was successful in reversing the Commission's decision to schedule a black bear hunt in 1989. (*See supra* report on FUND FOR ANIMALS; *see also* CRLR Vol. 9, No. 4 (Fall 1989) p. 119 and Vol 9, No. 1 (Winter 1989) p. 92 for background information.)

RECENT MEETINGS:

At its August 2 meeting, FGC refused to renew the U.S. Fish and Wildlife Service's permit to translocate sea otters to San Nicolas Island. (See CRLR Vol. 9, No. 4 (Fall 1989) pp. 115-16 and Vol. 9, No. 3 (Summer 1989) p. 108 for background information.) The Commission found the translocation of the otters unsuccessful; of the 103 sea otters relocated, 10 died, 18 have returned to the colony, and 46 are unaccounted for.

At FGC's August 31 meeting in Sacramento, former Commissioner Norman B. Livermore suggested that FGC contract to have a history of its activities written. In light of the recent budget cuts, Mr. Livermore stated he has dedicated the salary he received while he was a Commissioner to the project, and suggested that other former and current Commissioners do the same to help defray the costs of the project. Commissioner Taucher commented that a formal written history "would be a good thing, especially with so much flack we're getting right now." FGC asked that more information be gathered on the proposal, and invited Mr. Livermore to return to a future meeting to further discuss the matter.

FUTURE MEETINGS:

January 7-8 in Palm Springs.

January 31-February 1 in Long Beach.

February 28-March 1 in Redding.

April 4-5 in Sacramento.

May 16-17 in Fresno.

BOARD OF FORESTRY

Executive Officer: Dean Cromwell
(916) 445-2921

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

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

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

Range Livestock Industry: Jack Shannon.

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

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

MAJOR PROJECTS:

Board Adopts Emergency Regulations to Protect the Northern Spotted Owl. On July 23, the U.S. Fish and Wildlife Service (USFWS) declared the Northern Spotted Owl a threatened species throughout its range, including varied lands in California. The federal Endangered Species Act (ESA) prohibits any activities (e.g., timber harvesting) which would result in the "taking" of a threatened species. Under the ESA, the term "take" is broadly defined to mean harass, harm, pursue, hunt, shoot, wound, kill, capture, collect, or attempt to engage in such conduct (16 U.S.C. § 1532(19)).

Also on July 23, the Board responded to the USFWS listing by adopting emergency regulations that will maintain the current viability and distribution of the owl while the Board, in conjunction with other state agencies, prepares a habitat conservation plan (HCP) and accompanying environmental documentation to address protection of the owl on state and private lands in California. Specifically, the Board adopted new sections 898.2(f), 919.9, 939.9, 919.10, and 939.10, and amended existing sections 895.1, 919.6(d)(1), and 939.6(d)(1), Title 14 of the CCR.

The purpose of the rule changes was to prevent CDF from approving THPs or otherwise authorizing timber operations which constitute an unlawful "taking" of the owl, while at the same time enabling it to fulfill its duties under PRC section 4551. That section requires the Board to assure the continuous growing and harvesting of commercial forests; thus, the emergency rules were necessary to enable CDF and the Board of review and grant THPs which are in compliance with ESA and the California Environmental Quality Act (CEQA). The Board was primarily concerned with preventing timber operations which would harm or harass the owl by actually killing or injuring an individual through habitat modification or through timber operations which significantly impair or disrupt essential behavioral patterns such as breeding, feeding, or sheltering. The Board also believed that its failure to adopt emergency protective regulations would subject it, CDF, and THP submitters to liability for noncompliance with the ESA or CEQA.

The emergency regulations were also designed to produce an integrated state approach to protect the owl, and requires the cooperation of the California Department of Fish and Game (DFG). DFG has had a cooperative agreement with USFWS since November 10, 1978, which provides that DFG "agrees not to engage in, or issue a permit authorizing, the taking of a resident federally listed endangered or threatened species." The participation of DFG is an integral aspect of THP review. Given the owl's unique biological need, DFG has assumed the task of evaluating the effects of all proposed timber operations on the owl. The Board's emergency regulations outline the special information which must now be gathered from the THP submitter in order to facilitate both DFG's interagency responsibilities with USFWS as well as the interdisciplinary THP review process.

