

# Environmental Law Reporter

JUNE 2005  
VOLUME 2005 ISSUE NO. 6

## COMMON LAW AND ENVIRONMENTAL PROTECTION

An agreement between the California State Lands Commission and the City of Long Beach to transfer three acres of tidelands out of the public trust and exchange them for other lands did not comply with statutory requirements (p. 242)

## THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

Irrigation districts did not violate CEQA by adopting negative declarations with respect to their assignments of water rights to the City of Tracy to provide water supplies for future development (p. 245)

## HAZARDOUS WASTE AND TOXIC SUBSTANCE CONTROL

The U.S. Supreme Court held that defective design, defective manufacture, negligent testing, and breach of express warranty claims alleged by farmers against a pesticide manufacturer were not preempted by the Federal Insecticide, Fungicide, and Rodenticide Act because they were not premised on "requirements for labeling or packaging" (p. 253)

## LAND USE AND ENVIRONMENTAL PLANNING

Malibu beachfront property owners were denied permissive intervention in an action by a next-door neighbor challenging the acceptance of offers to dedicate vertical and lateral easements providing public beach access (p. 257)

## THE 2005 ENVIRONMENTAL LEGISLATIVE FORECAST — HEAVY LIFTING ON SHAKY GROUND

*By*  
*Gary A. Lucks, J.D.\**

Governor Schwarzenegger began the 2005-2006 legislative session with wide-ranging support from the state electorate. Riding a wave of unprecedented popularity, the governor threatened the Democrat-controlled legislature by promoting initiatives to weaken their legislative juggernaut. He promised to redraw legislative districts to foster more competitive races, move the full-time legislature to part-time status, and dramatically recast California's governmental structure. In a stunning reversal of fortune, the governor's popularity has dropped precipitously, and he now faces a reinvigorated legislature willing to take him on.

The governor, meanwhile, has been forced to shelve many of his grand plans. He had to scrap a ballot initiative to revamp the public pension system when organized labor responded to the plan with a buzzsaw of opposition. And he recently abandoned his agency restructuring proposal in light of opposition from legislators and a wide range of public interest groups. Nonetheless, the governor continues to press for a special election in November for other initiatives he hopes will improve his standing.

Despite the distractions of this political theater, which has garnered splashy headlines for the last several months, the legislature is in full swing, entertaining bills on energy, air quality, land use, housing, and hazardous materials.

---

\*Gary A. Lucks, J.D., is a Principal at BEYOND COMPLIANCE, LLC in Oakland, California, where he advises clients on multimedia environmental regulatory compliance and sustainability. He is a regular instructor at the University of California (U.C.) Berkeley and U.C. Davis Extension Program, where he teaches courses on environmental law, legislation, auditing, compliance, and sustainability. He is also a member of the California Bar Environmental Legislation Committee.

## COMMON LAW AND ENVIRONMENTAL PROTECTION

Land Exchange Agreement Transferring Land Out of Public Trust Failed to Meet Statutory Requirements ( <i>California Earth Corps v. California State Lands Commission</i> ) . . . . .	242
--	-----

## THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

REVIEW GRANTED: Adoption of Air Force Base Land Use Compatibility Plan Is Project Subject to CEQA ( <i>Muzzy Ranch v. Solano County Airport Land Use Commission</i> ) . . . . .	245
EIR Not Required for Assignments of Water Rights ( <i>Sierra Club v. West Side Irrigation District</i> ) . . . . .	245

## AIR QUALITY CONTROL

Regulatory Activity . . . . .	252
-------------------------------	-----

## HAZARDOUS WASTE AND TOXIC SUBSTANCE CONTROL

No FIFRA Preemption of Common Law Causes of Action Against Pesticide Manufacturer ( <i>Bates v. Dow Agrosciences LLC</i> ) . . . . .	253
--	-----

## LAND USE AND ENVIRONMENTAL PLANNING

Neighbors Denied Intervention in Action Challenging Acceptance of Offer to Dedicate Beachfront Easement ( <i>City of Malibu v. California Coastal Commission</i> ) . . . . .	257
Regulatory Activity . . . . .	259

## SOLID WASTE MANAGEMENT

Regulatory Activity . . . . .	259
-------------------------------	-----

## CUMULATIVE SUBJECT INDEX . . . . . 260

## CUMULATIVE TABLE OF CASES . . . . . 261

*text continued from page 223*

### Government Restructuring

When the governor's draft report proposing to restructure California's vast governmental bureaucracy emerged last summer, it received a cool reception from the state's independent oversight agency, the Little Hoover Commission. The recommendations, which called for abolishing 88 boards and commissions, also met with resistance from legislators from both sides of the aisle. The environmental

community opposed abolishing the independent boards that implement the state air quality, water quality, and waste management programs. Despite the noble goal of promoting government accountability, efficiency, and elimination of outdated and collateral programs, the California Performance Review (CPR) initiative has lost all momentum at present.

Nonetheless, the legislature has cherry-picked those CPR recommendations for environmental agencies that enjoy some level of consensus. For example, assembly bill (AB) 1546 (Hancock) would create a Department of Environmental Management within the California Environmental Protection Agency (Cal-EPA). The reconfigured Cal-EPA would consolidate the Department of Toxic Substances Control (DTSC), the environmental cleanup section of the Radiological Health Branch of the State Department of Health Services (DHS), and various programs of the regional water quality control boards (RWQCBs). Another Bill, Senate Bill (SB) 354 (Escutia) would require the governor to appoint a Task Force to make recommendations on how to consolidate the site cleanup programs under the Cal-EPA, namely DTSC and the RWQCBs.

Other possible restructuring proposals could transfer the hazardous materials business plan function, currently under the Office of Emergency Services (OES), to Cal-EPA. AB 1190 (Canciamilla) would establish a new agency—the Energy Agency—that would be led by a cabinet-level Secretary of Energy appointed by the governor. This bill would additionally require the governor to develop a plan to consolidate all major energy-policy-making functions into the new Energy Agency. At a minimum, these functions would include those of the California Power Authority, the State Energy Resources and Conservation Development Commission (CEC), the California Electricity Oversight Board, and the California Public Utilities Commission (CPUC). The new Energy Agency would include a board with authority to site energy production, storage, and transmission facilities. It would serve as the sole state representative before the Federal Energy Regulatory Commission. Finally, the Energy Agency would be required to draft a report for submission to the legislature addressing liquefied natural gas (LNG), natural gas conservation measures, and other options to improve the supply and distribution of a reliable natural gas supply in California.

We may also see the governor's office entertaining an executive order to fashion a less ambitious plan to reorganize California's vast agency structure.

## Energy

With energy costs soaring and supplies dwindling, California is girding for another energy shortage. The California Legislature is responding by dusting off policies that were shelved during the most recent energy shortage. The legislature is entertaining a number of initiatives ranging from boosting energy supply, decreasing energy demand, and promoting alternatives to traditional fossil fuels.

The first bill introduced in the state senate is serving as the vehicle to implement Governor Schwarzenegger's bold Million Solar Roofs Initiative. This bill would install one million solar energy systems on California homes and businesses with the ultimate objective of establishing a self-sufficient solar industry within the state. SB 1 (Murray) would require the CEC to establish incentives supporting placement of the solar power systems on one million new and existing residential and commercial buildings. The bill would also promote installation of solar systems on half of new homes within the next 13 years. Additionally, the CPUC would be required to adopt a program to enable ratepayers to recover the capital investment in a solar energy system by paying lower rates. Finally, the CPUC would be required to expand availability of net energy metering to a larger pool of eligible customers.

Similar legislation by Assemblymember Levine would empower the CEC to offer loans designed to subsidize the installation of solar photovoltaic energy systems within the service territory of investor owned utilities (IOUs). AB 1547 (Levine) would accomplish this objective by enacting the Solar Energy Peak Procurement Act, which would offer rebates to rate payers of all classes for installing solar systems. Like SB 1, this proposal would increase the net energy metering capacity for ratepayers. AB 1547 would also require residential developers to offer solar energy options to home buyers in housing developments comprised of 50 or more homes.

Several other bills offer different incentive based approaches to fostering solar energy. AB 1099 (Leno) and SB 1017 (Campbell) would exclude from property tax valuations the costs associated with a new solar energy system. The exemption would

encourage solar retrofit projects by allowing home owners to avoid additional property taxes that would otherwise be due for the costs associated with home improvements. SB 1017 (Campbell) would additionally extend until 2017 tax credits that are currently available for solar or wind energy systems. AB 1383 (Pavley) would establish a loan program to assist developers of low-income housing developments to subsidize solar energy systems. The program would finance up to 75 percent of the cost of solar systems in low-income housing units.

