

CALIFORNIA LEGISLATIVE UPDATE 1991

by Sheryl Schaffner Freeman

Much of the following information is obtained from the Sierra Club's California Headquarters in Sacramento. Our deepest gratitude to Gordon Hart for sharing this information with us. *Ed.*

Forestry: Sierra Accord Vetoed

After nearly a year of negotiation with logging and environmental interests, the Legislature passed a compromise forestry reform package known as the Sierra Accord. The Accord would have protected ancient forests and required sustained yield practices (this is the practice of cutting no more trees than are grown, to assure a continuous supply indefinitely).

The Accord reflected a great deal of give and take on both sides. These accommodations included 80 amendments suggested by Governor Wilson, plus additional weakening amendments pushed by out-of-state timber companies. In the end, the bill had the support of 65% of the timber land owners.

Ultimately, Governor Wilson vetoed the legislative package. The reasons he gave were: all his amendments were not included; the law was not "flexible" enough; and could lead to economic hardship on the timber companies, their employees, and local governments. He vowed, however, to continue to pursue forestry reform. Watch for more ballot box timber wars.

Rail Safety & Toxic Spill Response

Long overdue rail safety reforms were jolted to life by two catastrophic toxic spills from Southern Pacific trains last summer. The Legislative response included five bills, four of which the Governor signed (SB 48, AB 151, SB 152, and AB 684). The bills provide for, among other things: better information to be carried by the shippers regarding their hazardous cargo; an expanded list of chemicals which require special handling; and PUC identification of potentially hazardous rail sites with proposal of appropriate regulations regarding these sites. Also addressed are railroad and trucker fee financing for these new requirements and a "Toxic-Spill Strike Force" to handle toxic spill emergencies.

Filling the Pesticide "Data Gap"

The train spill on the Sacramento River of the pesticide metamsodium also prompted overdue action on pesticide health effect "data gaps." Pesticide manufacturers have been largely ignoring the Birth Defect and Prevention Act of 1984. This Act aimed to require manufacturers to provide all relevant information about the health effects of their pesticides. The Act was given some teeth in this legislative session with SB 550 and AB 1742, which set deadlines for providing the required information. Loss of the right to use the pesticide in the state would be the result of missing the deadline. This legislation was signed by the Governor.

Veto Kills Corporate Criminal Probation Bill

SB 260 would have allowed courts to place corporations on probation if they were convicted of a serious violation of a worker safety, environmental or financial law. This would enable the courts to prevent repeat offenses through monitoring and specific probation terms.



However, Governor Wilson vetoed the bill saying it was redundant because the courts can already impose probation. Presently, however, the courts can only do this if the convicted corporation consents to the probation.

Toxics & Hazardous Wastes

The following bills were passed and signed in this area:

AB 240, with significant support from Wilson Administration officials, was crafted to hurdle potential Constitutional obstacles to provide some protection for Indian Lands. The bill authorizes "cooperative agreements" between the Cal EPA Secretary and tribes. The agreements effectuate public health and environmental regulations regarding solid and hazardous waste facilities by contractual obligation. This hopefully avoids the delicate question of applying state law to Indian reservations while providing some protection from abusive dumping practices.

AB 2038 establishes a program to prevent lead poisoning in children.

AB 1475 requires hazardous waste recycling operations which are exempted from hazardous waste laws to inform local health departments of their activities and why they are exempt.

AB 1613 eliminates "grandfathering" of established hazardous waste facilities, requiring them to upgrade to code requirements.

Also addressing toxics the following bills are to be reconsidered next year:

SB 611 would require exported hazardous wastes to meet state standards.

SB 51 would establish in Cal EPA an Office of Pollution Prevention.

SB 1143 would impose a fee on hazardous household products to pay for their disposal.

Air Quality

Under **AB 1378**, beginning next year, rice growers in the Sacramento Valley Air Basin will have to reduce rice straw burning by about ten percent a year. The reduction requirements will bottom out in the year 2000 when the growers will be allowed to burn 25% of their crop if they can prove the need to destroy crop disease. A very unconventional aspect of the bill allows for air quality "offsets" in spite of the fact that these are not voluntary emissions reductions.

AB 859 phases out CFC-based air-conditioning in new vehicles over a two year period.

