137 for background information on this case.)

The U.S. Supreme Court unanimously reversed, holding that "FIFRA does not preempt the town's ordinance either explicitly, implicitly, or by virtue of an actual conflict." The Supreme Court looked to the text and history of FIFRA, and found that the more plausible reading of FIFRA's authorization to the states "leaves the allocation of regulatory authority to the absolute discretion of the states themselves, including the options of . . . leaving local regulation of pesticides in the hands of local authorities under existing state laws."

Despite the immediate effect this ruling may have in other states, Charles Getz of the state Attorney General's Office asserts that it will have little or no impact in California, because a 1984 state statute precludes local regulation of pesticides. However, environmentalists and some local governments hope the high court's decision—in combination with growing public dissatisfaction with the state's pesticide regulatory program and, particularly, CDFA's penchant for aerial malathion spraying—will spark legislative and/or judicial review of the 1984 law.

WATER RESOURCES CONTROL BOARD

Executive Director: Walt Pettit
Chair: W. Don Maughan
(916) 657-0941

The state Water Resources Control Board (WRCB) is established in Water Code section 174 *et seq.* The Board administers the Porter-Cologne Water Quality Control Act, Water Code section 13000 *et seq.* 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.

The Board continues to operate with only four members, following the December 1990 resignation of Darlene Ruiz, an attorney. At this writing, Governor Wilson has not named a replacement to fill the vacant position.

MAJOR PROJECTS:

Governor's Cal-EPA Plan Approved. Governor Wilson's proposal to create the California Environmental Protection Agency (Cal-EPA) took effect on July 17. WRCB, the Air Resources Board, and the California Integrated Waste Management and Recycling Board, among others, are now incorporated within Cal-EPA. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 177 for background information.)

Bay/Delta Water Quality Proceeding Continues. The Board concluded the water quality phase of the lengthy San Francisco Bay/Sacramento-San Joaquin Delta Estuary proceedings with its adoption of the Water Quality Control Plan for Salinity in May. (See CRLR Vol. 11, No. 3 (Summer 1991) pp. 177–78; Vol. 11, No. 2 (Spring 1991) p. 163; and Vol. 11, No. 1 (Winter 1991) pp. 131–32 for extensive background information.) However, in addition to being the subject of a lawsuit (*see infra* LITIGATION), WRCB's salinity plan was substantially rejected by the U.S. Environmental Protection Agency (EPA) on September 3. According to EPA, the plan's numerical objectives for temperature and salt levels are insufficient to protect the ecological health of the estuary. The EPA's announcement has been interpreted by some environmentalists and water agency officials as a way to force California to establish standards that would require more fresh water to flow through the Delta to hold back saltwater from San Francisco Bay (decreasing the amount of water available for exportation south to cities and farms). EPA gave the state 90 days to establish stricter standards than those contained in WRCB's plan. If the state does not meet this deadline, the Clean Water Act authorizes EPA to develop standards for the Delta.

In addition to revising its salinity plan, the Board is currently involved in the Scoping and Water Rights Phase of the Bay/Delta proceedings. During this phase, the Board held a number of one-on-one meetings with proceeding participants to develop alternatives to achieve various levels of protection for Bay/Delta beneficial uses that should be evaluated in an environmental impact report (EIR). These meetings, which ended in July, resulted in the development of flow-oriented alternative levels of protection for Bay/Delta beneficial uses, factors to be considered in analyzing impacts of the alternatives, and the tools to be used in developing the analytical information. As a follow-up to those meetings, the Board held a September 30 workshop to consider these factors in the development of an EIR; the EIR is expected to be drafted and released for public review during the spring of 1992.

California's Drought Continues. As of September 1, State Water Project reservoirs were holding slightly more water than they did in September of 1990. The California Department of Water Resources (DWR) attributes this year's slight improvement to the extreme conservation measures implemented across the state, as well as the water made available through the state's emergency drought bank established by Governor Wilson. Since February 1991, the state bank has purchased approximately 850,000 acre-feet of water from water-rich farming areas and other sources and sold more than half of it to needy water districts. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 163 for background information.)

Despite the water reservoirs' increases over last year, the past five years of drought have reduced California's reservoir holdings to only 61% of the overall average amount in years past, which amounts to just 39% of full holding capacity. Moreover, the statewide precipitation for the 1991 water year was only 77% of normal.

Speaking at a September 17 water planning conference in Burlingame, Roger Patterson, regional director of the U.S. Bureau of Reclamation, described the state's water condition as "very grim." The Bureau manages a federal water project which irrigates approximately 30% of all California's farmland, in addition to serving two million of the state's urban residents. Patterson said that even with normal rainfall this winter, he anticipates water delivery of no more than 50% of the usual supply.

