within the Marine Resources Protection Zone during the years 1983–87, inclusive. This two-year bill is pending in the Assembly Committee on Water, Parks and Wildlife.

AB 1364 (Cortese), as amended April 23, would prohibit any change in the point of diversion, place of use, or purpose of use to individually or cumulatively cause the flow in any stream, river, or watercourse to drop below that flow needed to protect biologically sustainable populations of fish and wildlife. This bill would require all determinations of fact and all recommendations made pursuant to its provisions to be made by DFG. The bill, however, would not apply to any stream, river, or watercourse unless the Director of Water Resources determines that the year will or may be a dry or critically dry year. This two-year bill is pending in the Assembly Ways and Means Committee.

AB 1557 (Wyman), as amended May 8, would require FGC to determine whether its regulations or regulatory actions—particularly those which result in the listing of a species as endangered or threatened under the California Endangered Species Act (CESA)—would result in a taking of private property subject to the provisions of the California Constitution or the United States Constitution governing eminent domain. This two-year bill is pending in the Assembly Committee on Water, Parks and Wildlife.

AB 353 (Hauser), as amended April 15, would require FGC to designate additional fish spawning or rearing waterways that it finds necessary to protect fishlife. This two-year bill is pending in the Assembly Committee on Water, Parks and Wildlife.

AB 355 (Hauser), as introduced January 29, would authorize DFG to order the party responsible for the deposit of any petroleum or petroleum product into the waters of this state to repair and restore all loss or impairment of fishlife, shellfish, and their habitat, and require DFG to adopt regulations to carry out the bill by June 30, 1992. This two-year bill is pending in the Assembly Committee on Water, Parks and Wildlife.

AB 1641 (Sher), as amended August 20, would enact the Fish, Wildlife, and Endangered Species Habitat Conservation and Enhancement Bond Act of 1991. This two-year bill is pending on the Assembly floor.

ACR 35 (Wyman), as amended June 3, would request DFG to seek funding to conduct a review and evaluation to determine the status of the Mohave ground squirrel. This resolution is pending in the Assembly Committee on Water, Parks and Wildlife.

AB 51 (Felando), as amended March 4, would require DFG to conduct a study of existing marine resource management activities and impacts, make recommendations on activities to maintain and increase the abundance of these resources, and report the results of the study and its recommendations to the Governor and the legislature by January 1, 1993. This two-year bill is pending in the Assembly Committee on Water, Parks and Wildlife.

AB 72 (Cortese), which, as amended August 20, would enact the California Heritage Lands Bond Act of 1992, is pending on the Assembly floor.

AB 145 (Harvey), as amended March 20, would increase from $100 to $250 the minimum fine for an initial violation of willful interference with the participation of any individual in the lawful activity of shooting, hunting, fishing, falconry, or trapping at the location where that activity is taking place, and increase the minimum fine for a subsequent violation to $500. This two-year bill is pending in the Senate Judiciary Committee.

LITIGATION:

Vietnamese Fisherman Association of America, et al. v. California Department of Fish and Game, et al., No. C910778-DLJ, is still pending in the U.S. District Court for the Northern District of California. In this case, the court issued a preliminary injunction on April 1 prohibiting DFG from enforcing Proposition 132 beyond the three-mile state waters limit. The case continues to be on hold while the Pacific Fishery Management Council holds hearings on the issue. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 171 and Vol. 11, No. 2 (Spring 1991) p. 158 for background information.)

FUTURE MEETINGS:

January 9–10 in Palm Springs.
February 6–7 in Sacramento.
March 5–6 in San Diego.
April 2–3 in Long Beach.
May 14–15 in Bakersfield.

BOARD OF FORESTRY

Executive Officer: Dean Cromwell (916) 653-8007

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

Public: Terry Barlin Gorton (Chair), Franklin L. "Woody" Barnes (Vice-Chair), Robert J. Kerstiens, Elizabeth Penaat, and James W. Culver.

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

Range Livestock Industry: Jack Shannon.

The FPA requires careful planning of every timber harvesting operation by a registered professional forester (RPF). Before logging operations begin, each logging company must retain an RPF to prepare a timber harvesting plan (THP). Each THP must describe the land upon which work is proposed, silvicultural methods to be applied, erosion controls to be used, and other environmental protections required by the Forest Practice Rules. All THPs must be inspected by a forester on the staff of the Department of Forestry and, where deemed necessary, by experts from the Department of Fish and Game, the regional water quality control boards, other state agencies, and/or local governments as appropriate.