Renewables procurement is the subject of other legislative efforts. AB 515 (Richman) reprises a concept that would employ state property for use in promoting solar energy. Specifically, this legislation would require the Department of Water Resources (DWR) to lease space for the installation of solar photovoltaic panels on State Water Project conveyance facilities. SB 431 (Battin) would require the CEC to establish a program to repower existing power plant facilities and convert them into renewable energy resources.

Several bills would change the schedule for or boost the amount of alternative energy that power suppliers in California must use in meeting the renewable portfolio standard (known as the "RPS") [Stats. 2002, SB 1078 (Sher)]. AB 1585 (Blakeslee) would require more aggressive alternative energy targets under the RPS by requiring the CEC to require power plants to procure at least 33 percent of retail electricity sales from renewable resources by 2020. This legislation would also require the CPUC to establish a program to allow electrical corporations to purchase tradable renewable energy certificates. AB 1362 (Levine) and SB 107 (Simitian) would advance the date for achieving alternative energy targets under the RPS. These bills would require that the goal of achieving 20 percent alternative energy be met by 2010 instead of by the year 2017. AB 1555 (La Malfa) would allow larger hydroelectric generators (with generating capacity of 30 megawatts or more), which are currently not considered renewable under the RPS, to count as renewable resources.

SB 250 (Campbell) would advance the governor's campaign pledge of transitioning to hydrogen fuel as another renewable source of energy. This law would establish interim specifications for hydrogen until standards are established by the American

Society of Testing and Materials (ASTM). AB 1576 (Nunez) would expand the scope of the California Alternative Energy and Advanced Transportation Financing Authority Act by including electricity generated from repowered electrical generating facilities designed for increased efficiency. AB 1009 (Richman) would require the CPUC to develop time-of-use electricity pricing tariffs to discourage energy consumption during peak time intervals, such as from 3–6 p.m. on week days. Customers would be charged higher rates for energy use during peak times. The bill would require IOUs to install real-time meters to provide cost-based feedback to customers.

In the aftermath of the 2003 energy blackout that left much of the United States and parts of Canada in the dark, the legislature has offered two bills designed to improve the reliability of our energy transmission and distribution system. AB 974 (Nunez) would require the CPUC, in consultation with the CEC, to develop a plan to streamline the permitting process governing electrical transmission. This plan would identify approaches to eliminating regulatory overlap, reducing approval times, and providing expedited review of transmission facilities. SB 1059 (Escutia) would authorize the CEC to designate transmission corridor zones (TCZ) throughout California either on its own motion or on request. TCZ designations would be subject to public comment and adjudicatory hearings. Each city and county would integrate the TCZ into its respective general and specific land use plans.

In addition to promoting increased electrical capacity from conventional sources of power, the legislature in the past few years has been promoting distributed energy sources such as cogeneration and solar energy. SB 669 (Battin) is a place-holder bill—known as a “spot bill”—that would establish a policy to encourage capital investment in distributed energy. By empowering ratepayers to generate their own electricity onsite, the need for investments in distribution and transmission would be reduced. AB 1332 (Gordon) would require the CEC to establish standards governing minimum levels of operating efficiency for sources of distributed generation (with capacities of five megawatts or smaller). The success of distributed energy programs hinges on the ability of these remote generators to offer their locally generated electricity-to-electricity grid. SB 1048 (Machado) would increase the energy generating

capacity of sources eligible as “distributed energy resources” from five to no more than 40 megawatts in size.

Another bill—AB 728 (McLeod)—would extend indefinitely the obligation of electricity providers to provide net energy metering to eligible biogas digester customer generators. SB 816 (Kehoe) would expand the obligation of San Diego Gas and Electric to offer net energy metering. Under current law, electric service providers must offer net energy metering on a first-come-first-served basis until use by eligible customer generators exceeds 0.5 percent of the electric service provider’s aggregate customer peak demand. This legislation would increase the cap on net energy metering to allow additional customers to participate in sending energy to the electric grid.

Other legislation was introduced to increase the supply side of the energy equation. AB 380 (Nunez) would require the CEC, in consultation with the Independent System Operator (ISO), to ensure the availability of sufficient electrical generating capacity to meet peak power demand. This program would be funded by ratepayers. SB 628 (Dutton) would indirectly lead toward increased electrical generating capacity by removing a hurdle to permitting large power plant projects. Labor unions have been accused of leveraging the cumbersome CEC permitting process; they often intervene in the environmental review process in order to extract commitments by the developer to use organized labor to build and operate the power plant in exchange for withdrawing opposition to environmental issues. This legislation would allow developers seeking an application for certification (AFC) or interested party to offer evidence supporting allegations of coercion of the permitting process and authorize the CEC to deny the ability to intervene in the AFC process. AB 1165 (Bogh) would provide that state and local agencies must make any recommendations to the CEC concerning the large power plant permitting process within 180 days after the application has been submitted.

The legislature is also exploring controversial policies intended to promote nuclear and LNG to California’s evolving inventory of energy sources. SB 984 (McClintock) would indirectly promote nuclear power projects by requiring the CEC to create an inventory reflecting existing sources of power that generate “zero emission.” This list would include

power plants that employ renewable sources like wind and solar along with nuclear technologies. The inventory would include a comparison of the annual emissions from these “zero emission” power plants (including greenhouse gases), with conventional gas-fired power plants using state-of-the-art emissions controls. With forecasts of a natural gas shortage, there is a growing debate over the feasibility and safety of liquefying natural gas generated in other countries and shipping it to California. Two spot bills would address LNG: AB 993 (Canciamilla) would require the CEC to explore the feasibility of processing LNG while AB 1611 (Ridley-Thomas) would create an LNG Interagency Permitting Work Group that would establish lines of communication among California agencies with jurisdiction to permit LNG facilities.

SB 769 (Simitian) would enact the Energy Reliability and Affordability Act to increase energy reliability and affordability by reducing energy demand by residential customers. The legislation would provide incentives to encourage home owners to replace older, inefficient home appliances such as refrigerators, freezers, and air conditioners. Additionally, this legislation would provide incentives for residential property owners to implement low-cost energy conservation improvements like replacing inefficient light bulbs and installing weather stripping.

SB 1037 (Kehoe) would repeal the current ban on using energy efficiency rebates to purchase an energy-efficient refrigerator. This legislation would additionally require electric and gas utilities in procuring energy to first address energy efficiency and demand reduction resources.

A number of bills have been introduced to flesh out unfinished business concerning community based aggregation. SB 641 (Campbell) would reestablish the consumer’s right to directly acquire electricity from energy suppliers they choose. This right was suspended when DWR began supplying electricity during the energy crisis. AB 1723 (La Malfa) would require IOUs and local publicly owned electric utilities to provide, as part of their respective load forecasts, the amount of their forecasted load that could be lost to community choice aggregation. Finally, AB 650 (Cogdill) would authorize irrigation districts and municipal utility districts to act as community choice aggregators.

## Air Quality

Over the past 35 years, regulatory controls have succeeded in greatly reducing emissions from most stationary sources of air pollution in California, despite significant population growth and increases in vehicle miles traveled in the state. Nonetheless, many regions in California are not meeting the national ambient air quality standards for ozone and particulate matter. The legislature is exploring novel approaches to regulating diesel and other emissions generated at “magnet sources” such as ports, airports, rail yards, distribution centers, and intermodal sites. Meanwhile, Governor Schwarzenegger has committed to reducing air pollution by 50 percent by 2010. He sees increased use of hydrogen fuels as part of California’s energy and air quality solution. He recently made good on his promise by issuing an executive order supporting the installation of hydrogen fueling stations to provide the infrastructure for hydrogen fuel.

## Air Quality Legislation

### *Stationary Sources*

During the last legislative session, the Carl Moyer Memorial Air Quality Standards Attainment Program (Moyer program) was a big winner as it secured a more reliable annual funding level of \$140 million. SB 467 (Lowenthal) would amend the Moyer program by requiring the California Air Resources Board (ARB) to expand the eligibility to receive the funds to include non-road internal combustion engines (e.g., fork lifts and airport ground support equipment). SB 931 (Florez) would limit access to the innovative grants offered by the Moyer program by excluding applicants with facilities that do not comply with one or more air, water, solid waste, or hazardous waste regulatory requirement. AB 721 (Nunez) would establish a loan program for chrome plating facilities to fund environmental improvements and investments to assist these facilities in meeting applicable environmental regulatory standards. SB 497 (Simitian) would require the California Department of General Services to establish a statewide Low-Emission Contractor Incentive Program. The program is intended to reduce air emissions generated from diesel-powered equipment used to construct road, buildings, and other state infrastructure projects. State contractors would be required to use specified fuels and meet standards for

their diesel equipment. AB 841 (Arambula) would require the statewide system that monitors ambient concentrations of particulate matter be expanded to ensure placement of sufficient monitors to more accurately characterize population exposure, background conditions, and transport influence.