In response to the severe drought conditions, Governor Wilson signed SB 229 (Boatwright) into law on September 16 (*see infra* LEGISLATION). This measure requires the installment of water meters in all new California homes and businesses built after January 1, 1992; it does not require meters in already-existing premises. The bill leaves to local governments the question of how to use the water meters. However, some water districts are going one step further than SB 229, such as the San Juan Suburban Water District, which requires the retrofitting of older homes with water meters as soon as there is a change of ownership.

Workplan for the Development of Sediment Quality Objectives for Enclosed Bays and Estuaries. Water Code section 13990 *et seq.* requires WRCB to adopt and submit to the legislature a workplan for the development of sediment quality objectives, to protect the beneficial uses of bays and estuaries from the adverse effects of toxic substances. Earlier this year, WRCB conducted a two-day technical workshop in sediment quality assessment and the development of sediment quality objectives. After considering the recommendations made at the workshop, WRCB staff developed a Workplan for the Development of Sediment Quality Objectives for Enclosed Bays and Estuaries, which the Board approved at its June 20 meeting. The workplan provides general background information on regulatory considerations and existing approaches to sediment quality assessment; presents budgetary considerations; describes the method which is anticipated to be used for deriving numerical sediment quality objectives; and describes specific tasks which are to be undertaken to develop sediment quality objectives for California. The workplan describes several regulatory tasks, such as the adoption of specific sediment quality objectives, which are expected to be completed within a seven-year period with funding from the Bay Protection and Toxic Clean-up Fund.

WRCB Adopts Emergency Financial Responsibility Requirements for Storage Tanks. At its September 26 meeting, WRCB adopted regulatory sections 2810–2873, Title 23 of the CCR, on an emergency basis. These regulations establish financial responsibility requirements for owners and operators of underground storage tanks containing petroleum.

In 1989, the state legislature determined that a significant number of underground storage tanks containing petroleum were leaking, and many owners and operators of such tanks were unable to obtain affordable environmental impairment liability insurance coverage to pay for corrective action. Due to the long-term threat to public health and water quality posed by leaking petroleum tanks, the legislature enacted Chapter 6.75 of the Health and Safety Code to establish a fund to pay for corrective action where coverage is not available. Chapter 6.75 establishes the Underground Storage Tank Clean-up Fund Program, requires WRCB to adopt regulations to implement Chapter 6.75, and requires that such regulations be consistent with corresponding federal law regarding underground storage tanks. The fund enables private commercial insurers to expand the availability and affordability of insurance coverage, and encourages owners and operators to take corrective action with respect to leaking petroleum tanks as soon as possible.

As proposed by WRCB, the new regulations establish a process "which helps eligible owners or operators pay for corrective action and third party compensation claim costs that result from an unauthorized release of petroleum from an underground storage tank." Specifically, the proposed regulations allow eligible owners or operators to use the Fund to meet up to $1 million of the federal financial responsibility requirements. In order to use the Fund as a basis for demonstration of financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage, an owner or operator must at all times (1) demonstrate financial responsibility of at least $10,000 per occurrence and $10,000 annual aggregate coverage exclusive of the Fund; (2) demonstrate financial responsibility for any required amount above $1 million exclusive of the Fund for specified owners; and (3) maintain eligibility to participate in the Fund.

Under the new regulations, a participating owner or operator is liable for all costs of corrective action or third party compensation pending reimbursement from the Fund. Further, the owner or operator must pay the first $10,000 in corrective action or third party compensation costs; if all requirements are met, the Fund will reimburse the owner or operator for the remaining reasonable and necessary corrective action and third party compensation costs up to $990,000 for each occurrence. WRCB expected to submit these emergency regulations to the Office of Administrative Law (OAL) for approval in October.

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

-Underground Storage Tank Standards. On June 5, WRCB submitted proposed emergency regulations to OAL for approval. The proposed action sought to amend sections 2610–2714 (non-consecutive) and Appendix I, Tables A, B, and C; repeal sections 2640–2663 (non-consecutive); and adopt sections 2640–2664 (non-consecutive) and Appendices II–VI, Titles 23 and 26 of the CCR, to govern corrective action related to underground storage tanks. On June 17, OAL disapproved the emergency regulatory action, finding that the rulemaking package did not comply with the necessity, clarity, and consistency standards contained in Government Code section 11349.1, and that WRCB failed to comply with the procedural requirements of the Administrative Procedure Act. On July 18, WRCB modified the proposal in response to OAL's findings, and resubmitted the package; on August 9, OAL approved the emergency regulatory actions.

