various procedural aspects of challenges to EIRs.

In the trial court, CDF and PALCO relied on *EPIC v. Johnson* for the proposition that section 21167.4 applies to THPs and is thus grounds for dismissal of the Sierra Club's petitions. The trial court agreed, and dismissed both actions without a hearing on the merits. The First District reversed and remanded, holding that the "offspring" statutes were intended to augment and to be subsumed under section 21167 (from which THPs are exempt under *EPIC v. Johnson*), and were not intended to apply to THP procedures. "While in *EPIC* this court applied the *substantive* provisions of CEQA to the environmental review of THPs, the *procedural* distinctions between EIRs and THPs, both in preparation and in the nature of the judicial challenge thereto, must be underscored" (emphasis original). After an extensive review of the procedures underlying the preparation of EIRs and THPs, the court ruled that "[a] court challenge to a THP approval is governed by the usual statutes and rules pertinent to civil proceedings generally. There are no specific statutes analogous to those involving judicial review of EIRs pertinent to the procedures employed in judicial review of a THP."

RECENT MEETINGS:

On October 11, the Board met in South Lake Tahoe to view the impact of four years of drought and severe insect damage on the forests in the Basin. Bob Harris of the U.S. Forest Service (USFS) briefed the Board on the activities of the USFS, noting that in the Basin, national forest ownership had increased from 40% to 80%. Currently, approximately 20% of the Basin forest (about 200 million board-feet) is dead standing timber which USFS is unable to adequately protect. Fires are so common that one broke out during the meeting; however, at this writing, no emergency regulation has been proposed to deal with this problem.

On November 6, the Board met in Mendocino County to examine the impact of forest practices on harvesting sites and watershed within Mendocino County. The Board is working with the Mendocino County Forestry Advisory Committee and the County Board of Supervisors to develop language that will assist the county in regulating an industry that has been allowed to cut at a higher rate than growth. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 162 for background information.)

FUTURE MEETINGS:

April 2-3 in Sacramento.
May 7-8 in Jackson.
June 4-5 (location undecided).
July 9-10 (location undecided).

WATER RESOURCES CONTROL BOARD

Executive Director: James W. Baetge
Chair: W. Don Maughan
(916) 445-3085

The state Water Resources Control Board (WRCB) is established in Water Code section 174 *et seq.* The Board administers the Porter-Cologne Water Quality Control Act, Water Code section 13000 *et seq.* The Board consists of five full-time members appointed for four-year terms. The statutory appointment categories for the five positions ensure that the Board collectively has experience in fields which include water quality and rights, civil and sanitary engineering, agricultural irrigation and law.

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

The State Board and the regional boards have quasi-legislative powers to adopt, amend, and repeal administrative regulations concerning water quality issues. WRCB's regulations are codified in Divisions 3 and 4, Title 23 of the California Code of Regulations (CCR). Water quality regulatory activity also includes issuance of waste discharge orders, surveillance and monitoring of discharges and enforcement of effluent limitations. The Board and its staff of approximately 450 provide technical assistance ranging from agricultural pollution control and waste water reclamation to discharge impacts on the marine environment. Construction grants from state and federal sources are allocated for projects such as waste water treatment facilities.

The Board also administers California's water rights laws through licensing appropriative rights and adjudicating disputed rights. The Board may exercise its investigative and enforcement powers to prevent illegal diversions, wasteful use of water, and violations of license terms. Furthermore, the Board is authorized to represent state or local agencies in any matters involving the federal government which are within the scope of its power and duties.

MAJOR PROJECTS:

Drought and Conservation Efforts. As of December 31, the state's winter rainfall was 75% below normal, storage reservoirs were only 33% full, and many of the reservoirs contained less water than in 1977, the driest year in California's history. As the state entered a fifth year of drought, the Metropolitan Water District (MWD), which provides two-thirds of southern California's water, announced plans to begin rationing water effective February 1. Under MWD's plan, residential use must be reduced by 5% and farm suppliers must cut water usage by 20%. MWD will fine cities and other agencies if they surpass their limits; local agencies exceeding their limits will be subject to treble fees.