AB 1693 (Matthews) would provide that funds issued by the California Pollution Control Finance Authority must result in third-party verified quantifiable reduction of pollution. Further, each applicant would be required to enter into an agreement outlining its commitments to operate and maintain the project as represented in its application. The Authority would be required to implement a monitoring program for projects it funds.

Senator Ashburn introduced legislation to reduce the air permitting costs for California military bases to boost the chances of surviving base closures during the upcoming Base Realignment and Closure (BRAC) process. SB 976 (Ashburn) would exempt military installations from the recently enacted "Protect California Air Act of 2003" [Stats. 2003, SB 288 (Sher)], which preempts local air districts from amending their new source review (NSR) air permitting programs to be less stringent than the federal NSR program as of December 30, 2002. SB 976 would authorize air districts entertaining a permit application for a modification or replacement of a major air emissions source to waive the requirements of the more stringent California NSR program requirements. The waiver would be conditionally granted as long as the project meets specified conditions such as the use of best available control technology.

Two bills are designed to modify the structure, function, and procedures of the air pollution control agencies in California. AB 1221 (Jones) would change the composition of the California ARB by adding a member who represents either the Sacramento Metropolitan Air Quality Management District (AQMD), the Placer County Air Pollution Control District (APCD), the Yolo-Solano AQMD, the Feather River AQMD, or the El Dorado County APCD. AB 1231 (Horton) would create the Air Pollution Accountability Act of 2005, which would establish hearing officers within the ARB with authority to issue and review abatement orders and variances for excess emissions from stationary sources or products. Hearing officers would be

required to make additional written findings in support of a variance.

SB 870 (Escutia) is a spot bill that would replicate a recent water quality law [Stats. 1999, AB 1104 (Migden)] and impose mandatory minimum penalties for serious and chronic stationary source violations of air quality laws. SB 109 (Ortiz) would repeal current law that precludes criminal prosecution involving a matter when civil penalties were recovered for the same offense. In addition, this legislation would repeal the law requiring dismissal of a civil action on the filing of a criminal complaint for the same offense.

The legislature is pioneering a number of novel approaches to curtail diesel emissions from ports and rail yards in an effort to bring California closer to meeting the governor's ambitious air emission reduction goals. AB 1101 (Oropeza) is a spot bill expressing legislative intent to require air districts with the largest diesel magnet sources to revise their rules to manage the air quality impacts from these sources. AB 1678 (Saldana) is another spot bill that would articulate legislative intent to require docked cruise ships to connect to electrical outlets for power on shore.

Senator Lowenthal has taken up the cause of limiting localized diesel pollution generated in California ports near low income and minority neighborhoods by introducing a package of four bills. Older and dirtier trucks are typically used to move products to and from ports on shorter routes compared to long haul routes. Because the ports of Los Angeles and Long Beach are considered to be the single largest sources of air pollution in the South Coast Air Basin, they feature prominently in the legislative package. SB 760 (Lowenthal) would impose an environmental mitigation fee of \$30 for each container processed at the Ports of Los Angeles and the Port of Long Beach. These revenues would be earmarked to reduce congestion on highways serving ports by improving the state's rail system linking ports. Additionally, the fees would be used to improve port security such as screening shipping containers. The South Coast AQMD would be authorized to expend the funds to mitigate air emissions generated from moving cargo to and from the ports from trucks, ocean-going ships, and rail. Funding could support projects to replace highly-polluting engines.

SB 761 (Lowenthal) would require marine terminals to set a time limit of no more than 60 minutes

for each truck to load or unload its products at the port facility. This law would additionally require marine terminals to establish a scheduling system where trucks could only enter the terminal at an appointed time. Another bill by Senator Lowenthal—SB 762—would create intermodal congestion and environmental quality commissions at the ports of Los Angeles, Long Beach, and Oakland (the Los Angeles-Long Beach Area Regional Intermodal Port Congestion and Environmental Quality Commission (LAIPC) and the Oakland Area Regional Intermodal Port Congestion and Environmental Quality Commission (OAIPC)). The LAIPC and OAIPC would be authorized to, among other things, issue permits to truck fleets allowing entry to pick up or deliver intermodal freight based on the number of trucks necessary to efficiently move freight from marine terminals to destinations. SB 764 (Lowenthal) would require the Ports of Los Angeles and Long Beach to develop a baseline for air quality at their respective facilities and to explore potential mitigation measures designed to reduce air emissions from sources located at the ports.

SB 763 (Lowenthal) would require the Ports of Los Angeles and Long Beach to offer priority berthing to ocean-going vessels using low sulfur fuel (with no more than 0.2 percent sulfur content). AB 810 (Parra) would offer small refiners an environmental tax credit of 5 cents per gallon of ultra-low sulfur diesel fuel (15 ppm of sulfur or less) they produce.

Other legislators are championing legislation to manage diesel emissions generated from rail yards and railroads. AB 888 (De La Torre) would require the South Coast AQMD to limit air emissions from equipment operating substantially within a rail yard. This legislation would require installation of retrofit control technologies for heavy-duty motor vehicle, non-road engines, or non-road vehicle operators. SB 459 (Romero) would authorize the South Coast AQMD to adopt emission impact mitigation fees on railroad companies operating within the air district that ship freight.

AB 1430 (Goldberg) addresses environmental justice concerns involving the use of mobile source emission reduction credits (or offsets) in lieu of installing air emissions controls at large industrial air emission sources located near communities of color or lower income. This bill would require

installation of stringent stationary source emissions controls for offsets before using mobile source offsets.

AB 1292 (Evans) would require school districts to implement guidelines to improve indoor air quality by making certain that heating, ventilation, and air-conditioning systems meet particular requirements and that the districts use contractors who are certified to implement and maintain these systems. Assemblymember Canciamilla introduced an Assembly Joint Resolution (AJR 8) urging the United States Congress and President to ratify an international treaty that would cap sulfur levels contained in marine fuels from ships. Another AJR—AJR 5 (Oropeza)—would request the United States Congress to take steps to increase corporate average fuel economy standards by at least 1.5 miles per gallon per year until the average fuel economy for new light-duty motor vehicles sold in California doubles.

### *Mobile Sources*

A number of bills would promote alternative vehicle fuels and cleaner burning engine technologies. AB 1660 (Pavley) would create the California Energy Efficient Vehicle Group Purchase Program to require the state to encourage the purchase of energy-efficient vehicles on behalf of state and local agencies. SB 975 (Ashburn) is intended to temporarily allow the military vehicle fleets operating in California to use biodiesel fuel over the next two years to comply with federal and state fleet requirements. Currently, there are no retrofit devices certified by the ARB for biodiesel. SB 975 (Ashburn) would allow public agencies or regulated utilities to use biodiesel fuel in engines certified by the ARB. AB 1229 (Nation) would require the ARB to require that all new passenger cars and light-duty trucks be affixed with a decal which displays an emissions index and a global warming index.

A series of proposals would use financial incentives to promote alternatively powered motor vehicles or to mitigate the environmental impacts posed by conventionally powered vehicles. AB 838 (Saldana) would authorize a tax credit for the vehicle license fees paid to register a hybrid vehicle. AB 1623 (Klehs) would authorize transit authorities within Bay Area counties to impose an annual registration fee (of up to \$5/motor vehicle) to mitigate environmental impacts generated from traffic congestion and motor vehicles within the county. AB

1407 (Oropeza) would establish the California Off-Road Environmental Health and Air Quality Funding Act of 2005, which would require suppliers of dyed diesel fuel (which is restricted to off-road uses and sold to farmers) to pay a mitigation fee of five cents per gallon. These fees would fund retrofitting or repowering of off-road diesel engines. AB 1407 would also impose a five cent per gallon fee on train operators for diesel fuel used in California. AB 694 (Chan) would authorize the Bay Area AQMD to expend motor vehicle revenues to implement projects to reduce air pollution derived from mobile sources. SB 658 (Kuehl) would authorize the State Coastal Conservancy to request the Department of Motor Vehicles to collect up to \$6 for motor vehicle registrations to fund projects to mitigate the environmental effects from motor vehicles in coastal counties.

