



annual ex vessel value of the fish (other than rockfish) landed by the permittee within the Marine Resources Protection Zone during the years 1983-87, inclusive. This bill would also authorize a one-time compensation for rockfish fishers based on a specified formula, if the courts determine that the Marine Resources Protection Zone extends into federal waters (*see infra* LITIGATION). This bill is pending in the Assembly Committee on Water, Parks and Wildlife.

LITIGATION:

DFG has recently been sued and countersued over its interpretation of Proposition 132, the Marine Resources Protection Act of 1990 approved by the voters at the November 1990 election. In February, the Committee to Ban Gill Nets, Dolphin Connection, Earth Island Institute, Assemblymember Doris Allen, and Leo Cronin petitioned the Alameda County Superior Court for a writ of mandate commanding DFG to enforce Proposition 132, which bans the use of gill and trammel nets, out to 200 miles offshore (instead of the three-mile limit enforced by DFG). This case was dismissed by stipulation on March 5, after DFG agreed to enforce the initiative out to 200 miles. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 158 and Vol. 11, No. 1 (Winter 1991) p. 126 for background information.)

However, on March 15, DFG was sued in *Vietnamese Fisherman Association of America, et al. v. California Department of Fish and Game, et al.*, No. C910778-DLJ, in the U.S. District Court for the Northern District of California. In this case, plaintiffs claim that DFG's interpretation of Proposition 132 conflicts with and is preempted by federal law, and that the state is forbidden from enforcing its laws in the area between three and 200 miles offshore. Following the March 18 issuance of a temporary restraining order, the court issued a preliminary injunction on April 1 prohibiting DFG from enforcing Proposition 132 beyond the three-mile state waters limit. At this writing, this case is on hold while the Pacific Fishery Management Council holds hearings on the issue. The Committee to Ban Gill Nets and Assemblymember Allen have intervened in this case in support of DFG.

RECENT MEETINGS:

At its April 4 meeting, FGC approved the renewal of the memorandum of understanding (MOU) between DFG and the Bighorn Institute. To date, no settlement has been reached in the law-

suit between Bighorn Ventures (a California limited partnership which is financed in part by Safeco Insurance, and which seeks to build hundreds of homes and a golf course next to Bighorn Institute) and Bighorn Institute (a non-profit organization which conducts a research, recovery, and release program intended to increase the bighorn sheep population in California). After Bighorn Institute expressed concerns over the proposed residential development (which resulted in Ventures' having to prepare an environmental impact report), Bighorn Ventures retaliated by initiating a costly and protracted suit based on alleged CEQA violations. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 158 for background information.)

FUTURE MEETINGS:

August 29-30 in Long Beach.
October 1-3 in Redding.
October 31-November 1 in San Diego.
December 5-6 in Sacramento.

BOARD OF FORESTRY

Executive Officer: Dean Cromwell
(916) 445-2921

The Board of Forestry is a nine-member Board appointed to administer the Z'berg-Nejedly Forest Practice Act (FPA) of 1973 (Public Resources Code section 4511 *et seq.*). The Board is established in Public Resources Code (PRC) section 730 *et seq.*; its regulations are codified in Division 1.5, Title 14 of the California Code of Regulations (CCR). The Board serves to protect California's timber resources and to promote responsible timber harvesting. Also, the Board writes forest practice rules and provides the Department of Forestry and Fire Protection (CDF) with policymaking guidance. Additionally, the Board oversees the administration of California's forest system and wildland fire protection system, sets minimum statewide fire safety standards, and reviews safety elements of county general plans. The Board's current members are:

Public: Franklin L. "Woody" Barnes (Acting Chair), Robert J. Kerstiens, and Elizabeth Penaat.

Forest Products Industry: Mike A. Anderson and Joseph Russ, IV.

Range Livestock Industry: Jack Shannon.

The FPA requires careful planning of every timber harvesting operation by a registered professional forester (RPF). Before logging operations begin, each logging company must retain an RPF to prepare a timber harvesting plan (THP).

Each THP must describe the land upon which work is proposed, silvicultural methods to be applied, erosion controls to be used, and other environmental protections required by the Forest Practice Rules. All THPs must be inspected by a forester on the staff of the Department of Forestry and, where deemed necessary, by experts from the Department of Fish and Game, the regional water quality control boards, other state agencies, and/or local governments as appropriate.

