

# Environmental Law Reporter

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## 2007 ENVIRONMENTAL LEGISLATIVE RECAP – BUDGET BLUES IN A LIGHT GREEN YEAR

*By*

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### AIR QUALITY CONTROL

In adopting a Final Rule setting the CAFE standards for light trucks for model years 2008-2011, the National Highway Traffic Safety Administration's failure to monetize the value of carbon emissions; set a backstop or overall fleet-wide average; revise the passenger automobile/light truck classifications; and to set fuel economy standards for all vehicles in the 8,500 to 10,000 lb. GVWR class was arbitrary and capricious and contrary to the Energy Policy and Conservation Act (p. 15)

### HAZARDOUS WASTE AND TOXIC SUBSTANCE CONTROL

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### INSURANCE

Compost odor is "pollution" within the meaning of the pollution exclusion (p. 35)

### WILDLIFE PROTECTION AND PRESERVATION

The Ninth Circuit lifted a stay of a preliminary injunction granted against the Navy's conduct of sonar experiments without mitigation measures to protect whales (p. 41)

In July 2007, the California State Assembly passed a bipartisan budget which met with forceful resistance from a united block of Senate Republicans. Despite Governor Schwarzenegger's support, fifteen conservative Republicans refused to sign off unless the Democratically-controlled Legislature agreed to concessions involving the California Environmental Quality Act (CEQA). They objected to the Attorney General's pending CEQA lawsuits which sought greenhouse gas (GHG) mitigation for impacts associated with land use general plans, transportation plans, and a refinery expansion. More specifically, they sought CEQA amendments to prevent lawsuits based on a failure to mitigate GHG increases from development projects until Assembly Bill (AB) 32 [see Stats. 2006, AB 32 (Nunez)] regulations are adopted in 2012.

The Republican opposition held out for a month, bringing to a standstill environmental policy-making that was in full swing at the time. Although not achieving everything on their wish list, the rebel lawmakers achieved partial success by upstaging the summer legislative session and extracting a budget bill that met some of their goals. The Democrats and the Governor yielded and approved Senate Bill (SB) 97 (Dutton). This budget trailer bill (discussed more fully below) prohibits CEQA lawsuits based on inadequate environmental analysis pertaining to transportation, flood protection, or

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levee repair projects funded by Proposition 1B and 1E bond funds (from the 2006 infrastructure bonds). These CEQA restrictions are effective until January 1, 2010 and apply only retroactively to CEQA documents that are not yet final. Their desire to strip the Attorney General of \$1 million to fund climate change litigation efforts went unanswered.

This preoccupation with the budget preempted the Legislature's policy-making momentum, resulting in a less-than-prolific crop of bills for the 2007/2008 legislative session. Nonetheless, the Legislature produced noteworthy laws addressing renewable energy and cogeneration, alternative transportation fuels, toxics reporting, chemical limits on manufacturing, local enforcement, compostable plastics, and condor survival initiatives. Unless otherwise stated, all legislation discussed below becomes effective on January 1, 2008.

## Air Quality and Global Warming

A trifecta of recent events caused a tipping point in news coverage on climate change: the passage of AB 32—the California Global Warming Solutions Act of 2006; former Vice President Al Gore's documentary film "An Inconvenient Truth"; and the devastation of Katrina. With polls showing widespread concern about climate change, the Legislature began the session by introducing more than 60 bills on the topic. Lawmakers have since backed off and are now less willing to amend AB 32 until they see how fast and how far the California Air Resources Board (ARB) is willing to go to combat climate change. The agency is currently engaged in a lot of heavy lifting; however its vision will remain unclear until January 2009 when it delivers the more detailed blueprint-known as the "scoping plan." In the meantime, the Legislature will likely focus its attention on climate change policy that will complement the provisions of AB 32. Down the road, we can once again expect the Legislature to take a leadership role on climate change as leaders attempt to close possible gaps.

For decades, air quality policies have focused on combating ground level ozone (or smog), particulate matter, diesel exhaust (now considered a California air toxic), and more recently GHG emissions. The transportation sector is responsible for over 40 percent of the criteria pollutants and GHG emissions in California. To manage air emissions from the transportation sector, lawmakers have focused attention on funding and supporting clean fuel alternatives, reducing consumption of petroleum products, expanding the smog check program to regulate diesel emissions, and to retrofit diesel-powered locomotive engines.

In order to achieve the state's goal of reducing petroleum consumption and GHG emissions, AB 118 (Nunez) established the California Alternative and Renewable Fuel, Vehicle Technology, Clean Air, and Carbon Reduction Act of 2007. This law establishes a funding source for the research, development, and deployment of clean fuels and innovative technologies to improve air quality. Beginning on July 1, 2008, vehicle registration fees will increase from \$31 to \$34 and smog abatement fees will rise by \$8. The State Energy Resources Conservation and Development Commission (CEC) will administer the newly created Alternative Fund and the ARB will administer the Air Quality Improvement Program. AB 236 (Lieu) is intended to increase fuel efficiency and the use of alternative fuels for state and local government fleets. This law requires the Department of General Services (DGS) to work together with the CEC to revise its fleet purchasing methodology for state and local fleets by prioritizing vehicles with superior environmental and energy performance. DGS will then be required to procure vehicles ranked best in their class. In addition, vehicles capable of using alternative fuels must be operated on those fuels unless alternative fuels are not readily available. A recent 2002 study found that just under 99 percent of California's state fleet flex-fuel vehicles were not fueled with alternative fuels. This law requires vehicles that are capable of using alternative fuels to use them by July 1, 2009. Finally, the Secretary of State and Consumer Services, in conjunction with DGS is required (by July 1, 2009) to develop a plan to reduce or displace the state fleet's consumption of petroleum products.

The Legislature enacted two bills affecting the Smog Check program. Historically, diesel-powered vehicles were not included in the smog check program because the high sulfur content of diesel fuel damaged the advanced emission systems. In recent years, the state and federal fuel formulations have dramatically reduced the sulfur content in diesel fuel. This advance removed the technical barrier to including diesel-powered vehicles in the smog check program. AB 1488 (Mendoza) responds to these achievements by expanding the reach of the smog check program to include light-weight diesel-powered vehicles. The smog check program now applies to diesel-powered vehicles manufactured after the 1997 model-year with a gross vehicle weight rating less than 8,501 pounds. This program takes effect on January 1, 2010. The Bureau of Automotive Repair estimates this law will introduce approximately 400,000 lightweight, diesel powered vehicles into the smog check program. Other smog check legislation offers relief to some Californians in the Central Valley whose vehicles fail the smog check program. SB 23 (Cogdill) allows low-income drivers to exchange their "gross polluting vehicle" with a donated, smog-compliant one. Prior to

this law, vehicle owners who failed the smog check could retire the vehicle and receive \$1,000. This vehicle exchange option is limited to the San Joaquin Valley Air Pollution Control District.