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

In early August, Governor Wilson announced his appointment of three new members to the Board. Terry Barlin Gorton, an attorney from San Diego,

was appointed to a public member position and will serve as Chair; Barlin Gorton served as a legal consultant to Wilson's gubernatorial campaign. James W. Culver of San Anselmo was also appointed to a public member position. Culver is chief executive officer of Larry Seeman Associates, an environmental firm which was under contract with CDF during 1990 to critique the Department's THP review process. Finally, Thomas C. Nelson of Redding was appointed as a forest products industry representative. Nelson is the director of timberlands for Sierra Pacific Industries, the state's largest forest owner.

Also in August, Governor Wilson announced his selection of Richard A. Wilson to serve as his new CDF Director. Wilson, a Mendocino County cattle rancher, has a long history as a conservationist and environmentalist; he has served as president of the Planning and Conservation League and as a board member of the California Environmental Trust.

MAJOR PROJECTS:

Board Under Siege From All Sides. Targeted by no less than three initiatives as recently as November 1990, the Board of Forestry again finds itself under assault from environmentalists and all three branches of government:

-The legislature, led by four powerful members, attempted to negotiate a truce in California's "timber wars," and—after a flurry of activity in the last days of the session—succeeded in passing a weakened but serviceable AB 860 (Sher) on September 13. The bill, which ultimately contained numerous provisions from SB 854 (Keene), AB 641 (Hauser), AB 714 (Sher), and SB 300 (McCorquodale), would have changed the composition of the Board and imposed upon it strict forestry management standards it has never chosen to adopt (*see infra* LEGISLATION).

-Disappointed by what he perceived as a "power play" by the Democrat-controlled legislature, and opposed to several timber harvesting restrictions which he believed were "inflexible," Governor Wilson vetoed AB 860 on October 10. In his veto message, the Governor stated: "Rather than signing a flawed bill, I am instructing the Director of Forestry to propose regulations to the Board of Forestry to begin implementing key reform provisions under their existing authority as provided in the Z'Berg-Nejedly Forest Practice Act." Thus, the Board has now been ordered to adopt standards it has resisted for decades.

-The courts have hammered both the Board and CDF repeatedly over the past year, particularly for their mishandling of the THP approval process. As recently as September 23, the Board lost a key case in which it approved two THPs for logging in old-growth forest, over the objection of CDF. Another pending case alleges that the Board has wholly failed to carry out its statutory mandate, and is allowing "legalized depletion" in violation of the FPA and public trust duties. Yet another case, dismissed in the trial court but reinstated on appeal in a strongly-worded opinion, challenges the "pattern and practice" of the Board and CDF to ignore the FPA and the California Environmental Quality Act (CEQA) in reviewing and approving THPs (*see infra* LITIGATION for information on these cases).

-Environmentalists—long angered and frustrated at the Board's failure to even define the crucial terms of its enabling act (including "maximum sustained yield"), much less establish stringent silvicultural and stocking standards—have begun circulating petitions to place "The Forest and Water Protection Act of 1992" on the June 1992 ballot, the provisions of which are much more stringent than those in the vetoed AB 860.

These circumstances form the setting for the new Wilson Board, now chaired by attorney Terry Barlin Gorton, and CDF, under the direction of recent appointee Richard Wilson, to address what even neutral observers contend have been years of nonfeasance by the Board of Forestry. Having shifted the burden from legislative solution to the Board, the administration now bears the full responsibility for executing the legislative intent of the Forest Practice Act.

Emergency Protection for the Marbled Murrelet. At its June 5 meeting, the Board resumed its public hearing on proposed emergency regulations to protect seaside old-growth forests which are the habitat of the marbled murrelet. (See CRLR Vol. 11, No. 3 (Summer 1991) pp. 171–72; Vol. 11, No. 2 (Spring 1991) p. 162; and Vol. 11, No. 1 (Winter 1991) p. 129 for background information on these proposed rules.) These regulatory changes list the marbled murrelet as a "species of special concern," define the term "marbled murrelet habitat," establish standards for a survey which must be conducted where a proposed THP includes the habitat of marbled murrelets, require the plan preparer to consult with both CDF and the Department of Fish and Game (DFG), and require the CDF Director to demand all feasible mitigations to prevent a significant effect on the species. In spite of repeated complaints by the timber industry that no emergency exists and that the rules are poorly written, the Board adopted the emergency regulations; the Office of Administrative Law (OAL) approved them on June 27 for a 120-day period expiring on October 25.

