

tion, the *Exxon Valdez* disaster and similar spills illustrate the dangers of oil exploration and transportation. President Bush should maintain his pledge and not be pressured into jeopardizing our future environmental resources to satisfy today's thirst for oil. The search for alternative fuels must be intensified.

Oil spill prevention remains the only way to manage the transportation of this hazardous material, because no foolproof cleanup methods have been discovered. Legislative efforts like California's should be applauded; however, the American consumer must realize that the true solution lies in a change of lifestyle. The legacy of the *Exxon Valdez* will stay with us for generations to come, but we must look at it through student's eyes and find lessons for the future.

REFERENCES

Anderson, Charles-Edward, *Oil-Spill Indictment: Exxon Claims No Criminal Liability For Wrongs of Subsidiary*, 76 ABA Journal, July 1990.

Anderson, Owen, *State Legislatures Continue to Enact Statutes Limiting Offshore Oil and Gas Development*, 5 Natural Resources & Environment, Summer 1990.

Brown, Corey, General Counsel to the Planning and Conservation League, interviewed in Sacramento on October 10, 1990.

Cross, Frank B., *Natural Resource Damage Valuation*, 42 Vanderbilt Law Review, 269 (1989).

Davidson, Art, *Valdez Reflections*, Sierra, May/June 1990.

Frommer, Dario and Torem, Adam, *The Petroleum Industry and the Marine Habitat: The Exxon Valdez Catastrophe and California's Options*, Vol.13:2 Environments, January 1990.

Halter & Thomas, *Recovery of Damages by States for Fish and Wildlife Losses Caused by Pollution*, 10 Ecology Law Quarterly 5 (1982).

Jones, G. Kevin, *Harvesting the Ocean's Resources: Oil or Fish?* 60 So. Cal Law Review 585 (1987).

Report of the Alaska Oil Spill Commission, *Spill: the Wreck of the Exxon Valdez, Implications for Safe Marine Transportation*, January 1990.

Roberts, Rich, "All That's Left is Spillover," L.A. Times, July 22, 1990.

Stone, Christopher D., *Should Trees Have Standing? Toward Legal Rights for Natural Objects*, Tioga Publishing Co., Palo Alto, 1988.

Swenson, Kenneth W., *A Stitch in Time: The Continental Shelf, Environmental Ethics, and Federalism*, 60 So. Cal. Law Review 851 (1987).

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Legislative Update 1991

by Andrew Sabey

INTRODUCTION

In an era seemingly dominated by propositions, environmental activity in California's legislature might easily be overlooked. However, in light of the fate met by environmental initiatives in the fall of 1990, it would be prudent for the environmentally concerned to

direct their resources to the Legislature. The single successful 1990 initiative related to environmental protection was the prohibition of gill net fishing within state waters.

While the Legislature is not likely to pass any laws as sweeping as "Big Green," or forestry restric-

tions as stringent as "Forests Forever," the single biggest obstacle to enactment of the myriad "environmental" bills has been removed: Governor Deukmejian. His predisposition to veto laws intended to protect the environment sent many bills to the dead letter office after they had wended their way through both houses of the Legislature. Nonetheless, the California Legislature was able to pass several historic bills pertaining to environmental protection, some of which have become law under Deukmejian's signature.

The environmental lobby promises to be quite active during the 1991 session as well. The following is a partial review of legislation from the 1990 session, including bills that became law and bills that failed. In addition, this article previews some of the proposals that the Legislature will consider in the 1991 session.

I. OCEAN PROTECTION

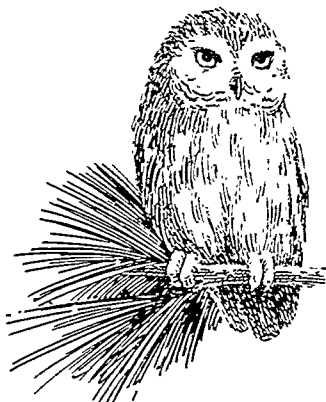
A. SB 2040 (Ted Lempert D-San Mateo)

Perhaps the most significant bill enacted into law during the 1990 session was the Lempert-Keene Oil Spill Prevention and Response Act (SB 2040). See "The Exxon Valdez: A Lesson Learned?" in this issue of *Environs* for a more complete analysis. In 1991, Assembly Member Lempert intends to carry legislation that essentially mirrors the ocean protection language in the failed "Big Green" initiative (minus the sections that were already enacted by the Lempert-Keene Act).