-Emergency Waste Discharge Fees. On April 26, WRCB published notice of its intent to adopt emergency regulations amending the schedule of 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 to section 2200, Division 3, Title 23 of the CCR. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 178 for background information.) A public hearing scheduled for July 19 was cancelled due to the Board's uncertainty regarding its 1991–92 budget. Now that the budget has been determined, WRCB is expected to proceed with these regulatory amendments.

-Fees for Bay Protection and Toxic Clean-up Program. The Board's proposed adoption of section 2236, Title 23 of the CCR, which would establish a new schedule of fees for the Bay Protection and Toxic Clean-up Program, still awaits review and approval by OAL. (See CRLR Vol. 11, No. 3 (Sum-

mer 1991) p. 178 for background information.)

-Water Quality Monitoring and Response Programs for Waste Management Units. In July 1990, OAL disapproved WRCB's proposed repeal of Article 5, Chapter 15, Division 3, Title 23 of the CCR, its adoption of a new Article 5 (commencing with section 2550.0), and its amendments to Article 10, Chapter 15, Division 3, Title 23 of the CCR, regarding water quality monitoring and response programs for waste management units. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 132 and Vol. 10, No. 4 (Fall 1990) p. 163 for background information.) At this writing, the CCR reflects that OAL subsequently approved these regulatory actions on May 24, 1991, to be operative July 1, 1991; however, no such notice has been published in the *California Regulatory Notice Register.*

Board Reviews Enforcement at Sites Subject to the Toxic Pits Clean-up Act. The Toxic Pits Clean-up Act (TPCA) of 1984, Health and Safety Code section 25208 *et seq.*, established a program to ensure that existing surface impoundments containing liquid hazardous wastes or hazardous wastes which contain free liquids are either made safe or closed. TPCA contains various deadlines for compliance with its provisions, and authorizes regulatory actions to ensure compliance. Earlier this year, WRCB assumed regulatory jurisdiction over 27 TPCA sites, and instructed staff to review enforcement actions on each of the sites.

At its July 18 meeting, WRCB adopted Resolution 91-63, officially approving staff's recommendations regarding the sites. Resolution 91-63 states that existing enforcement actions taken by the regional boards against the following TPCA sites are appropriate: West Contra Costa County Landfill; IT Baker; Rockwell, Santa Susana Field Laboratory; County of Glenn, Willows Airport; Orland Airport; IT Benson Ridge: McCormick and Baxter; J.R. Simplot Company, Helm; and Umetco Minerals Corporation. Further, WRCB determined that the following sites are not subject to TPCA: Crowley Maritime Corporation; Page Pits; and Chemical Waste Management, Inc., Coalinga. The following sites have met the statutory requirements of TPCA: Chevron U.S.A. (HydroPits); USS-Posco; Pacific Gas and Electric, Diablo Canyon; Koppers Company; Southern Pacific, Roseville; Court Galvanizing; Delta Truck Sales, Inc.; Folsom State Prison; FMC Corporation; California Delinting Company; and Laidlaw, Imperial.

Through Resolution 91-63, WRCB also issued Clean-up and Abatement Order 91-01 ordering United Technologies Corporation to close its surface impoundment by December 31, 1991, because the surface impoundment has polluted or threatens to pollute the vadose zone and groundwater.

Also under the umbrella of Resolution 91-63, WRCB passed three additional resolutions: Resolution 91-64, amending the San Francisco Bay Regional Water Quality Control Board's Cease and Desist Order 91-98 against Chevron, U.S.A., Inc.; Resolution 91-65, amending the Central Valley Regional Water Quality Control Board's Clean-up and Abatement Order 91-720 against Southern Pacific Transportation Company, Tracy Yard; and Resolution 91-66, amending the Central Valley Regional Water Quality Control Board's Clean-up and Abatement Order 91-709 against Mobil Exploration and Producing U.S., Inc. Resolution 91-64 requires Chevron U.S.A., Inc. to cease discharge by December 31, 1993, and to close its Pollard Pond surface impoundment by December 31, 1994, because the "surface impoundment is threatening to pollute or degrade the quality of waters of the state." Resolution 91-65 requires closure of three surface impoundments at the Southern Pacific Transportation Company, Tracy Yard, by October 15, 1992, because the "presence of diesel oil in the vadose zone caused by leakage from the surface impoundments poses an avoidable, continuing threat to groundwater." Resolution 91-66 requires that four surface impoundments owned by Mobile Exploration and Producing U.S., Inc., Woody Production Facility, Cymric Oil Field, must be closed by May 1, 1992, because "hazardous concentrations of mercury are present in the bottom of the impoundments and in underlying soils."