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AB 32 implementation greatly influenced how some of the \$42 billion in voter-approved bond moneys will be spent. AB 201 (Committee on Budget) is a budget trailer bill designed to allocate \$19.925 billion in general obligation bond funds approved under Proposition 1B (the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006). This law authorizes the funds for projects that replace, repower, or retrofit diesel locomotive engines for those railroad companies that enter into a Memorandum of Understanding (MOU) with a public agency. Passed as urgency legislation, this bill became effective on August 24, 2007. Eligible projects include, but are not limited to, efforts to replace, repower, or retrofit heavy duty trucks, harbor craft operating in seaports or replacing cargo handling equipment at seaports and rail yards, and provide on-shore electrical power for ocean freight carriers. A built-in prioritization formula favors cost-effective projects that generate the greatest air pollution and GHG emissions reductions and improve health benefits.

SB 88 (Committee on Budget and Fiscal Review) is a trailer bill that allocates \$3.9 billion authorized in Proposition 1B by adding oversight and reporting requirements. Additionally, this law appropriates \$350 million in Proposition 1B funds to cities and counties to supplement local streets and roads projects to ensure that cities and counties receive at least \$400,000 from bond funds in the 2007-08 fiscal year. Finally, up to \$25,000,000 is available to ARB to issue grants to ports, railroads, or local air districts to address air quality-related health affects. AB 1672 (Nunez) also assists with the implementation of Proposition 1B by requiring that the California Transportation Commission (CTC) provide at least 30 days written notice to the chairs of the appropriate budget and policy committees before approving changes to the guidelines governing expenditure of Proposition 1B funds. This law also expands the number of California Transportation Commission members from 11 to 13.

Diesel exhaust is linked to more than forty other cancer-causing substances. In fact, the ARB found that 70 percent of California's airborne cancer risk is due to exposures to diesel particulate matter, which is found in diesel exhaust. Based on these findings, in 1998, the ARB designated diesel particulate matter as a toxic air contaminant under California's Air Toxics program (commonly referred to as the AB 1807 program). In an effort to better manage the public's exposure to diesel exhaust, Assembly Member Jones introduced AB 233 to strengthen the enforcement of diesel emissions requirements, including the anti-idling restrictions. AB 233 increases to \$300 the minimum civil penalty for violations of the airborne toxic control measure that limits

idling of diesel-fueled commercial motor vehicles. The Department of Motor Vehicles is authorized under this law to refuse registration, registration renewal, or motor vehicle transfers to owners or operators who have violated air pollution laws until the violation has been cleared. Additionally, the ARB must triennially develop a strategic plan to help ensure the consistent and fair enforcement of the Diesel Risk Reduction Plan and Emission Reduction Plan for Ports and Goods Movement and develop a strategic plan for consistent, comprehensive, and fair enforcement.

Manganese is currently regulated as a California air toxic contaminant and can cause brain, liver, and kidney damage in a developing fetus and produce toxic effects to infants and children. AB 294 (Adams) requires the ARB to evaluate whether there are unhealthy ambient concentrations of manganese in California. The results of the findings must be reported to the Legislature by January 1, 2010.

The Central Valley, which experiences the worst smog levels in the country, has been undergoing a rapid demographic shift from a predominantly agricultural economy to an urban economy. SB 719 (Machado) is designed to improve air quality by increasing urban representation on the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD). Prior to SB 719, only three of the 62 cities within the SJVUAPCD jurisdiction could serve on the 11 member board. SB 719 increases the membership of the SJVUAPCD from 11 members to 15 by increasing the number of city members from three to five members. This law additionally expands the board's public health expertise by adding two gubernatorial public member appointments subject to Senate Confirmation. One seat must be filled by a physician practicing in the District with expertise on the health effects from air pollution while the other must include a person with medical or scientific expertise in the health effects of air pollution. SB 886 (Negrete McLeod) is another bill affecting the complexion of an air district. This law increases the membership on the South Coast Air Quality Management District from 12 to 13 members. The additional seat will represent the City of Los Angeles. This law takes into account geographical considerations in recasting which cities are eligible for representation. Finally, this law removes the term-limits ban on the Chairperson of the Sacramento Metropolitan Air Quality Management District and the Mojave Desert Air Quality Management District.

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## Energy

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Since California's 2001 energy crisis, the Legislature has been preoccupied with ensuring clean, reliable, and affordable energy supplies that do not contribute to climate change. A recent CEC study concluded that "water-related energy use" consumes a considerable amount of energy: 19 percent of California's electricity; 30 percent of its natural gas to heat; and 88 billion gallons of diesel fuel. Moving water from its source to the tap and heating it not only consumes prodigious amounts of energy, but contributes to climate change due to the fossil fuels used to power pumps and heaters. AB 1470 (Huffman) addresses part of this problem by establishing the Solar Water Heating and Efficiency Act of 2007 which is designed to provide incentives to install 200,000 solar water heating systems in California homes and businesses by 2017. This law is intended to offset the need for natural gas currently used to heat water. This law requires the Public Utilities Commission (PUC) in conjunction with the CEC to establish criteria for solar water heating systems eligible for the rebate incentives (up to \$250 million in rebates over the next 10 years). With some exceptions, funding for the incentives will be generated from a surcharge placed on gas customers.

Prior law required the DGS (in consultation with the CEC) by January 1, 2007, to ensure that all existing public buildings and parking facilities were retrofitted with solar energy equipment. AB 532 (Wolk) extends the date to January 1, 2009, and now requires solar energy equipment to be installed, where feasible, on "state-owned swimming pools" that are heated with fossil fuels or electricity. Additionally, new state buildings and parking facilities must be now equipped with solar devices by January 1, 2008, instead of January 1, 2003. Another law removes contracting obstacles to construct state buildings using "green building equipment" which includes alternative energy, cogeneration equipment, and conservation measures. Prior to AB 609 (Eng), the State Public Works Board could purchase green building equipment only if the costs to the state were less or comparable to non-green building equipment using a year-by-year cost model. This law allows the Board to consider a longer time horizon (using a life-cycle cost analysis over the life of the equipment or the term of the contract) when calculating the costs for purchasing and installing green building equipment on existing state buildings. This allows for the purchase of equipment with higher initial costs that achieve a return on investment with lower operating costs.