II. FORESTRY

A. AB 2585 (Byron Sher, D-Palo Alto)

In response to the timber industry practice of shipping timber out of the country for cheaper processing, AB 2585 would prohibit the sale of state-owned trees to companies that export trees out of state. The bill would also prohibit the state from buying wood products (like paper) from companies that export logs



or mill their California grown lumber out of state. The Sierra Club noted that support for this bill formed an unusual partnership between labor and environmentalists, "a mix of blue and green collars." Labor's primary motive is to preserve forest-product jobs in Northern California.

B. Ancient Redwood Protection

Forestry issues will be prominent in 1991. Proposition 130 ("Forests Forever") failed by a mere 150,000 votes. Much of the opposition was aimed at the expense of the bond provisions to buy large tracts of virgin redwood. However, the public generally supports the preservation of the ancient redwoods. Assembly Member Sher has already introduced AB 87 which would "prohibit until July, 1992, timber operations within any stand of ancient redwoods, as defined, which alone or in conjunction with any contiguous stand under public ownership measures 10 or more acres and which has never previously been subject to timber harvesting."

The Sierra Club has promised to push for legislation equivalent to the provisions of Proposition 130 and simultaneously to seek qualification of an initiative similar to Proposition 130 in order to ensure that California's ancient redwoods receive the protection they deserve.

C. AB 54 (Assembly Member Friedman, D-Los Angeles)

This bill would mandate that local agencies prohibit the removal of environmentally or culturally significant trees or impact on their habitat except by permit. Permits allowing the removal of a protected tree would "be conditioned with the replacement of trees in kind." In addition, anyone who constructs a commercial or residential project would be required to plant one tree for each 500 square feet of the project.

III. LAND-USE

A. AB 2460 (Tom Hannigan, D-Fairfield)

AB 2460, which did not pass the Assembly, was a land-use planning bill that attempted to hinge the approval of new development on the local agency's finding that adequate financing exists to provide the new population with facilities such as transportation, schools, sewerage, and water supply. The proposal states that, "No city, county, or city and county shall

approve a development project unless . . . it finds, based on substantial evidence in the record, which method will be used to finance the roads schools, water and sewer facilities directly related to and made necessary by the development project." The goal was to ensure that infrastructure needs were not overlooked by local agencies when approving new developments.

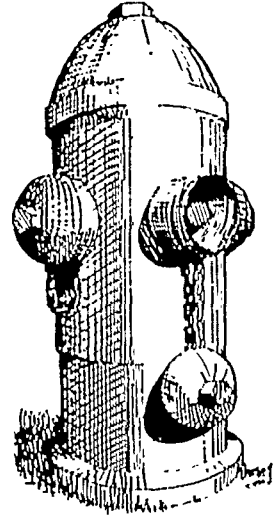
Three or four major bills are expected to address land-use planning issues in the 1991 session. Two of the bills are now in print.

B. AB 3 (Assembly Member Willie Brown, D-San Francisco)

AB 3 would create a statewide planning agency called the State Growth Management Commission. The Commission would succeed to the powers and duties of local and regional transportation and planning agencies, air quality management boards and water quality control boards for specified purposes. The Commission would prepare a State Conservation and Development Plan which the Commission would use to evaluate proposed development. The Commission's statewide jurisdiction reflects the realization that problems such as traffic congestion, sewage and waste disposal capacity, and deteriorating air quality transcend local government boundaries. The Commission would establish seven geographic regions and a "regional development and infrastructure agency" for each region. By establishing a statewide plan and a statewide agency to enforce the plan, it is hoped that land-use issues will be examined in light of their overall impacts.

C. AB 76 (Assembly Member Sam Farr, D-Monterey)

This bill would abolish the Governor's Office of Planning and Research and replace it with the Governor's Office of Research. Planning authority would then be vested in the Planning Agency headed by the Secretary of Planning. The new office would prepare a State Planning Report. Each city, county and regional agency would submit to the Planning Agency a report indicating the degree to which its approved general plan complies with the State Planning Report. The bill would also establish a separate Department of Environmental and Plan Review to review and coordinate environmental documents and ensure conformance with the State Planning Report. The bill would



" Courtney Smith From "RE:SOURCES"

also empower the Planning Agency to designate new regional planning districts, and to revise the definition of a regional plan.

