CALIFORNIA STREAMLINES ENDANGERED SPECIES RESTRICTIONS

Three recently enacted bills amend the California Endangered Species Act to address longstanding concerns of landowners. The bills confirm the state's authority to allow "incidental takings" of endangered species, ease restrictions on farmers and ranchers engaged in routine activities, and reduce duplication between state and federal programs.

The Department of Fish and Game has for years issued memoranda of understanding to landowners authorizing them to "take" endangered species incidental to otherwise lawful activities like farming, ranching and developing land. The Department's authority to do so, however, was recently called into question by two court decisions. Senate Bill No. 879 resolves this uncertainty by establishing the Deparment's authority to permit "incidental takes" and grandfathering the previous memoranda of understanding. The bill also prescribes that the "impacts" of any authorized take must be "minimized and fully mitigated." Measures required to meet this obligation must "be roughly proportional in extent to the impact" and "maintain the applicant's objectives to the greatest extent possible."

Senate Bill No. 231 offers farmers and ranchers some relief from endangered species restrictions. The bill directs the Department to adopt regulations authorizing locally designed voluntary programs for "routine and ongoing agricultural activities." Those programs must include management practices that avoid and minimize the take of listed and "candidate" species and encourage the enhancement of habitat. Any taking of such species incidental to routine and ongoing agricultural activities that occurs while the management practices are followed is not prohibited. Moreover, apart from any such program, any "accidental" taking of listed and candidate species resulting from "inadvertent or ordinary negligent acts" on a farm or ranch in the course of otherwise lawful routine and ongoing agricultural activities is not prohibited.

Assembly Bill No. 21 streamlines endangered species regulation by eliminating the need for both state and federal permits to authorize the same incidental take. Under the bill, if any person obtains authorization from the federal government to take a species, then "no further authorization or approval is necessary" under the California Endangered Species Act. To secure the benefits of this provision, however, the person must notify the Department and provide a copy of the federal authorization. The Department then has 30 days to determine whether the federal authorization is "consistent" with the state statute. If the Deparment determines that it is not, then taking will require a state permit.

The Department is preparing implementing regulations to establish procedures and policies for incidental take permits and farming and ranching programs. It hopes to propose them in time for final adoption by July 1998. Among the issues likely to be addressed are: To what extent will environmental review under the California Environmental Quality Act be required for incidental take permits? Will such permits include a "no surprise" provision, as federal permits do, precluding the imposition of new or additional mitigation measures except in extraordinary circumstances?