

## CALIFORNIA LEGISLATIVE UPDATE--SPRING 1992

by Sheryl Schaffner Freeman

State legislators are preoccupied in this election year with the persistently bad economy and budget crisis. This leaves the legislators rather little time and energy to pursue environmental law. Therefore, while there is a lot under discussion, it is not getting passed very quickly. Considering the magnitude and number of economic and political distractors, it is surprising how much environmental legislation is even under discussion.

Some of the hottest issues at this time are forests, energy/clean fuels and permit reform. Forest issues are a continuing point of conflict, left over from last year's failure to get a solution past the Governor. There has been an impressive spate of forward-looking energy/clean fuel bills proposed. Permit reform is engendering increasingly heated debate. Looking ahead, water issues will likely be the subject of controversial legislation some time in the near future. The drought may be over, but the water shortage is not.

### **FORESTRY: SIERRA ACCORD POST-MORTEM**

After vetoing last fall's "Sierra Accord," Governor Wilson has been unable to get his version of forestry reform through the Legislature. Four bills: **AB 641**, **SB 300**, **SB 854**, and **AB 714** were presented as a package alternative to the accord. Each bill contains a proviso that it will only become operative if the other three are enacted.

**AB 714**, concerning ancient forests, has generated the most controversy. The stated aim is "to protect significant natural resource values associated with ancient forests." However, this bill (as well as the other three) has been criticized as unenforceable, ambiguous and full of loopholes. The Sierra Club estimates that the package would allow 68% of the remaining ancient redwood forests to be cut down within 20 years. **AB 714** is currently in Conference Committee after different versions passed both houses.

**SB 300** would impose a timber yield tax surcharge and create a "Forest Practice Regulatory Fund" for specified purposes. **SB 854** expands on existing timber harvest plan law to require a long-term management plan prepared by a registered professional forester for certain defined timberlands. Neither of these bills passed in the Assembly.

**AB 641** would require the State Board of Forestry to designate watersheds sensitive to timber harvesting. It would establish maximum harvest limits in the watersheds and provide for exemptions. The bill was passed by both houses and sent to the Governor. However, the Governor returned it to the legislature so that the other three measures could be folded into it. This bill is presently in the Senate Inactive File.

The outcome of this entire package is uncertain at this point. Among many other weaknesses, environmentalists' complaints concern the bills' failure to enforceably define "sustained yield" and loopholes that allow Pacific Lumber Company to clearcut up to 30,000 acres of old-growth trees.

### **URBAN FORESTS**

**AB 1556** would require each city and county to adopt an ordinance protecting existing trees. It would require the planting of trees as a condition of project construction. **AB 1556** has passed the Assembly and is in Committee in the Senate.

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## ENERGY/CLEAN FUELS

Recently, the legislature has been in active pursuit of progressive energy policies. The bills seek to encourage the development of alternative vehicles, clean fuels, and efficiency by providing a broad array of market and governmental incentives.

A package of bills by Assembly Member Polanco (D-LA) aims to stimulate the development of alternative vehicles and fuels:

\* **AB 3049** provides for expedited permit reviews and project assistance for facilities or projects working on electric and other alternative fuel vehicle technologies.

\* **AB 3050** establishes a "California Electric & Alternative Fuel Vehicle Enterprise Consortium," to be a collaborative effort between the Dept. of Commerce and CA's Energy Resources Conservation & Development Commission.

\* **AB 3051** initiates a study of the overseas market potential to support California-based production and commercialization of electric and other alternative fuel vehicles.

\* **AB 3052** mandates a consumer recharging and refueling infrastructure master plan to support development, production and operation of alternative fuel vehicles.

\* **AB 3053** would have created a tax credit of 5% of the value of machinery purchased in research and development of alternative fuel vehicles.

\* **AB 3054** would have increased tax credits for converting existing vehicles to low-emission.