AB 927 shifts funds to assist small businesses in purchasing pollution control equipment.

An effort to weaken air quality districts' indirect source control authority (**SB 352**) became a two-year bill.

In the meantime, Air Quality Districts were given greater authority, including powers to: request information from in and out-of-state chemical suppliers whose chemicals result in air emissions (**AB 157**); review a discharger's compliance history with state and federal air quality laws and base permit renewal on that record (**AB 158**).

With **SB 124**, eight valley air pollution control programs will be consolidated by July 1992 into the San Joaquin Valley Air Quality Management District. **SB 124** provides much needed protection for Sierra Nevada Mountain air quality and emphasizes clean fuels programs.

SB 431 (Sen. Hart's "DRIVE Plus" program) made a comeback attempt this year, after being vetoed last year by Governor Deukmejian. The program would provide for a variable sales tax on new cars. There would be a higher tax rate for guzzling/high emitting cars, and a lower rate for the more fuel-efficient/less polluting cars. It was converted into a two-year bill.

Coastal Issues

After eight years of malign neglect, the Coastal Commission received emotional, if not financial sustenance. Governor Wilson's budget proposal to the legislature proposed a modest increase in the Commission's budget after years of slashing by former Governor Deukmejian. This significant gesture was curtailed by budget woes, but the Commission still managed to come out of the year as one of the few agencies that did not have their budgets cut.

The Coastal Commission was also given a boost by SB 317. This bill enables the Commission to file cease-and-desist orders to halt illegal development activities without having to go to court. This provides the immediacy of power necessary to prevent irreparable harm under their jurisdiction.

SB 283, however, was vetoed. It would have provided better deterrence against Coastal Act violations by increasing the fines and penalties available.

The south coast received protection against new oil and gas development leases in state-owned lands (AB 888). In the meantime, similar protection for the entire coast will be back for reconsideration next year (AB 854 and AB 614).

After a bruising public uproar, Disney, Inc. shelved (at least temporarily) SB 1062. The bill would exempt Disney from the Coastal Act, allowing it to fill in 250 acres of coastal waters in Long Beach for another amusement park. It was quickly converted into a two-year bill.

Water

After many years of similar attempts, SB 229 requires water meters to be installed in all new buildings beginning next year.

Legislation on hold for the next session includes: SB 1224 which would require the installation of low-flush toilets when a house is sold; SB 959, which would impose a small fee on each acre foot of water sold by retailers. The funds would go to environmental programs. Both bills are now two-year.

Unfortunately, AB 2090 which would remove some legal barriers to water rights transfers, was killed this year.

Recycling Highlights

SB 235 aims to increase plastic container recycling by providing manufacturers with alternate requirements. The choices include: using recycled materials, recycling some of their products, or reduce the amount of plastic used per container.

AB 2076 requires a four-cent deposit per quart of oil sold in California. The surplus deposits will help set up oil recycling programs.

Energy

SB 1214 the Energy Commission must develop a transportation fuels policy that focuses on energy efficiency and diverse fuels. It was passed this year.

SB 1212 would have fulfilled Governor Wilson's stated desire to convert the state vehicle fleet to low-emission or alternative fuels, but it was vetoed.

Growth Management

Waiting for Governor Wilson to obtain and review recommendations by his Growth Management Council, all regional governance/growth management bills introduced this year have been turned into two-year bills.

Administrative Notes

Fuel Regulations

The California Air Resources Board approved new fuel regulations. The rules change gasoline content specifications. The changes are expected to remove 1,500 tons a day of

State Resources Secretary Douglas Wheeler heads an "Executive Council on Biological Diversity" which will divide the state into 11 "bioregions."

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pollutants and reduce cancer risks from benzene and other compounds by one-fourth. This is expected to cost the average driver about \$90 per year in increased fuel costs. Health care cost savings were not estimated.

Bioregional Management

As part of a gradual, hesitant state trend toward bioregionalism, leaders of ten state and federal agencies signed an agreement forming the "Executive Council on Biological Diversity." The council is headed by state resources secretary Douglas Wheeler and includes the state departments of Fish and Game, Forestry and Fire Protection, Parks and Recreation, the state Lands Commission, the federal Bureau of Land Management, Fish and Wildlife Service and Forest Service, and the University of California's Agriculture and Natural Resources Division. The goals of the council include: dividing the state into eleven regions based on biological geography; drawing up nature and wildlife protection plans; coordinate biological conservation efforts with local governments; and to provide an arena to work out compromises on development issues, hoping to avoid legal battles. The agreement provides for no specific enforcement mechanisms.