AB 184 (Cogdill) is a spot bill that would create a pilot program to remove gross polluting vehicles from California roads. AB 383 (Montanez) would raise the income level for poor families to be eligible for the repair assistance program for California's smog check program. AB 898 (Maze) would require the Department of Consumer Affairs to harmonize the testing qualifications for smog technicians used in other states.

The legislature is also focused on finding a fix for the record high fuel prices and the periodic price spikes that occur in California. The fluctuating cost of fuel stems from shrinking global reserves along with a significant reduction in refining capacity within California. The number of California-based refiners has dropped from 33 to 13 since 1985. AB 936 (Wyland) would establish the Office of Special Counsel on Transportation Fuels in the governor's office and the Governor's Council on Transportation Fuels Policies. These organizations would develop transportation fuels policies, promote energy conservation and competition in transportation fuel supply, and seek sufficient, diverse fuels supplies. AB 1007 (Pavley) would require the ARB to develop plans and regulations to increase the use of alternative transportation fuels to reduce dependency on fossil fuels from foreign countries.

SB 44 (Kehoe) would require municipalities to amend their general plans to include comprehensive goals, policies, and implementation strategies to improve air quality. The plans would require

amendment no later than one year prior to the next scheduled revision to the municipality's housing element. Additionally, cities and counties would be required to send for review and comment a copy of the draft air quality element to its local AQMD.

### *Greenhouse Gases*

Assembly member Pavley shook up the U.S. auto industry in 2002 with the passage of her groundbreaking greenhouse gas (GHG) law [Stats. 2002, AB 1493 (Pavley)]. That legislation required the ARB to develop regulations calling for "the maximum feasible and cost-effective reduction" of GHGs emitted from specified classes of motor vehicles. Those regulations have since been promulgated. Automakers will be required to reduce GHG emissions by 22 percent in 2012 model autos (including passenger vehicles, light-duty trucks, and other non-commercial vehicles) and 30 percent for 2016 models. Automakers have challenged these regulations on that ground that GHGs are a surrogate for fuel economy standards, which are the domain of federal jurisdiction. Assemblymember Ira Ruskin is attempting to broaden Pavley's GHG policy by introducing legislation that would impose mandatory GHG reductions from stationary sources. The current law allows businesses to voluntarily reduce and document bonafide reductions in the California Climate Action Registry (Registry). AB 1365 (Ruskin) would require the Comprehensive State Environmental Goals and Policy Report to prioritize reducing GHG emissions by at least seven percent by 2010 and 10 percent by 2020 (based on 1990 levels).

Anticipating that GHG reductions from stationary sources will in fact become mandatory, Assemblymember Pavley introduced legislation to strengthen the Registry. AB 32 (Pavley) would revise the Registry by requiring Cal-EPA and CEC to adopt procedures and protocols to monitor, estimate, calculate, report, and certify GHG emissions generated from the following industrial sectors: oil and natural gas exploration, extraction, processing, refining, transmission, and distribution; cement production; municipal solid waste; and industrial hauling and disposal. Additionally, this legislation would require the Registry to coordinate with state agencies to promote the development of harmonized reporting standards. Finally, this bill would require the CEC to work with other states and regions to ensure that California and

nonresident businesses follow uniform reporting standards.

### Land Use

A number of bills address suburban sprawl and the legislature's desire to strike a balance between jobs, housing, and transportation along with providing transit-oriented and pedestrian-friendly communities. SB 223 (Torlakson) would establish the Job-Center Housing Planning Program to promote Smart Growth land use patterns. This bill would authorize the Department of Housing and Community Development to issue loans to municipalities to fund plans for infill housing in predominantly urbanized areas served by public transit. AB 1472 (Coto) would extend by an additional ten years redevelopment plans for projects (1) served by an existing rail transit systems with stations located within walking distance of densely populated areas, or (2) designated primarily for office, industrial, or research and development use, with high density residential uses.

The models used by planners to support transportation infrastructure and air quality policy do not reflect Smart Growth considerations such as the effect of (1) mass transit on reducing travel and (2) highways on inducing automobile traffic. According to Assemblymember Hancock, these modeling deficiencies cause elected officials and government decision makers to make multibillion dollar transportation decisions based on inaccurate information. AB 1020 (Hancock) would require metropolitan planning organizations and state-designated regional transportation planning agencies to revise regional travel models by incorporating Smart Growth principles. SB 275 (Torlakson) would require the California Transportation Commission to submit a 100-year needs assessment to the legislature on California's transportation system addressing the condition of California's roadways and to identify high priority projects expected to reduce congestion and provide economic and environmental benefits.

SB 725 (Morrow) would build on recent developments in the state of Oregon, where voters passed an initiative allowing aggrieved parties to make a takings claim when property values drop due to land use and environmental constraints. This bill would require payment of just compensation to property owners when the fair market value has dropped by 25 percent because of restrictive state or local land use regulations.

California is facing an unprecedented housing shortage and a housing affordability crisis that will be compounded by its burgeoning population, which is expected to grow by another 12 million residents within the next 30 years. An additional 220,000 housing units are necessary to meet the demand in California, which is ranked 48th in the nation in terms of homeownership. Over one-third of all renter families statewide pay over half of their incomes in rent, while an estimated 360,000 homeless persons live in California. As a result of this housing crisis, the legislature is entertaining a number of bills that would combat the gap between housing supply and affordability.

Housing elements must provide an assessment of housing needs including the locality's share of regional housing needs. AB 1367 (Evans) would allow land use determinations established in locally adopted land use initiatives to govern, even if those provisions would affect the regional housing share set forth by other governmental entities. AB 1233 (Jones) would establish a pilot program for cities or counties to articulate how they are meeting requirements for affordable housing. AB 549 (Salinas) would establish a pilot program to assist in determining whether a municipal housing element complies with state law governing housing element requirements. This legislation would require cities and counties who elect to participate in the alternative production-based certification of the housing element to submit a certification of compliance to the Department of Housing and Community Development. Housing elements would be required to assess housing needs and provide an inventory of land suitable for residential development to meet their share of the regional housing needs (including vacant sites and sites having potential for redevelopment). SB 365 (Ducheny) would extend to charter cities land use rules applicable to general law cities. These rules include allowing an exemption from a conditional use permit to develop affordable housing and prioritizing affordable housing for water and sewer services. Finally, SB 575 (Torlakson) would require a city or county to exceed its regional housing need for low and moderate income housing before it may disapprove an affordable housing development.

SB 326 (Dunn) would allow multifamily family housing developments to avoid conditional use land use permits if a specified percentage of housing units are available as affordable units for very low, lower,

and moderate-income households. Developers who commit to low income housing units would enjoy density bonuses and other incentives or concessions. SB 435 (Hollingsworth) would extend density bonus eligibility for construction of mobile home parks, moderate income community apartments, and stock cooperatives. Additionally, this legislation would allow a developer to receive a development standards waiver without having to demonstrate that the waiver is necessary to make the housing units economically feasible. AB 1450 (Evans) would require that housing targeted for moderate income households meet affordability criteria where the rent does not exceed 30 percent of 120 percent of the median income. SB 588 (Runner) would require that, in addition to supporting affordable housing, redevelopment agency taxes be considered for economic development and transportation infrastructure. AB 712 (Canciamilla) would lower the residential density allowed for cities and counties to meet the housing element requirements so long as the municipality identifies sufficient additional sites.

### **California Environmental Quality Act**

Several bills have been crafted to lighten the burden under the California Environmental Quality Act (CEQA) for projects that promote Smart Growth, provide affordable housing, or promote sources of renewable energy. AB 1387 (Jones) would leverage CEQA to promote Smart Growth principles. This legislation would provide that a lead agency or responsible agency need not require mitigation for significant impacts for residential projects located on an infill site within an urbanized area and that meets the traffic and transportation policies established in the municipal general plan or zoning ordinance. SB 832 (Perata) would expand the CEQA infill exemption, currently available for sites three acres in size, to 10 acres and the maximum number of residential units from 100 to 300. SB 521 (Torlakson) would expand the definition of “blight” under the Community Redevelopment law to include transit village development areas that lack high density development. This legislation would additionally require municipalities to allow “use by right” on each parcel for multifamily residential development within a transit village development district. SB 521 would also expand the geographic scope of transit village development districts to include any parcel that at least a portion of which is located within a quarter

mile of the transit station. AB 921 (Daucher) would allow redevelopment agencies to extend redevelopment plans for an additional 25 years (instead of just 10) without making a new finding of blight.