As a result of the drought, there has been an increase in conservation efforts throughout the state. Many of the conservation programs may have positive, long-lasting effects, such as the program created by the Monterey County Flood Control and Water Conservation District. The District has begun circulating a quarterly newsletter, aimed at reducing rumors, confusion, and misunderstandings concerning District initiatives, as well as stimulating public support for conservation efforts. The District has established various task groups which are working with different user groups to determine which conservation measures work best with each group; established a mobile Irrigation Evaluation Laboratory, which is evaluating various irrigating alternatives such as below-ground continuous "trickle" as opposed to the normal above-ground intermittent soil saturation method; and has experimented with weather modification (cloud-seeding) programs.

Statewide Plans. On December 10, the Board held a public workshop regarding adoption of the proposed Water Quality Control Plan for Inland Surface Waters and the proposed Water Quality Control Plan for Enclosed Bays and Estuaries. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 163 and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 193-94 for background information.) The Porter-Cologne Act (Water Code section 13170) authorizes WRCB to adopt water quality control plans for waters for which water quality standards are required by the federal Clean Water Act (CWA). Such plans, when adopted, supersede any regional water quality control plans for the same waters to the extent of any conflict. Water quality control plans must contain three major

sections: beneficial uses, water quality objectives, and program of implementation. A major element of these plans is the adoption of water quality objectives for toxic substances mandated by the CWA. Section 303(c)(2)(B) of the CWA requires the state to adopt quality criteria for the section 307(a) priority pollutants for which the EPA has published criteria and which are reasonably expected to interfere with beneficial uses.

WRCB staff prepared a revised draft Functional Equivalent Document (FED), which is similar to an environmental impact report prepared under the California Environmental Quality Act (CEQA), to facilitate public consideration of the proposed statewide plans. The November 26, 1990 FED discussed at the December 10 workshop addressed fifteen major issues, including:

-Selection of Pollutants. Pursuant to the CWA requirement, the proposed plans outline water quality objectives for 38 pollutants or classes of pollutants which address 67 EPA priority pollutants. WRCB will consider adopting objectives for the remaining section 307(a) priority pollutants for which EPA has developed criteria in future amendments to the plans.

-Water Quality Objectives. Chemical-specific numerical water quality objectives based on EPA section 304(a) criteria are proposed for the protection of human health or aquatic life for the pollutants selected. Acute and chronic toxicity objectives and narrative objectives are also proposed; an implementation plan provides for schedules of compliance.

-Water Quality Objectives for Agricultural Drains and their Implementation. The proposed statewide numerical water quality objectives would not apply to certain constructed agricultural drains or natural waterbodies dominated by agricultural drainage which are identified by regional boards and approved by WRCB. Instead, regional boards will develop a plan within two years from the date of adoption of the Inland Surface Waters Plan to derive and establish site-specific objectives for plan constituents. These site-specific objectives would be developed within five years contingent on available funding.

-Compliance with California Endangered Species Act. The proposed plans contain provisions for ensuring that water quality objectives adequately protect threatened and endangered species.

The other issues discussed in the FED are: Introduction to the Plans; Designation of Beneficial Uses; Ephemeral Streams; Alternative Site-Specific Water Quality Objectives; Water Quality-Based Toxicity Control; Application of Mixing Zones; Effluent Limitations, Compliance Determination, and Monitoring Requirements; Exceptions to Plan Requirements; Relationship to Existing Statewide Water Quality Control Policies; Implementation of Plan Provisions for Nonpoint Source Discharges; and Implementation of Plan Provisions for Stormwater Discharges. The FED contains a detailed discussion of each of these major issues (including public comments made at previous workshops and hearings, and staff responses thereto), and staff recommendations in each area.

Currently, Board staff are reviewing and responding to the comments made at the December 10 workshop. The Board is scheduled to approve both plans in early 1991.

