapter 840, Statutes of 1992), which adopts guidelines developed by the International Maritime Organization asking ships to avoid dumping ship ballast in coastal waters; AB 3252 (Kelley) (Chapter 1054, Statutes of 1992), which allocates $500,000 of Petroleum Violation Escrow Account Funds to the Riverside County Transportation Commission for a demonstration project on compressed natural gas-powered locomotives for use in commuter rail service; SB 611 (Calderon) (Chapter 33, Statutes of 1992) and SB 1143 (Killea) (Chapter 1346, Statutes of 1992), both concerned with hazardous and toxic waste reduction; and SB 1224 (Killea) (Chapter 1347, Statutes of 1992), which requires installation of low-flush toilets when a house is sold.

Three Club-supported bills were vetoed: AB 2469 (Friedman), which would have prohibited the state and University of California from purchasing tropical hardwoods or any hardwood products that are not sustainably produced; AB 3024 (Roybal-Allard), which would have required a permit application for any type of toxic disposal facility to include a "site demographics statement" listing race, age, language, and income characteristics of the community where the proposed facility would be located; and SB 1395 (Rosenthal), which would have authorized the Department of Motor Vehicles to issue "Blue Sky" license plates to owners or lessees of clean fuel vehicles.

The following Club-supported bills failed in the legislature: AB 72 (Cortese), which would have placed a parks and habitat bond issue on the ballot; AB 920 (Hayden), which would have reduced greenhouse emissions; AB 1423 (Gotch), a recycling measure; AB 2876 (Speier), which would have required the Department of Fish and Game to provide information on wildlife habitats to local governments and developers; AB 3737 (Horcher), which would have increased tax credits available to employers who purchase low-emission rideshare vehicles; AB 3800 (Bates), which would have doubled the state gasoline tax in order to fund cleaner transportation systems and repair earthquake-unsafe bridges; SB 51 (Torres), concerning hazardous and toxic waste control; SB 144 (Lockyer), which would have prohibited use of public funds in construction of the "Mid-State Toll Road" in the eastern Bay Area; SB 210 (Kopp), which would have doubled Bay Area bridge tolls; SB 959 (Presley), which would have imposed a modest fee on each acre-foot of water sold by water retailers to fund environmental programs; SB 1216 (Rosenthal), which would have authorized $100 million in bonds to finance a grant and low-interest loan program administered by the Energy Commission for the development of a clean fuel industry in California; and SB 1843 (Hart), the DRIVE+ bill which would have established a system of rebates and fees based on the pollution and energy efficiency characteristics of light- and medium-duty vehicles. AB 3145 (Campbell), which would have changed the name of the Department of Fish and Game to Fish and Wildlife, was amended to become a different measure.

The following bills opposed by the Club died in committee: AB 3120 (Polanco), which would have exempted oil facility modifications required to produce reformulated gasoline from review under the California Environmental Quality Act; AB 3795 (Moore), which would have prohibited the PUC from using environmental values as a basis for requiring replacement of existing resources; and SB 352 (Green), which would have eroded air districts' indirect source control. AB 2742 (Peace), which would have required the PUC to consider differing environmental values among competing means of generating electricity only when electric generating capacity is to be expanded, not when retrofitting existing capacity, was amended to become a different measure.

TURN (TOWARD UTILITY RATE NORMALIZATION)

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Toward Utility Rate Normalization (TURN) is a nonprofit advocacy group with approximately 50,000 members throughout California. About one-third of its membership resides in southern California. TURN represents its members, comprised of residential and small business consumers, in electrical, natural gas, and telephone utility rate proceedings before the Public Utilities Commission (PUC), the courts, and federal regulatory and administrative agencies. The group's staff also provides technical advice to individual legislators and legislative committees, occasionally taking positions on legislation. TURN has intervened in about 200 proceedings since its founding in 1973.

MAJOR PROJECTS

PUC Approves Caller ID With Stringent Consumer Safeguards. On June 17, the PUC ruled that local phone companies may offer the controversial Caller Identification (Caller ID) service, but conditioned that permission on requirements that the companies offer a comprehensive consumer education program on the new service and a choice of free blocking options. TURN and other consumer groups hailed the decision as a victory. "If we were giving out grades, we'd give the PUC a 'B' or maybe a 'B+' on this decision," said TURN Executive Director Audrie Krause.