Dual Plumbing Ordinances

The San Francisco Board of Supervisors passed ordinances that require large developers (commercial and residential developments over 40,000 sq. ft.) to install dual plumbing. The dual plumbing system is designed to handle potable water for drinking and washing and nonpotable water for irrigation and toilets.

LEGISLATIVE UPDATE: FEDERAL ACTIVITY IN 1991

by Danae Jean Aitchison

In November 1990, Congress ended a ten-year stalemate on rewriting the Clean Air Act when it passed legislation imposing stricter standards on urban smog, automobile exhaust, toxic air pollution, and acid rain. Unfortunately, the political battle over clean air forced other important environmental legislation to the sidelines. As 1991 began, Congress faced the prospect of needing to rewrite three of the nation's major environmental laws during the next few years: the Resource Conservation and Recovery Act (RCRA), the Clean Water Act and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). War in the Persian Gulf, coupled with recent completion of clean air negotiations, produced a difficult political setting for promoting the environmental agenda. However, much legislative activity on environment took place during the first half of the 102nd Congress; selected highlights of 1991 follow.

CABINET STATUS FOR THE EPA (S. 533)

The Senate passed a bill on October 1 that would transform the Environmental Protection Agency (EPA) into the Department of the Environment. The agency's goals would not change, but as a department, the agency would assume leadership in negotiating international environmental agreements and take over the duplicative environmental efforts now carried out by other federal agencies. President Bush has indicated that if the bill becomes law, William K. Reilly, EPA's current administrator, will become the first Secretary of the Environment. The House Government Operations Committee waited to act on a similar bill

until after the Senate had passed S. 533. The House will not, most likely, vote on a bill before the end of 1991.

CALIFORNIA DESERT PROTECTION ACT (HR 2929)

The House Interior Committee approved HR 2929 on October 16 by a 28-16 vote. The bill would turn 4.3 millions acres of Interior Department Bureau of Land Management land into 76 national wilderness areas. It would also expand Death Valley and Joshua Tree National Monuments into protected national parks, and would turn 1.5 million acres of the East Mojave Desert into a national monument. No Republican committee members voted for the bill. Republicans and the Bush Administration oppose the measure because it limits recreational and commercial activity on the land. Proponents of the bill say the desert is being destroyed by off-road vehicles and mining, and therefore needs the protections afforded by the bill. The House rejected the Administration proposal for not protecting enough desert land. In the Senate, Alan Cranston (D-CA) has sponsored a similar bill, S 21. The Senate Energy and Natural Resources Subcommittee is unlikely to consider the bill until Cranston and John Seymour (R-CA) agree on acceptable language. Seymour supports desert protection, but may not be willing to support the expansive protection of 10 million acres which Cranston advocates.

CALIFORNIA FISH AND WILDLIFE PROTECTION ACT (HR 1306)

Congressman George Miller (D-CA) introduced HR 1306 in the House in March. This bill seeks to protect and restore fish and wildlife in California's Central Valley by changing how Central Valley water is used. HR 1306 makes fish and wildlife equal partners in water use with farmers and cities. It provides economic incentives for farms to conserve water and prevent toxic runoff, and prevents federal agencies from locking up federal water supplies for more than three years until fish and wildlife improvements occur. In addition, the bill requires compliance with the North American Waterfowl Management plan, and requires efforts to double salmon and steelhead populations by the year 2000. Senators Bill Bradley and Alan Cranston have introduced similar legislation in the Senate. These bills are extremely important because they offer plans to help mitigate destruction of the Central Valley ecosystem which has been aggravated by continuing drought conditions. The House and the Senate will most likely postpone action until January.