For the purpose of promulgating Forest Practice Rules, the state is divided into three geographic districts—southern, northern, and coastal. In each of these districts, a District Technical Advisory Committee (DTAC) is appointed. The various DTACs consult with the Board in the establishment and revision of district forest practice rules. Each DTAC is in turn required to consult with and evaluate the recommendations of the Department of Forestry, federal, state, and local agencies, educational institutions, public interest organizations, and private individuals. DTAC members are appointed by the Board and receive no compensation for their service.

MAJOR PROJECTS:

Dwindling Membership Threatens Board's Ability to Act. At this writing, Governor Wilson has yet to fill any of the three vacancies on the Board (two public member positions and one forest products industry member), leaving the Board with only six members. This is significant because under PRC section 736, five members of the Board constitute a quorum, and five members must agree in order to adopt any regulatory package.

Board Considers Emergency Regulations to Protect the Marbled Murrelet. Since January 1991, CDF has disapproved at least three THPs which involved the habitat of the marbled murrelet. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 162 and Vol. 11, No. 1 (Winter 1991) p. 129 for background information.) Concern for the murrelet, a seabird which feeds at the ocean but nests in seaside old-growth forests, has been expressed by the state Department of Fish and Game (DFG) and the U.S. Department of the Interior (DOI) since 1978; both agencies have been petitioned to list the species as threatened and, in February 1991, DFG told DOI that the murrelet meets the five criteria set forth for listing a species under the federal Endangered Species Act.

At its May 8 meeting, the Board considered the adoption of emergency regulations to protect the habitat of the marbled murrelet. Section 895.1, Title 14 of



the CCR, would be amended to include the marbled murrelet as a "species of special concern"; section 912 would be amended to provide a definition of "marbled murrelet habitat"; and new sections 919.13 and 919.14 would be added to set standards for a survey which must be conducted where a proposed THP includes habitat of marbled murrelets, including a mandatory consultation with DFG and a requirement that the CDF Director "require all feasible mitigations to prevent a significant effect on the species."

At the May 8 public hearing, DFG representative Jim Steele testified in support of the proposed emergency regulations, noting that the federal government could list the murrelet at any time and that such protections would then be required. However, the majority of the other speakers (mostly from timber companies) argued that no emergency exists, that surveys are already required by CDF where murrelet habitat is in issue, and that the Board's hastily-assembled emergency rulemaking package resembles the emergency regulations adopted last summer to protect the northern spotted owl (which most foresters consider a disaster).

Following discussion, the Board decided to postpone any decision on the emergency regulations until its June 5 meeting. The Board decided to send a letter to CDF Director Harold Walt, urging him to continue the Department's arguably-unauthorized practice of requiring a survey where a THP involves the habitat of the marbled murrelet.

Board Considers Sensitive Species Petition Mechanism. In an effort to establish a method enabling concerned members of the public to petition the Board to classify a particular plant or animal species as "sensitive" for purposes of protecting it from timber harvesting, the Board's Forest Practice Committee recently presented the Board with a proposed rulemaking package, which was the subject of a public hearing at the Board's May 8 meeting.

The Board first became involved in this project in May 1988, when it appointed a Wildlife Task Force to respond to growing concerns over the extent to which the state's timber management system provides adequate consideration of the needs of wildlife. The Task Force submitted its report and recommendations to the Board for review in April 1990. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 129 for background information.) With regard to this rulemaking package, the Task Force found that the most significant criticism of the Forest Practice Rules' "species of spe-

cial concern" classification is the narrowness of scope and a lack of biologically-based criteria for periodic list update, review, and modification. Hence, these proposed rules seek to outline the required information to be provided to the Board by a petitioner, which will be evaluated by the Board in conjunction with CDF and DFG biologists, in order to determine whether the petition warrants a formal public hearing.

The proposed rules (sections 919.12, 939.12, and 959.12, Title 14 of the CCR) and the petition mechanism contained therein are based upon the California Endangered Species Act (CESA), Fish and Game Code section 2050 *et seq.* (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 1 for extensive background information on CESA.) Specifically, the regulatory package provides for public notification that the mechanism exists, and procedures enabling the Board to obtain information regarding population trends, habitat availability, suitability of habitat, feasible mitigation measures, and information sources. Upon completion of review, the Board will classify a species as "sensitive" if it finds that: (1) the California population is dependent upon timberland as habitat; (2) the California population is in decline; and (3) continued timber operations under the current rules of the Board will result in a loss of population viability.