At the Board's July meeting, DFG representative Jim Steele reviewed DFG's involvement in the THP application and review process. DFG biologists review proposed THPs to assure that no take will occur. Even an incidental taking of an owl would be a violation of the ESA if not in conformity with an HCP approved by USFWS. Under the review procedure, THPs approved prior to July 23 will continue unchecked, placing the burden of preventing a take on landowners. Neither the Board nor DFG has the authority to require additional review of an approved THP solely for the owl. However, for plans which were not approved before July 23, DFG review is required. Determinations made by DFG are based not only on the actual presence of owls, but also on considerations of the owl's habitat, including old-growth and hardwood stands.

Although the emergency regulations as originally adopted provided three options for obtaining approval of a THP, only one of the options proved to be viable in ensuring to a reasonable certainty that a take would not occur. This option requires a state-employed biologist to examine the proposed operation before the THP is submitted to CDF, and to determine that the operation will not result in an unlawful take of an owl. As a result of an insufficient number of DFG biologists and the submission of incomplete information by THP submitters, a severe backlog of THP approvals occurred during the summer months. At public hearings on September 6 and 12, Jim Steele assured the Board that DFG had shifted biologists to areas where delays were most frequent, and that the backlog would soon be eliminated.

In addition to inevitable delay, the emergency regulations require landowners to provide a current detailed analysis of the timberland with the THP application. Witnesses at the public hearings complained that the cost of an owl survey exceeds $1,000 per plan. Plans with small-harvest volumes and values cannot absorb these costs; therefore, small landowners have been hardest hit. The Board has responded to this problem in part by providing for THP review by state-employed biologists at state expense—but this has resulted in greater delays which in turn impose greater costs, according to the landowners.

Many foresters have urged an avoidance of this delay by shifting the burden of proof of the impact of harvesting on an owl from the landowner to the agencies. In his letter to the Board, Mark Penskar of the law firm of Pillsbury, Madison, and Sutro focused on the presumption created by the emergency regulations that the applicant's THP causes a take "until the applicant can prove that his plan will NOT take. Proving a negative is a difficult and extremely expensive task" which the nonindustrial landowner is financially unable to undertake, said Penskar. Nonetheless, the Board opposed explicitly changing the burden of proof as inappropriate and inconsistent with the Board's view of its statutory duties and authority.

The fundamental issue of whether the Board's emergency regulations constitute a taking of property rights which will constitutionally require just compensation has only been touched upon at public hearings. The Board's Habitat Conservation Plan (HCP), which it is currently drafting and which it hopes USFWS will approve by March 1992, will address issues of compensation. However, the Board has no authority to compensate landowners for harvesting foregone in the interim period. Staff has been directed to develop legislative proposals that would allow tax credits, fee exemptions, or other financial relief for landowners required to leave trees to protect the owl habitat.

The U.S. Forest Service estimates that thousands of timber-related jobs may be lost to save the habitat of the owl. To offset the possible loss of jobs, President Bush signed a trade bill on August 20 restricting log exports, which makes permanent a previous year-to-year ban on the export of raw logs from federal lands and imposes a complete ban on log exports from California. This law is expected to bolster the timber supply for domestic timber processers; about one in four logs harvested in the Pacific Northwest is shipped to more lucrative foreign markets for processing.

The Board's emergency regulations, which are effective for only 120 days, were scheduled to expire on November 23. However, the Board announced its intent to adopt the emergency regulations as permanent regulations in late August, and scheduled a public hearing on the matter for October 9 in South Lake Tahoe.

Board Adopts Cumulative Impacts Assessment Methodology. On September 12, the Board adopted amendments to sections 895.1, 896(a), 897(a), 898, 898.1(f), 898.2(c), 1034, 1037.3, 1037.5, and adopted Technical Rule Addendum No. 2, Title 14 of the CCR. These amendments originated in a petition for rulemaking by the Timber Association of California (TAC), in October 1988. The Board modified the proposed language, noticed the proposal, and held public meetings on the matter in May, July, and August 1989. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer (1990) p. 191; Vol. 10, No. 1 (Winter 1990) p. 140; and Vol. 9, No. 4 (Fall 1990) p. 121 for background information.)