CLEAN WATER ACT (PL 92-500)

Congress began to work on reauthorization of the Clean Water Act in March but did not get very far. The clean water law expired in September 1989, and was last reauthorized in 1987. Senate Environment Public Works Committee member Max Baucus, (D-MT) and ranking Republican John Chafee of Rhode Island prepared a bill to introduce to Congress in April. The House Public Works and Transportation Committee held hearings on clean water in March. The contentious issues in rewriting the Clean Water Act deal with controlling storm drain overflow in cities, funding projects for badly needed municipal sewage treatment plant upgrades, reducing non-point sources of pollution, and defining wetlands. Possible changes being considered include new taxes to discourage bad land management practices, and outright bans on commonly used industrial chemicals.

Wetlands: President Bush caused a furor in August when he announced a proposal to change the rules in a manual that federal agencies use to define wetlands. Under Section 404





of the Clean Water Act, landowners must obtain a permit from the Army Corps of Engineers before developing any property meeting the definition of a wetland. The definition of wetlands was widened in 1989 when the Army Corps of Engineers, the EPA, The Fish and Wildlife Service, and the Soil Conservation Service adopted a wetlands delineation manual. Many consider the wetlands definition as it now stands to be too broad. Opponents specifically attack the fact that federal agencies have turned the water law into a national lands policy. Bush's proposed changes would affect the 274 million acres of wetlands that currently exist, denying federal protection to as much as half. Representative Jimmy Hayes (D-LA) introduced HR 1330 in the House with 52 co-sponsors. The bill would limit the role of the EPA in regulating wetlands, would prioritize wetlands by their ecological value, and allow destruction of a wetland if the developer restored another wetland. In the Senate. The Bush Administration recently retreated from its plan after field studies confirmed it would remove protection from nearly half of the nation's wetlands.

ENDANGERED SPECIES ACT (PL 93-205)

The northern spotted owl was in the news again this year. The government declared it a threatened species in June 1990. Under the Endangered Species Act of 1973, the government must protect the species from hunting, trading, or federal action that could destroy its breeding and feeding grounds. In addition, the government must work toward recovery of the species by producing a recovery plan. Economic considerations *can* be weighed in the recovery plan. On April 29, the Fish and Wildlife Service announced a proposal to declare 11.6 million acres of forest in Oregon, Washington, and Northern California as "critical habitat" needed for the owl's survival. The Service expected to dramatically reduce the acreage once it incorporated economic effects into the proposal. On May 23, U.S District Judge William Dwyer of Seattle barred logging on 66,000 acres of old-growth forest inhabited by the northern spotted owl. Dwyer criticized refusals by the Forest Service and the Fish and Wildlife Service to comply with the Endangered Species Act by promulgating a comprehensive owl recovery plan. By the end of May, several bills had been introduced in the House offering solutions to the timber crisis. The main House bill, HR 1590, would set aside a 6.3 million acre old-growth preserve while also guaranteeing approximately 3 billion board feet of timber for annual sale. Further, the bill would provide economic assistance to rural communities dependent on the timber industry. A compromise measure sponsored by a coalition of Northwest lawmakers was billed as a similar but more flexible approach. HR 2807 differs from HR 1590 mainly because it sets aside areas of habitat based on maps drawn by a scientific panel studying the owl and establishes a new federal board of land appeals in an effort to avoid court battles.

Congressional activity to end the owl crisis was overshadowed in June when the Fish and Wildlife Service halted 44 timber sales on Bureau of Land Management Land that is also owl habitat. Logging representatives said the sales freeze could result in layoffs and mill closings in areas already seriously hit by closing public forests to logging. In response, Bureau of Land Management (BLM) Director Cy Jamison requested that Interior Secretary Manuel Lujan convene the Endangered Species Committee to decide if human and economic factors outweigh the continued protection of the northern spotted owl. On October 1 Lujan agreed to convene the Endangered Species Committee, known as the "God Squad," to decide the fate of the 44 timber sales on BLM land. Lujan had 140 days to hold formal hearings on the application and prepare a report to the Committee. The committee has another 30 days to meet, and to decide if the 44 BLM timber sales should be allowed.

NATIONAL ENERGY POLICY

War in the Persian Gulf focused Congressional and Administration attention on the urgent need for a national energy policy. The Senate quickly began work on the issue at the opening of the 102nd Congress. Three proposals were put together in 1991, one from the president, one from the Senate, and one from the House.