At the May 8 hearing, comments from both government agency representatives and the timber industry focused on several undefined terms in the proposed rules. By unanimous vote, the Board declared that it approved the concept, but sent the rulemaking package back to the Forest Practice Committee to flesh out the definitions of critical terms. The Board was scheduled to revisit this matter at its July 10 meeting.

Hearing to Consider Emergency Regulations on the Harvesting of Younger Trees and Achieving Maximum Sustained Production. During February, CDF was confronted with several THPs proposing to "harvest thrifty, fast-growing stands," that is, "trees that have optimum growth potential." In a February 15 letter to the Board, CDF Director Harold Walt opined that the plans, if approved, "would result in a reduction of stand growth. The productive potential of such sites will not be realized, thus having a cumulatively immediate, significant and long-term effect on the sustained production of high-quality timber products." As a result, CDF delayed its decision on the THPs, and Director Walt requested emergency rulemaking by the Board because, according to Walt, the

Board's existing rules "do not fully meet the intent of the [Forest Practice] Act because they do not provide adequate guidance to assure the sustainability of high-quality timber products from lands producing at or near capacity."

Thus, on April 2, the Board conducted a hearing to consider an emergency regulatory proposal submitted by CDF pursuant to PRC section 4555. The proposal would have amended regulatory section 895.1 to define "sustained production" to mean the achievement and maintenance of a high annual or regular periodic output of various renewable forest products without impairment of timberland productivity, in compliance with the intent of PRC section 4513. The emergency rulemaking proposal also called for the adoption of new section 913 to describe standard silvicultural systems and to provide alternatives that, when applied, would meet the objectives of the FPA by providing for maximum sustained production of forest products, while recognizing that protection of other timberland values (such as recreation, watershed, wildlife, range and forage, fisheries, and aesthetics) will influence the level of production of forest products. Under this section, THPs would be required to designate regeneration methods that would be used; timber operations would be limited on any specific area of timberland to once every ten years; trees proposed for harvesting would have to satisfy minimum age requirements; and exceptions would be allowed only under special circumstances. The THP would also be required to include a silvicultural prescription which describes the management of the underage trees or stands by including the RPF's assessment of the pre- and post-harvest species composition of the stand, pre- and post-harvest stocking standards, and the guidelines to be used in determining which trees are to be harvested or retained.

During the April 2 hearing, CDF's proposal encountered a great deal of criticism from timberland owners and environmentalists alike. Landowners argued that timber harvesting based upon the age of the trees is not only economically unfeasible (especially for non-industrial timberland owners), but it does not take into account the size that young trees can attain. One public member commented that a 16"-diameter tree could be anywhere from 24 to 200 years in age. Others commented that technological progress has not only made it possible to grow more trees at a faster rate, but it has also improved the quality of timber products made from younger trees. Environmentalists, on the other hand, recog-



nized the need to define "sustained production" and to amend the FPR (which currently focus on forest products sustainability rather than biological sustainability), but argued that this proposal was not substantial enough to make all the needed changes in the rules.

At the close of the hearing, the Board acknowledged the fact that its existing rules may fail to address the intent of the Act and that the issue of the maintenance of maximum sustained production may not be clearly addressed in the FPR. However, the Board did not believe that an emergency which would have a significant long-term impact existed. The Board decided it could adopt amendments to its "sustained production" regulations under the normal rulemaking process. CDF was directed to use the current definition of "sustained yield" in section 895.1, Title 14 of the CCR, as guidance for a determination of maintenance of productivity. (See *infra* LITIGATION for related discussion.)

Proposed Adoption of "Special Treatment Areas" Regulations. On April 3, the Board conducted a hearing to consider proposed amendment to sections 895.1, 913.4(a), and 953.4(a), and the adoption of sections 929-929.6, 949-949.6, and 969-969.6, Title 14 of the CCR, to provide clarity and guidance to the CDF Director on the protection of archaeological and historical resources, including Native American cultural sites.

In the past, RPFs have alleged that CDF's requirements concerning the protection of these resources exceed the authority of the FPR. The Board reviewed that question and determined that the Director's actions were consistent with the Board's rules, but believed that a new article of regulations would provide clarity and additional guidance to the Director. At the same time, the Native American Heritage Commission expressed concern that Native American cultural sites are being damaged under approved THPs. The Board requested that the Director provide recommendations to prevent continued damage of these sites, and the Director drafted a regulatory proposal which was the subject of a public hearing in August 1990. After hearing testimony at the hearing, however, the Board directed staff to further consult with the Native American community and to renotice the language after additional comment was received and revisions completed. The draft was also reviewed and modified by the DTACs and the Forest Practice Committee.

