



wildfire-prone areas; (3) improve the ability of the CDF and other governmental agencies to pursue arsonists who set wildland fires; and (4) review effects of AB 2595 (Chapter 1568, Statutes of 1988) on CDF's vegetation management programs.

In 1988, the Board sponsored SB 2190 by Senators Dills and Campbell. This bill would have specifically required local governments to consider the threat of wildfire as part of their general plans. The bill was approved by the legislature but vetoed by the Governor because of its local fiscal impact and because he believed that it is inappropriate to impose such a mandate on all local governments. In its Annual Report, the Board frankly disapproved of the Governor's veto. It is the Board's position that the minor fiscal costs are insignificant when compared to the damage caused by this summer's fires alone. The Board also believes that local governments share an obligation to plan wisely for wildfire protection and that SB 2190 was specifically written to apply only to wildfires. The Board will urge the legislature to again consider a bill like SB 2190 and to convince the Governor of its importance, despite minor fiscal costs.

Also vetoed by the Governor was AB 4070 (Farr), which would have authorized county review teams to accompany CDF on inspections; and would have authorized the Board to adopt individual county rules and regulations relating to the processing of THPs. Assemblymember Farr will reintroduce similar legislation in 1989 and is confident that passage will be forthcoming.

In 1988, the legislature passed AB 2595 (Sher), the California Clean Air Act of 1988 (Chapter 1568, Statutes of 1988), which relates to many aspects of the state's air quality program. Within that bill is an amendment to section 40400 *et seq.* of the Health and Safety Code, to be known as the Lewis-Presley Air Quality Management Act. The Board generally supports the new law, but is wary of one provision of the Lewis-Presley Act which allows local air pollution control districts to charge fees for burning, including controlled burning. In its Annual Report, the Board submits that any fees charged against CDF's vegetation management burns, range burning, and burning of slash piles by timberland owners will stifle landowner participation and effectively reduce the size of CDF's budget for its vegetation management program. The Board requests that the legislature carefully review implementation of AB 2595 and to

exempt wildland burning from any fees adopted by local air pollution control districts.

#### LITIGATION:

In April, a Humboldt County Superior Court judge granted a temporary restraining order to block timber cutting on 700 acres of trees near Eureka. Pacific Lumber Company's harvesting plan for the region had already been approved by CDF when petitioners filed *Environmental Protection Information Center (EPIC) v. Maxxam Corporation, et al.*, No. 79879, in March. (See CRLR Vol. 8, No. 4 (Fall 1988) p. 108 for background information.)

The restraining order was lifted after a subsequent hearing in July and EPIC appealed the decision. The First District Court of Appeal issued a writ ordering the Superior Court to reissue the temporary restraining order and remanded the case for rehearing. A trial date was set for January 23, 1989; the temporary restraining order will remain in effect through trial.

#### FUTURE MEETINGS:

To be announced.

#### WATER RESOURCES CONTROL BOARD

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The Water Resources Control Board (WRCB), established in 1967 by the Porter-Cologne Water Quality Control Act, implements and coordinates regulatory action concerning California water quality and water rights. 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.

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

#### MAJOR PROJECTS:

*Phase II of the Bay-Delta Workplan.* On October 31—following the conclusion of Phase I of the San Francisco Bay/San Joaquin Delta Estuary Workplan (Bay-Delta) and in preparation for Phase II, the WRCB released its draft water quality control plan for salinity (Salinity Plan) and its draft water quality control policy for pollutants (Pollutant Policy Document) in the Bay-Delta. (See CRLR Vol. 8, No. 4 (Fall 1988) p. 109; Vol. 7, No. 2 (Spring 1987) p. 96; and Vol. 6, No. 4 (Fall 1986) p. 82 for background information on the Bay-Delta proceedings.) At that time, the Board set forth a schedule of WRCB workshops during November-December 1988 and statewide public hearings to commence January 9 and end on February 27—the purpose of which were to discuss and determine whether to adopt the two draft documents.

