



## REGULATORY AGENCY ACTION

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

*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 appropriate 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.

The Board continues to operate with only four members, following the December 31 resignation of Darlene Ruiz, an attorney. At this writing, Governor Wilson has not named a replacement to fill the vacant position.

## MAJOR PROJECTS:

*WRCB Included in Governor's Cal-EPA Plan.* On April 17, Governor Wilson released the details of his plan to create the California Environmental Pro-

tection Agency (Cal-EPA). Pursuant to his "executive reorganization" authority under Government Code section 12080 *et seq.*, Wilson proposes to establish Cal-EPA and place within it the cabinet-level Office of the Secretary for Environmental Protection and six distinct units:

- three existing agencies from the Resources Agency—WRCB (including the regional water quality control boards), the Air Resources Board, and California Integrated Waste Management and Recycling Board; these boards will retain their existing memberships, jurisdiction, and autonomy;

- the Department of Toxic Substances Control (transferred intact from the Department of Health Services), which would handle responsibility for the regulation and clean-up of hazardous waste;

- the Department of Pesticide Regulation, transferred intact from the California Department of Food and Agriculture (CDFA); and

- the Office of Environmental Health Hazard Assessment (functions transferred from DHS), which would oversee risk assessment and the implementation of the Safe Drinking Water and Toxics Enforcement Act of 1986 (Proposition 65).

Under the Governor's reorganization plan, the Secretary will serve as the primary point of accountability for the management of environmental protection programs. The Office of the Secretary will bring together functions which cut across the various programs designed to address pollution in a single medium (*e.g.*, air, surface water, groundwater, land). In releasing his plan, Wilson acknowledged that it will not necessarily lead to a change in environmental law or policy, but is intended to correct the current "dilution of accountability" by consolidating related environmental responsibilities now divided among several state agencies.

Following its release to the public, the reorganization plan was forwarded to the legislature and to the Commission on California State Government Organization and Economy (the "Little Hoover Commission"), which studied it, held public hearings on May 22-23, and released its evaluation of the proposal on June 7. The Little Hoover Commission concluded that the Cal-EPA plan should be adopted, but made several recommendations for legislative adjustment of the proposal. (*See supra* agency reports on CDFA and LITTLE HOOVER COMMISSION for background information.)

Under the executive reorganization statute, the legislature has 60 days to veto it. The plan is referred to an appropriate standing committee in each house,

each of which reports to the respective floors at least ten days prior to the end of the 60-day period. The only legislative action allowed by law is for either house to adopt a resolution declaring that it "does not favor" the plan. The plan may not be modified, amended, or approved—only vetoed. If no action is taken by either house, the plan automatically takes effect on the sixty-first day. The legislature had until July 16 to veto Governor Wilson's Cal-EPA proposal.

*Bay/Delta Water Quality Plans Adopted.* As part of the Board's ongoing proceeding to establish a long-range protection plan for the waters of the San Francisco Bay/Sacramento-San Joaquin Delta Estuary, WRCB adopted Water Quality Control Plans for Inland Surface Waters and Enclosed Bays and Estuaries (No. 91-13 WQ) on April 11. These plans set forth numerical water quality objectives for toxic substances mandated by the federal Clean Water Act. (*See CRLR Vol. 11, No. 2 (Spring 1991) p. 163; Vol. 11, No. 1 (Winter 1991) pp. 131-32; and Vol. 10, No. 4 (Fall 1990) p. 163 for extensive background information on the Bay/Delta proceeding.*)

Further, on May 1, the Board unanimously adopted its proposed Water Quality Control Plan for Salinity. The salinity plan primarily addresses temperature, salinity, and dissolved oxygen parameters of water quality. In the plan, numerous water quality objectives which are intended to protect water quality and the beneficial uses of Bay/Delta waters have been established for salinity at municipal and industrial intakes, salinity levels to protect Delta agriculture, salinity levels to protect export agriculture, and salinity for fish and wildlife resources in the Estuary. Adoption of the salinity plan concludes the water quality phase of the lengthy Bay/Delta proceeding, which began in 1987.