AB 1714 (Levine) revises a policy included in the recently enacted Million Solar Roofs law [2006 Stats.,

SB 1 (Murray)] which was intended to install 3,000 megawatts (MW) of solar generating capacity and photovoltaic (PV) systems on half of all new California homes by 2020. That law required the CEC to establish eligibility incentives that included time-variant pricing for ratepayers with a solar energy system. This was designed to encourage installation of solar energy systems to maximize electrical production during peak demand. Typically, rate payers pay flat rates for electricity that does not vary throughout the day. Time-of-use rates rise with the hottest part of the day when electricity is most expensive and is significantly lower at non-peak times. AB 1714 authorizes the PUC to delay the implementation of the time-variant pricing program until it sets new electricity rates in 2009. This will address unanticipated rate disparities experienced by some owners of smaller solar energy systems that do not supply enough energy to meet the demand during peak summer hours. This will allow rate payers with solar systems to opt for flat rates until the PUC oversees the next general rate cases for the state's investor-owned utilities (IOUs). Signed as urgency legislation, this bill took effect on June 7, 2007.

Under the Renewable Portfolio Standard (RPS) [*see* Stats. 2002, SB 1078 (Sher)] 20 percent of the energy generated by IOUs must come from renewable energy sources by 2010, including new hydroelectric power facilities generating less than 30 MW of power. This will require the IOUs to find an additional 20,000 MW of renewable power in the next few years. Last year, Assembly member Blakeslee drafted a law [*see* Stats. 2006, AB 2189 (Blakeslee)] that allowed small hydroelectric facilities meeting certain conditions to receive RPS credit. This year, Blakeslee offered AB 809 to clarify that law. AB 809 provides an incentive for utilities to maximize electricity output from existing "small" hydro facilities that do not change current stream flow water practices in terms of timing or volume. In essence, this law changes the definition of an "eligible renewable energy resource" to include conduit hydroelectric facilities of 30 megawatts or less. These facilities must have commenced operation before January 1, 2006, and must implement "energy improvements."

The Legislature approved another law addressing renewable energy eligibility under the RPS. Prior to AB 946 (Krekorian), public water and wastewater agencies that wanted to sell renewable energy for RPS credit were required to generate this energy on or adjacent to the actual facility. AB 946 expands the eligibility criteria to allow public agencies to generate renewable energy (up to one MW) on any land they own or control. Renewable energy could include power generated from biogas digesters, conduit hydroelectric facilities, and/or solar panels.

SB 1036 (Perata) restructures a funding mechanism designed to manage premium costs associated with purchasing renewable energy under the RPS. Prior to SB 1036, the CEC had authority to provide supplemental energy payments (SEPs) to renewable energy providers to subsidize increased costs to generate renewable power. IOUs were only required to purchase renewable energy at above-market prices to the extent SEP funds were available. SB 1036 is designed to streamline the bid process to review renewable energy projects by transferring authority to administer the SEP program from the CEC to the PUC. This will build the SEP cost into electric rates, thus making SEP funds more attractive for financing. Before this law, SEP funds were subject to annual appropriation, which scared away bankers and investors who did not consider SEP awards to be available when they were considering the funding of an alternative energy project.

The Legislature innovated a strategy to promote markets for trading waste heat by enacting AB 1613 (Blakeslee). This provocative law enacts the Waste Heat and Carbon Emissions Reduction Act which is intended to provide a market for recovered heat from cogeneration systems. Cogeneration (otherwise referred to as combined heat and power or CHP) captures heat that is wasted from the generation of electricity; it also conserves fuel that would inefficiently be consumed to generate heat or steam in a separate operating system. As a result, the CHP trading strategy can avoid consuming electricity generated at remote power plants thereby achieving reduced air pollution and GHG emissions while conserving resources and saving money. AB 1613 permits the PUC to: (1) require electrical corporations to purchase eligible excess CHP-generated electricity that is delivered by a CHP system at a just and reasonable rate, (2) require local publicly owned electric utilities to establish a program allowing retail customers to use CHP systems, (3) require electrical corporations to include CHP technologies to the maximum degree that is cost-effective when approving renewable energy procurement plans under the RPS, and (4) create a pilot program to provide a mechanism to fund the upfront costs to purchase and install CHP systems. CHPs must also abide by GHG emission performance standards established by the PUC. Finally, this law requires the CEC to adopt guidelines to promote optimization and efficient use of waste heat that is cost effective, technologically feasible, and environmentally beneficial.

In addition to fostering strategies to increase renewable power sources, lawmakers took aim at lowering energy consumption. In an attempt to reduce electricity demand, electrical corporations offer businesses lower utility rates in exchange for curtailing power during peak demand. SB

428 (Dutton) makes this interruptible power program a requirement for electrical corporations. The PUC must develop cost-effective pricing incentives reflecting avoided costs.

Homes and businesses consume a significant amount of energy and indirectly generate air pollution and climate change gases. Non-residential buildings in California account for almost 50 percent of the energy consumed in the state. AB 1103 (Saldana) provides a tool to reduce energy consumption in these buildings by generating useful information for building owners and managers. This law is intended to provide them with information on the energy performance of the buildings they own or operate. As the sustainability adage goes: "what you measure you can manage." Thus, armed with energy efficiency data, building managers will be motivated to improve energy efficiency. Specifically, this law requires utilities to provide non-residential customers energy usage data in their monthly bills (that is compatible with the United States Environmental Protection Agency's Energy Star Portfolio Manager) on or after January 1, 2009. On or after January 1, 2010, this information must be disclosed to prospective buyers, lessees, and lenders pursuant to property financing transactions. Building owners and managers will then be in a position to compare the energy efficiency performance of buildings and make informed choices in making property decisions.

The Legislature approved another strategy for conserving energy by enacting the California Lighting Efficiency and Toxic Reduction Act [AB 1109 (Huffman)]. This law is designed to improve energy efficiency for general purpose lighting which accounts for ten percent of GHG emissions, according to the World Resources Institute. This Act commits to reducing by 50 percent (from 2007 levels) the electrical consumption for indoor residential lighting and 25 percent (from 2007 levels) for indoor commercial and outdoor lighting (e.g., incandescent bulbs) by 2018. The CEC is required to adopt energy efficiency standards for general purpose lights by December 31, 2008. Within two years of establishing these standards, the DGS, in consultation with other state agencies, must ban the sale of general purpose lights.

AB 292 (Blakeslee) extends the sunset from January 1, 2010, to July 1, 2019, on the Nuclear Planning Assessment Special Account. This program funds local governments located in the shadow of the state's nuclear power plants to plan for responses to potential radiological incidents. This law offers communities near the Diablo Canyon Power Plant and the San Onofre Nuclear Generating Station additional time to prepare for a potential nuclear incident.

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## Water Supply

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California's population is predicted to balloon by 30 percent in the next two decades while the snow pack is expected to shrink due to climate change. These trends add up to the state's water supply falling short of projected demand by two million acre feet in 2030. This dire forecast prompted the Governor to champion increased water storage to capture more water in the coming decades. Governor Schwarzenegger called a special session in the fall of 2007 to develop a \$9.1 billion bond package to build two new dams (Maxwell Dam in Colusa County and Temperance Flat Dam near Fresno) and double the capacity of a third (Vaqueros Reservoir near Mount Diablo in Contra Costa County).