Caller ID is a service which displays the calling party's telephone number on a small screen attached to the subscriber's phone. *[12:2&3 CRLR 38, 257–58]* The phone companies had argued that consumer privacy concerns expressed by TURN and others could be satisfied by offering customers per-call blocking, which requires the customer to dial a special three- or four-digit code before placing each phone call. TURN had urged the PUC to adopt Administrative Law Judge John Lemke's proposed decision rejecting Caller ID; in the alternative, most consumer groups advocated per-line blocking, which enables customers to block identification of all calls from their line.

The PUC decision requires the companies to give customers the option of choosing one of three free blocking options: per-line blocking, per-call blocking, or per-line blocking with per-call enabling (which enables subscribers to block disclosure of their number on all calls except those for which they have disabled the blocking mechanism). The decision also requires phone companies to conduct extensive educational campaigns before offering Caller ID. The companies will have to consult with consumer groups and others in creating their campaigns.

Despite the required educational efforts, the PUC understood that many customers would not exercise a choice. For this reason, the decision addressed the crucial issue of which of the three options is to be the default choice. The Commission noted that the California Constitution's right of privacy does not distinguish between the rights of private parties initiating and receiving telephone calls. Thus, customers listed in telephone directories who do not make a choice will receive per-call blocking. Those with unlisted numbers, who have undertaken some cost and trouble to express a heightened expectation of privacy, will receive per-line blocking with per-call enabling. The PUC expects its plan to meet privacy concerns; however, exercising caution, it ordered the introduction of Caller ID on a two-year experimental basis. GTE immediately announced that it would not offer Caller ID under the Commission's conditions.

In July, Pacific Bell asked the PUC to reconsider its decision. The company objects to the per-line blocking default option for customers with unlisted numbers on grounds that too many people will utilize this option. The effect will be to significantly reduce the value of the service to potential customers, and thus to the company. Approximately 40% of residential California telephone customers have unlisted numbers. PacBell also objects to the required educational campaign. Subsequently, TURN also filed an application for rehearing, arguing that per-line blocking with per-call enabling should be the default option for all customers. TURN also objected to another provision of the PUC order, which requires telcos to make available technology that allows called parties to "block the blocker." This means that call recipients could automatically reject all calls from callers who choose to block display of their telephone numbers. At this writing, the PUC has yet to rule on these motions. (*See infra* report on the PUC for related discussion.)

PacBell's $57.6 Million Refund Illustrates Reality of Improper Cross-Subsidization. TURN's fall newsletter announced a recent PUC decision ordering Pacific Bell to return $57.6 million to customers. The refund originates in improper company use of revenue from monopoly loop customers to subsidize the development of competitive products such as Voice Mail and Yellow Pages. TURN intervened to protest a proposed settlement between the PUC's Division of Ratepayer Advocates (DRA) and PacBell that would have let the company keep its "ill-gotten gains." *[12:2&3 CRLR 259; 12:1 CRLR 186]* Under PUC rules adopted in 1990, utility shareholders must bear the risks and financial burdens of company forays into competitive markets. TURN believes stronger regulatory oversight is needed to ensure that telcos do not use their monopoly service ratepayers as "cash cows" in such "enhanced service" endeavors. "This case clearly illustrates the dangers of allowing regulated utilities to venture into competitive services," said TURN's Audrie Krause. (*See infra* report on the PUC for related discussion.)

Two bills governing utility entry into enhanced service markets passed the legislature in August and were signed by the Governor. TURN initially opposed SB 1894 (Alquist) in favor of AB 2812 (Moore). SB 1894 (Chapter 980, Statutes of 1992) allows entry into competitive markets without PUC tariff review. Tariffing requirements protect consumers from discrimination by requiring telephone companies to publicly list the description, rates, terms, and conditions for a particular service. Proponents feel review is not necessary if the market contains multiple suppliers. TURN is concerned that ratepayers may cross-subsidize new services. AB 2812 (Chapter 996, Statutes of 1992), which provides some protections against such abuse, was ultimately tied to the passage of SB 1894.