According to WRCB, this plan sets the stage for the ultimate issues to be addressed during the Bay/Delta proceeding: determining reasonable protection for all uses, and determining who will share responsibility for meeting the established water quality objectives. These issues are being addressed in the fifth and final phase of the proceeding, the Scoping and Water Rights Phases. In preparation for this final phase, WRCB held three days of scoping workshops in Sacramento and Los Angeles between March 26 and April 9. The purposes of those workshops were (1) to receive information on the set of alternatives to achieve various levels of protection for Bay/Delta beneficial uses that should be evaluated in an environmental impact report (EIR) for the Bay/Delta water



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rights decision; and (2) to help define the process that should be used to gather information to evaluate the selected set of alternatives. Additionally, during June, WRCB's scoping phase staff was scheduled to conduct 26 one-on-one meetings with proceeding participants to aid in the development of these alternatives; according to WRCB, the set of alternatives to be evaluated should be defined by the fall. The final product of the scoping phase will be a draft EIR pursuant to the California Environmental Quality Act (CEQA); based upon the draft EIR, WRCB will hold a quasi-adjudicative water rights proceeding, and will eventually approve a final EIR and issue a water rights decision.

However, following WRCB's May 1 adoption of its Water Quality Control Plan for Salinity, a coalition of environmental groups filed a petition for writ of mandate in Sacramento County Superior Court against WRCB for its alleged failure to adopt water quality standards sufficient to protect the fish, wildlife, and aquatic resources in the Bay/Delta region. Specifically, petitioners seek to require WRCB to allow more fresh water to flow through the Delta. They assert that an additional flow of water is necessary to restore the ecosystem of the estuary, which is dependent on the mixing of fresh and salt water. According to the Board's Salinity Plan, such flow-related issues will be separately addressed in the Scoping and Water Rights Phases, which are not scheduled to conclude until December 1992. (See *infra* LITIGATION for more information on this lawsuit.)

**Drought and Conservation Efforts.** During March, the state received three times as much rainfall as is normally expected during that month; however, it received only half of the normal amount during April. Rainfall statewide for the water year (beginning October 1, 1990) stands at 74% of average. In a memorandum submitted by the Department of Water Resources (DWR) to WRCB, DWR Director David Kennedy formally declared 1991 as another critically dry year; many officials are predicting that 1991 will be the driest of the five years of drought the state is experiencing. The state has already reduced its normal deliveries of water to municipal and industrial users by 80%; agriculture deliveries have been eliminated and are not expected to be resumed this year. (See CRLR Vol. 11, No. 2 (Spring 1991) pp. 162-63 for extensive background information.)

U.S. Senator Bill Bradley (D-New Jersey) has introduced S. 586, the Reclamation Drought Act of 1991, which

would, among other things, provide authority to the Secretary of the Interior to undertake certain activities to reduce the impacts of drought conditions. The bill would mandate conservation, encourage sales of water from farms to cities, and tie long-term water contracts to environmental improvements. The bill would also create a \$30 million "restoration fund" to repair damage to wildlife habitat by imposing a surcharge on Central Valley Project water and power sales.

**Board Seeks to Increase Waste Discharge Fees.** On April 26, WRCB published notice of its intent to adopt emergency regulations amending the schedule of annual fees charged for its regulation of discharges of waste which could affect the quality of the state's waters; on May 21, the Board released a modified version of the proposed regulatory amendments. The proposed emergency regulatory action would amend section 2200, Division 3, Title 23 of the CCR, by increasing the annual fees which are to be paid by dischargers regulated by waste discharge requirements pursuant to Water Code section 13263. The current level of fees contained in section 2200 ranges from \$100 to \$3,100 per year; the proposed fees range from \$100 to \$10,000 per year. WRCB was scheduled to hold a June 19 public hearing on these proposed amendments.