Under the proposed regulatory action, amended section 895.1 would

define "significant archaeological or historical resource" as an artifact, object, or location which meets one of five specified criteria. The initial determination of significance will be made by a CDF archaeologist, and only one of the five listed criteria need be satisfied. The proposal would also amend the definition of "special treatment areas" to areas within 200 feet of a watercourse transition line of designated wild and scenic rivers; areas within 200 feet of national, state, regional, county, or municipal park boundaries; areas within the boundaries and within 100 feet of significant archaeological, cultural, or historic sites; key habitat areas of threatened, rare, or endangered species; Coastal Commission special treatment areas; or areas within 200 feet of a state-designated scenic highway or corridor.

New sections 929, 949, and 969 would state the purpose of the creation of the new article, which is to ensure that significant archaeological and historical resources of the state are identified and protected, and to provide direction to RPFs preparing THPs and Emergency Notices. Sections 929.1, 949.1, and 969.1 would list the steps an RPF must follow in preparing a THP or an Emergency Notice to determine whether a "significant archaeological or historical resource" exists and the actions which will be taken to reduce or eliminate adverse impacts to these resources. Sections 929.2, 949.2, and 969.2 would direct the RPF to indicate in the THP protection measures for any significant archaeological or historical special treatment area identified. The avoidance of activities which will cause site disturbance is an example of an appropriate protection measure.

New sections 929.3, 949.3, and 969.3 would require timber operators to amend the THP if archaeological or historical resources are discovered during timber operations, stop operations within 100 feet of the site, and notify the CDF Director immediately. Sections 929.4, 949.4, and 969.4 would list the necessary archaeological training requirements needed to identify archaeological or historical resources; and sections 929.5, 949.5, and 969.5 would direct timber operators or owners to record all significant sites located within the THP boundary. Sections 929.6, 949.6, and 969.6 would forbid any person who is involved in timber operations from collecting artifacts or looting sites within the THP boundary that are of significant archaeological or historic value.

During the April 3 public hearing, the majority of witnesses supported the goal of the proposed regulations, but believed

that certain problems and language ambiguities should be worked out before the package is approved. One problem concerned the role of the Native American Heritage Commission (NAHC) and local tribes in the site review process. The Native American representatives stressed the importance of including the NAHC and local tribes at the beginning of the THP review process. However, foresters questioned the need for pre-consultation with local tribes, complaining that the regulations do not account for the increasing cost and complexity of the already-burdensome THP process.

Another problem concerns the definition of "significant archaeological or historical resource." Landowners and foresters complained that too many "significant" sites would be found without enough consideration of their unique or non-unique characteristics, the review criterion applied under the California Environmental Quality Act (CEQA). Not only will this confuse RPFs in preparing THPs, but it could also have a great financial impact on small landowners since, according to archaeologist Mark Gary, new sites are discovered almost daily.

Foresters also questioned the level of archaeological training that would be required to identify potential sites, and whether it is even necessary. Each RPF would be given a three-day training course to learn the basic skills, but the RPFs complained that the THP process has already become too difficult and expensive without this added burden. Some RPFs also questioned how this scant training would add to their ability to recognize a significant site, but Mark Gary noted that not all significant sites are obvious and stated that training could only improve the RPF's ability to complete a THP.

In response to the public comment at the April 3 hearing, the Board released a modified version of the regulatory proposal on May 13. Section 895.1, which defines "significant archaeological or historical resource" was modified to note that (1) a site is not significant if it merely adds to the current body of knowledge; (2) a site is significant if it answers important scientific questions; (3) a site is significant if it is at least 100 years old and has stratigraphic integrity; and (4) a site is significant if it involves important research questions that historical research has shown can be answered only with archaeological methods. The modifications to section 895.1 also provide that the CDF archaeologist must notify the THP submitter in writing of the reasons for determining significance. According to the staff, these modifica-



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tions make the definition more consistent with CEQA. Also under section 895.1, significant sites of archaeological, cultural, or historical resources will be removed from the definition of "special treatment areas," since they will be protected under a new heading for Article 14 called "Archaeological and Historical Resource Protection."