Congress is also considering a bill authored by Representative Brooks of

Texas that would establish a competitiveness test administered by the U.S. Attorney General that each phone company would have to pass before entering a new field of business.

TURN Supports DRA Motion for Additional Public Hearings to Consider Proposed Rate Hikes for Basic Telephone Service. In the July issue of its *Inside Line* newsletter, TURN supported a motion by DRA asking PUC Administrative Law Judge George Amaroli to hold another round of public participation hearings in the ongoing Alternative Regulatory Framework (ARF) proceedings. As part of these proceedings, Pacific Bell and GTE California seek to increase basic residential service rates by 60%. *[12:2&3 CRLR 38, 258–59]* DRA contends that the telcos' notices sent to customers announcing hearings in October and November 1991 arrived late and did not contain sufficient information. In its response to DRA's motion, TURN pointed out that GTE also failed to identify the full impact of its proposal on customers. (*See* reports on PUBLIC ADVOCATES and the PUC for related discussions.)

PacBell Billing Scandal. For two weeks in July and August, a PUC administrative law judge heard evidence in TURN's $87 million complaint against PacBell. Before the start of the July 20 hearing, PacBell acknowledged that it knew about erroneous late payment charges in 1988 but took no action until February 1991 when employees went to the press. TURN considers the act a conscious business decision and wants the utility fined $50 million. *[12:2&3 CRLR 38]* PacBell has raised slightly its estimate of total overcharges from an initial $1.2 million to $3.4 million to the current $3 million to $4 million, of which $2 million has been refunded. TURN maintains that $26 million of overcharges plus $11 million in interest remain to be returned to customers.

According to TURN attorney Tom Long, Pacific Bell did little in the hearings to disprove TURN's allegations. "Our cross-examination of PacBell's witnesses has confirmed what we suspected all along," said Long. "PacBell put profits first, and its customers paid the price." At this writing, the ALJ has yet to issue a proposed decision. (*See infra* report on the PUC for related discussion.)

TURN Opposes Big Rate Hikes for Gas Customers. In its fall 1992 newsletter, TURN expressed disapproval of the way in which rates for natural gas service are being restructured in ongoing PUC proceedings. The state's major gas suppliers, PG&E and Southern California Gas, are requesting that residential customers pay a larger share of the costs of gas service and industrial customers pay less. The average increase would be $6 per winter month. Although the companies justify the shift as the result of so-called "Long Run Marginal Cost" studies which purportedly show that industrial customers have been subsidizing residential ratepayers, TURN believes it is the other way around. TURN's reworking of the numbers indicates that ratepayers' bills should be reduced $2.50 to $3 per month rather than increased. TURN senior attorney Mike Florio believes the natural gas companies are seeking lower industrial rates to meet competition from new, competitive gas lines, and hope they can get residential customers to provide a subsidy.

TURN Opposes PacBell's Move to Deny Public Access to Names of Top-Paid Employees. For the third time in three years, Pacific Bell has asked the PUC for permission to stop revealing the names of executives who earn more than $75,000 per year, as required by PUC form 77-K. About 1,600 PacBell employees are in that category. TURN opposed the request. "It's not a privacy issue so much as it's [that] their employees' salaries have increased in recent years," said TURN attorney Bob Finkelstein. The previous two similar requests have been rejected or withdrawn.

In its summer newsletter, TURN decried the fact that five of the state's top twelve utility executives earned more than $1 million last year. SDG&E's chief, Thomas Page, becomes the sixth if stock options are included. Pacific Bell's Sam Ginn was the top "earner" at over $2 million. TURN also noted that the total number of employees reported in form 77-K has increased greatly in the last year for all of the major utilities: an 88% increase for SDG&E, 64% for PG&E, 51% for Southern California Edison, 38% for Southern California Gas, and approximately 17% for Pacific Bell. TURN's Audrie Krause said, "Awarding pay increases to providers of an essential public service in the midst of a recession is truly obscene."

Using similar recession-related logic, in August TURN and UCAN urged the PUC to lower the allowable rate of return for the state's electric utilities from requests of 13% or more to 10.25%–11%. This would cut back statewide utility profits next year by $475 million. (*See* reports on UCAN and the PUC for related discussion.)