According to TAC and the Board, the general purpose of these regulations is to provide a bridge between the California Environmental Quality Act (CEQA) and the FPA in the review and processing THPs on non-federal land. The THP review and approval process of CDF and the Board has been certified by the Resources Secretary as equivalent to the Environmental Impact Report (EIR) process required by CEQA. The THP approval process has been sustained as in compliance with CEQA; however, several courts have found that CDF's evaluation of individual THPs has failed to meet the requirements and policy standards of CEQA, and have disagreed regarding the applicability of CEQA language and policy to THP approvals.

The proposed regulations attempt to remove all uncertainty about the application of CEQA to THP approvals, because amended section 896(a), Title 14 of the CCR, purports to entirely preclude the application of CEQA to THP approvals. The amended section provides: "The THP process substitutes for the EIR process under CEQA because the timber harvesting regulatory program has been certified pursuant to PRC section 21080.5. In recognition of that certification and PRC section 4582.75, these rules are intended to provide the exclusive criteria for reviewing THPs." Precisely how the Board expects its administrative regulations to preempt the judicial interpretation of a state statute in *EPIC v. Johnson*, 170 Cal. App. 3d 604 (1985), remains unclear. (*See infra* LITIGATION for further information on this issue.)

With regard to the CEQA-equivalent "cumulative impacts" assessment which must be made under the new rules, amended regulatory section 898 states that "[c]umulative impacts shall be assessed based upon the methodology described in Board Technical Rule Addendum Number 2. Consideration of cumulative impacts shall be guided by standards of practicality and reasonableness." Under the Addendum, the THP submitter must identify and briefly describe the location of past and reasonably foreseeable future projects, and the location of any known, continuing significant environmental problems caused by past projects. The submitter must also assess the cumulative impacts of the proposed project on the following factors: watershed resources, soil productivity, biological resources, recreational resources, visual resources, and vehicu-

lar traffic impacts. According to the Board's statement of reasons, the Addendum is drafted "to require an independent analytical approach to cumulative impacts," not a quantitative approach.

This regulatory action awaits review by the Office of Administrative Law (OAL).

Board Upholds CDF's Denial of Louisiana-Pacific THP. On September 12, the Board upheld the CDF Director's denial of Louisiana-Pacific's (L-P) THP No. 1-90-280-MEN, following appeal hearings on August 8 and September 11. The 240-acre THP, which was to be conducted on Deer Creek, 1.5 miles from Highway 128, was denied on June 8 by the Director because he determined that the productivity of the site would not be maintained and that the method in which the timber stand was to be managed did not satisfy the intent of the FPA. The Act (PRC section 4513) states that its intent is to assure that the use of all timberlands will, where feasible, restore, enhance, and maintain the productivity of the timberlands, and that the goal of maximum sustained production of high-quality timber products is achieved while giving consideration to values relating to recreation, watershed, wildlife, range and forage, fisheries, regional economic vitality, employment, and aesthetic enjoyment.

At the hearing on August 8, CDF presented its case before the Board concerning the denial of the THP. CDF forester Bill Baxter testified that during his June 4 pre-harvest inspection, Ken Wood, the RPF for L-P, could not point to one conifer over 14 inches in diameter at breast height, regardless of crown condition or tree vigor, that would remain after the harvest. In his field report, Baxter also noted that the stand was recently logged in 1976 and that a harvest of the stand at this time would be wasting approximately 90% of the stand's total volume growth for only one or two million board-feet per acre of actual harvest. CDF deemed that what L-P intended to cut under the THP was not in compliance with the standards of the FPA, and denied the THP.