Sections 929.1, 949.1, and 969.1 were modified to clarify the procedures that the RPF must follow during THP preparation, and section 1037.5 was amended to specifically name the NAHC or a local tribal group as those whom the Director may include in the review team for THPs.

The Board accepted further comments on the modified regulatory proposal until June 4, and was scheduled to revisit this matter at its June 5 meeting.

Status Update on Other Proposed Regulatory Actions. The following is a status update on regulatory proposals discussed in recent issues of the *Reporter*:

-Amendment to the "Commercial Species" Regulation. On May 9, the Office of Administrative Law (OAL) approved the Board's amendment to section 932, Title 14 of the CCR, to include the coast redwood as a "commercial species" in the Northern Forest District. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 160 for background information.)

-Adoption of Logging Slash Treatment Regulations. On April 2, the Board adopted amendments to sections 895.1, 917.5, and 937.5; the repeal of existing and the addition of new sections 917.2, 937.2, 957.2, 919, 939, 959, 1052.2, and 1052.3; the renumbering of 919.2, 939.2, and 959.2; and the addition of new Technical Rule Addendum No. 3, Title 14 of the CCR. These regulatory changes address the treatment of logging slash to reduce fire hazards and to provide pest protection, and modify the Board's rules on emergency timber operations. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 159 for detailed background information.) At this writing, the rulemaking record on this regulatory action has not yet been submitted to OAL.

-Watercourse and Lake Protection Regulations. On April 3, the Board adopted amendments to numerous provisions of the FPR between sections 895.1-963.6, which would protect areas identified as watercourse and lake protection zones from negative environmental impacts associated with adjacent timber operations. The amendments were proposed to address recommendations of the Watercourse Protection Task Force, which was appointed in August

1988. The Task Force, which included representatives from organizations with broad natural resource interests, met twelve times, with additional subcommittee meetings. (See CRLR Vol. 11, No. 2 (Spring 1991) pp. 159-60; Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 188; and Vol. 10, No. 1 (Winter 1990) pp. 140-41 for extensive background information on these changes.)

At the April 3 hearing, several Task Force representatives were critical of the regulatory proposals. The main subjects of criticism were the width of the protection zone on slopes greater than 50% in all watercourse classes, and the width of protection to be provided for Class III watercourses. However, supporters of the amendments argued that although many issues and suggestions did not end up in the package, the amendments reflect a compromise between the various organizations represented in the Task Force, and should be respected. Thus, the Board adopted the proposed changes. At this writing, this rulemaking package has not been submitted to OAL.

-Wildlife Protection Regulations. On March 5, the Board adopted a regulatory action that would substantially modify numerous provisions between sections 917.1-1034, Title 14 of the CCR. These regulatory changes consolidate wildlife and habitat regulations into Article 9 of the Board rules, and clarify what information must be provided on THPs concerning wildlife impacts. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 128 for background information.) At this writing, this regulatory package has not been submitted to OAL.

-Fire Safe Regulations. Following OAL's February 19 rejection of new sections 1270-1276.04, Title 14 of the CCR, which would establish minimum fire safe standards applicable to state responsibility area lands under the authority of CDF, the Board resubmitted a modified rulemaking package to OAL in late April. On May 30, OAL approved the Board's fire safe regulations. (See CRLR Vol. 11, No. 2 (Spring 1991) pp. 160-61; Vol. 11, No. 1 (Winter 1991) pp. 128-29; and Vol. 10, No. 4 (Fall 1990) p. 160 for background information.)

-Non-Industrial Timber Management Regulations. In March, OAL disapproved the Board's amendments to sections 895 and 895.1, and its adoption of sections 1090-1090.27, Title 14 of the CCR, which would establish an alternative to the THP for non-industrial forest landowners (less than 2,500 acres). (See CRLR Vol. 11, No. 2 (Spring 1991) p. 160; Vol. 11, No. 1 (Winter 1991) p. 128; and Vol. 10, No. 4 (Fall 1990) pp. 159-60 for background information.) The

Board planned to resubmit this rulemaking package by the end of June.

-Cumulative Impacts Assessment Methodology. On March 15, the Board submitted a rulemaking package to OAL which includes the adoption of new sections 912.9, 932.9, 952.9, and Technical Rule Addendum #2, and amendments to sections 895, 895.1, 896, 897, 898, 898.1, 898.2, 1037.3, and 1037.5, Title 14 of the CCR. The regulatory action sets forth a cumulative impacts assessment process for the evaluation of a THP. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 130; Vol. 10, No. 4 (Fall 1990) pp. 158-59; and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 191 for background information.) On April 11, OAL rejected the rulemaking package because it failed to comply with the necessity, clarity, and reference standards of Government Code section 11349.1; it did not contain an adequate summary of and response to public comments; and it failed to comply with the Administrative Procedure Act in several technical respects. The Board plans to correct these deficiencies and resubmit the regulatory action to OAL by the end of July.