At its July 10 and September 11 meetings, the Board held more public hearings on the permanent adoption of the murrelet regulations. The Board noted that, on June 20, the U.S. Fish and Wildlife Service published notice of its intent to list the marbled murrelet as threatened in its Washington, Oregon, and California habitats, under the federal Endangered Species Act; in early September, the state Fish and Game Commission announced its intent to list the murrelet as endangered under the California Endangered Species Act. Unable to reach agreement on modifications to the proposed permanent regulations, the Board decided to renew the emergency regulations for another 120-day period and defer action on the permanent regulations until its December 10 meeting.

Additional Information in Notice of Intent to Harvest Timber. At its June 5 meeting, the Board held a public hearing on its proposed amendments to regulatory subsections 1032.7(d) and (g), Division 1.5, Title 14 of the CCR, regarding the contents of a Notice of Intent to Harvest Timber which must be submitted to the CDF Director by the RPF who has prepared a THP.

As originally published, section 1037.2(d) would be amended to require the Notice of Intent to include the names of the timberland owner, the RPF who prepared the THP, and the plan submitter; the location of the plan area by county, section, township, and range; the acres proposed to be harvested; the regeneration methods and intermediate treatments to be used; the estimated earliest date that the CDF Director may approve the plan (15 days from the receipt of the plan by CDF); a statement that the public may review the THP at the specified CDF regional office and information about the cost of copying the plan; a location map which clearly sets forth specified information; and a statement that questions or concerns regarding the THP should be directed to the applicable CDF regional office for public input incorporation into an Official Response Document.

Section 1037.2(g) would be amended to provide that, prior to THP submission, the person submitting the plan shall post a copy of the Notice of Intent at a conspicuous location near the plan site. The Notice of Intent shall be on colored paper or identified with

colored flagging so as to be easily visible to the public.

During the June hearing, several timber industry representatives complained about the addition of the location map to the Notice of Intent, and stated that this requirement will add $100 to the cost of a THP. Thus, the Board decided to refer the language back to the Forest Practice Committee for consideration of the comments, and to revisit the matter at its July meeting.

On July 10, the Board reviewed the modifications suggested by the Committee. Among other things, these modifications revise the description of the required map ("a map which provides the approximate boundary of the THP area, a map legend, and a scale") and require the map to be posted with the Notice of Intent. Following discussion, the Board approved the modified language and decided to publish it for a 15-day comment period. At this writing, the modified language has not yet been published, and the Board has not yet adopted the proposed regulatory changes.

"Special Treatment Areas" Regulations. At its June 5 meeting, the Board held another public hearing on its proposed amendments to sections 895.1, 913.4(a), and 953.4(a), and the adoption of sections 929–929.6, 949–949.6, and 969–969.6, Title 14 of the CCR, to provide guidance to the CDF Director on the protection of archaeological and historical resources, including Native American cultural sites. (See CRLR Vol. 11, No. 3 (Summer 1991) pp. 173–74 for detailed background information on these changes.) The Board considered modified versions of the regulatory language released on May 13 and May 28. The Board approved the May 28 version of the proposed changes, and adopted it subject to a 15-day comment period. At this writing, the regulatory changes have not yet been submitted to OAL for review and approval.

Board Adopts Sensitive Species Petition Mechanism. At its July 10 meeting, the Board continued the public hearing on its proposal to adopt new sections 919.12, 939.12, and 959.12, Title 14 of the CCR, to create a mechanism whereby concerned members of the public may petition the Board to classify a particular plant or animal species as "sensitive" for purposes of protecting it from timber harvesting. Under the proposed rules, the Board may classify a species as "sensitive" if it finds that (1) the California population is dependent upon timberland as habitat; (2) the California population is in decline; and (3) continued timber operations under the current rules of the Board will result in a loss of population viability. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 172 for background information.)

At the July hearing, staff described several modifications to the proposed language. Among other things, the modifications revise the first criterion for listing to read as follows: "The California population [of the subject species] requires timberland as habitat for foraging, breeding, or shelter." Staff also added three new subsections to (1) require the Board to consult with relevant state and federal agencies and to declassify a species as sensitive, after consultation and a public hearing, if it no longer meets the criteria for classification; (2) require the Board to consider and, when possible, adopt regulations using the best available scientific information to establish the feasible mitigations for protection of the species at the same time such species is classified sensitive; and (3) develop proposed regulations for the protection of a classified species within one year of classification. The Board deferred action on the proposal until its September meeting, at which time it adopted the regulations as modified in July. At this writing, the Board has not yet submitted this regulatory package to OAL for review.