In an effort to expedite the environmental review process, Senator Murray has introduced a bill that would allow preparation of an abbreviated environmental impact report (EIR) that meets specified land use conformity criteria. SB 948 (Murray) would allow a short form EIR in lieu of a standard EIR if the project is consistent with land use designations in the area and is (1) a residential development; (2) in a city; or (3) in an unincorporated area designated in an approved local general plan for residential development. The short form EIR would be required to describe significant effects along with significant effects requiring mitigation measures.

SB 673 (Denham) is a spot bill that would change CEQA as it relates to residential housing projects planned for urban areas with a demonstrated housing shortage. AB 400 (Gordon) is another spot bill that is designed to expedite the construction of or repowering of renewable energy facilities by streamlining the process for obtaining an EIR. AB 375 (Cogdill) would establish a series of exemptions to CEQA involving projects to construct telecommunication utilities. SB 427 (Hollingsworth) would create another CEQA exemption allowing Caltrans to expand an existing overpass, onramp, or off-ramp built on a public easement or right-of-way.

Other bills are intended to clarify the mechanics of CEQA procedures. SB 648 (Margett) addresses the issue of determining which agency should serve as the lead agency when two or more agencies vie for the lead agency role. This bill clarifies that only a disputing agency may request the Office of Planning and Research (OPR) to resolve a lead agency conflict. AB 1464 (McCarthy) would clarify that the public review period and the state agency review period for a draft EIR, proposed negative declaration, or proposed mitigated negative declaration may, but are not required to, begin and end at the same time. SB 785 (McClintock) would address the matter of a challenge to a CEQA decision by a petitioner who is not a natural person. This bill would require that in such an action the petitioner file a Certification of Interested Persons that lists all potentially interested parties associated with the petitioner.

AB 648 (Jones) would require that all notices or

environmental documents published or prepared on behalf of a lead agency or responsible agencies must provide the identity of the project sponsor. Under CEQA, notice and consultation must begin anew for an EIR when "significant new information" arises. This legislation would provide that "significant new information" involves a change in the project sponsor.

### **Hazardous Materials**

An estimated 85,000 chemicals are registered for use in the United States with an estimated 2,000 chemicals added each year. Many of these chemicals are found in cosmetics, personal care products, pesticides, food dyes, cleaning products, fuels, and plastics. Limited toxicological screening data is available for most of these chemicals and over 90 percent have had no testing for their effects on human health. Biomonitoring studies have scientifically demonstrated that humans are exposed to a multitude of these persistent chemicals, which are both chronic and widespread. For example, a Centers for Disease Control and Prevention study documented that more than 200 synthetic chemicals have been detected in breast milk.

Several bills from the last biennial session have been either recast or reintroduced to, among other things, provide strategies to fill scientific gaps in toxicological and epidemiological data; to identify environmental exposures (particularly on children) and potentially damaging health and environmental effects; and to identify trends and geographic patterns of disease and environmental exposures to chemicals.

AB 289 (Chan) would require chemical manufacturers to provide Cal-EPA with analytical test methods that include chemical biomarkers of exposure. These biomarkers can then be used to measure downstream exposures to environmental breakdown products in humans or the environment. SB 600 (Ortiz) would require the Division of Environmental and Occupational Disease Control (within DHS) to establish a biomonitoring program to monitor the presence and concentration of specified chemicals in the population. This program is intended to collect data to determine the presence of a designated chemical in the environment, and possible routes of exposure. SB 849 (Escutia) would fund a research scientist to staff the recently established Environmental Health Surveillance System, which establishes an interagency

agreement between DHS, Cal-EPA and the University of California to track and evaluate the nexus between environmental exposures to chemicals and potential chronic illnesses. AB 1684 (Klehs) would require chemical manufacturers, suppliers, distributors, and importers of toxic materials and harmful agents to provide the names and addresses of their customers on request.

SB 849 (Escutia) would establish the Interagency Office of Environmental Health Tracking within DHS to coordinate all California databases that track environmental health data. The office would be staffed by DHS and Cal-EPA staff to, among other things, assist local communities in interpreting environmental health data and develop a strategic plan to address gaps in data.

Senator Migden and Assemblymember Chu introduced legislation designed to close loopholes that exist within the federal cosmetics law. The United States Food and Drug Administration lacks the authority to require cosmetics manufacturers to disclose data on the ingredients used in their products and does not have authority to approve the ingredients used in cosmetics. SB 484 (Migden) would establish the California Safe Cosmetics Act, which would obligate cosmetic manufacturers to disclose to DHS the ingredients contained within their products that are considered carcinogens. AB 908 (Chu) would prohibit the manufacture, sale, or distribution of cosmetics that contain dibutyl phthalate (DBP) or di-(2-ethylhexyl) phthalate (DEHP), which are considered carcinogenic and reproductive toxicants. AB 319 (Chan) would prohibit the manufacture, sale, or distribution of products containing bisphenol-A and phthalates if intended for use by a child three years of age or younger. Similarly, the prohibition would also apply to products in toys or childcare articles containing specified concentrations of di-n-butyl phthalate (DBP), di-2-ethylhexyl phthalate (DEHP), or butyl benzyl phthalate (BBP). Additionally, products containing specified concentrations of diisononyl phthalate (DINP), diisodecyl phthalate (DIDP), or di-n-octyl phthalate (DNOP) would be prohibited in toys intended for use by a child under three years of age if the toy can be placed in the child's mouth. Finally, this legislation would require manufacturers to use the least toxic alternatives to these banned chemicals.

Assemblymember Chan has proposed to amend

her recent law prohibiting the sale of polybrominated diphenyl ethers (otherwise known as PBDEs or brominated flame retardants). AB 263 (Chan) would authorize DTSC to assess a civil penalty of \$1,000 to \$5,000 for each offense. AB 900 (Lieber) would enact the California Safer Chemical Substitutes Act of 2005, which would prohibit the use or sale of methylene chloride, perchloroethylene, trichloroethylene, or 1-bromopropane. Manufacturers and distributors would be obligated to take back from retailers and consumers these chemicals or the consumer products that contain these chemicals. The manufacturers would further be obliged to compensate the consumer or retailer for the full price paid for chemical or product. AB 1415 (Pavley) would prohibit the sale or distribution for promotional purposes mercury-added products such as mercury switches or mercury relays.

AB 405 (Montanez) would ban the use of specified classifications of pesticides on school sites. This prohibition would apply to pesticides that have been granted a conditional registration, an interim registration, or an experimental use permit by the Department of Pesticide Regulation (DPR) or the United States EPA, as well as pesticides with canceled or suspended registrations or pesticides that have been phased out of use. SB 509 (Florez) would require county agricultural commissioners to notify the public who may come in contact with aerial pesticide applications, within 24 hours of the application. In addition, county agricultural commissioners would be required to work with the Office of Environmental Health Hazard Assessment (OEHHA) to minimize pesticide exposures to the public and to avoid the use of particularly deleterious pesticides. AB 1730 (Malfa) would prohibit the DPR from requiring a registrant to provide efficacy data on antimicrobial pesticide products.

Two bills would regulate lead in candy. AB 121 (Vargas) would require DHS to monitor the levels of lead found in imported candy sold or distributed in California. DHS would be required to develop maximum lead limits for imported candy. DHS would be further obligated to issue health advisory notices to county health departments when these levels are exceeded.

SB 985 (Dunn) would require DHS to regulate lead in candy to ensure that levels do not exceed naturally occurring levels. DHS would be required

to test candy to determine the presence of lead and where necessary to issue health advisories and require retailers to remove adulterated candies from store shelves.

SB 490 (Lowenthal) would require OEHHA to cooperate with the Netherlands' Ministry of Housing, Spatial Planning, and the Environment in an effort to compile a list of chemicals considered to pose environmental and health hazards; this list would exclude chemicals appearing on the Proposition 65 list. OEHHA would be required to report to the legislature on the policies by the Netherlands to protect the public and the environment from these chemicals.

AB 403 (La Malfa) would exempt propane tanks used only for heating buildings from hazardous materials business plan inventory and emergency response requirements.

### Cleanup and Brownfields

California lost an opportunity to make progress on cleaning up contaminated brownfields sites after the state budget surplus evaporated in 2002 and the \$100 million slated for such efforts was withdrawn to help manage the budget deficit. Since then, efforts to convert contaminated, underutilized brownfields properties into productive developments have stalled. As a result, the legislature has been exploring incentives to expedite brownfields cleanups that do not involve additional state funds. This session, the legislature is interested in refining liability mechanisms under the state brownfields and Superfund programs. Bills have also been proposed to integrate into one agency the cleanup functions and responsibilities currently shared between DTSC and the RWQCBs, in part to address concerns of forum shopping between the two agencies (*see* Restructuring, *above*).