**Board Seeks to Adopt New Schedule of Fees.** On May 21, the Board held a public hearing to receive comments on its proposed adoption of regulations which will establish a new schedule of fees for the Bay Protection and Toxic Clean-up Program. Water Code section 13396.5 requires WRCB to establish fees applicable to all point and nonpoint dischargers who discharge into enclosed bays, estuaries, or any adjacent water in the contiguous zone or the ocean; such fees shall be collected annually and shall not exceed \$30,000 per discharger. The total amount of fees collected pursuant to section 13396.5 shall not exceed \$4 million per year.

According to WRCB, no regulations currently exist which impose fees on dischargers who discharge into enclosed bays, estuaries, or the ocean to support the responsibilities and duties of the Bay Protection and Toxic Cleanup Program. WRCB's Informative Digest regarding this proposal states that the fees will create incentives to reduce discharges to the ocean, enclosed bays, and estuaries, and will be based on relative threat to water quality from point and nonpoint dischargers. At this writing, the proposed regulations await adoption by the Board

and review and approval by the Office of Administrative Law (OAL).

**CMA Submits Request for Determination.** The May 3 issue of the *California Regulatory Notice Register* included a notice of a request for a regulatory determination filed with OAL by the California Manufacturers Association (CMA). CMA has asked OAL to determine whether a rule of the California Regional Water Quality Control Board (Los Angeles Region) is a "regulation" as defined in Government Code section 11342(b), and thus subject to the rule-making requirements of the Administrative Procedure Act before it may be legally enforced. The rule in question requires companies to conduct groundwater monitoring and to prepare environmental audits whenever the contents of their underground storage tanks are released into the soil. CMA contends that this rule is applied generally in underground storage tank releases cases pending before the Board. OAL's decision is expected to be released by August.

**WRCB Resubmits Underground Storage Tank Regulations.** On June 5, the Board resubmitted to OAL a modified version of its proposed regulatory action repealing existing Article 5, Subchapter 15, Division 3, Title 23 of the CCR; adopting a new Article 5; and amending Article 10, Subchapter 15, Division 3, Title 23 of the CCR, relating to water quality monitoring and response programs for underground storage tanks. OAL previously rejected this rulemaking package in July 1990. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 132; Vol. 10, No. 4 (Fall 1990) p. 163; and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 195 for background information.)

### LEGISLATION:

**ABX 9 (Cortese),** as amended April 8, authorizes a water supplier, under prescribed conditions, to contract, during 1991, with a state drought water bank or with other water suppliers or users outside the service area of the water supplier to transfer water made available from specified sources. The bill also authorizes water suppliers to enter into these contracts during 1992 if the DWR Director makes a prescribed determination. This bill was signed by the Governor on April 17 (Chapter 1X, Statutes of 1991).

**ABX 10 (Costa)** provides that no temporary water transfer made pursuant to any provision of law for drought relief in calendar years 1991 and 1992 shall affect any water rights. This bill was signed by the Governor on April 17 (Chapter 2X, Statutes of 1991).



**ABX 16 (Mays).** Existing law requires every state agency to transmit to OAL for filing with the Secretary of State a certified copy of every regulation adopted or amended by it, with certain exceptions. As introduced March 21, this bill would include within those exceptions an emergency regulation adopted by WRCB, or WRCB and DWR jointly, to mitigate the adverse effects of a drought. This bill is pending in the Assembly Committee on Water, Parks and Wildlife.

**ABX 15 (Kelley),** as amended May 9, would authorize WRCB to make loans or grants to fund eligible water reclamation projects, as defined, in order to relieve emergency drought situations. This bill is pending in the Assembly Committee on Water, Parks and Wildlife.

**ABX 8 (Katz).** Existing law authorizes a permittee or licensee to temporarily change the point of diversion, place of use, or purpose of use due to a transfer or exchange of water or water rights if specified conditions are met and WRCB approves the temporary change. As introduced March 14, this bill would prohibit a local water district from preventing, prohibiting, or delaying a temporary change petitioned for pursuant to these provisions. This bill is pending in the Assembly Committee on Water, Parks and Wildlife.