After burnishing his image as a green Governor at the vanguard of the climate change movement, Mr. Schwarzenegger took a gamble by boosting big dams. Not surprisingly, the governor met with a wall of resistance from environmentalists who oppose new dams. They argue that big dams are not the answer because with rising temperatures, impoundments will be less efficient due to increased evaporation. Moreover, the environmental community argues the two new dams are at odds with the Governor's commitment to containing the fallout from climate change because they would be net energy users.

The October 16 deadline for assembling a package of water bonds for the February ballot came and went. Democrats sought alternative strategies including conservation, groundwater recharge, re-operation of existing dams, and recycling. Ultimately, Republicans and Democrats failed to bridge their ideological divide over water supply policy and voted down a \$6.8 billion Democratic water bond proposal intended for the February 5, 2008, state primary. This stalemate sets the stage for a ballot battle featuring dueling bond proposals in November 2008.

Since the last prolonged drought in the early 1990s, the Urban Water Management Council developed an MOU to promote water efficiency best management practices (BMPs). The vast majority of urban water agencies have since signed on. However, agricultural water agencies chose to develop their own MOUs. AB 1420 (Laird) was adopted to improve the rates of compliance with water efficiency BMPs by providing financial incentives to use \$1 billion available from Proposition 84 to implement water conservation. This law recasts the eligibility criteria for urban water suppliers to receive water management grants or loans issued by the Department of Water Resources (DWR), the State Water Resources Control Board (SWRCB), or the California Bay-Delta Authority.

Funds can be used for surface water or groundwater storage, recycling, desalination, water conservation, water supply reliability, and water supply augmentation projects. Applicants are required to implement water demand management measures described in the urban water management plan.

AB 1376 (Berryhill) is designed to assist city and county planning departments who are often unaware of the existence of urban water management plans. Public and private urban water suppliers serving 3,000 customers or supplying more than 3,000 acre-feet of water each year must develop and adopt an urban water management plan. This law requires water suppliers to provide a 60-day notice to the city or county planning department within which it supplies water to allow the municipality to review the plan and consider amendments or changes to the plan.

Other legislation expands water conservation policy to the private sector while promoting energy efficiency. As discussed above, California consumes significant amounts of electricity to move, heat, and treat water. AB 1560 (Huffman) requires the CEC to prescribe water efficiency and conservation standards for new residential and non-residential buildings. Among other things, these standards could include lighting and insulation climate control systems. Additionally, this law authorizes the Department of Housing and Community Development to develop voluntary best practices and mandatory requirements related to environmentally preferable water using devices.

AB 662 (Ruskin) responds to recent CEC findings that water efficient household appliances also use less energy. This law expands minimum operating efficiency requirements for appliances to reduce both energy and water consumption.

Potentially saving eight billion gallons of water per year, AB 715 (Laird) requires manufacturers to provide low flush water closets and urinals by 2014. These standards will be phased in over time beginning with 50 percent of all models by 2010 rising to 100 percent by 2014. The new standards will lower the amount of water consumed per flush from 1.6 gallons to 1.3 gallons for water closets and from 1.0 gallons to 0.5 gallons for urinals. These revised standards will apply to residential and commercial toilets and urinals. Additionally, state agencies must consider the use of non-water-supplied urinals when proposing building standards for plumbing systems.

Two measures are designed to advance the state's goal of using one million acre-feet of recycled water each year. Advocates of recycled water contend that some regional water quality control boards (RWQCBs) deny

(Pub. 174)

waste discharge requirements (WDR) permits to discharge recycled water. AB 1481 (De La Torre) establishes another route to promote recycled water by authorizing the SWRCB to adopt a statewide general permit for recycled landscape irrigation by July 31, 2009. Applicants seeking recycled water for golf courses, parks, playgrounds and highway landscaped areas will be able to file a notice of intent with the SWRCB to comply with the general permit. Applicants must also meet recycling criteria established by the California Department of Public Health (DPH). A number of structures are encouraged to use recycled water for their toilets. These include commercial, retail and office buildings, theaters, auditoriums, schools, hotels, apartments, barracks, dormitories, jails, prisons, and reformatories. AB 1406 (Huffman) adds condominiums to this list. This voluntary law can only take effect where recycled water is available via a separate recycled water piping system. Participating condominiums must post a "Notice of Use of Recycled Water" warning that the water is non-potable and limited to toilet and urinal flushing.

AB 1404 (Laird) is designed to improve the measurement of water use and to manage water supply information. The law was designed to remedy a controversy over water supply data involving the federal Central Valley Project Improvement Act, which required measurement of water delivered through the federal water project. This law requires the DWR, the SWRCB and the DPH to coordinate the collection and management of water use data from agricultural and urban water uses. The SWRCB (in collaboration with DWR, California Bay-Delta Authority, and DPH) is required, by January 1, 2009, to evaluate the feasibility of financing a coordinated water measurement database.

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## Water Quality

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Storm water is a leading cause of pollution along the California coast and in the ocean. Close to 80 percent of marine debris found on beaches and in the oceans is generated from the land—90 percent of which is plastic. Due to the small size of some of the plastics, conventional storm catch basins fail to capture this pollution. Aside from an aesthetic problem, plastic debris such as cigarette filters, plastic bags, and "preproduction plastic" impact the health of marine life that often confuses the debris for food. AB 258 (Krekorian) was enacted to manage this problem by requiring the SWRCB and RWQCBs to develop a fee-based monitoring program to reduce the discharges of preproduction plastics (known as "nurdles") that enter the marine environment. The program must be implemented by January 1, 2009, to

control the discharge from point and nonpoint sources of nurdles (such as resin pellets and powdered coloring for plastics). The program must address waste discharge, monitoring, and reporting requirements for plastic manufacturing, handling, and transportation facilities, and implement specified minimum BMPs. The program must also establish criteria that warrant a "no exposure" certification that allow conditional exemptions for plastics manufacturers, handlers, and transportation facilities.

AB 739 (Laird) is another storm water law that establishes criteria for the SWRCB and the DWR to award grants from Propositions 1E and 84 to manage storm water projects that offer long-term water quality improvements.

The Legislature attempted to cure a problem revealed by the Los Angeles County Auditor-Controller involving hundreds of unreported spills. Together these spills amounted to eight million gallons of raw sewage discharges in Los Angeles County and no record of being cleaned up. AB 800 (Lieu) clarifies existing release reporting obligations for persons responsible for sewage or hazardous substance releases to the waters of the state. In addition to notifying the State Office of Emergency Services, they must also immediately notify the local health officer or the director of environmental health of a sewage discharge.