TURN Testimony Highlights "Wasteful and Unnecessary" PG&E Conservation Spending. In its summer newsletter, TURN reported that included in PG&E's 1993 General Rate Case is a request by the company for $875 million to fund its customer energy efficiency programs over the next three years. The PUC allows utilities to earn profits on investments in conservation that are equal to or greater than the profits earned on investment in new power plants. Although utilities and environmentalists praise such "conservation for profit" programs as a win-win situation, "TURN is working to weed out wasteful and unnecessary conservation spending." TURN energy analyst Eugene Coyle testified in the General Rate Case that while PG&E projects that its conservation programs will save 735 gigawatt hours of electricity, these savings would be wiped out by a plan to market 1,210 gigawatt hours of energy sales. At the same time it is calling for increased conservation spending, he said, PG&E is trying to maintain electric power sales by offering special low rates to large customers. And PG&E's refrigerator rebate program, which is designed to encourage consumers to replace old refrigerators with new more efficient models, also subsidizes the sale of huge, feature-laden refrigerators that use more energy, according to Coyle.

TURN Moves to Reinstate the Baseline Rate. TURN's legislative campaign to reinstate baseline electric rates yielded results when the legislature passed AB 1432 (Moore) on August 28. The Governor signed the bill in September (Chapter 1040, Statutes of 1992). AB 1432 reverses the PUC's five-year tendency to wipe out relatively low electric rates for those who use small (baseline) quantities of energy. First introduced in 1975 in response to pressure by TURN and many other consumer and environmental groups, baseline rates give customers a monetary incentive to conserve energy. Such rates also aid senior citizens and other low-income customers. However, since 1987 PG&E's baseline rates have increased 80% while average electric rates increased 53%. In an April decision on PG&E's rate design, baseline bills went up $1.09 but bills of customers using 1,000 kwh per month decreased $2.78. The trend has been similar for Southern California Edison and SDG&E baseline rates.

TET Grant Renewed for Another Year. In the July issue of *Inside Line*, TURN announced that its Telecommunications Education Trust (TET) grant has been renewed for another year. The grant is used to produce *Inside Line* and to provide training to TET grantees on telecommunications policy issues. *[11:4 CRLR 43; 10:1 CRLR 35]*

UCAN (UTILITY CONSUMERS' ACTION NETWORK)

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Utility Consumers' Action Network (UCAN) is a nonprofit advocacy group supported by 52,000 San Diego Gas and Electric Company (SDG&E) residential and small business ratepayers. UCAN focuses upon intervention before the California Public Utilities Commission (PUC) on issues which directly impact San Diego ratepayers. UCAN also assists individual ratepayers with complaints against SDG&E and offers its informational resources to San Diegans.

UCAN began its advocacy in 1984. Since then, it has intervened in SDG&E's 1985, 1988, 1989, and 1993 General Rate Cases; 1984, 1985, 1986, and 1989 Energy Cost Adjustment Clause proceedings; the San Onofre cost overrun hearings; and SDG&E's holding company application. Between 1988 and 1991, UCAN devoted much of its time and effort to challenging the proposed takeover of SDG&E by Southern California Edison Company (SCE). On May 8, 1991, the PUC unanimously rejected the merger proposal.

During 1991, UCAN's Board of Directors decided the advocacy organization should expand beyond its traditional focus on gas, electric, and telephone utility issues, and represent the public interest in insurance matters. UCAN plans to intervene in Department of Insurance rate regulation proceedings and engage in public education on insurance issues.