**AB 614 (Hayden),** as amended April 10, would require WRCB and the regional boards to establish total maximum daily loads, load allocations, and waste load allocations for toxic pollutants which address specified sources of discharge into any enclosed bay, estuary, coastal waters, or adjacent waters. The bill would also require WRCB to adjust and increase, by \$1.7 million, the total amount of fees collected annually from specified waste dischargers. This bill is pending on the Assembly floor.

The following is a status update on bills reported in detail in CRLR Vol. 11, No. 2 (Spring 1991) at pages 164-65:

**AB 88 (Kelley),** as amended May 21, would provide that the adoption or revision of state policy for water quality control and water quality control plans and guidelines, the issuance of waste discharge requirements, permits, and waivers, and the issuance or waiver of water quality certifications are exempt from the requirements of the Administrative Procedure Act. AB 88 would instead require WRCB and the regional boards to provide notice to specified persons and organizations, to prepare written responses to comments from the public, and to maintain an administrative record in connection with the adoption

or revision of state policy for water quality control and water quality control plans and guidelines. This bill would also authorize any aggrieved person to petition WRCB to review an action or failure to act by a regional board in connection with the powers delegated to the state by the Federal Water Pollution Control Act. AB 88 is pending in the Assembly Ways and Means Committee.

**AB 1122 (Sher),** as amended May 15, and **SB 51 (Torres),** as amended April 10, would both create the California Environmental Protection Agency (Cal-EPA) by reorganizing the Resources Agency and transferring functions of agencies outside the Resources Agency to the new Cal-EPA. Both bills would move WRCB to Cal-EPA. (See *supra* MAJOR PROJECTS for related discussion.) AB 1122 is pending in the Assembly Ways and Means Committee; SB 51 is pending in the Senate Appropriations Committee.

**AB 1132 (Campbell),** as introduced March 5, would declare that it is the policy of this state to protect and preserve all reasonable and beneficial uses of the San Francisco Bay/Sacramento-San Joaquin Delta Estuary and to operate the State Water Project to mitigate the negative impacts on the Estuary from the operation of the Project. This bill was rejected by the Assembly Ways and Means Committee on May 22; however, that Committee granted the bill reconsideration on that same date.

**AB 2017 (Kelley),** as introduced March 8, would, among other things, delete the existing requirement that administrative civil liability may be imposed upon a person or entity for the unauthorized diversion or use of water only during years declared to be critical by DWR. This bill passed the Assembly on May 16 and is pending in the Senate Committee on Agriculture and Water Resources.

**AB 2111 (Polanco),** as amended May 6, would enact the Assured Water Policy Act, and authorize the owner or operator of a qualifying water facility to request WRCB to issue an order requiring the physical connection of any qualifying water facility to the treatment and transmission facilities of the local water agency in whose service area the qualifying water facility is located, and to require the sale or exchange of water, as prescribed. This bill is pending in the Assembly Ways and Means Committee.

**SB 685 (Calderon),** as amended April 29, would require WRCB to adopt a fee schedule which assesses a fee on any owner or operator of a solid waste disposal site who has not submitted a complete and correct solid waste water quali-

ty assessment test to the appropriate regional board by July 1, 1991. This bill passed the Senate on May 30 and is pending in the Assembly Natural Resources Committee.

**AB 13 (Kelley),** as introduced December 3, would provide that water which has not been reclaimed to meet prescribed safe drinking water standards is not deemed to constitute waste water, but would authorize prescribed agencies to limit the use of that water. This bill is pending in the Assembly Committee on Water, Parks and Wildlife.