Regulatory Actions. On July 30, the Office of Administrative Law (OAL) rejected WRCB's proposed regulatory action on water quality monitoring and response programs for waste management units. The proposed action would have repealed existing Article 5, Subchapter 15, Division 3, Title 23 of the CCR, and adopted a new Article 5. OAL also rejected WRCB's proposed amendments to section 2601 (Technical Definitions) of Article 10, Subchapter 15, Division 3, Title 23 of the CCR. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 163 and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 192 for detailed background information.)

The Board amended the rulemaking packages and conducted two public comment periods on the modified proposals, which ended on September 27 and November 27. The Board was scheduled to hold a workshop on the proposed changes on January 9-10 and to vote on the adoption of the proposed changes on January 24.

Navy Exempted From California Ocean Plan. At its October 3 meeting, WRCB considered a resolution which would grant the U.S. Navy an exception to the California Ocean Plan, to enable the Navy to operate a permanent desalination plant on San Nicolas Island. The California Ocean Plan, adopted on July 6, 1972, provides that "waste shall not be discharged to areas designated as being of special biological significance," and that "discharges shall be located a sufficient distance from such designated areas to assure maintenance of natural water quality conditions in these areas."

The U.S. Navy operates a facility on San Nicolas Island; the waters surrounding the island have been designated as being of special biological significance. Because there is a shortage of potable water for the 200 naval personnel on the island, the Navy has been barging fresh water from the mainland to the island; these water deliveries are expensive and, at times, hazardous. Therefore, the Navy proposed to build a desalination plant on the island to provide a dependable source of fresh water, and requested an exception to the Ocean Plan's prohibition against discharges in the island's surrounding waters. WRCB may, subsequent to a public hearing and with the concurrence of the EPA, grant such an exception where the Board determines that the exception will not compromise protections of ocean waters for beneficial uses, and that the public interest will be served.

Following the public hearing, the Board adopted the resolution, concluding that the discharge of brine from the desalination plant would not adversely affect either the aquatic resources located in the nearshore area or other beneficial uses associated with these waters.

Clean Water Petition. In a policy decision approved on November 27, the Board issued WQ Order 90-7-CWP, stating that "fair and equitable service" requirements included in state and federal Clean Water Grants are complied with when the grant-funded capacity of a waste treatment plant has been fully and appropriately used for the purpose and the area for which it is intended.

In the case at issue, a group of Sonoma County landowners petitioned the Board to require that waste treatment service be extended to their property by either the City of Santa Rosa or the South Park County Sanitation District. State and federal Clean Water Grants were made to the City in 1975, on condition that the City would provide service to a defined service area on a fair and equitable basis; the funded service area included the City, the District, certain unincorporated areas of Sonoma County, and the cities of Rohnert Park and Sebastopol. The grant-funded treatment project, Laguna Treatment Plant, was completed and has been in operation for a number of years. In 1987, it was upgraded; the cost of the upgrading and expansion—approximately $20 million—was paid for solely by local funds (*i.e.*, not subject to the "fair and equitable service" requirement). The City's original grant-funded capacity was fully utilized by January 1988; approximately one-third of the District's grant-funded capacity remains.

The area for which petitioners sought service lies outside City and District boundaries, but within the unincorporated area of Sonoma County. The Board noted that the owners of the property

have periodically sought service from the City and/or the District since at least 1982, when grant-funded capacity was still available. Both the City and the District denied service, each contending that the other should provide service from its grant-funded capacity. In 1982, WRCB's Division of Water Quality declined to intervene in the landowners' behalf, "because of an erroneous conclusion that the area in question was not within the grant-funded service area." According to WQ Order 90-7-CWP, "[u]nfortunately, the landowners did not pursue the issue at that time. In 1986, the landowners indicated that they believed the property was within the grant-funded service area. The Division undertook a review, and ultimately agreed that the property was within the grant-funded service area."