IV. RECYCLING

A. SB 2090 (Gary Hart, D-Santa Barbara) and AB 3050 (Burt Margolin, D-Los Angeles)

These identical bills were introduced in their respective houses intending to increase the number of containers covered by California's "two-for-a-nickel" refund program. Margolin authored the original refund act in 1986, and Hart authored last year's refund increase from one-cent, to two-for-a-nickel. These bills would bring all beverage containers including wine, liquor, fruit and vegetable juices and milk under the refund program. According to Sierra Club analysis, the most significant feature of the new laws would be the creation of new markets for milk jugs (high density polyethylene HDPE), milk cartons (plasticized paperboard), and fruit juice pouches (aseptic containers). The law would require beverage manufacturers to pay a ``processing fee'' to help pay the recycling cost, thereby guaranteeing that collectors will receive a fair return. Currently these container types have only a limited recycling market.

V. SOLID WASTE

A proposed bill for the 1991 session would impose an "advanced disposal fee" on all products sold in stores that will require disposal in landfills. While

the details are not yet available, the bill apparently would establish various fees for different products based on their packaging and their recycling potential. The fee would be included in the purchase price at the check-out. The more wasteful packaging a product carries with it, the higher the fee. According to one Sierra Club analyst, the bill may find a wide array of support. Environmentalists see it as an attempt to internalize the cost of waste disposal. Manufacturers see it as an alternative to all-out bans on certain products, and more equitable than laws that key on one particular product while ignoring others. (Maine recently banned aseptic containers because they are not recyclable.) Distributors approve of statewide action that will preempt individualized local programs that would be difficult to comply with.

VI. AIR TOXICS

A. SB 46 (Art Torres, D-Los Angeles)

To be considered this session, SB 46 would change the existing State Toxic Air Contaminants Program which is currently administered jointly by the Air Resources Board (ARB) and the Department of Health Services (DHS). The ARB identifies the toxic substance and the DHS adopts control measures to reduce emissions for all toxics except pesticides. Air toxics which are pesticides are currently regulated through the California Department of Food and Agriculture. This bill would bring regulation of pesticides under the ARB and would require that the identification and control process be completed by specific dates. If the identification and control process is not completed within the prescribed time limit, the suspected toxin is automatically identified as an air toxic. In addition, the bill would redefine "cancer causing air contaminant" to include all chemicals identified as carcinogens by Proposition 65.

VII. HAZARDOUS WASTE

A. AB 3749 (Byron Sher D-Palo Alto)

This sensible proposal was a victim of Deukmejian's veto. The bill would have established a nickel-a-quart deposit for motor oil sold in the state and provided incentives for retailers to become collecting points for used oil. Currently, less than half of the 140 million gallons of oil used in the state is recycled. Although both environmental and industry groups

supported the bill, Deukmejian's veto message asserted that the new program would have little benefit, while imposing significant costs on the public.

VIII. TRANSPORTATION

A. SB 1905 (Gary Hart, D-Santa Barbara)

Known as the "DRIVE + program," which fell victim to Gov. Deukmejian's veto last session, it is expected to be reintroduced this session under a new bill number. The bill would enact a program called Demand-based Reduction in Vehicle Emissions, plus reduction in carbon dioxide. Basically, the bill would levy sales tax credits or surcharges on the sale or lease of a new automobile based on the level of specified pollutants the auto emits. The sales tax would be calculated according to the amount the car's emissions exceed the sales weighted average for all models in three general groupings: automobiles, light duty trucks and medium duty trucks. The Department of Motor Vehicles would collect the tax and use it to administer the program.

IX. MINING

A. AB 3551 (Byron Sher, D-Palo Alto)

This bill revamped and reinforced California's Surface Mining and Reclamation Act (SMARA). The changes include new requirements that an Environmental Impact Report be prepared before open pit gold-mining using the "cyanide heap-leach process" may be approved. The bill also establishes a fee structure to help local governments implement SMARA, gives local agencies the power to issue "cease and desist" orders, and allows violators to be assessed up to \$5,000 per day in civil penalties. Further evolution of the law is expected in 1991, as the State Mining and Geology Board issues new regulations.

X. WETLANDS

Governor Deukmejian vetoed a series of wetlands bills including one that would have established a series of wetlands mitigation banks (SB 344 McCorquodale, D-San Jose) and one that would merely have required a survey of all state-owned wetlands (AB 4326 Isenberg, D-Sacramento). The Governor did sign AB 4325 and AB 4328 (Baker, R-Walnut Creek), which established an Inlands Wetlands Conservation Program under the Wildlife Conservation Board and directed the State Water Board to

identify sources of reclaimed water available to the central valley wildlife refuges.

CONCLUSION

With a new governor comes renewed hope from the environmental community that real progress can be made in protecting California's natural resources. Governor Wilson promised, among other things, to establish a California Environmental Protection Agency, modeled after the federal EPA. Such an agency could bring sorely needed organization to an otherwise fragmented distribution of responsibility for enforcing California's environmental protection laws.