-Protection of the Northern Spotted Owl. On May 28, OAL approved another extension of the Board's emergency regulations to protect the northern spotted owl, which were originally adopted in July 1990 after the federal government listed the species as threatened throughout its range. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 128 and Vol. 10, No. 4 (Fall 1990) pp. 157-58 for background information.)

LEGISLATION:

SB 854 (Keene), AB 641 (Hauser), AB 714 (Sher), and SB 300 (McCorquodale) is a package of bills, each joined to the other and none of which will become law unless all do, which is intended to prevent another expensive initiative battle like the one waged in November 1990 over Propositions 128 ("Big Green"), 130 ("Forests Forever"), and 135 ("Big Brown"). The package of bills was negotiated between the Sierra Club and Sierra Pacific Industries, California's largest private timberland owner, and was introduced after the Timber Association of California rejected a proposed agreement that would have protected some environmentally sensitive forests and permitted loggers to harvest only as much timber as grows each year.

SB 854 (Keene), as amended April 15, would require long-term timber management plans for all ownerships over 2,500 acres; after ten years, annual cutting would be limited to no greater than 2.2% of harvestable timber. SB 854 is



pending in the Senate Natural Resources Committee.

AB 641 (Hauser), as amended May 20, would require THPs to include mitigation measures recommended by DFG which are designed to protect fish and wildlife resources, and establish specified wildlife habitat requirements for the long-term timber management plans required by SB 854 (Keene). This bill is pending in the Senate Natural Resources Committee.

AB 714 (Sher), as amended April 29, would prohibit clearcuts and similar harvests in ancient forests. For other than ancient forests, this bill would limit clearcuts to 20 acres and require buffer zones between clearcuts to be at least as large as the clearcut itself; prohibit clearcuts within 300 feet of county or state roads, or within 200 feet of non-timber production areas; and halt clearcutting in adjacent areas until new trees on the clearcut site are six inches in diameter, or until 20 years have passed since the last clearcut. This bill is pending on the Assembly floor.

SB 300 (McCorquodale), as amended May 20, would protect streams and rivers in harvest areas by limiting harvesting; increase citizen input on THPs by lengthening to 60 days the timber harvest review period on environmentally sensitive or controversial plans; and reformulate the composition of the Board of Forestry to better reflect the general public's interests in protecting forests. The new board would be made up of one local government representative, two industry representatives, three public representatives, and three conservation group representatives. Board members could not have a financial interest in timberlands or the forest products industry. This bill is pending on the Senate floor.

AB 1533 (Farr), as amended April 22, would revise the composition of the Board of Forestry to include one county supervisor, one member from a local chamber of commerce, and two members from conservation organizations; prescribe special conflict of interest requirements for the nonindustry and nonconservation organization members of the Board; require the Board to adopt, not later than April 1, 1993, regulations consistent with specified requirements and limitations to, among other things, assure that harvests in old-growth virgin forests are conducted in a manner which addresses the distinctive values associated with those forests; and increase the maximum fine for violation of the FPA from \$1,000 to \$5,000. This bill is pending in the Assembly Natural Resources Committee.

AB 1127 (Campbell), as amended May 7, would prohibit any person not registered as a professional forester from performing the duties of an RPF, or using the title of a registered professional forester. This bill is pending in the Assembly Ways and Means Committee.

The following is a status update on bills reported in detail in CRLR Vol. 11, No. 2 (Spring 1991) at pages 161-62:

AB 87 (Sher), as introduced December 4, would prohibit until July 1, 1992, timber operations within any stand of ancient redwood which, alone or in conjunction with any contiguous stand under public ownership, measures ten or more acres and which has never previously been subject to timber harvesting. This bill is pending in the Assembly Natural Resources Committee.

AB 445 (Sher), as amended April 18, would enact the California Releaf Act, requiring cities and counties to include specified tree planting and protection ordinances in their general plans by January 1, 1993. This bill is pending in the Assembly Natural Resources Committee.