Written Response to Issues Raised During THP Review. At its September 11 meeting, the Board held a public hearing on its proposed amendments to section 1037.8, Division 1.5, Title 14 of the CCR. Effective January 1, 1991, PRC section 4582.7 specifies that before the CDF Director may approve a THP, he/she must (among other things) respond in writing to issues raised during the review of the THP. The proposed amendment to section 1037.8 would require the CDF Director's written response to issues raised to be completed and released to the public and others when a THP is approved, instead of within ten days of the approval of the THP. CDF asserts that it began to prepare written responses to issues raised and release them to the public and others when THPs are approved on January 1, 1991; therefore, the proposed amendments would reflect existing CDF practice and conform the regulatory section to amended PRC section 4582.7. Following the public hearing, the Board unanimously adopted the proposed amendments; at this writing, these regulatory changes await review and approval by OAL.

Fees for Timberland Conversion Permits. Also at its September meeting, the Board held a public hearing on its proposal to adopt new section 1104.3, Title 14 of the CCR, to establish a system of conversion permit fees to finance the Timberland Conversion Permit Program under PRC section 4621.

In 1990, AB 4098 (Sher) (Chapter 1237, Statutes of 1990) amended PRC section 4621 to require the Board to adopt a fee schedule for Timberland Conversion Permits (TCPs). (See CRLR Vol. 10, No. 4 (Fall 1990) p. 161 for background information on AB 4098.) The Board proposes that the fee mechanism be designed to obtain the actual cost of the program using a flat application fee, and a table from the State Administrative Manual to compute additional charges where the actual state cost exceeds the application fee. New section 1104.3 would require a TCP applicant to submit a filing fee of $600 to the appropriate regional headquarters for the minimum cost of processing an application for the conversion of timberland to a non-timber growing use. For complex conversions, CDF will use sections 8752.1 and 8740 of the State Administrative Manual to calculate additional fees to cover the services of employees. In its notice of proposed rulemaking, the Board recognized three existing exemptions to the TCP requirement; these exempt activities would remain unaffected by the addition of section 1104.3 and the filing fee therein.

At the public hearing, several witnesses argued that an additional exemption should be created for projects which have already undergone complete, public environmental review processes under CEQA, and have received either a negative declaration or an approved environmental impact report (EIR), providing that CDF and the Board have participated in the review process. Others noted that subdivisions are currently exempt from the TCP requirement (and the new filing fee), and wanted to ensure that the Board reviews TCP applications in order to close potential loopholes which may be exploited by those attempting to make use of the exemptions. Finally, Frank Long of the Southern DTAC expressed concern about the open-ended amount of the fee and the fact that TCP applicants could be faced with an indeterminate fee which could reach thousands of dollars, which could be disastrous for small operators.

Following the hearing, the Board decided to defer action on proposed section 1104.3 until it has had a chance to revisit these issues at its December meeting.

Status Update on Other Proposed Regulatory Actions. The following is a

status update on regulatory proposals discussed in recent issues of the *Reporter*:

-Logging Slash Treatment Regulations. On August 5, OAL approved the Board's amendments to sections 895.1, 917.5, and 937.5; the repeal of existing and the addition of new sections 917.2, 937.2, 957.2, 919, 939, 959, 1052.2, and 1052.3; the renumbering of sections 919.2, 939.2, and 959.2; and the addition of new Technical Rule Addendum No. 3, Title 14 of the CCR. These regulatory changes address the treatment of logging slash to reduce fire hazards and to provide pest protection, and modify the Board's rules on emergency timber operations. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 159 for background information.)

-Watercourse and Lake Protection Regulations. On September 23, OAL approved the Board's amendments to numerous provisions of the Forest Practice Rules between sections 895.1–963.6, which protect areas identified as watercourse and lake protection zones from negative environmental impacts associated with adjacent timber operations. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 174; Vol. 11, No. 2 (Spring 1991) pp. 159–60; and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 188 for extensive background information on these changes.) These regulatory changes were scheduled to become effective on October 23.

-Wildlife Protection Regulations. On August 12, OAL approved the Board's regulatory package which consolidates wildlife and habitat regulations into new Article 9 of the Board's rules, and clarifies the information which must be included on THPs concerning wildlife impacts. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 128 for background information.)