SB 989 (Committee on Environmental Quality) would expand on last year's brownfields immunity legislation (Stats. 2004, AB 389 Montanez), which offered immunity from cleanup liability for innocent land owners, bona fide purchasers and contiguous property owners. This legislation would expand the immunity protection to "bona fide ground tenants" who enter into an agreement with a local agency to perform a limited site assessment and possibly a limited response plan. Some environmental groups who were displeased with AB 389 will likely be

promoting “clean-up” legislation intended to tighten remediation standards for brownfields. AB 1342 (Committee on Environmental Safety and Toxic Materials) expands the scope of immunity pursuant to the California Superfund law (otherwise known as the “Carpenter-Presley-Tanner Act”) for duplex owners, including those who own only a single unit in the building. Such persons would enjoy the same rebuttable presumption as single family homeowners—that they are not liable for any release occurring at another property resulting in contamination of the groundwater plume or ground beneath the duplex.

Other legislation is designed to promote environmental justice by fostering improved public participation in managing clean-up projects and providing accountability at the local level. AB 597 (Montanez) would revise the public participation procedures required under the California Land Reuse and Revitalization Act of 2004, which requires bona fide purchasers, innocent landowners, or contiguous property owners to enter into an agreement with a lead agency to perform a site assessment and response plan in exchange for immunity for the cleanup. The bill would require agencies to notify all other appropriate governmental entities that are not parties to the response plan. It would also require the RWQCB with jurisdiction to provide public notice to convene a public meeting in the area to receive comments. AB 1344 (Committee on Environmental Safety and Toxic Materials) would enact the California Subregional Coordination and Cleanup Act of 2005, which would streamline regulatory approvals for individual parcel sites by using multi-parcel risk assessment data and multi-parcel remedial action plans. The bill would also establish a pilot program to provide grants to aggregate multiple property parcels for site mitigation and planning purposes. AB 912 (Ridley-Thomas) would provide a business tax exemption for financial corporations who offer loans to redevelop brown fields located in blighted areas.

SB 838 (Escutia) would require Cal-EPA to establish a pollution control technology registry intended to make cleanup and pollution control strategies publicly available.

Two proposed bills address property contaminated from illegal methamphetamine operations. AB 1078 (Keene) would enact the Methamphetamine Contaminated Property Cleanup Act of 2005. The Act would

require DTSC to establish procedures for vacating and remediating contaminated property resulting from methamphetamine laboratory activities. Property owners would be required to develop and submit a preliminary site assessment (PSA) work plan describing the nature and extent of contamination along with their cleanup plan. In the event that the property owner cannot be located, cities or counties would be authorized to remediate the property pursuant to the order and be entitled to compensation from the property owner. SB 421 (Simitian) would authorize the State Board of Equalization to collect a fee from the manufacturers of pseudoephedrine to defray the costs incurred by DTSC in removal and remedial actions to clean up drug lab waste. AB 1017 would criminalize the disposal of methamphetamines onto agricultural lands.

SB 977 (Ashburn) would exempt military facilities from reporting the location of unused military munitions (containing perchlorate) based on the risk posed by alerting terrorists to these locations.

AB 752 (Karnette) would indefinitely extend the current temporary authority of the Administrator for Oil Spill Response to establish a standard of financial responsibility lower than \$300 million for nontank vessels that carry below a certain threshold of oil and, therefore, pose less risk of a spill.

## **Hazardous Waste**

Building on recent trends, the legislature is once again tinkering around the edges of the well-established hazardous waste regulatory framework. This year the legislature is interested in both advancing and retreating in a number of areas. Battery retailers, dentists and transporters of “ultra-hazardous materials” would experience additional stringency if pending legislation became law, while the regulated community would enjoy a streamlined EPA identification process and the rollback of a ban on the use of heavy metals in computers. Additionally, other legislation would expand the reach of the more relaxed universal wastes program.

SB 423 (Simitian) would delete from the Electronic Waste Recycling Act of 2003 a provision that prohibits California manufacturers of covered electronic devices (i.e., computers) from using heavy metals when manufacturing their products if the European Union bans such chemicals (See European Union Directive 2002/95/EC). In addition, this

legislation would modify notification obligations involving the export of covered electronic waste or devices intended for recycling or disposal in a foreign country or another state. AB 639 (Aghazarian) would require DTSC to provide a streamlined and expedited procedure for issuing identification numbers to hazardous waste generators.

AB 1125 would require retailers of household batteries to collect used household batteries for reuse, recycling, or proper disposal at no cost to the consumer. AB 966 (Saldana) would require DHS to regulate the discharge of mercury and byproducts related to the use of amalgam generated from dentists and related services. This legislation would also require use of the best available technology to remove mercury from wastewaters generated at the facility.

SB 419 (Simitian) is designed to manage the risk posed by transporting ultrahazardous chemicals by population centers. This risk was underscored in January 2005, when a train transporting chlorine gas derailed by a small town in South Carolina, resulting in nine deaths and 250 injuries. This bill would prohibit the transportation of “ultra-hazardous materials” on state highways and railroads. Additionally, “ultra-hazardous materials” would be banned if transported by rail above specified threshold quantities through urban exclusion corridors without a permit from OES.

AB 1337 (Ruskin) would create an exemption for hazardous waste transfer facilities for an empty rail tank car that contains a non-liquid residual heel from previously held hazardous waste. This bill would also allow the owner or operator of a “standardized” hazardous waste facilities permit to make changes to facility structure or equipment utilizing the Class 1 permit modification without having to provide “prior notification.” Additionally, this legislation would require that hazardous waste held on transport vehicles or in staging areas be counted in the facility inventory (for purposes of permitted capacity of a hazardous waste facility hazardous waste). However, it would exclude waste held on transport vehicles during transfer operations. This law would also allow the owner or operator of a hazardous waste facility to meet its obligation to demonstrate financial assurance to respond to damage claims and closure costs by using a financial test or corporate guarantee.

SB 982 (Committee on Environmental Quality)

would require the DTSC’s Hazardous Waste Enforcement Unit to establish a website for the purpose of receiving reports involving the violation of hazardous waste requirements.

AB 492 (Baca) would require businesses that handle or uses perchlorate to submit to DTSC annual reports documenting the manner in which perchlorate waste is disposed.

### **Solid Waste**

The legislature set out an ambitious agenda to further reduce the amount of solid wastes entering landfills with legislation to increase the landfill diversion rate and to educate the public on curbside recycling and litter reduction. Litter generated from smoking has also spawned legislation that would prohibit smoking on public beaches and impose a litter reduction fee on each pack of cigarettes. Other legislation is designed to steer used tires and concrete back into commerce by creating markets for them.

SB 420 (Simitian) would modify a key provision of the California Integrated Waste Management Act (IWMA) by boosting the amount of non-hazardous solid waste that must be diverted from landfills. This bill would require that source reduction and recycling elements (SRREs) increase from 50 percent to 75 percent the diversion target by January 1, 2015. AB 1090 (Matthews) would revise provisions of the waste hierarchy established by IWMA that promotes waste management practices in the following order of priority: (1) source reduction, (2) recycling and composting, (3) environmentally safe “transformation” and landfilling. The IWMA defines “transformation” to include incineration, pyrolysis, distillation, or biological conversion other than composting and excludes gasification or biomass conversion. The legislation would redefine “transformation” to exclude pyrolysis, distillation, or biological conversion and conversion technology. In addition, the legislation would allow municipalities to use “conversion technology” (which means waste processing using noncombustion, thermal, chemical, or biological processes) to meet their landfill diversion goals. AB 177 (Bogh) would revise the definition of “biomass conversion” to instead mean the controlled combustion, thermal conversion, chemical conversion or biological conversion of biomass waste used to produce electricity, heat, or a reconstituted product.

AB 1193 (Hancock) would prohibit mass mailings

of CDs or DVDs to households unless the shipper provides a postage paid return mailing envelope. AB 1049 (Koretz) would require that food and beverage packages include a label to assist consumers in properly managing wastes in curbside recycling programs. The labels would include consumer disposal instructions consisting of a code indicating "Trash," "Recycling," or "Compost."

AB 399 (Montanez) would require the Integrated Waste Management Board (IWMB) to develop model ordinances for use by local agencies to promote reuse, waste reduction, and recycling programs at multifamily dwellings. Additionally, this legislation would require local agencies, when issuing building permits to owners or managers of a multifamily housing unit, to issue information on waste reduction. The legislation would also require those offering solid waste handling services to a multifamily dwelling to meet with owners or managers to determine appropriate waste reduction programs for the multifamily dwelling.