At the continued hearing on September 11, L-P presented six witnesses and one attorney in its attempt to convince the Board to overturn CDF's denial. Acting Board Chair Carlton Yee questioned the introduction of these witnesses because no notice of their appearance had been given, and only one of them had any connection with the actual denial. Dr. Yee also questioned whether any additional evidentiary material could be introduced since the Board had not been able to review it. L-P's attorney Mr. Carlton argued that an appeal hearing is only a quasi-judicial proceeding and that the Board is not a true court of law; thus, strict rules of evidence and procedure should not apply. Board member Woody Barnes suggested that the Board is capable of deciding what should be considered in making its decision, and that the testimony should be allowed. Dr. Yee agreed and L-P presented its case.

The first two witnesses discussed topics such as the free market system, the danger that over-regulation imposes on technological advancement and competition, and the many uses of low-quality wood chip products. The third witness for L-P was the first to refer directly to the timber site in question. As a professional forester and consultant, Mr. Able testified that the THP would provide for future timber growth at the maximum productivity because the old-growth trees that remained at the site following the 1952 and 1976 cuts of the "dominant" and "co-dominant" trees were "suppressed" trees that were not genetically predisposed to growing tall and fast.

According to the expert witnesses who followed, the L-P THP is only a "liberation" cutting that would stimulate the maximum growing potential of the site by clearing old-growth "suppressed" trees which adversely affect the growth of younger trees, thinning out clumps, and evening out the stand structure. Mr. Carlton focused on this claim in his closing argument, and also questioned whether CDF has the authority to deny a THP.

At the conclusion of L-P's lengthy testimony, CDF rebutted by repeating the Board's observation that the testimony of only one of the witnesses had any real relevance to the denial, and that Ken Wood—the RPF who prepared the THP—was not even present. CDF staff member Marc Jameson also pointed out that there was no difference of opinion as to what is on the site; the dispute was over what L-P actually intended to do. According to Bill Baxter, L-P claimed that the THP included only the cutting of old-growth residuals (described as old-growth "suppressed" trees by the L-P experts), spacing tree clusters, and clearing hardwoods. However, during the pre-harvest inspection, L-P RPF Ken Wood could not point to any 14-inch-diameter trees that would not be cut. This is a significant difference from the articulated "liberation" cut. In response to Mr. Carlton's comments, Ken Delfino of CDF stated that CDF has the authority to uphold the intent of the FPA, and that the THP's failure to meet the standards of the FPA and sections 898.1(c) and 897(b), Title 14 of the CCR, was sufficient to warrant denial of the THP.

The public comments following the CDF testimony reflected great concern for the type of resource depletion that is occurring in Mendocino County as a result of heavy foresting on a short-growth rotation; some witnesses applauded the CDF Director for his denial of the THP and his willingness to following the laws that were established to maintain the forest for future use. Mr. Carlton ended the appeal with a brief rebuttal, but the Board decided to uphold CDF's denial at its September 12 meeting.

According to Board staff member Doug Wickizer, L-P is not expected to take further legal action on the denial of the THP, because the grounds on which the denial rests would withstand court challenge.

Proposed Adoption of Non-Industrial Timber Management Regulations. On October 10, the Board was scheduled to hold a public hearing to discuss the proposed adoption of amendments to sections 895 and 895.1, and the adoption of new sections 1090-1090.27, Title 14 of the CCR. The Board is required to adopt these regulations to implement SB 1566 (Keene) (Chapter 1290, Statutes of 1989), which established an alternative to the THP for non-industrial forest landowners (less than 2,500 acres). The law provides for the submission of a management plan to CDF which would establish a Non-Industrial Timber Management Plan (NTMP) for all or a portion of the ownership. The plan is to describe intended management activities, address possible impacts of those activities, and is to be reviewed by an interdisciplinary team. When the plan is found to be in compliance with the rules of the Board, it will be approved by the CDF Director. The actual timber operations are to be conducted under a Notice of Timber Operations submitted to the Director, which is not subject to his/her approval. However, if the harvesting conducted under the Notice fails to protect the resources as provided for in the plan and the rules of the Board, action may be taken to cancel the plan.