Additionally, Resolution 91-63 requires the appropriate Regional Board Executive Officers to seek administrative civil liability if the compliance dates in the Board's orders are missed by sites subject to the TPCA. Finally, Resolution 91-63 returns regulatory jurisdiction over all 27 sites in this resolution to the appropriate regional boards.

LEGISLATION:

S. 586 (Bradley) is federal legislation which would enact the Reclamation Drought Act of 1991, authorizing the Secretary of the U.S. Department of the Interior to: (1) perform studies to identify opportunities to augment, make use of, or conserve water supplies available to federal reclamation projects and Indian water resource developments, and for fish and wildlife habitat, maintenance, and enhancement; (2) undertake management and conservation activities to reduce the impacts of temporary drought conditions; (3) provide information or technical assistance to willing buyers in their purchase of available water supplies from willing sellers and in the delivery of such water; (4) prepare drought contingency plans for federal reclamation projects which incorporate water conservation measures in the operations of non–federal recipients of water from federal reclamation projects; and (5) enter into agreements with federal agencies, state and local governments, Indian tribes, and such other public and private entities and individuals as necessary to carry out this Act. This bill is pending in the Senate Subcommittee on Water and Power. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 178 for background information.)

SB 229 (Boatwright), as amended April 22, requires the installation of water meters, as defined, on new potable water service connections on and after January 1, 1992. The bill exempts prescribed community water systems and wells from this requirement, and requires domestic cold water meters to be in compliance with prescribed standards and to be of a specified type. This bill was signed by the Governor on September 16 (Chapter 407, Statutes of 1991).

AB 189 (Tanner) requires WRCB to develop, by July 1, 1992, policies and procedures to be used in overseeing the investigation and taking of removal and remedial actions at hazardous substance release sites. This bill was signed by the Governor on August 1 (Chapter 292, Statutes of 1991).

AB 1699 (Kelley). Existing law requires an owner or operator of an underground storage tank containing petroleum to pay a storage fee for each underground storage tank issued a permit. The fees are deposited in the Underground Storage Tank Clean-up Fund; WRCB is authorized to expend the money in the fund for specified purposes, including to reimburse eligible owners and operators for the costs of corrective action and to reimburse eligible owners and operators for costs related to the compensation of third parties for bodily injury and property damages arising from an unauthorized release of petroleum into the environment from an underground storage tank (*see supra* MAJOR PROJECTS). The Board is required to award the claims in accordance with a specified priority ranking,

which ranks tanks located on residential property first. Existing law imposes various eligibility requirements upon claimants applying for reimbursement.

This bill authorizes a person who owns a tank located on property zoned only for residential use, or property which the owner demonstrates is not used for agricultural purposes on and after January 1, 1985, to file a claim for the costs of corrective action if the tank meets specified requirements, and exempts WRCB from making findings concerning permitting and financial responsibility with regard to the payment of a claim for such a tank. This bill was signed by the Governor on October 14 (Chapter 1033, Statutes of 1991).

AB 2090 (Katz), as amended August 19, would have expanded the ability of water users to sell their allocation of water directly to other users. Under current law, public agencies (*e.g.*, irrigation districts) may "transfer" surplus water to others in return for compensation. This transferability has long been supported by environmentalists who are critical of current water allocation law. (Currently, a water user obtains the right to water "beneficially used" during prior years. This means that, in order to retain the right to use water, one has to continue to use it. Beneficial use has been broadly defined historically to include the growing of low-value crops such as alfalfa in desert climates. This water law policy stimulates the waste of water and its misallocation. See CRLR Vol. 9, No. 1 (Winter 1989) p. 1 for extensive background information.)

In order to further stimulate water transfers based on market forces, a number of statutes allow for the transfer of water without loss of the user's allocation. For example, the transfer of water for compensation may be itself a "beneficial use." However, the law as it exists has confined such transfers to public agencies, which have been hesitant to arrange them. The August 19 version of AB 2090 represented a major attempt to prod sales by allowing individual water users within served by these public agencies (such as irrigation districts) to make their own deals with other water users. The local agency would have the right to approve the transfer, and could limit transfers to no more than 20% of the irrigated land within its service area; but it must facilitate the transfer, collect the money from the purchasing water user, and transmit the money to the transferring water user—subtracting the taxpayer subsidy properly attributed to the water sold. (Most of the water used for irrigation is created by publicly-financed projects not fully compensated for by the nominal water charges imposed by public agencies on water users.)