AB 338 (Levine) would require Caltrans in purchasing asphalt paving materials used for state highway and construction projects to include up to 20 percent of asphalt containing crumb rubber (made or derived from recycled scrap tires and used as an additive for making asphalt) as opposed to conventional asphalt (by 2007), increasing to 25 percent by 2010 and 35 percent by 2013. Additionally, this legislation would require Caltrans and the IWMB to use crumb rubber and other tire-derived products. AB 574 (Wolk) is designed to promote the use of recycled concrete by defining what constitutes "recycled concrete." This proposed law would require that the end user be informed that the concrete being offered is recycled.

SB 772 (Ducheny) would require Cal-EPA to develop a five-year used and waste tire work plan designed to cleanup existing waste tire piles located in proximity to the California-Mexico border. The plan would also be required to include long-term tire fire contingency planning, emergency response provisions, and a cross-border used and waste tire tracking system. Finally, the plan must implement an English/Spanish training program for waste and used tire haulers. Cal-EPA would also be required to establish a five-year border environmental program to implement the waste tire work plan, which would be managed by the State Water Resources

Control Board Border Affairs Unit. AB 1249 (Blakeslee) would require the IWMB, in consultation with DHS, to require the State Fire Marshall to adopt fire prevention regulations for waste and used tire storage. SB 455 (Escutia) would require the IWMB to adopt a California uniform waste and used tire manifest system to track waste and used tires and to prevent the illegal disposal of those tires.

AB 1065 (Committee on Agriculture) would require registered grease transporters to maintain records of material removed from a grease trap or a grease interceptor. AB 1333 (Frommer) would make it a criminal offense to fail to completely remove grease materials from grease traps and properly dispose of grease materials. SB 926 (Florez) would require local public agencies to apply at least 75 percent of all sewage sludge it generates to beneficial uses such as electricity generation, composting, or land applications.

AB 17 (Koretz) would expand on existing law that makes it an infraction to smoke within 25 feet of a playground or tot lot sandbox area. This legislation would also make it an infraction to smoke on a state coastal beach. AB 1389 (Oropeza) would increase the fines for discarding "small quantities" of "waste matter" or cigarette butts from \$750 to \$1,500 for a first offense; \$1000 to \$2,000 for a second offense; and \$2,000 to \$3,000 for further convictions. AB 1612 (Pavley) and SB 942 (Chesbro) would impose a litter reduction fee on each pack of cigarettes to help offset public agency costs associated with the cleanup of cigarette litter. The projected \$120 million fund would mitigate cigarette-related pollution through public education and related programs.

AB 1103 (Karnette) would require bicycle retailers and dealers to furnish to purchasers a notification stating that bicycles may be recycled and that tax deductions are available for contributing bicycles to charitable organizations.

## Water Quality

Last year, the legislature succeeded in enacting a prolific number of water quality and water supply laws. This year the legislature is focusing on modifying drinking water standards for arsenic, perchlorate, and boron and recasting a number of provisions governing the administration of the State Water Resources Control Board (SWRCB) and the RWQCBs. Other legislation would address restora-

tion of anadromous fish runs and promotion of recycled water.

For more than 70 years the Bureau of Reclamation diverted water from the San Joaquin River in violation of state law, according to a recent federal district court ruling. SB 21 (Florez) was introduced to assist in remedying this situation and would authorize the Resources Agency to study the feasibility of restoring the San Joaquin River and its anadromous fish runs. Similarly, SB 350 (Machado) is intended to restore stream flows to the San Joaquin River with the goal of recovering native anadromous fish populations. The legislation also allows for acquiring water appropriated by Federal Bureau of Reclamation.

AB 1168 (Saldana) would require DHS to develop a public health goal for boron followed by adoption of a primary drinking water standard. AB 1354 (Baca) would require DHS to establish a primary drinking water standard for perchlorate of six parts per billion and establish legislative intent for parties responsible for perchlorate contamination of drinking water sources to pay the costs of cleanup. SB 1067 (Kehoe) would repeal the law requiring DHS to adopt a primary maximum contaminant level for arsenic. SB 773 (Cox) is designed to promote conjunctive use of water by establishing a uniform set of statewide policies to implement aquifer storage and recovery projects. The SWRCB considers treated surface water that may contain disinfection byproducts to be "waste." This legislation would exempt from the Toxic Injection Well Control Act injection wells used to inject drinking water. Additionally, drinking water that is percolated would be exempt from the definition of "waste" under the California Porter-Cologne Water Quality Control Act.

SB 623 (Aanistad) would modify the law establishing mandatory minimum penalties of \$3,000 for each serious water quality violation involving four offenses within a six month period [Stats. 1999, AB 1104 (Migden)]. This legislation would specify that the repeated violations must occur within six calendar months and that the four repeated violations must be of the same pollutant parameter as opposed to any parameter within the six month time frame. Additionally, the legislation specifies that a failure to submit a discharge monitoring report is considered to be a violation involving a \$3,000 penalty if the report is not submitted within 30 days of its deadline.

Finally, the bill would authorize the SWRCB or an RWQCB to waive or reduce the penalties if within its discretion it is justified.

AB 1727 (Aghazarian) would change the structure of the nine RWQCBs, which currently allow the membership to select a chairperson who is empowered to appoint an executive officer. This legislation would require the SWRCB to appoint an executive director and, for each of the regional boards, an executive officer to report to the executive director of the state board. The governor would be authorized to appoint the chairperson of each regional board who would serve at the pleasure of the governor. Each regional board would then be required to delegate authority to manage the waste discharge requirements (WDR) program to its executive officer with appeals to executive officer decisions to be made to the executive director. The membership of the regional boards would be reduced from nine to seven members.

SB 729 (Lowenthal) would recast a number of provisions governing the frequency of SWRCB meetings and its budgetary process. It would reduce the membership of RWQCBs from nine members to five and require some members to have advanced degrees in biology, public health, or planning and experience in environmental justice and finance. Additionally, the SWRCB would be required to develop a database addressing water quality problems and to require RWQCBs to post on the internet a summary of enforcement actions; it would also authorize RWQCBs to impose administrative civil liability. Most notably, this bill would require the SWRCB to prescribe in quantifiable terms "best available technology" and "maximum extent practicable" for pollutants found in storm water for which a numeric water quality standard has been established in any water quality control plan. These technology-based numeric effluent limits must be included in storm water permits. This bill would also require municipalities to notify their respective RWQCBs of land use decisions having the potential to involve WDRs. Finally, this bill would require the guidelines governing the listing and delisting of impaired waters (under Section 303(d) of the federal Clean Water Act) subject to total maximum daily loads or total maximum daily loads ("TMDLs") to prioritize the water bodies. The bill would also require identification and implementation of TMDLs

within 10 years of the date the impaired water body is listed as impaired.

SB 646 (Kuehl) would prohibit the SWRCB and RWQCBs from issuing WDR permit waivers for wastewater discharges into impaired waters pursuant to Section 303(d) of the federal Clean Water Act. If enacted, this bill would likely result in thousands of California farmers having to apply for permits for their agricultural return flows and would be the first such requirement of its kind for farmers who are generally exempt under the Clean Water Act. In contrast, AB 1271 (Blakeslee) would prohibit the Central Coast RWQCB from requiring a facility subject to a WDR conditional waiver for irrigated agricultural discharges to monitor surface water discharges more frequently than a biennial cycle. The prohibition would apply if the board determines that the most recent monitoring results contain a minimal amount of waste.

AB 848 (Berg) would establish the Ocean Ecosystem Resource Information System to support ecosystem conservation and management of ocean waters and its marine resources. SB 1070 (Kehoe) would require the SWRCB to provide a more complete picture of the status of the beneficial uses and water quality reflected in California's water resources. This legislation would require the state board to make available on its website information describing water quality research, standards, regulation and enforcement. AB 849 (Berg) is a spot bill that would establish state policy to facilitate collaboration between fishermen and scientists in efforts to conduct research on ocean and marine fisheries.

## Water Supply

SB 820 (Kuehl) would modify a number of procedural obligations to promote water conservation and planning. This bill would, among many other things, require that the California Water Plan include a discussion of the energy necessary to meet future water needs in California. Additionally, urban water suppliers would be required to quantify the energy costs and benefits of conserved water in their urban water management plans. Urban water suppliers failing to submit an urban water management plan would lose funds from the SWRCB, DWR, and the California Bay-Delta Authority. It would also require that groundwater management plans be updated by 2008, and every five years thereafter. The bill would also make the preparation and adoption of urban

water management plans subject to CEQA. Agricultural water suppliers of a specified size would be required to adopt an agricultural water management plan by 2010. This bill would also require DWR to publish a list of candidate streams to be declared fully appropriated. Finally, this legislation would require DWR to establish a rebuttable presumption of waste whenever any person fails to implement cost-effective water conservation practices.