Responding to the challenges of upgrading and expanding water systems serving smaller communities that often are economically disadvantaged, AB 783 (Arambula) requires DPH to prioritize funding for infrastructure improvements and expansions for projects in disadvantaged communities. It also encourages DPH to consolidate small community water systems that serve disadvantaged communities in instances where consolidation will help improve water quality, reliability of water delivery, and improve cost effective management.

AB 1220 (Laird) modifies applicability criteria under the Office of Oil Spill Prevention and Response (OSPR) Act, which requires regulated marine facilities and vessels to prepare and implement oil spill contingency plans, training programs and annual drills. This law revises the definition of "small marine fueling facility;" under the Act to eliminate confusion with a similar term: "small craft refueling dock." This definitional change effectively exempts marine fueling facilities with a tank storage capacity of 20,000 gallons or less. Currently, no facilities fall within this category. Additionally, this law allows plans to establish training and drills for elements of the contingency plan every three years instead of annually. Finally, the law removes obsolete indemnification standards governing arrangements with oil spill response services.

The Marine Invasive Species Act regulates ballast water discharges on commercial ships. However, it does not regulate aquatic invasive species attached to the ship's hull. These aquatic organisms cause significant ecological and economic impacts. AB 740 (Laird) is designed to close this gap by reducing the introduction of marine invasive species into coastal waters and ports. This law establishes a regulatory program that requires regular removal of "hull fouling organisms" from the submerged portions of a vessel and regular cleaning of the ballast tanks to remove fouling organisms. Visiting vessels must maintain records of vessel activities including: dry docking, in-water cleaning of the submerged portion of the vessel, and antifouling paint applications. AB 1683 (Wolk) is also intended to manage the threat of invasive species. This law prohibits the possession, importation, shipment and transportation of Dreissenid mussels into California. It gives the Department of Fish and Game (DFG) tools to prevent the spread of these mussels by authorizing inspections, quarantines, and other enforcement approaches.

The Ocean Protection Council (OPC) coordinates state activities in order to protect and conserve coastal waters and ocean ecosystems. AB 1056 (Leno) authorizes the OPC to establish a science advisory team to review and evaluate results of research and investigations. AB 1280 (Laird) makes resources available to the OPC to develop and implement fishery management plans such as innovative community-based mechanisms that create incentives to improve the ecosystem.

In the wake of the Katrina disaster, last year California voters approved over \$9 billion (Proposition 84 and Proposition 1E) to manage the risk of floods and to protect water resources. This year, the Governor signed several laws that link land-use decisions and flood protection planning in an effort to protect 1600 miles of levees in the Central Valley. AB 5 (Wolk) ties together several flood protection bills and among other things requires the DWR to prepare and the Central Valley Flood Protection Board (formerly the Reclamation Board) to adopt a flood control system status report and develop levee flood protection zone maps. Beginning on or before September 1, 2010, and annually thereafter, DWR must notify landowners whose property is located within a levee flood protection zone. Every September 30, local agencies responsible for operating and maintaining project levees must prepare and submit to DWR a report containing information on levee conditions including maintenance performed. By December 31, 2008, DWR must compile a report on the project levees operated by local agencies for submission to the Board. Finally, DWR and the Board must collaborate with the federal government or local agencies in designing and constructing environmental enhancements associated with a federal flood control project. Key provisions of AB

156 (Laird) were included in AB 5 (described above), which was signed as part of a comprehensive flood bill package.

SB 5 (Machado) requires that local land-use decisions be consistent with a strategic Central Valley Flood Protection Plan. This plan must be developed by DWR and the Central Valley Flood Protection Board by 2012. SB 5 attempts to clarify flood management roles and responsibilities among local flood agencies, municipalities, developers and other property owners. SB 5 also requires cities and counties within the Sacramento-San Joaquin Valley to amend their general plans to align them with the Flood Protection Plan (within 24 months of adoption of that plan). The general plans must include relevant flood data, analysis, and goals and policies to reduce the risk of flood along with feasible implementation measures. Within 36 months of adopting the flood protection plan, the municipalities must revise their zoning ordinance to conform to the general plan. Cities and counties within the Sacramento-San Joaquin Valley must make specified findings regarding flood protection before approving land use decisions (or entering into a development agreements), including tentative maps or parcel maps for new residential properties located within a flood hazard zone.

Employing the theory of inverse condemnation, a recent court of appeal ruling held that the state can be liable for flood damage for property damages caused by the failure of a state project levee [*Paterno v. State of California* [(2003) 113 Cal. App. 4th 998, 6 Cal. Rptr. 3d 854, 2004 CELR 54]]. AB 70 (Jones) responds to this case and attempts to address the "disconnect" between state liability and local land use decisions that affect flood risk. This law is designed to share with state government the liability generated by local land-use decisions. Beginning January 1, 2008, local government will be liable for its "fair and reasonable share" of flood damages if it "unreasonably" approves development projects within a floodplain of a state levee. Under this law, cities and counties will be liable for property damage caused by flooding only to the extent that the municipality increased the state's exposure. The author hopes that the revised liability scheme will motivate planners to "take steps to mitigate flood risks before permitting new developments" in a flood plain.

SB 17 (Florez) recasts membership of the newly renamed Central Valley Flood Protection Board regarding member term limits, conflicts of interest, and duties including a responsibility to develop a strategic flood protection plan and to review local land use plans. Finally, SB 276 (Steinberg) authorizes the Sacramento Flood Control Agency to make levee improvements and modify the operation of Folsom Dam located east of Sacramento.

SB 1029 (Ducheny) expedites the time by which DPH must adopt primary and secondary drinking water standards (i.e., maximum contaminant levels). This law establishes time frames for adopting regulations governing these standards. The Department of Finance must complete its review within 90 days from the date DPH submits or resubmits a rule. SB 220 (Corbett) closes regulatory gaps governing bottled water, which is not subject to the Safe Drinking Water Act's potable water standards; rather, it is considered a food product subject to the federal Food and Drug Administration standards. SB 220 establishes a consumer right-to-know program for water bottling plants and water-vending machines that includes water quality labeling information on the bottle. Bottled water plants must annually develop a bottled water report (in English, Spanish, and other languages) that must be supplied to the consumer upon request. Labels on bottled water sold at retail or wholesale in beverage containers must, among other things, provide the source of the bottled water and information on water quality and on how consumers can obtain a copy of the bottled water report. Bottlers that distribute directly to consumers must provide similar information on each billing statement. DPH must conduct annual inspections of at least 20 percent of licensed vending machines in the state. Beginning January 1, 2009, water-vending machines must be licensed and serviced at least once every 31 days.