The proposed regulations must address all areas necessary to implement the NTMP and the Notice. As proposed, the regulations include definitions necessary for preparation and review of the NTMP (sections 895 and 895.1); public notice of the NTMP (sections 1090.1-.5); rule application to the NTMP (section 1090); NTMP and Notice contents (sections 1090.6 and 1090.8); Notice of

Timber Operations requirement (section 1090.7); RPF, NTMP submitter, and licensed timber operator (LTO) responsibilities (sections 1090.9-.14); NTMP amendments (sections 1090.15, 1090.25, and 1090.26); review and processing of the NTMP (sections 1090.16-.24); change of ownership (section 1090.27); and cancellation of plans (section 1090.28).

Proposed Adoption of Fire Safe Regulations. Also on October 10, the Board was scheduled to hold a public hearing to discuss the proposed adoption of fire safe regulations, section 1270-1276.04, Title 14 of the CCR. In addition to the public hearing, the Board conducted public meetings in eleven locations throughout the state in September and early October. The proposed regulations are in response to SB 1075 (Rogers) (Chapter 955, Statutes of 1987), which added section 4290 to the PRC, requiring the Board to adopt minimum fire safe standards applicable to the state responsibility area lands under the authority of CDF. The statute was adopted by the legislature to deal with an increasing fire protection problem in California. Since 1923, over 5,300 homes have been destroyed by wildfire and 149 lives lost. More than half of those homes have been destroyed since 1970. This year alone, over 500 homes were destroyed in Santa Barbara and San Diego counties. Increasingly, the loss of homes is not confined to the remote foothills and mountains of the state, but also occurs in subdivisions and developments that are contiguous to or intermixed with the wildlands. Over two million residences now exist in the wildlands.

The fire agencies in California no longer have the equipment or funding necessary to provide an engine to protect each home during large wildland fires. Implementation of the concept of "defensible space" is one step necessary to mitigate wildland fire structural losses. This concept addresses the area around a structure or development and makes it safer and easier to provide fire protection. Each residence built in the wildlands must provide some basic level of protection around the home if it is to survive a wildland fire. This can include providing water, adequate roads, flammable vegetation clearance, or proper building identification. These measures provide a point of attack or defense for fire protection forces and increase the chance of survival for a residence or other development. If "defensible space" is not provided, the inevitable increase in the loss of homes to wildland fires will continue.

Thus, the proposed regulations would apply to all residential, commercial, and industrial buildings constructed within state responsibility areas after January 1, 1991, and would include (1) road standards for fire equipment; (2) standards for signs identifying streets, roads, and buildings; (3) minimum private water supply reserves for emergency fire use; and (4) fuelbreaks and greenbelts. These regulations are not building standards as defined in section 18909 of the Health and Safety Code, and would not supersede local regulations that equal or exceed the standards proposed.

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

-Roads and Landings Regulations Adopted to Comply with "Best Management Practice" Under Federal Clean Water Act. On July 10, the Board adopted new sections 912.6, 932.6, 952.6, and Technical Rule Addendum No. 3, and amendments to Technical Rule Addendum No. 1 and numerous sections of its regulations in Title 14 of the CCR. These regulatory changes modify the Forest Practice Rules addressing road and landing construction standards to ensure compliance with the Federal Clean Water Act (FCWA) (section 208 of the Federal Pollution Control Act (FPCA)), and to enable the Board's Forest Practice Rules to be certified "best management practice" under the FCWA and FPCA. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 186-87 for detailed background information.) This regulatory package still awaits review and approval by OAL.

-Time Limitations for CDF Director Consideration of Public and Agency Input on Proposed THPs. On May 1, the Board amended section 1037.4, Title 14 of the CCR, to establish a ten-day time period for the CDF Director to assess and respond to input provided by the public and other agencies on proposed THPs. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 189 for background information.) This proposal was approved by OAL on September 17.

-Cable Road Drainage Regulations. On May 1, the Board adopted proposed regulatory changes to clarify the intent of the Forest Practice Rules to maintain natural drainage patterns on cable roads in timber operations, and the circumstances under which waterbreaks are required to minimize erosion. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 188-89 for background information.) The proposed action would amend sections 914.6(d), 934.6(d), and 956.4(d), Title 14 of the CCR. OAL approved the rulemaking file on August 9.