MAJOR PROJECTS

UCAN Urges PUC to Cut SDG&E Profit Margin for 1993. As part of its advocacy in SDG&E's 1993 General Rate Case, in August UCAN urged the PUC to reject SDG&E's request for a 13% rate of return, or profit rate, for 1993. UCAN Executive Director Michael Shames appeared before the PUC with a Monopoly game and acted out the utility's profit demands by taking all the play money and piling it upon the board's electric company square. UCAN believes that during a recession, a regulated monopoly's profits should decline along with other wages and incomes. Accordingly, the organization called for a reduction in the allowed rate of return to between 10.5% and 10.75% for 1993. SDG&E is currently permitted a 12.65% rate of return. Last year, the company requested 13.6%. Meeting at an exclusive San Francisco restaurant in September, four SDG&E officials told PUC Commissioner Patricia Eckert that the utility agrees that its profit margin should be reduced, but not below 12.15%. Shames viewed the luncheon as damage control. "Clearly, SDG&E knows it will lose the case," he said. "Maybe UCAN and TURN can pool their money and take her to lunch...at McDonald's." (*See infra* report on the PUC for related discussion.)

SDG&E Sets Bad Example. For years, UCAN has complained that SDG&E's brightly-lit downtown headquarters sets a bad example in an era of energy conservation. The issue was raised again, this time by San Diego city officials, during hearings on the utility's 1993 General Rate Case. At night, SDG&E's nineteen-story building is flooded with light from 88 large 100,000-watt bulbs around the structure's base, as well as 510 smaller yellow floodlights that form a crown surrounding the building's top floors. The company justifies the lights by saying that the primary purpose is to increase downtown safety. A deputy city attorney representing the city in the rate case suggested that if the utility really wants to improve safety, it should drop the rate increase it wants to charge the city for street lighting.

PUC Approves Caller ID With Stringent Consumer Safeguards. On June 17, the PUC ruled that local phone companies may offer the controversial Caller Identification (Caller ID) service. Caller ID is a service that displays the calling party's telephone number on a small screen attached to the subscriber's phone. *[12:2&3 CRLR 40, 257–58]* The PUC's decision gives consumers a choice between free per-call blocking, per-line blocking, or per-line blocking with per-call enabling. The default option for those with unlisted telephone numbers who fail to make a choice will be per-line blocking with per-call enabling. All others who do not choose an option will receive per-call blocking. The telcos, who wanted nothing but per-call blocking, were generally unhappy with the decision. Consumer groups gave the decision generally high marks. (*See* reports on CONSUMER ACTION, TOWARD UTILITY RATE NORMALIZATION, and the PUC for related discussions.)

Insurance Consumers Bill of Rights Defeated. SB 2030 (Torres), termed the "Insurance Consumers Bill of Rights," died in committee. UCAN played a key role in drafting the legislation. *[12:2&3 CRLR 40]*

Citizen's Review Committee Releases Final Water/Sewer Report. The San Diego City Citizen's Water/Sewer Review Committee, which included among its twenty members UCAN's Michael Shames and Judith Abeles, released its final report on June 5. *[12:2&3 CRLR 40]* The committee's findings and recommendations include:

–the widely advertised $2.5 billion cost of San Diego's proposed and recently rejected clean water program was actually closer to $6 billion;

–monthly base fees for sewer service and water are too high and should be reduced, and a greater portion of total fees should depend upon amount of water consumption;

–the city should create an independent Water and Sewer Office of Advocacy to conduct audits of city utility operations, review capital improvement programs, and provide clear, unbiased information to the public;

–sewer rates could triple by 2003 unless remedial actions are taken;

–the water utility's operations budget has increased almost 400% since 1980, and much of the increase is unexplained; and

–the city must redouble its efforts to make San Diego a water conservation and efficiency model.

Consumers Will Finance Nuke Shutdown. On August 8, the PUC determined that Southern California Edison and SDG&E would be permitted to recover $460 million in costs and interest not yet recouped on San Onofre Nuclear Generating Station Unit #1 (SONGS 1), which is being shut down. Critics complained that ratepayers are being charged for the utilities' failed investment. UCAN's Shames was not delighted with the decision but said he would grin and bear it. "The settlement makes the best of a bad situation," he said. Shames likened the situation to one in which undesired in–laws finally leave town. "You're glad they're going—but still wish they had never come in the first place, because of the cost and trauma they caused you." The 24-year-old plant, designed to operate until 2004, ran at 70% efficiency for its first eleven years, but since 1980 has been inoperative for extended periods. During these idle times, the owners pumped in more than $300 million worth of seismic and safety retrofitting. The PUC estimated it would cost another $250–$750 million to keep SONGS 1 operating. In the end, it was found cheaper to shut it down and buy power elsewhere. SONGS 2 and 3 continue to operate on the site.