-Non-Industrial Timber Management Regulations. On July 11, OAL approved the Board's amendments to sections 895 and 895.1, and its adoption of sections 1090–1090.27, which establish an alternative to the THP for non-industrial forest landowners (less than 2,500 acres). (See CRLR Vol. 11, No. 3 (Summer 1991) p. 174; Vol. 11, No. 2 (Spring 1991) p. 160; and Vol. 11, No. 1 (Winter 1991) p. 128 for background information.)

-Cumulative Impacts Assessment Methodology. On August 26, OAL approved the Board's rulemaking package which sets forth a cumulative impacts assessment process for the evaluation of THPs. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 174; Vol. 11, No. 1 (Winter 1991) p. 130; and Vol. 10, No. 4 (Fall 1990) pp. 158–59 for background information.)

LEGISLATION:

The following is a status update on bills reported in detail in CRLR Vol. 11, No. 3 (Summer 1991) at pages 174–76:

AB 860 (Sher). On September 10 in conference committee, AB 860 was amended to include the major provisions of SB 854, AB 641, AB 714, and SB 300 (*see infra*). Among other things, AB 860 would have revised the qualifications of and prescribed stringent conflict of interest standards for members of the Board of Forestry; required the Board to establish standards for registered professional foresters to prepare and implement long-term timber management plans; required the Board, by January 1, 1997, to evaluate, and amend as necessary, the forest practice rules applicable to specified forest districts, to ensure that their use achieves the goal of sustained yield wherever they are applied; prohibited in any stand of ancient forest the conduct of timber operations utilizing even-age regeneration harvest methods and timber harvests in which more than 70% of the average conifer and hardwood basal area is removed in one operation (clearcutting); prescribed maximum harvest limits as a percentage of timber volume on lands subject to a long-term timber management plan; prescribed special requirements for harvest activities within ancient forests; and prescribed special requirements for even-age regeneration harvest activities for timber types other than ancient forests. In a move which may foreshadow another divisive and expensive initiative battle like the one waged in 1990 over Propositions 128 ("Big Green") and 130 ("Forests Forever"), Governor Wilson vetoed AB 860 on October 10. The four bills which were the basis of AB 860 are still pending as two-year bills (*see infra*).

AB 833 (Farr), as amended September 11, would have required that, within the Southern Subdistrict of the Coast Forest District established by the Board, feasible alternative practices that are needed to mitigate significant adverse environmental impacts, submitted in writing to the review team chairperson by review team members, shall be accepted by the review team chairperson and incorporated into the THP. This bill, which also would have required each affected county to have a member on the review team, was vetoed by the Governor on October 10.

SB 213 (McCorquodale), as amended May 22, permits moneys in the Forest Resources Improvement Fund to be expended, upon appropriation, for forest pest research and management, technical transfer, and outreach. This bill was signed by the Governor on October 14 (Chapter 1052, Statutes of 1991).

SB 279 (McCorquodale). Existing law authorizes CDF, with the approval of the Department of Finance and in accordance with policy established by the Board, to enter into agreements with any owner and with any agency of government for the purpose of controlling or eradicating forest insects or plant diseases damaging or threatening destruction to timber or forest growth, and CDF may make expenditures for that purpose. As introduced February 4, this bill deletes the requirement for approval by the Department of Finance. This bill was signed by the Governor on September 16 (Chapter 408, Statutes of 1991).

AB 1903 (Hauser), as amended August 20, increases the Board's examining committee to at least seven members, at least two of whom represent the public; requires the committee to review complaints and make disciplinary recommendations to the Board; and increases the compensation of committee members to $100 per day, if requested. This bill was signed by the Governor on October 8 (Chapter 748, Statutes of 1991).

AB 54 (Friedman), as amended September 6, would have required each city and county, by January 1, 1994, to adopt an ordinance to protect existing trees, and to require the planting of trees as a condition of project construction. This bill was rejected by the Senate on September 12.

SB 854 (Keene), AB 641 (Hauser), AB 714 (Sher), and ***SB 300 (McCorquodale)*** is a package of bills, each joined to the other and none of which will become law unless all do. The language of the bills was negotiated and resulted in the so-called "Sierra Accord," an agreement between environmental groups and Sierra Pacific Industries, the state's largest timberland owner. Many of their more important provisions were amended into AB 860 (Sher) in a conference committee session on September 10; however, Governor Wilson vetoed AB 860 on October 10 (*see supra*).