**AB 3053** and **3054** failed passage in the Assembly Committee on Revenue and Taxation. The other bills are in committees.

**AB 3252** authorizes and funds a demonstration program to test the use of compressed natural gas as fuel for commuter locomotives. **AB 3736** increases tax credits for employers who purchase low-emission rideshare vehicles (Both of these are also in committee).

Senator Rosenthal's (D-Beverly Hills) **SB 1395** would authorize the D.M.V. to issue personalized "Blue Sky" license plates for clean fuel vehicles. These special plates would qualify the driver for privileges such as free parking, use of high-occupancy lanes and exemption from state sales and use taxes. The bill also protects the owner of a clean fuel vehicle from discrimination by insurers regarding rates, coverage or cancellation terms. This bill failed passage in the Senate Committee on Transportation, but reconsideration has been granted.

Rosenthal also introduced **SB 1216**, the Clean Fuel Transportation Bond Act of 1992. It authorizes the issuance of \$100,000,000 in bonds to finance the development of a clean fuel vehicle industry and the necessary state infrastructure. It too failed in the Senate Committee on Transportation and was granted reconsideration.

Senator Hart's "DRIVE-Plus" program, formerly **SB 431**, has been reintroduced as **SB 1843** this year. DRIVE-Plus is a revenue neutral system of state sales tax credits and charges -- rewarding the fuel efficient, low emitters with funds derived from the fuel guzzling polluters. This bill languishes in committee. Meanwhile, the state of Maryland has usurped California's traditional role as trailblazer by recently passing similar legislation.

Not all energy bills under consideration are aimed at protecting the environment. **AB 2742**, introduced by Assembly Member Peace (D-Chula Vista), would prohibit the Public Utilities Commission (PUC) from considering costs and benefits to the environment of utility retrofitting, and limit the environmental value consideration of energy resources derived from outside the state. Assembly Member Moore (D-LA) has introduced **AB 3795**. This bill would prohibit the PUC from using environmental values in requiring the displacement of existing energy facilities. Both bills are in the Assembly Ways and Means Committee.

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## AIR QUALITY

**SB 352** would limit the power of air quality management districts. It provides that multi-county districts may only "consult with," or "comment on" environmental impact reports of cities or counties regarding planning, zoning, or approval of developments which are indirect sources. Specifically, the districts may not require a permit without express statutory authority. In committee.

## WATER

Held over from last year, **SB 1224** was passed in the Senate and is under consideration in the Assembly. The revised version of Senator Killea's (D-San Diego) bill provides that, "on or after 01/01/94," all toilets sold or installed in California must use no more than 1.6 gallons per flush.

Also a holdover, **SB 959**, the "Safe Drinking Water, Fish, & Wildlife Act of 1992," would impose an unspecified "surcharge" (tax) on water suppliers. The funds generated by the tax would be used for water-related environmental protection. In committee, still.

**AB 2473** is another water surcharge bill, this one new. This bill is intended to generate funds to offset costs to counties resulting from water transfers. For example, Yolo County has estimated that last year's export of 54,000 acre-feet of water ultimately cost the county \$129,305. These costs arise from the unemployment resulting from the fallowing of farmlands. **AB 2473** passed the Assembly and is under consideration in the Senate.

## COASTAL ISSUES

Instead of properly evaluating and mitigating environmental impacts of subtidal development, Sen. Robert Beverly (R-Redondo Beach) has proposed to let ports pay a flat "in lieu of" fee to the state. **SB 1677** lets ports pay a fee to avoid facing the delicate problems of degrading sub-tidal habitats and shifts the burden of mitigation to the state. This would encourage destructive development projects without considering the special problems of the particular development. In committee.

**AB 854** would create the California Coastal Sanctuary to include all state waters subject to tidal influence (except east of the Carquinez bridge). It would prohibit any state agency (with exceptions) from entering into any new oil or gas leases in the sanctuary unless the President has ordered the distribution of the Strategic Petroleum Reserve. This bill would subsume existing oil and gas lease restrictions and accommodate existing leases. **AB 854** was passed by the Assembly last year. It is stalled in the Senate.