-Head-of-Agency Appeals Process for THPs. On April 3, the Board adopted new sections 1056-1056.7, Title 14 of the CCR, and renumbered numerous existing sections. The proposed renumbering rearranges existing sections regarding the THP process under the topics of (1) appeal by the THP submitter of the Director's disapproval of the THP; (2) appeal by the county board of supervisors for the county in which the proposed timber operation is located; and (3) head-of-agency appeals by the state Water Resources Control Board and the Department of Fish and Game, as authorized in SB 1568 (Keene)(Chapter 400, Statutes of 1989). New sections 1056-1056.7 incorporate into the Forest Practice Rules the provisions of PRC section 4582.9, and provide specific procedures for the head-of-agency THP appeals process. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 188 for background information.) OAL approved these regulatory changes on September 27.

-Limited Exemptions to THP Requirements. On March 7, the Board adopted new section 1038.2 and amended section 1103.1(a), Title 14 of the CCR, to provide limited exemptions to the preparation of THPs required under Forest Practice Rules. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 185-86 for background information.) At this writing, this proposal still awaits review and approval by OAL.

-Watercourse Protection Regulations. On January 10, February 6, and March 6, the Board held extended public hearings on proposed amendments to the Forest Practice Rules regarding areas identified as watercourse and lake protection zones. The amendments would substantially modify numerous provisions between sections 895-963.6, Title 14 of the CCR. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 188 for background information.)

On March 6, Acting Board Chair Carlton Yee recommended that the new language be held in abeyance pending preparation of a revised cost estimate reflecting the cost analysis findings of the Forest Practice Committee. According to Board staff member Doug Wickizer, the Board is expected to renotice the language of the regulatory changes for a full 45-day public review period sometime in January or February 1991.

-Road Performance Bond Regulations. On October 12, 1989, the Board adopted proposed regulatory changes to

clarify the standards on performance bonds for public roads in five counties having special forest practice rules. (See CRLR Vol. 9, No. 4 (Fall 1989) pp. 120-21 for background information.) This regulatory action was approved by OAL on August 8.

LEGISLATION:

The following is a status update on bills reported in detail in CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) at pages 189-90:

AB 3687 (Hauser), as amended August 17, would have deleted the existing requirement that the Department report to the Governor and the legislature on or before July 1, 1989, on the adequacy of existing resource conservation standards; required CDF, on or before July 1, 1991, to report to the Governor and the legislature on the impact of timber harvesting on the California economy; and prohibited the sale of state timber to a manufacturer who exports redwood, except as specified. This bill was vetoed by the Governor on September 22.

AB 3686 (Hauser) would have required every THP to include a wildlife management plan prepared by a wildlife biologist certified by the Wildlife Society, and under the direction of the RPF responsible for the preparation of the THP. This bill died in the Assembly Natural Resources Committee.

AB 4098 (Sher), as amended August 21, defines "commercial purposes" to include (1) the cutting or removal of trees which are processed into logs, lumber, or other wood products and offered for sale, barter, exchange, or trade; or (2) the cutting or removal of trees or other forest products during the conversion of timberlands to land uses other than the growing of timber. (See CRLR Vol. 10, No. 1 (Winter 1990) p. 140 and Vol. 9, No. 4 (Fall 1989) p. 121 for background information on this issue.) This bill also requires an application for a timberland conversion permit to be accompanied with an application fee, as specified, and requires CDF to establish a system of graduated timberland conversion permit fees. This bill was signed by the Governor on September 22 (Chapter 1237, Statutes of 1990).

SB 2201 (Keene) would have prohibited clearcutting in any old-growth coast redwood or Douglas fir timber stand, and would have required harvest operations on those lands to have specified characteristics. This bill died when the Senate failed to concur in Assembly amendments.