SB 854 (Keene), as amended September 5, would require long-term timber management plans for Type A timberland (any timberland owned or controlled by any person who owns or controls more than 20,000 acres of commercial timber, timberland, cutover land, or timber rights) or Type B timberland (timberland owned or controlled by any

person who owns or controls more than 5,000 but less than 20,000 acres); prescribe maximum harvest limits as a percentage of timber volume on lands subject to a long-term timber management plan; and require the Board to adopt specified regulations by specified dates to implement the program, including requirements for long-term timber management plans. SB 854 is pending on the Assembly floor.

AB 641 (Hauser), as amended September 9, would establish wildlife habitat requirements for the long-term timber management plans proposed in SB 854 (Keene), including special requirements for ancient forests. The bill would also require the Board to adopt interim rules by January 1, 1993, and final rules by January 1, 1994, to provide standards and procedures for determination of maximum harvest limits for the timberlands of each ownership within planning watersheds. This two-year bill, which would also authorize landowners to petition the court and be granted an exemption from the provisions of the bill if the landowner can demonstrate specified matters, is pending in the Senate inactive file.

AB 714 (Sher), as amended September 9, would prohibit clearcuts and similar harvests in ancient forests. For other than ancient forests, this bill would prescribe special requirements for even-age regeneration harvest activities, including requirements for separation of successive regeneration harvest units by a buffer. This bill would also require the Board, by July 1, 1992, to adopt, with the concurrence of the Department of Fish and Game, regulations establishing standards and procedures for implementing these requirements. This bill would become inoperative if the Forest and Water Protection Act of 1992 is passed by the electorate at the June 1992 election (*see supra* MAJOR PROJECTS). This two-year bill is pending in the Senate inactive file.

SB 300 (McCorquodale), as amended September 3, would protect streams and rivers in harvest areas by limiting harvesting; increase citizen input on THPs by lengthening to 60 days the timber harvest review period on environmentally sensitive or controversial plans; and reformulate the composition of the Board of Forestry to better reflect the general public's interests in protecting forests. The new board would be made up of two forest products industry representatives, one range livestock industry representative or one nonindustrial timberland owner, three public representatives, four conservation group representatives, and one organized labor representative who is employed in the forest products industry. This two-year bill is pending on the Senate floor.

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

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

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

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

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

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

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

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

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

SB 888 (Keene), as amended August 19, would enact the Old-Growth and Native Forests Protection Act of 1992 which, if adopted, would authorize, for purposes of financing a specified old-growth forest protection program, the issuance of bonds in the amount of $300 million. This two-year bill is pending in the Assembly Committee on Banking, Finance, and Bonded Indebtedness.

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 two-year bill is pending in the Senate Committee on Natural Resources and Wildlife.

LITIGATION:

In ***Sierra Club, et al. v. Board of Forestry (Pacific Lumber Company, Real Party in Interest)***, No. A047924 (Sept. 23, 1991), the First District Court of Appeal upheld the authority of CDF to require THP submitters to prepare surveys of old-growth-dependent wildlife species in THPs relating to stands of old-growth forest with complex habitat characteristics. In so doing, the court reversed the Board of Forestry's approval of two 1988 THPs submitted by Pacific Lumber Company (PALCO);

both THPs had been denied by CDF due to PALCO's failure to submit the requested wildlife surveys.

In both plans submitted in early 1988, PALCO sought to harvest timber in old-growth redwood forest in Humboldt County. Initially, CDF refused to accept the two THPs for filing, based on the Department of Fish and Game's (DFG) demand for the wildlife surveys, which it contended were necessary to enable it and CDF to intelligently evaluate the THPs and recommend suitable measures to mitigate the environmental impact of the plans. PALCO refused to conduct the surveys "as it would establish a very inappropriate precedent." CDF agreed to file the plans, but continued to support DFG's request for the wildlife surveys during its review of the THPs.

During CDF's review of the plans, a DFG biologist wrote PALCO, reaffirming DFG's demand for the surveys and setting forth a suggested protocol for conducting them. PALCO again rejected the demand, this time through a letter from its RPF. While agreeing to six mitigation measures, the RPF refused to undertake new studies or to provide CDF/DFG with any information other than that already possessed by PALCO. Based on the recommendation of the CDF/DFG interagency review team, CDF denied the two THPs in April 1988. PALCO appealed the denial to the Board.