**AB 614** would require the State Water Resources Control Board & the regional boards to develop and maintain a comprehensive program to identify and study toxic hot spots in enclosed bays and estuaries. The boards would then be expected to plan for the cleanup of the sites and amend water quality plans and policies that affect those sites. This bill is in the Senate Inactive File.

**SB 1062** is another two-year bill from last year that is still alive. This bill would exempt Disney from the Coastal Act and allow it to fill in 250 acres of coastal waters in Long Beach for another amusement park.



## WILDLIFE

The Assembly has passed the "California Dolphin Safe Tuna Act of 1992" (AB 1835). It failed in the Senate, but reconsideration has been granted. This bill would require tuna harvested in non-dolphin-safe methods to so note on the label.

Assembly Member Jackie Speier (D-So. San Francisco) has introduced the "California Biodiversity and Habitat Heritage Act." AB 2876 aims to maximize the use of presently existing information systems and coordinate agency functions to better identify and protect wildlife habitats. Potentially powerful protective results are suggested by the strong opposition this bill has generated in the Cattlemen's Association, the Chamber of Commerce, and timber industry workers. Presently in committee.

A refreshingly brief bill, AB 3145, has been reintroduced to change the name of the Department of Fish and Game to the Department of Fish and Wildlife. Former Governor Deukmejian killed the last version in 1990. This time around the bill has so far passed the Assembly and is now in the Senate Committee on Natural Resources and Wildlife.

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## TOXICS/HAZARDOUS WASTE

SB 611 provides another deadline extension for implementation of treatment standards mandated by the Resource Conservation and Recovery Act (RCRA). The bill exempts from the land disposal ban hazardous wastes subject to the as yet undefined treatment standards. The bill also directs the Dept. of Toxic Substances Control to identify the types of exempted hazardous wastes and the treatment capacity required to treat this waste. Signed into law April 8th.

SB 1143 requires owners and operators of hazardous waste facilities to obtain a permit from the Department of Toxic Substances Control. The bill exempts from this requirement household hazardous waste collection facilities operated by or under a public agency. Passed by Senate. In Assembly committee.

## CORPORATE CRIMINAL LIABILITY

Senator Ken Maddy (R-Fresno) attempted to significantly weaken the Corporate Criminal Liability Act (CCLA) with the introduction of SB 1747. The CCLA makes it a crime for corporate bosses to conceal information about dangerous products in the workplace, including toxics. The law imposes large fines on the company and jail time on the managers. SB 1747 would have exempted most California businesses (with under 250 employees) from many CCLA requirements and specifically repealed portions of it. Fortunately, AB 1747 was killed in the Senate Industrial Relations Committee.

## PERMIT REFORM

The admirably high standards imposed by California's environmental protection laws are implemented through very complex permit systems. At the request of Governor Wilson, the California Environmental Protection Agency (Cal/EPA) has issued "Draft Recommendations for Consolidating and Streamlining the Cal/EPA Permit Processes." At time of this writing, the comment period is open but will close soon (April 20th).

SB 2039 is the "spot bill" that will be used to provide any necessary legislative authorization for the recommendations. The draft language of the bill is roughly parallel with

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the recommendations. Some aspects are not likely to engender serious controversy. For example one recommendation is "to identify areas of potential conflict and duplication." Other recommendations and provisions will be hotly debated -- such as the "General Permit" concept. In this approach, the permits are adopted administratively, as an executive function, instead of through a rule-making process. This approach could severely limit both the openness of the process and judicial review. This is just the beginning of what is likely to be a very long, drawn out debate.

[*Editor's Note:* For the Wilson administration's perspective on this subject, see *California Competitiveness and Environmental Regulation: Up Close with James Strock*, at page 71.]