SB 213 (McCorquodale), as amended May 22, would permit moneys in the Forest Resources Improvement Fund to be expended, upon appropriation, for forest pest research and management, technical transfer, and outreach. This bill passed the Senate on April 11 and is pending in the Assembly Natural Resources Committee.

SB 279 (McCorquodale). Existing law authorizes CDF, with the approval of the Department of Finance and in accordance with policy established by the Board, to enter into agreements with any owner and with any agency of government for the purpose of controlling or eradicating forest insects or plant diseases damaging or threatening destruction to timber or forest growth, and CDF may make expenditures for that purpose. As introduced February 4, this bill would delete the requirement for approval by the Department of Finance. This bill passed the Senate on May 9 and is pending in the Assembly Natural Resources Committee.

AB 512 (Sher), as amended April 9, would create the Timberland Conversion Account in the General Fund, and require specified fees to be deposited in the account. The funds would be available, upon appropriation, for purposes of administration of the timberland conversion provisions of CDF. This bill passed the Assembly on April 15 and is pending in the Senate Appropriations Committee.

AB 833 (Farr), as amended May 20, would amend section 4582.6 of the PRC. That section currently provides that the

board of supervisors or planning commission of any county for which the Board of Forestry has adopted regulations pursuant to PRC section 4516.5 may request a public hearing on any THP submitted for lands within the county and, upon that request, CDF is required to hold a hearing prior to taking any action on the plan. AB 833 would require that within the southern subdistrict of the Coast Forest District described in section 907.1, Title 14 of the CCR, feasible alternative practices that are needed to mitigate significant adverse environmental impacts, submitted in writing to the review team chairperson by review team members, shall be accepted by the review team chairperson and incorporated into the THP, or the CDF Director shall deny the THP. This bill passed the Assembly on May 29 and is pending in the Senate Natural Resources and Wildlife Committee.

AB 1407 (Lempert), as amended May 7, would require THPs within the Southern Forest District, as established by the Board's regulations, to be submitted for approval to the county in which the timber operation is to take place, in lieu of CDF. This bill is pending in the Assembly Ways and Means Committee.

AB 959 (Arelas), as amended May 8, would require CDF to establish a program for the provision of mobile communications vans, mobile command offices, and mobile kitchen trailers, and support staff for the maintenance and operation of that equipment. This bill is pending in the Assembly Ways and Means Committee.

AB 1976 (Campbell), as introduced March 8, would require all timber operations to comply with specified minimum requirements, including a requirement that timber operations shall not be permitted which may degrade the waters of this state. This bill is pending in the Assembly Natural Resources Committee.

SB 848 (Vuich), as introduced March 7, would require all owners of 75,000 acres or more of timberland to submit to CDF for approval, and to manage their lands pursuant to, a long-term resource management plan prepared by an RPF, unless the owner elects to be subject to specified alternative limitations. This bill is pending in the Senate Committee on Natural Resources and Wildlife.

SB 888 (Keene), as amended May 30, would enact the Old-Growth Forest Protection Act of 1992 which, if adopted, would authorize, for purposes of financing a specified old-growth forest protection program, the issuance of bonds in the amount of \$321 million. This bill is



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pending in the Senate Appropriations Committee.

SB 1072 (McCorquodale), as amended April 23, would require the Board to develop and coordinate a program of best management practices to protect water quality on rangelands, and to report to the legislature on or before December 1, 1992, and annually thereafter on the progress of this program. This bill is pending in the Senate Committee on Natural Resources and Wildlife.

AB 1903 (Hauser), as amended May 7, would increase the Board's examining committee to seven members, at least two of whom represent the public; require the committee to review independent investigations and make disciplinary recommendations to the executive officer of the Board; and increase the compensation of committee members to \$100 per day, if requested. This bill is pending on the Assembly floor.

AB 54 (Friedman), as amended May 16, would require each city and county, by January 1, 1994, to adopt an ordinance to protect existing trees, and require the planting of trees as a condition of project construction. This bill passed the Assembly on May 28 and is pending in the Senate Natural Resources and Wildlife Committee.