**AB 231 (Costa),** as amended April 2, would declare that, when any person entitled to the use of water under an appropriate right fails to use any part of that water as a result of conjunctive use of surface water and groundwater involving the substitution of an alternative supply for the unused portion of the surface water, any cessation of, or reduction in, the use of appropriated water is deemed equivalent to a reasonable, beneficial use of the water, as prescribed. This urgency bill passed the Assembly on May 9 and is pending in the Senate Committee on Agriculture and Water Resources.

**AB 1103 (Bates),** as amended May 6, would, among other things, require WRCB to establish a schedule of annual fees to be paid by dischargers to cover the costs incurred by the regional boards under this bill. This bill is pending in the Assembly Ways and Means Committee.

**AB 1605 (Costa),** as amended May 30, would permit surface water to be leased for a period not to exceed five years to assist water conservation efforts, subject to specified terms and conditions. It would limit the water which may be subject to a lease agreement; require the lessor to file a notice of the water lease agreement, including specified information, with WRCB; and require the Board to give specified public notice. This bill is pending in the Assembly Ways and Means Committee.

**AB 673 (Cortese),** as amended April 22, would enact the Water Recycling Act of 1991, establishing a prescribed statewide water recycling goal. This bill passed the Assembly on May 16 and is pending in the Senate Committee on Agriculture and Water Resources.

**AB 1737 (Campbell),** as introduced March 8, would require WRCB, DWR, and local public agencies to promote specified water practices in a prescribed order of priority, and to maximize the use of all feasible water conservation and wastewater reclamation options. This bill is pending in the Assembly Committee on Water, Parks and Wildlife.



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AB 1802 (*Eaves*), as introduced March 8, would require WRCB to adopt, by regulation, energy conservation standards for plumbing fittings; authorize WRCB to adopt the applicable performance standards established by the American National Standards Institute for those plumbing fittings; and require WRCB to notify the legislature at least one year prior to revising any of those standards. This bill is pending in the Assembly Housing and Community Development Committee.

AB 24 (*Filante*), as amended May 15, would enact the Water Recycling Bond Law of 1992, authorizing, for purposes of financing a water recycling program, the issuance of bonds in the amount of \$200 million. AB 24 is pending in the Assembly Committee on Banking, Finance and Bonded Indebtedness.

AB 174 (*Kelley*), as amended May 22, would declare that the use of potable domestic water for unpotable uses, including cemeteries, golf courses, parks, highway landscaped areas, and industrial and irrigation uses, is a waste or an unreasonable use of water, and would generally prohibit a person or public agency from using potable water for those purposes if reclaimed water is available. This bill passed the Assembly on April 4 and is pending in the Senate Committee on Agriculture and Water Resources.

SB 69 (*Kopp*), as amended May 6, 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 water of the San Francisco Bay. This bill is pending in the Senate Appropriations Committee.

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 inactive file.

### LITIGATION:

On May 31, a coalition of environmental groups filed a lawsuit in Sacramento County Superior Court against WRCB for its alleged failure to adopt water quality standards sufficient to protect fish, wildlife, and aquatic resources in the Sacramento-San Joaquin River

Delta, which flows into and helps flush and clean San Francisco Bay. The suit, *Golden Gate Audubon Society, et al. v. State Water Resources Control Board*, No. 366984, seeks to overturn WRCB's May 1 adoption of a Water Quality Control Plan which establishes new salinity standards to protect municipal, industrial, agricultural and environmental uses of the Delta. (See *supra* MAJOR PROJECTS for related discussion.)

The environmental groups, which include the Environmental Defense Fund, the Natural Resources Defense Council, the Sierra Club, and seven chapters of the Audubon Society, assert that WRCB's Plan fails to adequately protect declining and endangered species, including the chinook salmon, striped bass, and Delta smelt. The groups claim that the new standards violate laws enacted to protect the Delta estuary's fish and plant life, including the California Endangered Species Act, the federal Clean Water Act, the California Porter-Cologne Water Quality Act, the California Environmental Quality Act, and state and federal anti-degradation laws. Very simply, petitioners seek a court order declaring that WRCB's May 1 Salinity Plan violates the law, because it fails to address the adequate "flow requirements" necessary to reduce salinity and protect fish and wildlife in the Delta.