However, widespread negative reaction to the two plans caused the Board to subsequently postpone the public hearings. Much of the criticism centered on a recommendation calling for a long-term freeze in water exports from the Delta to southern California. The Delta is a series of islands and passageways located at the convergence of several northern California rivers northeast of San Francisco; two-thirds of the state's water flows through the Delta.

The WRCB's plan calls for a new statewide "water ethic" of conservation, and a freeze on exports of Delta water to southern California at 1985 levels until 2010. The proposal is intended to remedy a sharp decline in salmon and striped bass populations in the Delta; the increased flow in the north should



also help flush out increased toxic pollution in the Delta due to increased exports to the south. The Board's draft recommends less pumping and increased flows during the spring and summer months, to push more of the young fish through the Delta and away from the pumps. Any shortages in pumping could be made up during the fall and winter months. Higher seasonal flows have also been recommended by the Department of Fish and Game and the U.S. Fish and Wildlife Service.

However, southern California water agencies and legislators reacted strongly to the Board's proposals. The chair of the San Diego County Water Authority described the plan as "the first shot in the next water war." Senate Agriculture and Water Resources Committee Chair Ruben Ayala called his own hearings on the matter and criticized the plan, arguing that restrictions in imports would be unfair because they would pit farmers against urban water users. Senator Ayala vowed to introduce legislation to block the implementation of any Board decision which will undermine southern California water supplies.

Other critics demanded a reopening of Phase I of the Bay-Delta proceeding to challenge the Board's findings and draft documents. So far, the Board has refused to reopen Phase I; but has postponed indefinitely the Phase II hearings on the draft plans in order to determine how much time is needed by the parties to adequately prepare to present evidence in Phase II.

*MWD and IID Agree to Water Transfer.* In December, the Metropolitan Water District (MWD) and the Imperial Irrigation District (IID) agreed in concept to a plan under which MWD would pay for various conservation projects worth approximately \$92 million in the Imperial Valley, in return for which MWD would receive 100,000 acre-feet of water per year. The water which MWD will receive is the amount which IID estimates it will save as a result of the conservation projects. Under the agreement, which is to last for 35 years, MWD will also pay IID \$23 million in other costs incurred by diversion of the water, such as loss of income from hydroelectric power. (For complete background information on this issue, see *supra* FEATURE ARTICLE.)

At its September 7 meeting, the WRCB had ordered IID to develop a plan by the end of the year to save 100,000 acre-feet of water per year or risk losing part of its water appropriation from the Colorado River. (See

CRLR Vol. 8, No. 4 (Fall 1988) p. 110 for background information.)

*Kesterson Reservoir Clean-Up.* The clean-up of Kesterson National Wildlife Refuge and Reservoir has been a project of the WRCB and the U.S. Bureau of Reclamation (Bureau) for several years. (See CRLR Vol. 8, No. 4 (Fall 1988) pp. 108-09; Vol. 8, No. 3 (Summer 1988) pp. 115-16; Vol. 8, No. 2 (Spring 1988) p. 111; Vol. 7, No. 3 (Summer 1987) p. 121; Volume 6, No. 3 (Summer 1986) p. 76; Vol. 5, No. 4 (Fall 1985) p. 87; and Vol. 5, No. 1 (Winter 1985) p. 72 for complete background information.)

The Bureau is proceeding with the clean-up procedures adopted by the WRCB in July 1988. At present, most of the low-lying lands, which include over 500 acres, have been filled in an attempt to check the spread of selenium. (See CRLR Vol. 8, No. 4 (Fall 1988) pp. 108-09.) The selenium had been leaching from ephemeral pools that formed in the low-lying areas. The filling of the reservoir is designed to control runoff by transforming all of the area into upland.

The WRCB is supervising the continued progress of the clean-up program. On April 1, the Board will make its final assessment; at that time, the Bureau will present sampling data and other pertinent information to the Board. The Board will also examine a habitat impact study and determine whether further remedial actions will be necessary.