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## Hazardous Materials and Hazardous Waste

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The recent meltdown in the Chinese manufacturing supply chain has led to millions of recalled lead-contaminated products entering the United States chain of commerce. These events have spotlighted the dangers of toxic chemicals that can cause acute and chronic illness, especially to infants and children. Lead is a heavy metal that is toxic to the brain and nervous system and is extremely toxic to infants, children and pregnant women. Lead paint or dried paint film decorating glass bottles can cause lead exposure to those handling the bottles. AB 774 (Ridley-Thomas) is designed to reduce the risk of lead poisoning. This law narrows an exemption under the Toxics in Packaging Prevention Act that prohibits packaging containing lead and other specific bioaccumulative metals. Specifically, this law limits lead content on glass bottles containing paint to no more than 0.06 percent by weight of lead or lead compounds.

Following the lead of San Francisco and several other countries, California enacted AB 1108 (Ma), which prohibits the manufacture, sale or distribution of toys and child care products that contain phthalates exceeding 1/10 of one percent beginning January 1, 2009. Scientific stud-

ies have linked phthalate exposure to testicular injury, liver injury, and liver cancer, while other studies have concluded that these chemicals are endocrine disruptors (responsible for disrupting hormones and the reproductive system). Phthalates (plastic softeners that increase flexibility) are known to leach from the plastic. Manufacturers of children's toys and baby products must use the least toxic alternatives when replacing phthalates. Manufacturers are prohibited from replacing phthalates with carcinogens and reproductive toxicants, as defined in the law.

The California Lighting Efficiency and Toxic Reduction Act [*see* AB 1109 (Huffman), discussed above] restricts the sale of general purpose lighting (which include lamps, bulbs, and tubes) that contains hazardous substances prohibited by the European Union's RoHS Directive. Beginning January 1, 2010, lighting manufacturers will be prohibited from selling these products in California. These manufacturers will be required to certify that their general purpose lights do not contain specified levels of hazardous substances. By September 1, 2008, the Department of Toxic Substances Control (DTSC) must coordinate with the California Integrated Waste Management Board (IWMB) to recommend strategies to: (1) cost-efficiently and conveniently collect general purpose lights at the end-of-life and (2) educate consumers on the proper management and collection of bulbs for recycling.

The Legislature responded to a significant weakening of Section 313 of the federal Emergency Planning and Community Right to Know Act (commonly known as the Toxic Release Inventory or TRI requirements) by enacting AB 833 (Ruskin). In 2006, EPA raised the federal threshold for reporting chemical releases that trigger TRI reporting from 500 pounds per year to 2,000 pounds, and from 500 pounds per year to 5,000 pounds for management of chemical waste. This change will result in businesses reporting significantly lower volumes of toxic chemicals to the public. Lawmakers passed the California Toxic Release Inventory Program of 2007 (effective on January 1, 2009), which is intended to nullify the effect of the federal rollback. Specifically, facilities must submit a toxic chemical release form to DTSC if they are not required to submit a form containing the same information under EPCRA. The form must contain the same information that would have been required under the federal EPCRA Section 313 program.

The aboveground storage tank (AST) inspection program has remained dormant since the 2002/2003 fiscal year when the Legislature eliminated funding from the SWRCB's budget to implement that program. AB 1130 (Laird) restores the AST compliance program by transferring authority from the SWRCB and RWQCBs to local Certified Unified Program agencies (CUPAs). CUPAs (i.e., local environmental health and fire departments that

implement six environmental and emergency response programs) now have the responsibility to inspect once every three years within their jurisdictions ASTs having petroleum storage capacity of 10,000 gallons or more, and to collect fees. This law authorizes the SWRCB and regional boards to oversee cleanup or abatement efforts involving a release from an AST. AB 1098 (Saldana) is intended to clarify that the CUPA (or the participating agency) has authority to set administrative and criminal penalties for violations of the hazardous materials business plan program involving the handling and releases of hazardous materials. This law additionally modifies the penalty structure for violations of the California Accidental Release Program.

AB 1717 (Committee on Agriculture) increases from two to four years the statute of limitations for the Department of Pesticide Registration (DPR) to prosecute civil violations for misbranded or adulterated pesticides. This law also requires the following to register with the Agricultural Commissioner before operating a structural pest control business in a county: structural pest control operators (Branch 2 and Branch 3), qualifying managers and companies registered with the Structural Pest Control Board, and board licensed Branch 1 pest controller licensees conducting fumigations. This law also requires licensed pest controllers, structural pest control operators, field representatives, applicators, and companies registered with the Structural Pest Control Board to notify the agricultural commissioner at least 24 hours before administering fumigants.

Generators of used dielectric fluid now enjoy a conditional exemption from hazardous waste toxicity testing thanks to AB 1359 (Parra). Dielectric fluid is derived from highly refined mineral oil and is used in oil-filled equipment such as transformers. Prior to this law, before a generator could transport used oil, he had to prove that the used oil met specified toxicity and purity standards. This law eliminates the batch-by-batch toxicity test but leaves in place the need to test for purity. Prior to shipment, the generator must certify that dielectric fluid from similar equipment and subject to similar operating conditions does not exhibit the toxicity characteristic. The used oil generator must keep records of prior tests.

In 2002, the United States Geological Survey conducted a study showing that 80 percent of streams sampled across 30 states had measurable concentrations of drugs, steroids, and reproductive hormones. Exposure, even to low levels of pharmaceuticals, can negatively impact aquatic organisms and may cause human health effects. When consumers dispose of waste pharmaceuticals, they must be managed as a household hazardous waste. Prior to the enactment of SB 966 (Simitian), consumers were not expressly prohibited from disposing pharmaceuticals and

personal care products in the trash or flushing them down the toilet. This law is designed to provide a safe and environmentally sound alternative to dispose of unused prescription drugs. It requires the IWMB to survey other state disposal programs and develop model programs, by July 1, 2008, for the collection and disposal of pharmaceutical drug waste (but not controlled substances). Other state models include pharmacy-based take-back pilot projects and mail-back programs.

AB 1371 (Ruskin) offers DTSC additional enforcement tools to prosecute violations of unauthorized hazardous waste storage. Prior to this law, DTSC only had criminal enforcement authority, which requires a much higher burden of proof. The law authorizes DTSC to prosecute civil and administrative enforcement cases against alleged violators who intentionally or negligently store or treat hazardous wastes at unlicensed hazardous waste facilities. It exempts those who take reasonable steps to determine that a hazardous waste transporter is properly licensed or a storage facility is authorized to accept hazardous wastes.