AB 1724 (Villines) is a spot bill that would prohibit a regional board from requiring a master reclamation permit holder to reclaim or recycle water during periods of excessive rainfall. AB 371 (Goldberg) would establish the Water Recycling Act of 2005 and authorize the SWRCB to adjust its fee schedule for WDRs issued to publicly owned treatment works (POTWs) to provide incentives to promote water recycling. This bill would also require state construction projects involving newly installed piping for conveying nonpotable recycled water to be purple. Additionally, this law would require DWR to adopt plumbing design for buildings with both potable and recycled water systems.

AB 1466 (Laird) would require WDR to establish a program to control or eradicate the water-thirsty tamarisk plants that are out-competing native habitat along the Colorado River watershed. AB290 (Leslie) would require DHS to commence a five-year study to evaluate the methodologies used to determine water source capacities in hard-rock wells to explore techniques that will achieve the most accurate and cost-effective prediction of long-term well water capacity. SB 978 (Ashburn) would create an exemption for the United States military from a law passed last year that required urban water suppliers to install water meters on all municipal and industrial water service connections.

AB 501 (La Malfa) would require any city or county engaged in an environmental or wildlife restoration project or conservation easement transfer to identify available public water system supplies for that project. The municipality would be required to determine if a water supplier included the water supply earmarked for the project in the most recently adopted urban water management plan.

AB 672 (Klehs) would allow fishing, kayaking, canoeing, hiking, and bike riding adjacent to or within a reservoir that is intended for domestic use and does not prohibit bodily contact.

SB 113 (Machado) would require that when the California Bay-Delta Authority makes its annual decisions on its program plans and expenditures, it must ensure consistency with the “beneficiary pays principle,” which requires allocation of project costs to beneficiaries in proportion to the benefits received.

SB 31 (Florez) would reform the way water fees are assessed and administered. It would, among other things, preclude use of the fees for investigating complaints regarding water rights or the protection of fish, wildlife, water quality, or other natural resources.

### **Bonds**

It appears that the California budget will remain in deficit for the foreseeable future, prompting the legislature to once again reach out to the voters to approve alternative sources of funding through bonds. SB 153 (Chesbro) is a smorgasbord of goodies wrapped up in a bond measure designed to enact the California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Act of 2006. The bond would earmark specified amounts of money for grants to state and local agencies to: (1) rehabilitate facilities at existing local parks; (2) install facilities promoting positive alternatives for youth; (3) promote family oriented recreation; (4) provide for open, safe, and accessible local parklands, facilities, and botanical gardens; and (5) develop and enhance nonmotorized trails to promote passive and active recreational enjoyment including wildlife and scenic viewing opportunities. The measure would generate \$3 billion for the acquisition, development, and preservation of park, recreational, water, coastal, agricultural land, air, cultural, and historical resources.

SB 863 (Florez) would enact the California Clean Air Bond Act to finance an air quality program funded by a State General Obligation Bond of \$5,150,000,000. AB 1269 (Pavley) would enact the Clean Air, Clean Water, Coastal Protection, and Parks Bond Act of 2007, which would fund an as yet unspecified amount for air and water quality, coastal protection, and parks programs. More specifically, grants would be available for integrated watershed management programs, river protection, parks and wildlife protection. SB 783 (Murray) would authorize bond funds to acquire and preserve park, recreational, and historical resources.

### **Safety**

AB 186 (Bogh) would allow police and fire departments and the California Department of Forestry and Fire Protection (CDF) to seek refunds of civil penalties assessed for occupational health and safety violations if the previously cited condition has been corrected and there have been no serious violations for a two-year period. AB 815 (Lieber) would require the Occupational Safety and Health Standards Board to adopt revised or new workplace standards prepared by the Hazard Evaluation System and Information Service (HESIS). Such workplace standards would be created for hazardous substances for which OEHHA has published a quantitative risk assessment and would be revised for those substances whose existing permissible exposure limit (PEL) is not sufficiently protective.

### **Natural Resources and Wildlife**

Several bills would improve, directly or indirectly, conditions for wildlife forest resources. One bill would remove fish ladders at dams along California’s rivers and streams while other legislation would encourage volunteers to preserve priority bird areas on private lands. Other legislation would establish a statewide plan to control invasive species. Another bill would expand a conservation fund to compensate those who suffer injury or death by mountain lions.

Assemblymember Keene takes the position that forest management cannot be practiced on a patchwork of small, individual parcels. He sees management of Christmas tree farms that are scattered throughout the foothills region to be ill-suited for regulation under the Z’berg-Nedjedly Forest Practice Act. As a result, AB 1705 (Keene) would eliminate Christmas trees from the definition of “timberland” and specify that “timberland” does not include a parcel less than one acre, or a parcel less than three acres that is subject to CEQA jurisdiction. AB 887 (Villines) would extend effective dates of timber harvesting plans from three to 10 years. AB 715 (Levine) would require the governor to review recent reports on state actions responding to proposed changes in federal laws governing inventoried roadless areas. This bill would additionally authorize the legislature to approve or deny the governor’s proposed actions.

SB 1086 (Migden) would extend the sunset date for the Resources Trust Fund, which provides

money, for among other things, salmon and steelhead trout restoration, marine life management, maintenance of state parks, and the protection of natural and recreational resources. These funds are generated from tidelands oil revenues. SB 857 (Kuehl) would authorize Caltrans to remediate barriers to fish passage and to require new projects to be constructed without fish barriers. Additionally, this legislation would require Caltrans to annually issue a report to the legislature describing the progress in assessing and removing fish barriers on coastal streams.

SB 1033 (Hollingsworth) would delete a requirement that antelope and elk hunting be restricted to residents of California only and allow any person possessing a valid hunting license to obtain a license tag for the taking of antelope or elk.

AB 874 (Wolk) would require the California Department of Fish and Game (DFG) to recognize priority bird areas, to publish a list of those areas, and publicize their presence. This legislation would also require DFG to recommend strategies for public outreach and education to increase incentives for voluntary conservation of priority bird habitat on private lands. AB 749 (Leno) would permit the Fish and Game Commission to adopt regulations to protect Dungeness crab and limit the number of traps used in a season.

AB 24 (Maze) would permit individuals who have suffered personal injury or death, the loss of a spouse or child, or the loss or injury of a pet or livestock by a mountain lion to apply for funds from the Habitat Conservation Fund (created by the California Wildlife Protection Act of 1990). The bill would also require DFG to request the University of California to establish a clearinghouse of information regarding mountain lion attacks, and require DFG to post signs in areas where mountain lions are known to exist. In certain circumstances, DFG would be required to issue permits to take mountain lions and/or to track and kill mountain lions.

SB 1057 (Perata) would require, rather than permit, DFG to be compensated for the costs of preparing and implementing natural community conservation plans. AB 734 (Perata) would modify existing law that makes illegal the sale of kangaroo parts, to apply only to endangered kangaroos protected under state, federal, and international endangered species laws.

AB 577 (Wolk) would require the Resources

Agency and Department of Food and Agriculture to develop a statewide plan to manage and control all invasive species.

AB 486 (Leslie) would make available to counties the 12 percent of funds under the Roberti-Z'berg-Harris Urban Open-Space and Recreation Program that is currently available for acquisition or development, or special major maintenance, of recreation lands or facilities.

AB 1296 (Hancock) would establish the San Francisco Bay Water Trail, linking the San Francisco Bay, San Pablo Bay, and Sacramento River Delta for navigation by human-powered boats and beachable sail craft, and provide for water-accessible overnight accommodations.

## Looking Ahead

Despite declining poll numbers, Governor Schwarzenegger remains unwilling or unable to craft budgetary and policy compromises with the Democrat-controlled opposition. The weakened governor is nonetheless willing to test his muscle and turn to the people with a special election and a slate of ballot initiatives in November. The governor—who ran on a no-new-taxes pledge—will also likely face off against Senate Leader Don Perata, who is promoting a tax increase to repair the state's poorly performing schools.

Much hangs in the balance on the budget deficit, special election, and the governor's standing with the electorate. Whether the governor succeeds in beating back the threatened tax increase or prevails with a special election this fall will ultimately hinge on his popularity and strength as a salesman. The outcome could affect not only his clout as a leader, but could influence which bills become law and ultimately who will be governor in 2006.