One unknown factor in the clean-up decision is technological. The Bureau has repeatedly advocated the use of an unproven process known as volatilization. (See CRLR Vol. 8, No. 4 (Fall 1988) p. 109.) Theoretically, volatilization would use fungal growth to transform inorganic selenite into a gaseous state. The gas would then dissipate into the atmosphere. The Board was presented with additional information regarding the volatilization process on December 1; Board members stated that the data indicates volatilization is promising, but unanswered questions remain. The data did prove that selenite will volatilize within several years. However, the kinetics of the process as well as its environmental impact are still uncertain.

*Amendments to the Water Quality Control Plan for the San Joaquin Basin.* On February 5, 1985, the WRCB adopted Order No. WQ 85-1. The order, in part, required the formation of a Technical Committee to analyze potential regulation of agricultural drainage discharges in the San Joaquin Basin. It also required the Central Valley Regional

Water Quality Control Board to adopt appropriate basin plan amendments and implement a program to regulate agricultural drainage flows in the San Joaquin Basin.

The Regional Board is now in the process of amending the Water Quality Control Plan for the San Joaquin Basin. In October, the Regional Board issued a draft document entitled "Amendments to the Water Quality Control Plan for the San Joaquin Basin (5C) for the Control of Agricultural Subsurface Drainage Discharges." The report is being circulated to all parties and generally for public comment. The amendments will also be the subject of a public hearing before the Regional Board. After the hearing the Regional Board will consider adoption of the proposed amendments.

## LEGISLATION:

*Anticipated Legislation.* At least two of the numerous bills passed by the legislature last session but vetoed by the Governor will be resubmitted by their sponsors. The substance of AB 1990 (Hayden), which would require the WRCB to conduct a standardized ocean monitoring and discharge reporting system, will be reintroduced as part of another bill. SB 2691 (Hart), also vetoed last September, will be introduced as part of a larger coastal protection plan. That bill would have required inclusion of a water quality component for bays and estuaries, and numerical sediment quality objectives in the WRCB's California Ocean Plan by specified dates. The bill also would have required the WRCB to send a proposal for developing and maintaining a program to clean up toxic hot spots in the state's ocean, bays, and estuaries to the legislature. (See CRLR Vol. 8, No. 4 (Fall 1988) p. 116 and Vol. 8, No. 3 (Summer 1988) pp. 116-17 for details on these bills.)

WRCB, which supported several of the bills vetoed by the Governor last session, has been told not to support similar bills in the future and to work to defeat them.

## LITIGATION:

On October 6, in *National Audubon Society v. Department of Water*, No. 85-2046, the Ninth Circuit Court of Appeals reversed a district court ruling and concluded that federal courts have no jurisdiction over the Mono Lake controversy. The ruling will send the case to state court, where it may be joined with other cases regarding Los Angeles' diversion of water from Mono Lake and its tributaries. The Los Angeles Department of Water and Power (DWP) has diverted



## REGULATORY AGENCY ACTION

substantial amounts of water from Mono Lake for years, recently pursuant to permits issued in 1974 by the WRCB. Those permits were held invalid by the Third District Court of Appeal on May 23, 1988; shortly thereafter, that court withdrew its unanimous opinion upon DWP's motion for reconsideration. At this writing, the Third District has not yet reissued its opinion in the case. (See CRLR Vol. 8, No. 3 (Summer 1988) pp. 117-18 for detailed background information.)

In November, the U.S. Supreme Court heard oral argument in *California v. United States*, No. 87-1165. The litigation is one case in a long line of water rights cases involving the Colorado River which have reached the Supreme Court. This particular litigation focuses on the boundary lines of five Arizona Indian reservations. The way in which the lines are drawn will affect the allocation of River water to California, Arizona, Nevada, and the Indian tribes.

In 1962, the U.S. Supreme Court issued *Arizona v. California*, 373 U.S. 546, its landmark ruling on the Colorado River allocation. (See *supra* FEATURE ARTICLE for background information.) In its ruling, the Court recognized that the five Indian reservations along the lower River had "reserved" water rights to satisfy their "reasonable need," according to a formula based on the amount of "practically irrigable acreage" on the reservation. It specified that the reservations were entitled to more than 900,000 acre-feet per year, which would be credited against the amount allocated to states in which the reservations are located.