The Board found that the overriding issue in this case—and one not addressed by the Board's Fair and Equitable Guidelines— is the question of the duration of the grantee's commitment under the fair and equitable service requirement. Focusing on this issue, WRCB found that the City (with which WRCB has a contractual agreement) had a grant obligation to provide service on a fair and equitable basis to the service area, and that "all grant-funded capacity provided to the City has been fully and appropriately used by the City for the purposes for which it was intended." WRCB essentially found that the City's grant-funded capacity was gone by the time the landowners succeeded in convincing the Board's Division of Water Quality that they lived within the service area; that it has no jurisdiction to require the City to allocate to the landowners any of the new capacity constructed solely with local funds in 1987; and that it has no jurisdiction to require the District to do anything, since it has no contractual relationship with the District (even though WRCB's Division of Water Quality approved the master agreement allocating grant-funded capacity among the various entities providing sewer service within the grant-funded area).

The Board also found that present disposal practices in the area in question appear to be creating health hazards or water quality problems which must be eliminated. The Board stated that if the water quality problems caused by the existing development are not corrected by the City, the County, or the District, the North Coast Regional Board should take appropriate action.

State Revolving Fund Loans. During the last quarter of 1990, WRCB approved three major projects totalling $80 million to be funded by the State Revolving Fund (SRF) Loan Program. Two of the loans deal with construction of wastewater treatment facilities for the Santa Ana Watershed Project Authority and the Los Angeles County Sanitation Districts; these loans may be approved by the Board after the Division of Clean Water Programs has approved the facilities plan, including the project report, environmental documents, and draft revenue program. Under Resolution 90-115, the Santa Ana Project will receive $20 million from 1990 funds and $20 million from 1991 funds. The purpose of the Santa Ana Project is to provide a means for intercepting and transporting brines and wastewater from the upper Santa Ana Watershed to the Pacific Ocean; this project was identified by both California and the U.S. Environmental Protection Agency (EPA) as a necessary element in the comprehensive basinwide water pollution control plan.

Pursuant to Resolution 90-114, the Los Angeles County Sanitation District will receive $20 million of 1991 funds for the construction of four new anerobic digesters at the Carson City facility. The use of greater amounts of polymers to increase solids recovery and decrease emission to the ocean means that a greater amount of liquid must now be sent through the digesters. Increased pretreatment wastes from industries also contributed to the need for the new digesters.

Pursuant to Resolution 90-113, the Fresno Metropolitan Flood Control District will receive $20.1 million, including $15 million of 1990 funds and $5 million of 1991 funds. The District will use the funds for construction of facilities and implementation of source control measures which will reduce runoff-borne pollutants from both urban and agricultural uses. These measures are intended to protect local streams, the San Joaquin River, and the regional groundwater basin.

Clean-up and Abatement Account. At WRCB's October 3 meeting, the County of Merced requested $2 million from the Water Pollution Clean-up and Abatement Account for the clean-up of gasoline discharged from three leaking underground tanks. The county is particularly concerned about these tanks because they are delaying Caltrans' construction of a freeway bypass. Caltrans is trying to acquire property for a right-of-way, and there is some leakage from the tanks onto the proposed right-of-way. Merced County will not provide funds for non-County clean-ups, and Caltrans has refused to pay for clean-up beyond the right-of-way. Some responsible parties were identified, including Chevron USA, Inc., which owns a gas station on the site; however, Chevron has not acknowledged its responsibility. There have been no negotiations with the other responsible parties.

On November 7, WRCB denied the request, due to the identification of nearly 14,000 leaking underground tanks statewide and limited funds in the Clean-up and Abatement Account. In the past, the Board has declined to use Clean-up and Abatement Account funds for underground tank clean-ups unless there were extraordinary circumstances. The Board concluded that Caltrans has several options, including cleaning the site itself; filing civil actions against the responsible parties; or seeking a discounted price for the property.

Water Quality Petitions. William Vander Woude and Pete Verboom, two San Diego County dairy owners, filed petitions for review of monitoring requirements of the California Regional Water Quality Control Board, San Diego Region (Regional Board). The petitions concern a December 1989 order by the Regional Board which requires all dairies in the region to implement groundwater monitoring programs; the petitions allege the monitoring is too expensive and that it is unfair to require only San Diego area dairies to comply.