On August 20, the Senate Committee on Agriculture and Water Resources heard the August 19 version of AB 2090. A major opponent of the bill was Barry Brown, a specialist with the influential Western Farm Credit Bank. Brown argued that those lending money to farmers who may sell their water rights under AB 2090 might place the bank's security (the land value) in jeopardy, which might affect credit to agricultural interests. It is unclear why the Committee would be influenced by such a position where the farmer would be receiving compensation for water he/she has chosen to sell for his/her own best economic interests. The bill would preserve the existing water allocation of a farmer attributable to his/her land, preserving its value. It merely allows the farmer to sell water to those who most need it which would otherwise be economically wasted. However, the Senate Committee rejected AB 2090 by a 5–4 vote, with two members (Craven and Presley) absent; Assemblymember Katz successfully sought reconsideration.

However, as amended September 11, AB 2090 does not attempt to broaden transfer rights or authorize individual water users to sell their allocation. This basic thrust of the bill was abandoned by the author, based on an inability to obtain the necessary additional votes. Rather, the amended bill now addresses only the separate concern that water transfers of agencies be approved only if they do not "unreasonably affect the environment." (Existing law requires that the transfer not unreasonably affect fish, wildlife, or other instream beneficial uses. The more general language of AB 2090 requiring "environmental" weighing would broaden, to some extent, the kinds of environmental impacts to be evaluated in approving a transfer.) In addition, as to long-term transfers, the bill would require that they not unreasonably affect the "overall economy" of the local community from which the water is being transferred. This more circumscribed bill is still pending in the Senate Committee on Agriculture and Water Resources.

AB 2004 (Cortese), as amended May 22, would enact the Water Quality and Water Conservation Bond Law of 1992 which, if adopted, would authorize the issuance of bonds in the amount of $200 million for purposes of financing a specified program to aid in the acquisition and construction of groundwater treatment and groundwater recharge facilities and water conservation programs. This bill is pending in the Assembly Committee on Banking, Finance and Bonded Indebtedness.

The following is a status update on bills reported in detail in CRLR Vol. 11, No. 3 (Summer 1991) at pages 178–80:

ABX 16 (Mays). As amended September 9, this bill provides that certain emergency findings adopted by WRCB are not subject to review by the Office of Administrative Law; provides that certain emergency regulations adopted by the Board may remain in effect for up to 270 days, as determined by the Board; and provides that those emergency regulations are repealed upon a specified finding by the Board. This bill also exempts from established time limits for the approval or disapproval of development projects by public agencies applications to appropriate water, petitions for change of point of diversion, place of use, or purpose of use, or petitions for a prescribed certification, for projects involving the diversion or use of water. This bill was signed by the Governor on October 9 (Chapter 12X, Statutes of 1991).

AB 2017 (Kelley), as amended August 22, would permit WRCB to impose administrative civil liability upon a person or entity for the unauthorized diversion or use of water even during years not declared to be critical by DWR. This bill was signed by the Governor on October 14 (Chapter 1098, Statutes of 1991).

AB 2111 (Polanco), as amended September 11, would have enacted the Desalination for Assured Water Policy Act. This bill would have authorized DWR to recommend public financing and construction of desalination plants; specified the terms and conditions of private desalination plant water contribution to local water agencies; allowed such a desalination plant operator to require declarations of actual cost to the water authority in the production of acceptable water; and required payment to the desalination plant of an appropriate amount to stimulate desalination as an alternative source of new water. The concept is similar to the "wheeling" of electricity required of power plants. Persons who provide power to the grid must be compensated by the utility under statutory criteria. Although major water providers are considered utilities and are subject to Public Utilities Commission regulation, AB 2111 would have precluded desalination plants from PUC review by explicitly prohibiting their status as a utility. In addition, legislative committee consultants contended that the high cost of desalination and

the relatively low volume of water produced do not justify a major public investment. Governor Wilson vetoed this bill on October 9.

AB 1605 (Costa), as amended September 11, permits surface water to be leased for a period not to exceed five years to assist water conservation efforts, subject to specified terms and conditions; limits the water which may be subject to a lease agreement; requires the lessor, if the lessor or lessee is a waster district or a water company, to file a notice of the water lease agreement, including specified information, with WRCB; and requires the Board to give specified public notice. This bill was signed by the Governor on October 11 (Chapter 847, Statutes of 1991).

AB 673 (Cortese), as amended April 22, enacts the Water Recycling Act of 1991, establishing a prescribed statewide water recycling goal. This bill was signed by the Governor on July 27 (Chapter 187, Statutes of 1991).