SB 2601 (Keene) authorizes the CDF Director to enter into a contract with a public agency with regulatory or natural resources management authority for prescribed burning, and permits the state's share of the costs of site preparation and prescribed burning to exceed 90% of the total costs if the Director determines no direct private economic benefits will accrue or will be utilized by a person that owns or controls any property under contract. This bill was signed by the Governor on September 30 (Chapter 1600, Statutes of 1990).

SB 917 (McCorquodale). Existing laws require the clearing of flammable material or combustible growth and the taking of other action around any building or structure in specified circumstances. This bill provides that conviction of a third violation of these provisions in five years is a misdemeanor, punishable by a fine not less than $500. This bill authorizes CDF, in that event, to perform or contract for the performance of necessary work and to bill the violator for the costs incurred, in which case the violator, upon payment of those costs, would not be required to pay the fine. This bill was signed by the Governor on September 11 (Chapter 773, Statutes of 1990).

SB 1569 (Keene) was substantially amended on August 31 and is no longer relevant to the Board or CDF.

AB 1811 (Sher), as amended June 26, appropriates $5,977,000 from the Special Fund for Economic Uncertainties to CDF for early activation of specified fire protection facilities and related fire suppression activities. This bill was signed by the Governor on August 10 (Chapter 494, Statutes of 1990).

SB 377 (Campbell), which would have established the Public Fire Prevention Program Advisory Committee with specified membership, died in the suspense file of the Assembly Ways and Means Committee.

LITIGATION:

In Environmental Protection Information Center (EPIC) v. Board of Forestry, Maxxam Corporation, et al., John T. Ketelsen has been retained to represent the Board following Attorney General John Van de Kamp's withdrawal from representation of the Board on February 6. Van de Kamp's withdrawal followed an extended one-year legal battle in which he defended his ability and his right to represent the Board of Forestry in the action, against allegations that his duty to protect and preserve the environment created a conflict of interest dictating his withdrawal. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 190-91 for background information.)

The *EPIC* case involves CDF's 1987 approval of a Maxxam Corporation THP which would heavily log approximately 700 acres of old-growth redwood and Douglas fir forest in Humboldt County. (See CRLR Vol. 9, No. 3 (Summer 1989) pp. 113-14; Vol. 9, No. 2 (Spring 1989) p. 107; and Vol. 9, No. 1 (Winter 1989) p. 94 for background information on this case.) Maxxam Corporation has been the target of attack by environmental organizations, which allege that the increased harvesting of old-growth timber by the corporation is a method to pay back over $700 million owed in high-interest junk bonds which were used by Charles Hurwitz in his corporate takeover of the company. The Board is currently awaiting a hearing on a request by EPIC for a preliminary injunction.

In *Californians for Native Salmon & Steelhead Ass'n v. California Dep't of Forestry*, No. A046232 (July 6, 1990), the First District Court of Appeal reversed the trial court's dismissal and reinstated an action for declaratory relief challenging CDF's alleged policies regarding two issues: (1) the time of filing of CDF's responses to public comments on a THP; and (2) the evaluation and mitigation in each THP of the cumulative impact of logging activities.

In its original complaint, plaintiffs challenged CDF's approval of a specific THP in a combined petition for writ of mandate/complaint for injunctive and declaratory relief. They sought not only to vacate the THP approval, but declaratory relief outside the THP at issue concerning a "pattern and practice" of agency conduct allegedly in violation of the California Environmental Quality Act (CEQA). During the judicial proceeding, the THP grantee withdrew the THP and moved for an order dismissing it as a party. Co-respondents CDF and Board of Forestry demurred to the complaint, arguing that the challenges to the THP were moot and that there was no longer a justiciable controversy "in that the pleading refers to unspecified timber harvest plans and to an unidentified contention or policy of Respondents." The trial court dismissed the THP grantee and sustained the demurrer with leave to amend to make more specific allegations regarding CDF's policies.