Also, the five year drought promises to make water issues prominent in 1991. Senate President *Pro Tem* David Roberti, (D-Los Angeles) has promised to introduce a comprehensive water policy bill this session. Sen. Roberti was quoted by the Sierra Club, "I just think to have a realistic water program we're going to have to discuss pain for everybody."

Andrew Sabey is a second year student at King Hall and legislative analyst for the Environmental Law Society. Andrew wishes to give special thanks to Dario Frommer, also a second year student at King Hall, and Gordon E. Hart, a legislative representative for the Sierra Club.



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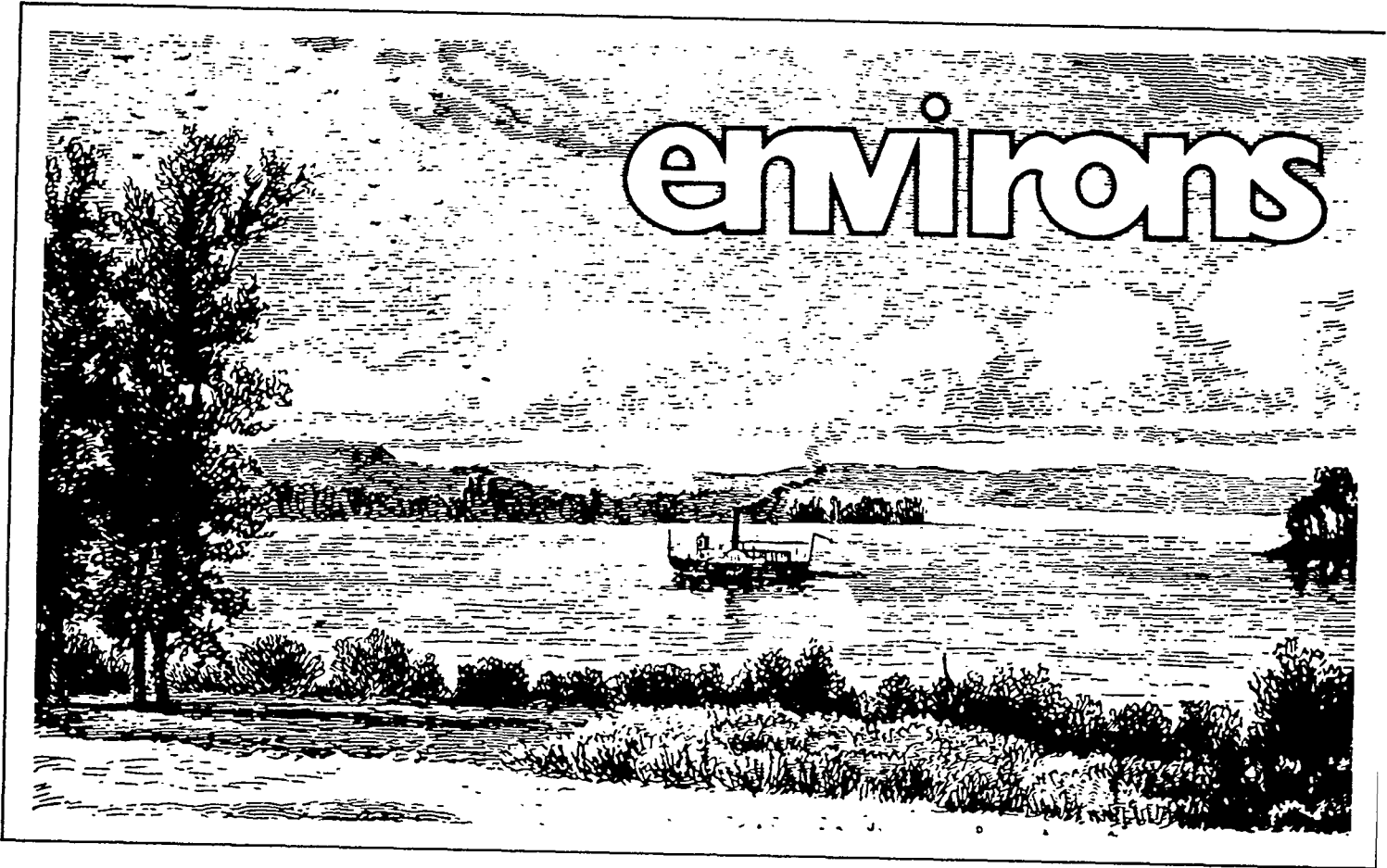
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