The Regional Board contends it acted in accordance with Chapter 15 of the Board's regulations (section 2510 et seq.), which provides that whenever a regional board concludes that either surface or groundwater may be adversely affected by a dairy operation, it is reasonable for that regional board to require dairy operators to take steps to assure that no unacceptable impacts occur.

Also at issue is Resolution 87-71, a quality control plan involving dairy policy, which was adopted by the Regional Board on November 16, 1987. WRCB reviewed the resolution and adopted it as its own (88-35); however, the Board deleted language in the Regional Board's resolution which provided that waste management control measures should be required only where groundwater quality protection or improvement would justify the expenditure.

The petitioners contended that, unlike newer dairies which could absorb the cost of monitoring, the cost of the monitoring equipment to older and smaller dairies may drive them out of business; the Regional Board would be dictating the cost of milk; there is no data that groundwater from the dairies has contaminated drinking water; the Regional Board has not looked into the size differences of the various farms in applying

the monitoring program; some farms share wells, but each dairy would have to implement its own monitoring system; and the Regional Board's real motive is to drive the small dairies out of the region.

No action was taken on this petition at the October 3 workshop; this item has not been set for a future meeting at this time.

LEGISLATION:

AB 24 (Filante), as introduced December 3, and *AB 88 (Kelley)*, as introduced December 4, would each enact the Water Reclamation Bond Law of 1992, which would authorize, for purposes of financing a water reclamation program, the issuance of bonds in the amount of $200 million. Both bills are pending in the Assembly Committee on Water, Parks and Wildlife.

AB 174 (Kelley). Existing law makes a legislative finding and declaration that the use of potable domestic water for the irrigation of greenbelt areas is a waste or an unreasonable use of that water, if reclaimed water meeting specified conditions, as determined by WRCB, is available. As introduced December 21, this bill would make those provisions applicable to the use of potable domestic water for industrial uses. This bill is pending in the Assembly Committee on Water, Parks and Wildlife.

SB 69 (Kopp), as introduced December 5, would require WRCB, in any proceedings for the establishment of salinity standards or flow requirements applicable to the State Water Project or the federal Central Valley Project, to include independent water quality objectives and water rights permit terms and conditions specifically for protection of the beneficial uses of the waters of the San Francisco Bay. This bill is pending in the Senate Committee on Agriculture and Water Resources.

SB 79 (Ayala), as introduced December 6, would prohibit WRCB, in implementing water quality control plans or otherwise protecting public trust uses of the waters of the San Francisco Bay/Sacramento-San Joaquin Delta, from imposing on existing water rights permits or licenses new terms or conditions requiring delta flows in excess of those in effect on January 1, 1991. This bill is pending in the Senate Committee on Agriculture and Water Resources.

LITIGATION:

In *Imperial Irrigation District v. State Water Resources Control Board*, No. D008521 (November 21, 1990), the Fourth District Court of Appeal reaffirmed its ruling that WRCB had jurisdiction to determine whether the irrigation practices of the Imperial Irrigation District (IID) were reasonable or wasteful, and upheld the Board's findings as amply supported by the evidence.

In response to a citizen's 1980 allegations that IID was misusing water, the Board conducted an extensive evidentiary hearing and its issued landmark 1984 Decision 1600, a 71-page review of the history of the proceedings, evidence, findings of fact, conclusions of law, and an order requiring certain actions to be taken by IID. Among other things, WRCB concluded that certain IID practices were wasteful of water and an unreasonable misuse of water. IID appealed.

On appeal by way of petition for writ of mandate to the superior court, the court bifurcated its review and undertook first to determine the issue of WRCB's jurisdiction. The trial court held that the Board lacked jurisdiction and that Decision 1600 had no binding effect on IID. In 1988, the Fourth District reversed (186 Cal. App. 3d 1160, or "*Imperial I*"), holding that WRCB had authority to adjudicate the issue of unreasonable use of water by IID. The California Supreme Court denied review, and the case was remanded to the superior court for a determination whether the evidentiary record supported issuance of Decision 1600. On remand, the trial court held that WRCB's findings were supported by the evidence. IID appealed again, reraising the jurisdictional issue, and arguing that WRCB's findings of fact were unsupported by the evidence. (See CRLR Vol. 9, No. 1 (Winter 1989) pp. 3-4 and notes 68-74 for extensive background information on WRCB's historic Decision 1600.)