Petitioners' claims date back to the 1978 Water Quality Control Plan adopted by WRCB for the Sacramento-San Joaquin Delta and Suisun Marsh, which established water quality standards for municipal and industrial, agricultural, and fish and wildlife beneficial uses in the Delta and Suisun Marsh. The 1978 Plan was designed to provide the same level of protection to the estuary as would have existed without the State Water Project and the federal Central Valley Project (the so-called "without project" protection level). The key component for measuring ecosystem levels of protection is the "striped bass index" (SBI), because the striped bass is generally thought to be an "indicator species," or representative of the relative health of the entire Bay-Delta ecosystem.

During the 1976-77 drought, the SBI declined precipitously, and striped bass populations in the Bay-Delta Estuary have remained low since that time. (See *supra* agency report on DEPARTMENT OF FISH AND GAME for related discussion.) Petitioners generally allege that the 1978 Plan has failed to maintain a healthy striped bass population; that the U.S. Environmental Protection Agency has so found; and that WRCB so admitted in its October 1988 Draft Salinity Plan. Specifically, when WRCB

released its Draft Salinity Plan in the ongoing Bay/Delta proceedings in October 1988, the Plan called for a significant increase in spring flows in order to meet the needs of the striped bass and other economically important fish species, including chinook salmon. However, WRCB withdrew this plan in January 1989 without ever holding a hearing on it, "for political rather than scientific reasons" (according to petitioners). (See CRLR Vol. 9, No. 2 (Spring 1989) p. 107 and Vol. 9, No. 1 (Winter 1989) pp. 94-95 for background information.)

Petitioners allege that WRCB's May 1 Salinity Plan makes no changes to the 1978 Plan to improve the SBI through fewer water diversions and more water flow through the Delta. Petitioners dispute WRCB's intention to simply set salinity standards now (which petitioners allege WRCB has admitted are not in themselves adequate to reverse the decline of the striped bass), and delay consideration of flow requirements until the water rights phase of the ongoing proceedings, currently scheduled for completion in late 1992. Petitioners allege that this procedure violates a 1980 order of the EPA, a 1986 order of the First District Court of Appeal in *United States v. State Water Resources Control Board*, 182 Cal. App. 3d 82, 227 (1986), and Water Code sections 13050(j), 13241, and 13242.

Additionally, petitioners allege that former WRCB member Darlene Ruiz "secretly transmitted internal drafts of the Plan to [representatives of water export interests] for comment and revision, irretrievably tainting the State Board's deliberative process and depriving petitioners and the public of any opportunity to rebut this secretly-communicated information and to cross-examine its sources." While Ruiz admits that she distributed draft versions of the plan to a number of groups, including the Metropolitan Water District in southern California, she claims that her actions were proper. According to Greg Wilkinson, an attorney who represented state water contractors during the Board's proceeding, adopting a water quality plan is a quasi-legislative action, meaning that Board members could informally seek comment from a variety of sources. However, petitioners allege that the Board violated its own adopted workplan governing *ex parte* contacts by failing to disclose the secret communications in the public record of its proceedings.

On May 29, final judgment was entered in *State Water Resources Control Board (WRCB) and the Regional Quality Control Board, San Francisco*



*Region v. Office of Administrative Law*, No. 906452 (San Francisco County Superior Court). The court held that WRCB's wetlands policies at issue are regulations within the meaning of the Administrative Procedure Act (APA); the rules are not exempt from the APA; and since the rules were not adopted pursuant to the APA, they are unenforceable. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 165; Vol. 11, No. 1 (Winter 1991) pp. 134-35; and Vol. 10, No. 4 (Fall 1990) p. 164 for detailed background information; see *supra* LEGISLATION for AB 88 (Kelley), which would remove some of WRCB's decisionmaking from the requirements of the APA.)