After a hearing before the Board at which DFG clarified the precise nature of the wildlife information it was seeking (and noted that the wildlife surveys were being required only for THPs relating to old-growth forests with complex habitats—perhaps 5% or less of all THPs received by CDF), the Board overturned CDF's decision and approved the two THPs. In so doing, the Board made two findings: (1) CDF and DFG were "unreasonable" in requesting the wildlife surveys; and (2) in ambiguous language, it declined to find that the THPs would have significant adverse effects on old-growth-dependent wildlife species. The Sierra Club sought judicial review of the Board's decision. The trial court denied the Club's petition for writ of mandate; this appeal followed.

On appeal, the First District first engaged in a lengthy analysis of the relationship between the FPA and the California Environmental Quality Act (CEQA), PRC section 21000 *et seq.*, and the general authority both delegate to CDF and DFG. Although CDF's THP process has been certified as being "functionally equivalent" to CEQA's environmental impact report, timber harvesting plans are not exempt from all CEQA provisions, and resources agencies such as CDF and DFG have statutory obligations under CEQA. One particular CEQA provision from which timber harvesters are not exempt and to which CDF and DFG are subject is PRC section 21160, which provides that "[w]henever any person applies to any public agency for a lease, permit, license, certificate, or other entitlement for use, the public agency may require that person to submit data and information which may be necessary to enable the public agency to determine whether the proposed project may have a significant effect on the environment or to prepare an environmental impact report." With regard to the issue at hand, the court found that "[a]n agency subject to CEQA may unquestionably be authorized under section 21160 to request the sort of wildlife survey at issue here." The court also examined the FPA and found ample evidence of the legislature's implicit delegation of authority to the agencies to request reasonable wildlife surveys when needed to evaluate a THP.

The court also rejected the argument of the Board and PALCO that CDF's demand for the wildlife surveys impedes and therefore conflicts with the FPA's "speedy timeframes" for processing THPs, noting that timber harvesters who wish to cut old-growth forests should complete the required wildlife surveys before filing the THP and triggering the regulatory deadlines.

Next, the court turned to the reasonableness of CDF in requiring the actual wildlife surveys at issue. While acknowledging that its review of the Board's decision is subject to the substantial evidence rule (that is, the court should defer to the Board if it finds substantial evidence in the record to support its decision), the court found that "the wildlife surveys in question are indistinguishable from other inspections of the proposed logging site required by FPA regulations. They demand no more than the Department would reasonably require in order to intelligently weigh mitigating measures calculated to preserve a vital and perhaps vulnerable animal community. . . . The record does not support the Board's finding that the requested surveys were here unreasonable."

The court admitted that its analysis "presupposes that the [THPs] may have a significant effect on the environment," and recognized that the Board had initially declined to make such a finding one way or the other. However, the court noted that environmental scrutiny under CEQA and the FPA is triggered when a proposed project *may* have significant environmental impact. The court found that PALCO's RPF conceded this point in his letter refusing to conduct the wildlife surveys, and that the Board did not clearly address the appropriate issue. "[T]he present record contains abundant evidence from which it 'can be fairly argued' that the two timber harvest plans may have a 'significant environmental impact.' [citations omitted] The two responsible agencies, [CDF] and DFG, pursued such arguments throughout the proceedings. We accordingly consider that the Board's findings are both irrelevant and unsupported by the evidence. The record clearly reveals a potentially substantial adverse effect on wildlife communities authorizing the Department to demand data necessary to the consideration of feasible mitigating measures."

The Board and PALCO plan to seek rehearing by the First District and/or review by the California Supreme Court.

In ***T.R.E.E.S. v. California Department of Forestry and Fire Protection***, No. A050630 (Aug. 30, 1991), the First District Court of Appeal held that CDF is not required to compel amendments to a THP where the actual harvesting deviates from the originally approved plan. It may choose to do so, but has no mandatory duty to compel THP amendments such that it is vulnerable to a petition for writ of mandate when it chooses not to.

The controversy in question surrounded a THP submitted by Louisiana-Pacific Corporation (L-P) to CDF, which first approved the plan in April 1987. CDF later approved minor amendments to the THP in September and November 1988 and March 1989, and a major amendment on May 12, 1989. All of the amendments were proposed by L-P. During June 1989, T.R.E.E.S. (Timber Resources Environmental Education Service, an unincorporated association) member Helen Libeu wrote CDF, asking it to require another major amendment to L-P's THP. The request by Libeu, which was denied by CDF by letter on July 3, 1989, sought a major amendment to the plan based on her alleged discovery that harvesting being carried out under the plan included "the substantial harvesting of Group B species (hardwoods), while the original plan approval was only for conifers." T.R.E.E.S. filed an original verified petition and complaint on August 2, 1989; a second amended pleading on December 6, 1989; and a third amended petition on February 7, 1990. In response, CDF

and L-P filed demurrers for failure to state a cause of action.