Plaintiffs' first amended pleading was a straight complaint for declaratory and injunctive relief, alleging and challenging "the pattern and practice of the California Department of Forestry in their [sic] approval of timber harvest plans, both in their failure to evaluate and respond to comments, and to assess cumulative impacts as mandated by the California courts." Specifically, plain-

tiffs allege that CDF regularly approves THPs and allows timber operations to commence without issuing written responses to significant environmental objection by the public no more than ten days from the date the plan is approved, contrary to the requirements in sections 1037.7 and 1037.8 of the Forest Practice Rules and CEQA, as interpreted in *EPIC v. Johnson*, 170 Cal. App. 3d 604 (1985), and other cases. Further, plaintiffs allege that, in numerous instances, CDF has failed to address the cumulative impacts of the proposed harvest along with other past, present and proposed harvests, pursuant to CEQA and *EPIC v. Johnson*. Plaintiffs allege a list of 65 approved THPs as illustrative of respondents' "procedure" to issue responses to public comments tardily or not at all, and of respondents' having "consistently ignored" their duty to assess cumulative impacts. Respondents demurred to the amended complaint. The trial court sustained the demurrer, and plaintiffs appealed.

In reversing and remanding for trial, the appellate court held that an action for declaratory relief is a proper vehicle, noting that the material factual allegations of plaintiffs' complaint have been admitted by respondents' demurrer. "Appellants allege and respondents dispute whether CDF is engaged in conduct or has established policies in violation of applicable statutes, regulations, and judicial decisions. Clearly the allegations of appellants' complaint sufficiently set forth an actual controversy over significant aspects of respondents' legally-mandated duties."

In response to CDF's argument that plaintiffs are merely expressing dissatisfaction with a series of 65 THP approvals, the court again noted that plaintiffs allege a "pattern and practice" of conduct violative of the law, which has been admitted by means of respondents' demurrer. The court also rejected respondents' argument that plaintiffs' challenge should be by way of a petition for administrative mandamus; "[a]ppellants...challenge not a specific order or decision, or even a series thereof, but an overarching, quasi-legislative policy set by an administrative agency. Such a policy is subject to review in an action for declaratory relief."

On September 19, the California Supreme Court denied respondents' petition for review. At this writing, this action is proceeding to trial.

RECENT MEETINGS:

At the June 5 Board meeting, Lloyd Bradshaw, Chair of the Forest Pest Council, reported that pest conditions were getting worse in California as a result of low precipitation. The average annual loss to insects is 800 million board-feet. In 1989, losses were estimated at 2 billion board-feet. Bradshaw estimates that 5-6 billion board-feet will be lost in 1990 due to insect mortality, increasing the fire hazard and worsening burning conditions.

At the Board's September 12 meeting, CDF Director Harold Walt recommended that the Board follow the Governor's lead in publicly opposing Proposition 130 in the November election, which would affect the composition of the Board. Although Board public member Elizabeth Penaat suggested that this policy statement would appear to be a self-serving attempt by Board members to maintain their positions, the policy was approved.

Also in September, the Mendocino County Board of Supervisors requested assistance from the Board in developing a long-term timber goal. According to members of the Board of Supervisors, Mendocino County has allowed industry to cut at a higher rate than growth in the name of private property rights. With its resource base dwindling, the county now seeks to achieve a "sustained forest." The Board is assembling a task force on this issue, and intends to visit Mendocino County in early 1991.

FUTURE MEETINGS:

To be announced.

WATER RESOURCES CONTROL BOARD

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

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

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

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

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

MAJOR PROJECTS:

California's Drought Continues. Ongoing drought conditions continue to be a major water resource control problem; a recent poll indicated that 71% of California residents believe that an adequate supply of water is a critical issue facing the state. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 193 for background information.) One report estimated that if the drought extends into a fifth year, it could cost the southern California economy alone up to $25 billion and 400,000 jobs, resulting from forced reductions in municipal, industrial, and agricultural use.

Experts contend that reservoirs are already so low and watersheds are so dry that even a normal winter would not provide enough runoff for most water systems in the state to satisfy full demand in 1991. Further, the Department of Water Resources—which has proclaimed 1990 to be a "critically dry year"—is unable to forecast the weather from November through February, normally the wettest months for parts of the state.

Most cities have already implemented mandatory or voluntary conservation plans, seeking to save between 10-45% of normal water use. Cities which do not currently meter residents' water usage,