The tanker truck accident on the Bay Bridge last spring got the attention of the Legislature. AB 1612 (Nava) was introduced in response to the April 2007 accident where a tanker truck carrying gasoline crashed, causing a fire that destroyed a key freeway section draining traffic from the San Francisco the Bay Bridge. This law is intended to restrict the ability to secure a hazardous material endorsement and tightens inspection of terminal operations. Prior to this law, hazardous materials carriers could waive California Highway Patrol (CHP) inspections of their terminals if the carrier promised to maintain its equipment in good order. This law removes the option of a waiver and requires a physical inspection by the CHP every two years under the Biennial Inspection of Terminals program.

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## Cleanups and Brownfields

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The Underground Storage Tank (UST) Cleanup Fund Act of 1989 makes funds available to owners and operators of petroleum USTs to defray cleanup costs from leaking USTs. Prior to AB 1437 (Aghazarian), owners and operators of petroleum USTs were ineligible to access cleanup funds if they failed to comply with UST permitting requirements. The SWRCB was authorized to waive the permitting requirement if the claimant acquired the land on which the leaking UST was located and obtained a UST permit within one year from when he or she should have been aware of the UST permitting program, whichever occurred later. The waivers were unavailable where permit noncompliance occurred after January 1, 1990. AB 1437 extends the waiver opportunity to claimants who continued to be unaware of permitting requirements after January 1, 1990. This law is premised

(Pub. 174)

on the notion that many claimants had no reason to know of the UST permitting program before 1990.

Other legislation harmonizes aspects of the site assessment program involving the California Superfund program and brownfields. Regardless of which agency serves as the lead agency (DTSC, SWRCB, or RWQCB), AB 422 (Hancock) is intended to ensure that a human health or ecological risk assessment is completed to evaluate volatile organic compound (VOC) exposures. This law requires the exposure assessment to be prepared in conjunction with a response action that evaluates the reasonable maximum indoor estimates of VOC that could enter structures located on the contaminated site or proposed to be constructed. It authorizes the SWRCB and RWQCBs to require either a screening level or site-specific assessment for those involved in cleaning up a brownfield site. With some exceptions, this applies only to cleanup orders issued by the SWRCB or a RWQCB on or after January 1, 2008.

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## Land Use

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The Legislature delivered a potpourri of land use policy ranging from flood protection considerations in local general plan elements to giving funding preference for projects with sustainable business designs. AB 162 (Wolk) requires cities and counties to include flood protection considerations in the following general plan elements: land use, conservation, safety, and housing elements. Municipalities must identify and annually review land at risk for flooding. This law prohibits from inclusion in a council of government inventory land eligible for housing that is found insufficiently protected from flood hazards. The next revision of the housing element on January 1, 2009, must update: (1) the conservation element and identify rivers, creeks streams, flood corridors, riparian habitat, and other areas capable of accommodating floodwater; and (2) the safety element providing flood hazards information and establishing goals, policies, and objectives, to protect the community from flooding. Finally, the law establishes criteria to allow municipalities that have enacted flood plain management ordinances to meet the provisions of this law.

AB 1053 (Nunez) sets forth criteria allowing Business Improvement Districts to access some of the \$850 million allocated under Proposition 1C (Housing and Emergency Shelter Trust Fund Act of 2006). This money can be used to fund infill development, brownfields projects, and infill and housing-related parks. AB 1460 (Saldana) gives priority to applicants seeking bond funds for the multi-family housing program under Proposition 1C. Applicants that incorporate sustainable building design (such as energy efficiency, water saving fixtures, and recycled

building materials) are awarded priority points in the application process.

SB 162 (Negrete) requires Local Agency Formation Commissions (LAFCOs) to consider environmental justice when issuing decisions that affect low-income communities or neighborhoods with ethnic and/or racial minorities. Specifically, LAFCOs must entertain environmental justice, among other factors, when reviewing boundary changes for cities and special districts. For example, if a LAFCO approves annexation of a sanitation district adjacent to a city with a sizeable low income population, that city can access utility services offered by that district.

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## California Environmental Quality Act

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As discussed above, SB 97 (Dutton) was part of a legislative package that secured the 2007-2008 state budget. This budget trailer bill requires the Office of Planning and Research (OPR) to adopt and update climate change-related CEQA regulations (known as CEQA Guidelines) three years in advance of the forthcoming climate change regulations under AB 32. By July 1, 2009, OPR must develop regulations to guide lead agencies in preparing environmental impact reports (EIRs) and initial studies analyzing climate change impacts. These guidelines must address feasible mitigation for GHG emissions generated from projects involving transportation or energy consumption. According to the Senate floor bill analysis, GHG emissions constitute significant adverse effects under CEQA. The Resources Agency must formally adopt these guidelines by January 1, 2010. The law also prohibits CEQA challenges for failure to adequately evaluate environmental impacts involving GHG emissions from infrastructure projects (e.g., transportation, levee repair, or flood protection projects) funded under Proposition 1B. This CEQA exemption applies retroactively to CEQA documents that are not yet final and remains in effect until January 1, 2010.

Under prior law, applicants seeking benefits under the Enterprise Zone Act were required to complete and certify an EIR even where a negative declaration or mitigated negative declaration would suffice. SB 341 (Lowenthal) streamlines the CEQA process by allowing applicants to prepare a negative declaration or mitigated declaration when the Department of Housing and Community Development determines that an EIR is unnecessary.

When required by a CEQA document to set aside land interests to mitigate environmental impacts for agency-sponsored capital projects, AB 1246 (Blakeslee) allows a state or local agency to transfer the property title to non-profit organizations.

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## Solid Waste

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This year, recycling advocates had to settle for more modest achievements compared to last year's bounty of policy success. Nonetheless, the Legislature continued to incrementally build programs and strategies to manage plastic waste and promote plastics recycling and composting. In addition to establishing a program to manage nurdles [see AB 258, discussed above], the Legislature offered relief to manufacturers of degradable plastic bags. Prior law required plastic bag manufacturers to provide specified post-consumer plastic content. Compostable and biodegradable trash bags (typically used for yard waste) are incompatible with conventional recycled plastic for purposes of composting. Recognizing that degradable plastic bags will be composted and not recycled, AB 1023 (DeSaulnier) exempts plastic trash bag manufacturers from the recycled-content standards.

Other recycling laws promote curbside recycling at multi-family housing and offer relief to materials recovery facilities or MRFs. SB 1021 (Padilla) authorizes the Department of Conservation (DOC) to award grants to fund placement of beverage container recycling receptacles in multi-family housing. Under this law, local governments and nonprofit organizations can seek grants from a \$15 million pool from January 1, 2008, to January 1, 2009. AB 1473 (Feuer) assists MRFs that receive and process recyclables from curbside recycling programs. Waste "residuals" are generated during the processing of recyclables. MRFs that generate 10 percent residuals must obtain a solid waste facility permit and can be ordered to "cease and desist" operations until the permit is obtained. This bill authorizes Local Enforcement Agencies to issue a stay to these MRFs to allow an opportunity to continuing operating while applying for the necessary permit.