The boundaries of the Indian reservations have long been disputed, which has resulted in dissension over the Indians' rights to the water. A central issue in the litigation is the United States' assertion of sovereign immunity. Plaintiffs allege that the federal government's earlier intervention into the boundary dispute constitutes a waiver of sovereign immunity.

*United States and State of California v. City of San Diego*, No. 88-1101-B. As a result of a civil suit filed against it in federal district court in San Diego on July 27, San Diego runs the risk of being assessed civil penalties up to \$25,000 per day for each violation of the Clean Water Act occurring since February 4, 1987, and \$10,000 per day for each violation occurring between July 27, 1983 and February 4, 1987.

California and the federal government are suing the City of San Diego

for numerous violations of its national pollutant discharge elimination system (NPDES) permit. The complaint is accompanied by a three-inch-thick exhibit which details over 2,000 violations alleged by the plaintiffs.

In its first amended complaint filed in November, plaintiffs allege that San Diego has been discharging pollutants from its Point Loma sewage treatment plant in excess of its NPDES permit since 1983. Other alleged violations include "overflows from sewer lines and pump stations used to transport sewage..., discharging untreated wastewater containing pollutants into the waters of the United States without an NPDES permit...[and disposal] of sewage sludge at the abandoned Brown Field treatment plant...[and into] Mission Bay."

Since the original complaint was filed, the parties have been involved in motions practice, including a joint stipulation extending time to answer filed on August 26, and a motion for more definite statement filed on September 30 by the City. On November 25, the court granted the motion and gave the City twenty days to respond to the first amended complaint.

### RECENT MEETINGS:

At a recent hearing, the WRCB heard testimony regarding a draft water quality control policy which would set standards and guidelines for the use of toxicity tests to measure the toxicity of wastewater discharges. Water is currently tested through a chemical-specific approach which tests water for the presence of specific chemicals.

Two types of toxicity tests exist: acute toxicity tests measure short-term lethal effects on test species; chronic or critical life stage toxicity tests measure long-term sublethal effects. The WRCB's draft policy proposes the use of both types of tests. Acute tests would be used to assess and eliminate acute toxicity in an effluent mixing zone, while chronic tests would be used to assess and eliminate toxicity in ambient waters of the state.

Several regional boards are already using toxicity tests, and the purpose of the draft policy is to supply minimum statewide guidelines for the use of the tests and to help implement the U.S. Environmental Protection Agency's (EPA) national policy.

The WRCB's draft policy states that there shall be no acute toxicity in any discharge to surface waters of California and that all ambient waters shall be free of toxic substances in toxic amounts.

The policy establishes technical definitions of both acute and chronic toxicity. One of the problems encountered by the WRCB staff in drafting the policy are the technological limitations on detecting toxicity in water. Current technology cannot detect chronic toxicity below a certain level. The policy also calls for standardization of testing protocol, including the use of standard test species rather than indigenous ones.

Finally, the draft policy requires that acute toxicity limits be incorporated into NPDES permits for discharges to surface waters. Violation of a toxicity limit under the policy would trigger increased monitoring to determine whether toxic discharges continue. If the discharge is ongoing, then an investigation would begin to isolate the toxin and eliminate it.

At the hearing, representatives from EPA and the Department of Fish and Game commented in favor of adopting the policy. The EPA also supported the addition of a provision that violation of the toxicity limit would be a violation of the NPDES permit to ensure state enforcement.

Opposing comments were made by the Los Angeles County Sanitation Department, the East Bay Municipal Utility District, Chevron, and others. Several opponents stated that the policy conflicts with WRCB's California Ocean Plan. In their view, the policy fails to account for the extensive dilution which occurs in the ocean as opposed to river and streams. Other critical comments concerned the availability of test laboratories in California and their capacity to conduct tests in a timely and accurate manner.

The WRCB staff intends to respond to the comments received and make revisions to the policy as appropriate.

### FUTURE MEETINGS:

Workshop meetings are generally held the first Wednesday and Thursday of the month. For exact times and meeting locations, contact Maureen Marche at (916) 445-5240.