AB 174 (Kelley), as amended August 30, declares that the use of potable domestic water for nonpotable uses, including cemeteries, golf courses, parks, highway landscaped areas, and industrial and irrigation uses, is a waste or an unreasonable use of water, and generally prohibits a person or public agency from using potable water for those purposes if reclaimed water is available. This bill was signed by the Governor on October 5 (Chapter 553, Statutes of 1991).

ABX 15 (Kelley), as amended June 14, would authorize WRCB to make loans or grants to fund eligible water reclamation projects, as defined, in order to relieve emergency drought situations. This two-year bill is pending on the Assembly floor.

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 two-year bill is pending in the Assembly Committee on Water, Parks and Wildlife.

AB 614 (Hayden), as amended September 6, would make legislative findings and declarations relating to marine pollution. This bill is pending in the Senate inactive file.

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. AB 88 is pending in the Senate Committee on Agriculture and Water Resources.

AB 1122 (Sher) and ***SB 51 (Torres)***. The Governor's Reorganization Plan No. 1 of 1991, which took effect on July 17, creates the California Environmental Protection Agency (Cal-EPA), accomplishing the original goals of these bills. Therefore, SB 51 was amended on September 5 and now proposes to enact the Pollution Prevention Act of 1991, transferring the duties vested in the Secretary for Environmental Protection under the Plan relating to the Ocean Resources Task Force and the Coastal Resources and Energy Assistance Act to the Secretary of the Resources Agency; SB 51 is pending on the Assembly floor. AB 1122, which has not yet been amended, is pending in the Senate Governmental Organization 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 two-year 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 quality assessment test to the appropriate regional board by July 1, 1991. This two-year bill 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 wastewater, but would authorize prescribed agencies to limit the use of that water. This two-year bill is pending in the Assembly Committee on Water, Parks and Wildlife.

AB 231 (Costa), as amended September 3, would declare that, when the holder of an appropriative right fails to use any part of that water as a result of conjunctive use of surface water and groundwater involving the substitution of an alternative supply for the unused portion of the surface water, any cessation of, or reduction in, the use of appropriated water is deemed equivalent to a reasonable, beneficial use of the water, as prescribed. Although this urgency bill has passed both the Assembly and Senate, it is pending in the Assembly inactive file.

AB 1103 (Bates), as amended August 19, would, among other things, require WRCB to establish fees to be paid by dischargers to cover the costs incurred by the regional boards under this bill. This two-year bill 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 two-year bill is pending in the Assembly Committee on Water, Parks and Wildlife.

AB 1802 (Eaves), as introduced March 8, would require WRCB to adopt, by regulation, energy conservation standards for plumbing fittings; authorize WRCB to adopt 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 two-year bill is pending in the Assembly Housing and Community Development Committee.

AB 24 (Filante), as amended August 26, would enact the International Border Wastewater and Toxic Clean-up Bond Law of 1992, the Water Recycling Bond Law of 1992, the Clean Water Bond Law of 1992, and the Water Quality and Water Conservation Bond Law of 1992. AB 24 is pending on the Assembly floor.

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 two-year 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 two-year bill is pending in the Senate inactive file.

LITIGATION:

On July 25, WRCB filed its appeal of the lower court's decision 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 trial 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. At this writing, no briefing schedule has been announced. (See CRLR Vol. 11, No. 3 (Summer 1991) pp. 180–81; Vol. 11, No. 2 (Spring 1991) p. 165; and Vol. 11, No. 1 (Winter 1991) pp. 134–35 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.)

The trial in ***City of Sacramento v. State Water Resources Control Boards for the Central Valley Region; Rice Industry Committee as Real Party in Interest***, No. 363703 (Sacramento County Superior Court), has been postponed from September 13 to November 22. 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 the California Environmental Quality Act (CEQA) and the Porter-Cologne Water Quality Control Act. The parties are currently trying to negotiate a settlement. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 181; Vol. 11, No. 1 (Winter 1991) p. 134; and Vol. 10, No. 4 (Fall 1990) p. 164 for background information.)

A January 15 hearing is scheduled in ***Golden Gate Audubon Society, et al. v. State Water Resources Control Board***, No. 366984 (Sacramento County Superior Court). In this action, various environmental groups challenge the validity of WRCB's May 1 Water Quality Control Plan for Salinity, one of several statewide plans which has emerged from the Board's four-year-long proceeding to establish a long-range protection plan for the waters of the San Francisco Bay/Sacramento-San Joaquin Delta Estuary. (See CRLR Vol. 11, No. 3 (Summer 1991) pp. 34 and 180 for background information on this case.) The petitioners' case was given a boost on September 3, when the EPA informed WRCB that its salinity plan is inadequate to protect fish and wildlife in the Bay/Delta (*see supra* MAJOR PROJECTS).