LITIGATION:

On May 10, the Redwood Coast Watersheds Alliance (Alliance), a non-profit California public benefit corporation, filed *Redwood Coast Watersheds Alliance v. California State Board of Forestry, et al.*, a petition for writ of mandate and complaint for injunctive and declaratory relief against the Board and CDF for violation of PRC sections 4512, 4513, and 4516. Through Attorney Sharon Duggan, Alliance alleges that the Board and CDF are violating the Forest Practice Act and public trust duties by allowing "legalized depletion"—that is, by failing to establish adequate silvicultural standards; maintaining inadequate stocking standards that are insufficient to fulfill maximum productivity; failing to adopt regulations ensuring the sustained production of high-quality timber products; approving timber harvest plans which deplete forest resources; failing to provide sufficient monitoring of and data for existing forest conditions; failing to protect watershed values, wildlife values, fisheries, regional economic vitality, employment, and aesthetic enjoyment; failing to proceed according to law in that the Board and CDF have permitted, among other things, through a lack of regulation and use of market forces as

the guiding criteria for harvest levels, overharvesting, timber mining, declining utilization standards, lack of environmental protection for watersheds and species diversity, and the use of hardwoods for stocking without stocking standards for hardwood species; and authorizing timber harvesting regeneration methods which are not consistent with the biological requirements of the tree species, timber site, and soil.

Among other things, Alliance seeks a judicial declaration that the Board and CDF are in violation of PRC sections 4512, 4513, and 4516 because they have adopted no meaningful minimum silvicultural standards, no sustained yield rules, and no standards for industrial lands. Alliance alleges that there is an immediate need for these standards and rules because of decreasing forest productivity, soil fertility, wildlife diversity, and other forest-related benefits. In addition, Alliance has asked the court to order the Board and CDF to immediately adopt enforceable standards, and to refrain from approving any timber harvest operations on marginal and depleted forest stands which are not at or near the biological capacity for the soil, timber site, and native species composition until satisfactory rules are adopted.

On the same day, Alliance petitioned Resources Agency Secretary Douglas Wheeler to withdraw the 1976 certification of the regulation of timber operations on private lands in California by CDF and the Board. Pursuant to PRC section 21080.5(e), the petition requested that the Secretary review the current THP processing system to determine whether it is in fact equivalent to the environmental impact report process required by the California Environmental Quality Act (CEQA), PRC section 21000 et seq., and whether timber harvesting operations should continue to be exempt from CEQA's EIR requirement under PRC section 21080.5. The petition is based upon alleged "material changes" made in the THP program and the rules and regulations of the Board since the 1976 certification, which the Alliance contends are inconsistent with the environmental protection purposes of the Forest Practice Act.

Specifically, the petition alleges that CDF's THP regulatory program does not "[i]nclude guidelines for the orderly evaluation of proposed activities and the preparation of the plan or other written documentation in a manner consistent with the environmental protection purposes of the regulatory program" under PRC section 21080.5(d)(2)(ii). Alliance further contends that "neither the plan nor the regulatory program properly

addresses feasible alternatives and mitigation measures, in that the regulatory program does not require that 'an activity will not be approved or adopted as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant impact which the activity may have on the environment' (PRC section 21080.5(d)(2)(i); and the plan or other written documentation does not 'include a description of the proposed activity with alternatives to the activity and mitigation measures to minimize any significant adverse environmental impact' (PRC section 21080.4(d)(3)(i). Nor is the plan or other written documentation required by CDF available for a reasonable period of time for review by other public agencies and the general public, as required by section 21080.5(d)(3)(ii). Finally, significant changes in the environment and the law call for a review of that certification."

In *Californians for Native Salmon & Steelhead Ass'n v. California Department of Forestry*, No. A046232, plaintiff's complaint has been reinstated in the trial court following the First District Court of Appeal's reversal of the lower court's order sustaining CDF's demurrer. The complaint seeks declaratory and injunctive relief, alleging and challenging the "pattern and practice of the California Department of Forestry in their [sic] approval of timber harvest plans, both in their failure to evaluate and respond to comments, and to assess cumulative impacts as mandated by the California courts." (See CRLR Vol. 10, No. 4 (Fall 1990) pp. 161-62 for extensive background information on this case.) Upon remand, the trial court rejected a demurrer by CDF based on the cumulative impacts assessment methodology rulemaking package that was recently rejected by OAL (*see supra* MAJOR PROJECTS); CDF then filed an answer to the complaint. At this writing, the case awaits trial.

FUTURE MEETINGS:

September 10-11 in Sacramento (tentative).

October 1-2 (location undecided).

November 5-6 (location undecided).

WATER RESOURCES CONTROL BOARD

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Chair: W. Don Maughan
(916) 445-3085

The state Water Resources Control Board (WRCB) is established in Water