UNION OF CONCERNED SCIENTISTS

Transportation Program

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UCS is an independent nonprofit organization of scientists and other citizens concerned about the impact of advanced technology on society. UCS programs focus on national and state energy, environmental, and transportation policy, as well as national security policy and nuclear power safety. UCS was founded in 1969 and currently has a membership of 100,000 (20% in California), a staff of 40, and offices in Cambridge, Massachusetts, Washington, D.C., and Berkeley.

The newly-opened Berkeley office is home to UCS' innovative transportation program. The staff expertise and outreach focuses on promoting environmentally-sound transportation policies at the state and local governmental level. To pursue these goals, the transportation program works to educate the public about transportation issues and their impact on energy, the economy, the environment, and public health; develop innovative, market-based strategies to reduce vehicle use; and provide technical assistance to state planners and policymakers trying to forge new approaches to addressing transportation sector problems. UCS hopes to create successful, precedent-setting policies in California that can be replicated in other states and countries. The transportation program works regularly with the state Air Resources Board, California Energy Commission, and the legislature. The California office has an active internship program and encourages qualified applicants to contact the office.

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Promotion of DRIVE+ Legislation. DRIVE+, which stands for Demand-based Reductions in Vehicle Emissions, is a program which would provide consumers with financial incentives to buy cleaner, more fuel-efficient vehicles by giving rebates to those who purchase such vehicles and levying surcharges on consumers who buy dirty, inefficient vehicles. The program is designed to be revenue-neutral: The rebates come from the surcharges. In the form of SB 1905 (Hart), DRIVE+ passed the legislature in 1990 but was vetoed by former Governor Deukmejian. It was introduced as SB 431 (Hart) in 1991 and SB 1843 (Hart) in 1992; both bills died in committee. It is expected to be reintroduced in the 1993–94 legislative session. At least ten bills similar to DRIVE+ have been introduced on the state and federal levels, and the state of Maryland recently adopted a similar program.

Alternative Fuels Evaluation Program (AFEP). UCS is undertaking a comprehensive study of the various alternative automotive fuels with potential for replacing gasoline. At present, while companies, cities, states, and the federal government conduct alternative fuel assessments, no single agency is collecting comprehensive data on all relevant criteria: emissions, energy impact, maintenance requirements, performance characteristics, cost, and safety. Starting in early 1993, AFEP will systematically collect and analyze the data on different alternative fuels under consideration for complete criteria evaluation. UCS will disseminate this information as it becomes available. UCS will be looking for regional fleet operators to use as prototypes for the AFEP.

Pay-As-You-Drive Insurance. Another market-based incentive to reduce personal vehicle usage under consideration by UCS is pay-as-you-drive insurance. Under this plan, insurance premiums would be based partially on vehicle miles driven. In other words, fewer miles driven would translate into lower insurance premiums. Insurance surcharges would be assessed at the gasoline pump. UCS will be researching legislative history, collecting relevant data, developing and evaluating policy options, and establishing legislative and agency support for these policies.

Evaluation of Intelligent Vehicle/Highway Systems (IVHS). Intelligent Vehicle/Highway Systems are increasingly advanced as a solution to problems in the transportation sector. UCS' transportation program is evaluating the cost, feasibility, and likely environmental impact of the broad array of technologies composing IVHS. The California office will assess the compatibility of any and all IVHS technologies with other transportation policies—proposed and pending. An analysis of IVHS by Deborah Gordon, UCS' Senior Transportation Analyst, is currently available from the Berkeley office.

Equity Study of Various Transportation Policies. Proposed public policies for alleviating congestion and dependence on personal vehicle usage could adversely affect low-income groups. UCS believes these impacts must be recognized, minimized when possible, and viewed as an integral part of policy decisions. UCS will design a study to evaluate the equity impacts of market-based transportation policies such as DRIVE+, congestion pricing, and pay-as-you-drive insurance. This will entail defining equity and establishing the framework for measuring the impacts (both quantitative and qualitative) that transportation pricing policies have on affected populations. The study should be completed in late 1993.