Plaintiffs want the state to increase the flow of fresh water through the Delta to reduce salinity and lower water temperatures, which will protect declining and endangered fish species such as the Delta smelt, striped bass, and chinook salmon. However, greater flows through the Delta would mean that less water could be diverted for farm use and for shipment to southern California. The Sacramento-San Joaquin Delta is a prime source of water for the huge Metropolitan Water District in southern California. WRCB does not intend to address the flow requirements issue until the final phase of its Bay/Delta proceeding.

On August 30, the court granted motions to intervene filed by the State Water Contractors Board and the Central Valley Water Project Water Association.

In ***Boise Cascade Corporation, et al. v. U.S. Environmental Protection Agency***, 91 D.A.R. 10351 (Aug. 23, 1991), the U.S. Ninth Circuit Court of Appeals held that it lacks jurisdiction to review the EPA's approval of California's permit system designed to reduce toxic effusions under the Clean Water Act. The Clean Water Act requires California, through WRCB, to develop a strategy to remedy the toxic pollution of navigable waters with its boundaries. EPA authorized California to issue its own permits subject only to federal control through a noticed withdrawal by EPA of such delegated authority. California statutorily conferred jurisdiction to review such permit issuance on its state courts. Plaintiffs, a coalition of citizen groups, filed suit in federal court to challenge WRCB's approval of California's plan. The Ninth Circuit dismissed for lack of jurisdiction, stating that Congress granted courts of appeal jurisdiction to review only certain EPA actions; "[s]pecificity demonstrates that Congress did not intend court of appeals jurisdiction over all EPA actions. . . ." The court determined that, although it is authorized to review certain EPA promulgations, the plan at issue was merely approved, not promulgated, by the EPA. The court concluded that because "state courts can interpret federal law," they can "review and enjoin state authorities from issuing permits that violate the requirements of the Clean Water Act."

In a controversial 7–2 decision on July 16, the California Coastal Commission approved a plan permitting Southern California Edison to mitigate the environmental damage caused by its San Onofre Nuclear Generating Station (SONGS) by building a 300-acre artificial kelp reef and restoring a 150-acre coastal wetland somewhere in southern California. In 1989, a fifteen-year study by the Commission's three-member Marine Review Committee (MRC) concluded that Edison's operation of SONGS kills literally tons of fish and kelp each year and discharges debris-filled water into the ocean, reducing natural light on the ocean floor by as much as 16%; the MRC made numerous recommendations for preventing, reducing, and mitigating these impacts. Concerned about the Commission's delay in implementing MRC's recommendations, a San Francisco-based environmental group filed ***Earth Island Institute v. Southern California Edison***, No. 90-1535 (U.S.D.C., S.D. Cal.), in November 1990, alleging numerous federal Clean Water Act violations by Edison in its operation of SONGS. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 181; Vol. 11, No. 2 (Spring 1991) p. 166; and Vol. 11, No. 1 (Winter 1991) p. 135 for background information.)

Environmental groups and Dr. Rimmon C. Fay, one member of the MRC established by the Commission to monitor SONGS when it approved the construction of Units 2 and 3 in 1974, argued that Edison should be required to construct cooling towers to reduce the amount of seawater and marine life sucked into the plant. In its analysis of the issue, Commission staff acknowledged that "[c]ooling towers are the only prevention technique that would result in essentially full marine resource protection." However, staff noted that the two other MRC members rejected this alternative, citing "its extreme costs and the fact that it would cause other impacts to coastal resources such as visual intrusion, fog inducement, noise, and destruction of coastal bluffs."

At the Commission's July hearing on the issue, most commissioners articulated concern about the aesthetic impact, cost of the proposed cooling towers—estimated at somewhere be-

tween $1–2 billion, and the resulting burden on Edison ratepayers. The alternatives approved by the Commission will cost Edison only $30 million.

The required construction of an artificial kelp bed reef is designed to replace the lost and damaged resources at the San Onofre Kelp Bed Reef and produce a persistent giant kelp forest and associated ecosystem. The reef will be located in the vicinity of SONGS, but outside the influence of the SONGS discharge plume and water intake. The required wetland restoration project is intended to compensate for fish loss; Edison may choose from among the Tijuana Estuary in San Diego County, San Dieguito River Valley in San Diego County, Huntington Beach Wetland in Orange County, Los Cerritos Wetland in Los Angeles County, Ballona Wetland in Los Angeles County, or other sites as approved by the Commission's Executive Director. Because the MRC also found that SONGS is exceeding the terms of its National Pollutant Discharge Elimination System (NPDES) permit issued by the San Diego Regional Water Quality Control Board, the Commission also agreed to recommend that the Regional Board modify Edison's discharge permits to incorporate regular monitoring by Edison and set specific measurement standards which Edison must follow in filing its monitoring reports.