Prior law established an oversight process to track the fate of major appliances (e.g., refrigerators, freezers, washers, dryers, microwaves, air conditioners, and furnaces) in order to ensure that they are managed by certified compliance recyclers. This program helped manage the risk of releasing hazardous materials (e.g., mercury, chlorofluorocarbon, used oil, and polychlorinated biphenyls) from these appliances. AB 1447 (Calderon) now allows appliance service technicians as well as certified appliance recyclers to remove refrigerants from major appliances. This law also permits persons who are not certified appliance recyclers to transport, deliver, or sell discarded major appliances to scrap recycling facilities and certified appliance recyclers. Finally, the law imposes record keeping requirements for scrap recycling facilities accepting appliances from non-certified appliance recyclers.

Illegal dumping enforcement officers have authority to arrest alleged violators; however, prior to AB 1048 (Richardson), they could not obtain criminal history information and could not check suspects and vehicles for warrants. This law authorizes the State Attorney General to provide this information upon a compelling need. This will provide officers important information when apprehending a suspect who could also be wanted for a dangerous felony crime. Finally, AB 679 (Benoit) authorizes the court to impose a fine of \$100 for an infraction and \$200 for a misdemeanor for a defendant convicted of littering and illegal dumping offenses.

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## Natural Resources and Wildlife

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The Legislature approved a number of laws planning for recreational resources along the coast and in the Central Valley. Other laws are designed to protect the California condor and wild trout populations, while other measures adjust the penalties and evidentiary provisions governing poaching abalone, sturgeon, and lobster.

Studies have that shown lead poisoning is a significant threat to the survival of the California condor—a fully protected species under the California Endangered Species Act. AB 821 (Nava) establishes the Ridley-Tree Condor Preservation Act, which requires the use of non-lead ammunition when taking big game and coyote within condor habitat. The DFG is required to develop regulations defining non-lead ammunition by July 1, 2008. To the extent that funding is available, DFG must also provide hunters within specified hunting zones non-lead ammunition for free or at reduced cost.

SB 384 (Cogdill) was enacted to improve the protection of California's wild trout species. This law requires the DFG to determine whether a stream or a lake should be managed as a wild trout fishery or whether planting native trout to supplement wild trout populations is more appropriate. It further strips DFG of its authority to develop catch and release fisheries and replaces it with a requirement to develop additional wild trout waters. Finally, DFG must prepare and complete management plans for all wild trout waters in California within three years of initial designation and update these plans every five years.

AB 1187 (DeSaulnier) tinkers with enforcement provisions governing the illegal sale and possession of sturgeon and lobster. This law increases penalties for poaching to no less than \$5,000 but not more than \$10,000. In addition, the law adjusts the evidentiary rules governing abalone possession by revoking the rebuttable presumption that persons who take or possess a specified amount of abalone possess it for "commercial purposes." The law establishes that possession of more than 12 abalone serves

as prima facie evidence that it is possessed for commercial purposes.

Several laws extend provisions of forestry and resource management programs along with exotic animal management. AB 1515 (La Malfa) extends an exemption under the Z'Berg-Nejedly Forest Practice Act of 1973, which permits residents and landowners to remove fallen trees and other "vertical debris" for the purpose of reducing the rate of fire speed, duration, and intensity. Other legislation [SB 701 (Wiggins)] reinstates the California Forest Legacy Program, which expired on January 1, 2007. This law additionally authorizes the Department of Forestry and Fire Protection to purchase conservation easements to preserve private forest lands. AB 646 (Wolk) extends the provisions of a watershed restoration program protecting Cache Creek until December 31, 2012. Other legislation [SB 419 (Kehoe)] expands the geographical extent of the San Diego River Conservancy while expanding its mission to protect historical and cultural resources. Finally, AB 1729 (Committee on Water, Parks, and Wildlife) authorizes the DFG to "take" wildlife for promoting public health or safety and "take" any bird it determines is unduly preying on birds, mammals, or fish. AB 1729 also prohibits private land owners from "taking" rock doves as non-game species.

AB 1396 (Laird) brings California one step closer to a contiguous coastal trail system by requiring the California Department of Transportation (Caltrans) to identify state-wide surplus property located in the coastal zone.

In an effort to plan for and meet the recreational needs of the burgeoning Central Valley population, AB 1426 (Wolk) requires the Department of Parks and Recreation (DPR) to develop a plan to implement its vision to protect natural, cultural, and historical resources by January 1, 2009. This vision is intended to expand and improve park facilities and recreation programs throughout the state parks in the Central Valley. SB 421 (Ducheny) is designed to clarify existing law by authorizing DPR to acquire, by donation or purchase, real property that is subject to a conservation easement or deed restriction.

SB 742 (Steinberg) significantly increases registration fees and fines for riders violating the Off-Highway Motor Vehicle Recreation Act of 2003. This law requires that approximately 25 percent of available annual funds be earmarked to fund environmental programs. Additionally, the law recasts the composition of the Off-Highway Motor Vehicle Recreation Commission by increasing membership from seven to nine members.

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## Looking Ahead

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The budget brinkmanship that played out this summer is yet another example of how partisan acrimony creates

policy stalemate in Sacramento. This hyper-partisanship is fed by ideologically pure lawmakers who enjoy safe seats. It is aggravated by terms limits, which generate inexperienced legislators who are typically loathe to take on risky, bipartisan reforms. If the lawmakers are to have a fighting chance of tackling long overdue environmental policy reforms, members on each side of the aisle will need to venture forth and take risks.

Finding bipartisan collaboration will take courageous leadership from the Governor's office to transcend this perennial divide. The charismatic, internationally popular Governor has some political capital to burn if he chooses to use it. During and since his reelection, the Governor has steered back to the center while the Republican legislative minority has held fast to its ideological core. Schwarzenegger has chastised his fellow Republicans for holding up a budget that met with the approval of a significant majority of both houses. Meanwhile, the darling of the conservative right, Senator Tom McClintock, argues that Schwarzenegger must return to the party's principles instead of redefining them in moderate terms.

With polls showing climate change on the minds of the majority of the California electorate, there is mounting pressure for Republicans to rethink their strategy and join the Governor in the center on this issue. Otherwise, the tug of war between the conservative and centrists wings of the Republican Party could cause long-term damage for the shrinking Republican base in California.

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# THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

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## Cases

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### **EIR For Large Development Project Adequately Addressed Water Supply**

*Santa Clarita Organization for Planning the Environment v. County of Los Angeles*

No. B189116, 2d Dist., Div. 6

11/28/07 Daily J. D.A.R. 17387, 2007 Cal. App.

LEXIS 1938

November 26, 2007 (rehearing opinion)