The Fourth District affirmed, citing *Imperial I* for the proposition that WRCB's "obligations in the field of water use adjudication are broad, plenary and all-encompassing." The court further found that IID has vested rights only as to the "reasonable" use of water; WRCB need not defer to IID's decisions in the field of water waste; and the fact that a diversion of water may be for a purpose which is "beneficial" in some respect does not make such use reasonable when compared with demands, or even future demands, for more important uses. The court also concluded that "the findings of the Board amply support the legal conclusions it made, as well as the orders imposed."

Finally, the court recognized the fact that IID has "engaged for three decades in costly and critical litigation about its water rights," and that IID had asked the court to "reverse all the lengthy deliberations that have preceded our hearing and requests even again an 'opportunity to more extensively brief the issue.'" The court responded: "All things must end, even in the field of water law. It is time to recognize that this law is in flux and that its evolution has passed beyond traditional concepts of vested and immutable rights." The court cited Professor Freyfogle's 1989 *Stanford Law Review* critique, in which the professor stated: "California has regained for the public much of the power to prescribe water use practices, to limit waste, and to sanction water transfers....[E]verything is in the process of changing or becoming" in water law.

The court concluded: "In affirming this specific instance of far-reaching change, imposed upon traditional uses by what some claim to be revolutionary exercise of adjudicatory power, we but recognize this evolutionary process, and urge reception and recognition of same upon those whose work in the practical administration of water distribution makes such change understandably difficult to accept."

In *City of Sacramento v. State Water Resources Control Board; California Regional Water Quality Control Boards for the Central Valley Region; Rice Industry Committee as Real Party in Interest*, No. 363703 (Sacramento County Superior Court), plaintiff alleges that the boards violated state environmental and water quality laws when they adopted and approved a new pollution control plan in January and February 1990. WRCB contends that it complied with CEQA and the Porter-Cologne Water Quality Control Act. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 164 and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 195-96 for detailed background information.) Pursuant to Public Resources Code section 21167.8, the court mandated this matter to a settlement conference. In the event no settlement is reached, the matter has been scheduled for a February 22 hearing.

In *State Water Resources Control Board and the Regional Water Quality Control Board, San Francisco Region v. Office of Administrative Law*, No. 906452 (San Francisco County Superior Court), the court issued notice of its tentative decision denying the Board's request for a writ of mandate on December 10. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 164 and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 196-97 for detailed background information.) OAL had until December 31 to prepare a proposed order for the court to sign; the Board had until January 21 to file its objections to OAL's proposal. Should

the court find no merit in WRCB's objections, it may sign the order after January 21.

In *United States and California v. City of San Diego*, No. 88-1101-B (S.D. Cal.), city, state, and federal officials have ratified a settlement agreement, under which the City of San Diego is required to have a new sewage water reclamation system fully operational by December 31, 2003. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 164; Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 195; and Vol. 9, No. 4 (Fall 1989) p. 125 for extensive background information on this case.) The agreement to proceed with a secondary sewage treatment facility is based on the 1972 federal Clean Water Act, which requires cities such as San Diego to install a secondary treatment plant.

Despite the settlement agreement, U.S. District Court Judge Rudi M. Brewster expressed concern about the $2.8 billion cost, the opposition to the secondary sewage plant within the scientific community, and the lack of a clear public benefit to be afforded by the agreement. Judge Brewster requested the parties to submit briefs on whether he has authority to alter the Clean Water Act's secondary treatment requirement. At a November 1 hearing, Judge Brewster ruled that although he does not have jurisdiction to stray from a strict reading of the statute, he does have the power to approve or reject the consent decree between the city and the EPA settling the lawsuit. Brewster announced that, in order to approve the consent decree, he must find that it both complies with the Clean Water Act and is in the public interest. Therefore, Judge Brewster requested that additional briefs be submitted and set a hearing date of February 5. At the hearing, Judge Brewster will determine whether there is significant environmental damage being caused by the current sewage treatment plant. Attorneys will be allowed to call scientists and other experts as witnesses.