The third amended petition and complaint were based on two causes of action. The first cause of action alleged that CDF had refused Libeu's written request to require a major amendment to the plan based on her discovery of the harvesting of hardwoods in violation of the FPA and CEQA. T.R.E.E.S. claimed that the refusal was an abuse of discretion by CDF because its failure to require the amendment resulted in its failure to evaluate certain environmental impacts which are required to be evaluated. The second cause of action alleged that the refusal to require a major amendment constituted a failure to perform a mandatory duty under the FPA and its implementing regulations. The demurrers of CDF and L-P were sustained without leave to amend, for failure to state a cause of action. This appeal followed.

Under PRC section 4514.5, "[a]ny person may commence an action on his own behalf against the board or [CDF] for a writ of mandate pursuant to [Code of Civil Procedure section 1084 *et seq.*] to compel the board or the department to carry out any duty imposed upon them under the provisions of this chapter." However, a petitioner must show a clear, present, and usually ministerial duty on the respondent's part, and a clear, present, and beneficial right in the petitioner to the performance of that duty. Mandate usually will not lie to compel an exercise of discretion. The court concluded that neither the FPA nor CEQA establish a mandatory CDF duty to compel the submission of THP amendments. Rather, the duty is on the plan holder to submit amendments when harvesting varies from the terms of the approved THP, or risk the FPA's broad range of penalties and other enforcement mechanisms. According to the court, "[t]his is not to say that the department lacks discretion to suggest an amendment as part of corrective action . . . or perhaps even as a condition for initial THP approval. That differs, however, from a duty to compel an amendment." Thus, the First District affirmed the trial court's dismissal for failure to state a cause of action.

Redwood Coast Watersheds Alliance v. California State Board of Forestry, et al., No. 932123, is still pending in San Francisco County Superior Court. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 176 for background information.) Through San Francisco environmental attorney Sharon Duggan, RCWA alleges that the Board and CDF are violating the FPA 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 THPs 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. The Board's demurrer to plaintiff's complaint was recently denied, and the Board is scheduled to file an answer in the near future.

At the same time she filed the *Alliance* case, Duggan petitioned Resources Agency Secretary Douglas Wheeler to decertify CDF's THP process as "functionally equivalent" to CEQA's EIR process. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 176 for background information.) On June 10, Wheeler denied Duggan's petition, on grounds that the "timber harvest regulatory program continues to comply with the requirements of PRC section 21080.5 and the objectives of the California Environmental Quality Act." Wheeler noted that the scope of his review for purposes related to certification under section 21080.5 is restricted to the "generic requirements of subdivision (d) and is directed *not* to extend to individual decisions under the regulatory program." Wheeler also stated that "[i]n determining whether the certified program complies with section 21080.5, as with other questions under CEQA, the test is not perfection, nor whether an improved program design is possible, but reasonableness."

Within this limited standard of review, Wheeler refused to disturb the certification of the THP program. In response to Duggan's assertion that various changes in Board regulations and CDF's program administration have weakened the environmental protection provided by the certified timber harvest program and have resulted in noncompliance with the specific statutory prerequisites for certification, Wheeler stated that "the program has become more, rather than less, environmentally protective."

Having exhausted her administrative remedies, Duggan plans to amend her *Alliance* complaint to challenge the certification of the THP program as functionally equivalent to the CEQA EIR process.

Californians for Native Salmon & Steelhead Ass'n v. California Department of Forestry, No. A046232, is still pending in San Francisco Superior Court. Revived by the First District Court of Appeal, this case challenges 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. 11, No. 3 (Summer 1991) p. 176 and Vol. 10, No. 4 (Fall 1990) pp. 161–62 for extensive background information on this case.) Plaintiffs, also represented by Sharon Duggan, challenge the validity of 65 THP approvals as illustrative of CDF's "procedure" to respond to public comments either tardily or not at all, and of CDF's having "consistently ignored" its duty to assess cumulative impacts under CEQA and *EPIC v. Johnson*, 170 Cal. App. 3d 604 (1985).

FUTURE MEETINGS:

January 7–8 in Sacramento.
February 4–5 in Sacramento.
March 3–4 in Sacramento.
April 7–8 in Sacramento.
May 5–6 in Sacramento.