Administration Plan

President Bush revealed his 214 page energy strategy on February 20, 1991. The plan called for increased domestic energy production and new foreign suppliers. Key proposals included: opening up a portion of the Arctic National Wildlife Reserve (ANWR) to gas and oil drilling, loosening regulations on Public Utility Holding Companies, encouraging more nuclear power production by streamlining federal licensing procedures for plants, and increasing the number of private automobile fleets that run on alternative fuels. The plan was heralded by President Bush and Secretary of Energy James D. Watkins as a balance between conservation and production, however few conservation measures were mandated. Mandatory increases in automobile fuel efficiency, tax incentives for renewable energy and conservation, and gasoline and import oil taxes were conspicuously missing.

Senate Plan

The main Senate energy bill was introduced in early February by Senate Energy and Natural Resources Committee Chairman J. Bennett Johnston (D-LA) and Senator Malcolm Wallop (R-WY). The original draft bill, S. 341 (later S. 1220), combined two controversial and opposing issues, oil and gas drilling in the ANWR, and mandatory increases in Corporate Average Fuel Efficiency (CAFE). The Johnston-Wallop strategy was to produce an energy bill that would provide environmentalists and industry with some of their demands. It was, however, widely criticized by both interest groups. In addition to allowing drilling in ANWR and requiring higher CAFE standards, the original draft bill included provisions to require importers to set aside a percentage of their imports to fill the Strategic Petroleum Reserve, proposals to streamline nuclear power plant licensing, and proposals exempting wholesale electric power producers from regulation under the Public Utility Holding Company Act to boost competition and efficiency.

During markup sessions, the Senate Energy Committee rejected specific targets for alternative fuel use. Committee members also refused to require auto makers to produce more fuel-efficient cars. Members approved the controversial provisions allowing drilling in ANWR, restructuring of the electric utility industry, and streamlining the nuclear licensing process. The committee approved the final bill on May 23, but it did not reach the Senate floor for debate until late October. On November 1, opponents of the bill, particularly the ANWR drilling provision, managed to shelve it by threatening a filibuster. When sponsor Senator Bennett Johnston moved to end debate, he was ten votes short of the number required to end delaying tactics and bring the bill itself to a vote.

House Plan

The House bill, HR 1543, was engineered by Philip R. Sharp (D-IN). The House Energy and Commerce Subcommittee on Energy and Power began to mark up the omnibus bill in sections on July 17. HR 1543 resembles the Senate bill S. 341, but is narrower in scope. It includes provisions for a mandatory oil set-aside program designed to increase the Strategic Petroleum Reserve, federal funding for research and development of clean-coal technology, streamlining the licensing process for a proposed nuclear waste dump in Nevada, and restructuring of the electric utility industry. The bill also incorporates features favorable to environmentalists, such as a tax credit for energy produced from renewable resources and

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minimum energy efficiency standards for some products. The House has not yet voted on HR 1543, and will likely wait until Congress reconvenes in January.

RESOURCE CONSERVATION AND RECOVERY ACT (PL 98-216)

Authorization for RCRA, the nation's law governing disposal of solid and hazardous waste, expired on September 30, 1988. Congress had funded RCRA since 1988 with annual appropriations. In 1990 a rewrite was postponed because key members of Congress were absorbed in the Clean Air Act rewrite. The main issues for a RCRA rewrite will focus on how to handle overflow from the nation's landfills, how to dispose of municipal incinerator ash, and whether states should be able to export their municipal and hazardous waste to other states. Other issues include adding a groundwater protection provision, allowing greater flexibility in landfill design for states, requiring federal control over wasteful manufacturing and excessive packaging, and instituting national bottle recycling.

Senator Max Baucus (D-MT) and Chairman of the Senate Environment and Public Works Subcommittee on Environmental Protection, circulated a draft bill, S. 976, in April. The draft, co-written by Baucus and Senator John Chafee (R-RI) called for at least half of all municipal garbage to be recycled by the year 2000. It would also give EPA broad authority to set regulations on classifying and handling hazardous wastes, and would allow states with approved trash-management plans to ban imports of garbage from less regulated states. The subcommittee held a series of ten hearings on RCRA reauthorization before starting markup on the bill. At the last hearing on September 17, EPA administrator William K. Reilly announced the administration's opposition to Congress' effort to rewrite RCRA. Despite this blow, Congress is committed to passing new solid waste legislation as soon as possible.

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