The February 5 hearing will be held in conjunction with a previously-scheduled hearing at which the EPA is attempting to collect millions of dollars from the City of San Diego for violating the Clean Water Act in the past; that phase of these proceedings is expected to take several weeks.

On November 8, Earth Island Institute, a San Francisco-based environmental group, filed suit in U.S. District Court for the Southern District of California against Southern California Edison Company (SCE), alleging that SCE's operation of the San Onofre Nuclear Generating Station violates the federal Clean Water Act. Earth Island's claims are primarily based on a fifteen-year, 46 million study which was ordered by the Coastal Commission and financed completely by SCE; the study found that the operation of the San Onofre plant does in fact kill tons of fish and kelp each year. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 115 for background information.) Federal law requires SCE to obtain a permit to operate San Onofre from both WRCB and the California Coastal Commission; Earth Island contends that operation of the plant in such a way as to kill marine life technically violates WRCB's permit. The suit demands that SCE either fix the plant's cooling system, which the study found to be responsible for most of the fish and kelp kills, or close the plant.

FUTURE MEETINGS:

Workshop meetings are generally held the first Wednesday and Thursday of each month. For the exact times and meeting locations, contact Maureen Marche at (916) 445-5240.

INDEPENDENTS

AUCTIONEER COMMISSION

Executive Officer: Karen Wyant
(916) 324-5894

The Auctioneer and Auction Licensing Act, Business and Professions Code section 5700 *et seq.*, was enacted in 1982 and establishes the California Auctioneer Commission to regulate auctioneers and auction businesses in California.

The Act is designed to protect the public from various forms of deceptive and fraudulent sales practices by establishing minimal requirements for the licensure of auctioneers and auction businesses and prohibiting certain types of conduct.

Section 5715 of the Act provides for the appointment of a seven-member Board of Governors, which is authorized to adopt and enforce regulations to carry out the provisions of the Act. The Board's regulations are codified in Division 35, Title 16 of the California Code of Regulations (CCR). The Board, which is composed of four public members and three auctioneers, is responsible for enforcing the provisions of the Act and administering the activities of the Commission. Members of the Board are appointed by the Governor for four-year terms. Each member must be at least 21 years old and a California resident for at least five years prior to appointment. In addition, the three industry members must have a minimum of five years' experience in auctioneering and be of recognized standing in the trade.

The Act provides assistance to the Board of Governors in the form of a council of advisers appointed by the Board for one-year terms. In September 1987, the Board disbanded the council of advisers and replaced it with a new Advisory Council (see CRLR Vol. 7, No. 4 (Fall 1987) p. 99 for background information).

RECENT MEETINGS:

The Board of Governors' January 11 meeting was held in violation of the Bagley-Keene Open Meeting Act, Government Code section 11125(a), for failure to provide proper notice.

At the meeting, Executive Officer Karen Wyant stated that she is having difficulties in prosecuting auctioneers suspected of permitting shilling to occur at an auction. She explained that an auctioneer can easily avoid disciplinary action because, under the current state of the law, it is unclear at what point an item owner, who is bidding purportedly to protect his/her "reserve," becomes an illegal "shill." Although Wyant has frequently presented legislative and regulatory proposals to the Board which would clarify undefined industry terms and enable the Commission to more effectively police common abuses by auctioneers, industry opposition and Board inaction have thwarted her efforts. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 126; Vol. 9, No. 1 (Winter 1989) p. 97; and Vol. 8, No. 4 (Fall 1988) p. 111 for background information.)

At the January meeting, Wyant presented a proposal which would explicitly specify the manner in which bidding may be performed by the owner of goods at an auction, in order to assure that he/she is not bidding for the sole purpose of increasing the sale price. The proposed rule would prohibit an owner or his/her agent from making more than one bid on an item, unless the owner or agent is personally identified to the audience after the lot is put up for sale and before bids are taken. It would also limit