In *United States and California v. City of San Diego*, No. 88-1101-B (S.D. Cal.), U.S. District Court Judge Rudi Brewster ruled on March 28 that the City of San Diego "has been in violation of the Clean Water Act almost continuously since the statute was enacted in 1972" and fined the city \$3 million for "causing significant harm to the marine environment." The ruling is part of a pending lawsuit brought by the federal and state governments against San Diego based on the city's failure to comply with several provisions of the Clean Water Act. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 165; Vol. 11, No. 1 (Winter 1991) p. 135; and Vol. 10, No. 4 (Fall 1990) p. 164 for detailed background information.) Based on the city's failure to comply with the Act, the federal government urged Judge Brewster to order the city to construct a multibillion-dollar sewage treatment plant and fine the city \$10 million, payable entirely to the federal government; the City of San Diego had asked that the judge fine the city \$1.4 million for its violations. Of the \$3 million fine, only \$500,000 must be paid to the U.S. Treasury; the remaining \$2.5 million will be allocated for a "credit" water conservation project aimed at retrofitting homes with water-saving devices such as low-flow faucets and toilets.

On April 3, Judge Brewster issued another decision in this proceeding, ruling that the City of San Diego need not build a \$28 million chlorination plant to disinfect its sewage before pumping it into the ocean. The U.S. Environmental Protection Agency (EPA) had argued that such treatment is necessary to remove dangerous bacteria from the sewage, which sometimes floats back toward the shore after being discharged from an underwater pipe 2.2 miles offshore. However, the City successfully argued that its \$145 million plan to extend the pipe by 2.5 miles would elim-

inate any such problems by the mid-1990s.

The major issue remaining in this proceeding is whether San Diego will be required to spend over \$2.8 billion on a new sewage water reclamation system, including a secondary treatment plant. During March, Judge Brewster received extensive testimony regarding the necessity of the secondary treatment facility, one of the most expensive aspects of the overall plan. On June 5, Judge Brewster decided to defer approval of the system until January 1993, giving the city 18 months to pursue water conservation, reclamation, and treatment programs which may substantially reduce the cost of compliance with the Act. Judge Brewster also established numerical targets which the City should strive to achieve over the next 18 months. If the city is able to meet these goals, Judge Brewster noted that it could make "a very credible and meritorious case" for seeking a waiver from the secondary standards from the EPA.

Trial is scheduled to begin on September 13 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). In this proceeding, plaintiff alleges that the boards violated state environmental and water quality laws when they adopted and approved a new pollution control plan in January and February 1990. The Board contends that it complied with CEQA and the Porter-Cologne Water Quality Control Act. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 134; Vol. 10, No. 4 (Fall 1990) p. 164; and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 195-96 for detailed background information.)

In the lawsuit filed by the San Francisco based-environmental group, Earth Island Institute Inc., against Southern California Edison (SCE), alleging violations of the federal Clean Water Act stemming from operations at the San Onofre Nuclear Power Plant, U.S. District Court Judge Rudi Brewster ruled on May 6 that the California Coastal Commission and the San Diego Regional Water Quality Control Board have six months to determine whether coolant-water discharges from the plant are violating the federal law and the plant's coastal permit. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 166; Vol. 11, No. 1 (Winter 1991) p. 135; and Vol. 9, No. 4 (Fall 1989) p. 115 for background information.) The Coastal Commission's Marine Review Committee has previously concluded that the operation of the San Onofre plant kills tons of fish and kelp each year. Although WRCB has jurisdiction over violations of the federal Act, it is deferring action until the Coastal Commission acts.

SCE and the Coastal Commission are presently negotiating an agreement which would require SCE to spend over \$30 million in mitigation efforts, including the construction of an artificial reef which would serve as a new marine habitat. At this writing, such an agreement still awaits approval by the Commission. Judge Brewster indicated that if the agencies do not come to a conclusion within the next six months, a trial will take place in early 1992 to determine whether the Clean Water Act has been violated.

#### 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