RECENT MEETINGS:

At its June 20 meeting, WRCB unanimously adopted Water Quality Order 91-06, concerning petitions for review of monitoring requirements implemented by the San Diego Regional Board; the petitions were filed by two San Diego County dairy farmers, William Vander Woude and Pete Verboom. (See CRLR Vol. 11, No. 1 (Winter 1991) pp. 133–34 for detailed background information.) The petitioners alleged that the monitoring program imposed on them by the San Diego Regional Board is too expensive and that it is unfair to require only San Diego area dairies to comply. WRCB affirmed the Regional Board's monitoring program as consistent with section 2510 *et seq.*, Title 23 of the CCR, which authorizes regional boards to impose a monitoring program on confined animal facilities. WRCB also refused to find that the Regional Board's actions were improper on the basis that other regions do not require such a monitoring program.

On August 22, WRCB adopted Resolution 91-81, establishing a San Diego Regional Board drought policy. This policy authorizes the Regional Board's Executive Officer to notify the producer or user, or both, of reclaimed water that the Regional Board has temporarily waived the adoption of waste discharge requirements or water reclamation requirements, or both, for reclaimed water projects that comply with specified conditions of the policy.

The policy also authorizes the Executive Officer to notify dischargers of reclaimed water and treated wastewater in violation of effluent limits for certain constituents contained in waste discharge requirements (WDR) adopted by the Regional Board that no formal enforcement action for these violations will be taken if the discharger complies with specified conditions; the main condition is that the WDR violations are due solely to increased concentrations of waste constituents in the effluent due to water conservation measures and/or changes in the mineral quality of the water supply due to drought conditions.

At its September 26 meeting, WRCB approved an amendment to the Water Quality Control Plan (WQCP) for the North Coast Region by establishing site-specific temperature objectives and an interim plan for portions of the Trinity River. The 34-mile stretch of the Trinity River between Lewiston Dam and the confluence of the North Fork of the Trinity River is a prime spawning area for salmon and steelhead trout. However, construction of the Lewiston Dam in 1963 seriously impacted the river's natural flow, causing natural production of salmon and steelhead trout to severely decline by 80% and 60%, respectively. In 1975, the North Coast Regional Board adopted its Basin Plan, including general temperature objectives for all surface waters within the north coast region. However, due to continual dry weather conditions since 1985 and further reduced inflow to the Trinity River, the established objectives no longer provide adequate protection for the fisheries' resources.

The amendment to the WQCP sets water temperature objectives of 60 degrees Fahrenheit for the protection of adult spawning salmon and steelhead, *in vivo* eggs, and juveniles, and 56 degrees Fahrenheit for the protection of egg incubation; according to WRCB, fishery scientists widely support these temperature objectives. The U.S. Bureau of Reclamation, the California Department of Fish and Game, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service will be responsible for establishing the timing and proportion of releases available to attain the new temperature objectives for the Trinity River established by the amendment.

Also in September, WRCB ruled on a May 1990 petition by the Environmental Health Coalition (EHC) to review a pollutant discharge permit issued in April 1990 by the San Diego Region-al Board. The permit regulates groundwater dewatering discharges into the San Diego Bay and its tributaries; dewatering is a process by which groundwater is actively pumped out and removed from an area at a rate greater than the rate of recharge. The petitioner claimed that because San Diego Bay is a water quality limited segment, meaning that its water quality is impaired, all discharges to San Diego Bay should be prohibited. The Board disagreed, holding that the Bay is water quality limited due to four pollutants (mercury, copper, TBT, and PCBs) and that sources other than dewatering are primarily responsi-ble for the release of these pollutants into the Bay. The Board also found that the discharges are not municipal wastewaters or industrial process waters and that direct monitoring of sediments and benthic life is not appropriate in this case.

FUTURE MEETINGS:

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

RESOURCES AGENCY

CALIFORNIA COASTAL COMMISSION
Executive Director: Peter Douglas
Chair: Thomas Gwyn
(415) 904-5200

The California Coastal Commission was established by the California Coastal Act of 1976, Public Resources Code section 30000 *et seq.*, to regulate conservation and development in the coastal zone. The coastal zone, as defined in the Coastal Act, extends three miles seaward and generally 1,000 yards inland. This zone, except for the San Francisco Bay area (which is under the