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By

*Gary A. Lucks**

Preoccupied by another financial crisis and election year politics, the Legislature and the outgoing Governor concluded one of the most lackluster legislative sessions in decades. Despite the dearth of earth-shattering legislation, last year was eclipsed by significant ballot initiatives that may have far reaching implications in California and on the national stage.

This year was marked by the passage of Proposition 26 which changes the state Constitution so that some fees will require a two-thirds vote. Due to major fluctuations in the general fund from year-to-year, California environmental agencies have resorted to regulatory fees to support environmental programs. Proposition 26 could jeopardize some of these programs by recasting environmental fees as taxes, making it virtually impossible to obtain the requisite two-thirds vote for approval. This could have profound and wide-ranging impacts on implementing many California environmental laws including the Global Warming Solutions Act of 2006 (otherwise known as "AB 32").

Proposition 22 is another voter-approved initiative that will impact the fiscal picture for California. Because it restricts the state government's ability to collect local funds, it is expected to contribute another \$1 billion gap to the projected \$28.5 billion dollar budget deficit over the next 18 months. On the

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other hand, the electorate approved Proposition 25. This initiative eliminates the two-thirds requirement to approve spending; however, it is still necessary to produce a supermajority in the legislature to increase revenues.

Nonetheless, the recently closed legislative session produced noteworthy policy on product stewardship for carpet manufacturers; waste paint recycling, and limits on heavy metal content in bead blasting. The balance of the new laws addressed a number of technical clean up provisions affecting existing environmental programs.

Climate Change

With his approval ratings in the dumps, the lame duck governor salvaged his environmental legacy as one of the champions of Climate Change legislation. Proposition 23 went down to a resounding defeat in the November 2010 election thus preserving part of Governor Schwarzenegger's legacy as a green crusader. Proposition 23 would have indefinitely suspended AB 32, leaving California's pioneering efforts to tackle climate change in limbo. Assembly Bill (AB) 32 authorizes the California Air Resources Board (ARB) to craft strategies to reduce greenhouse gas (GHG) emissions to 1990 levels by 2020. Since enactment of AB 32, the ARB has been implementing a "scoping plan" that sets forth an ambitious set of regulatory strategies including a "cap-and-trade" scheme to reduce GHGs.

The ARB based its scoping plan conclusions on controversial carbon data representing the potential capacity for California forests to sequester carbon. The plan posited that forests currently sequester a net of approximately five million metric tons of carbon dioxide (CO₂) annually after taking into account emissions from fires, harvesting, land conversion, and decomposition. AB 1504 (Skinner) was introduced to address significant methodological limitations supporting the basis for the sequestration rate. One of the scoping plan strategies requires the California Department of Fire (CDF) and the Board of Forestry (BOF) to evaluate how it will continue to achieve this sequestration rate by 2020 implementing the Z'berg-Nejedly Forest Practices Act of 1973 (Forest Practices Act). Assembly member Skinner contends that since the mission of the Forest Practice Act does not specifically embrace the values of carbon sequestration, the CDF "may not be in the best position to complete the [sequestration] assessment objectively."

The wide-ranging mission of the Forest Practices Act is to, among other things, effectuate maximum sustained yield of high-quality timber products while considering recreation, watershed, wildlife, range and forage, fisheries, regional economic vitality, employment, and aesthetic enjoyment. AB 1504 (Skinner) expands the list of public values to include CO₂ sequestration. This law also requires the ARB's rules governing commercial tree harvesting to determine whether state forests have the capacity to sequester enough CO₂ to meet or exceed the scoping plan GHG reduction target for the forestry sector.

In March 2010, the ARB tabled proposed rules designed to establish a vehicle cabin temperature standard known as "cool cars" or the vehicle cabin temperature standard. The cool cars policy is premised on reducing fuel consumption, GHGs and other pollutant emissions by maintaining cooler interior temperatures for cars and

light trucks. Due to scheduling challenges with the rule-making process, the ARB withdrew the proposed regulation in the spring of 2010. The ARB plans to refashion these rules to affect the 2017 model year. Senate Bill (SB) 1328 (Lowenthal) provides ARB policy guidance for use when reworking these rules. It requires the ARB to consider potential reductions in air-conditioning use that can be achieved while a motor vehicle is moving. In addition, the agency must consider potential conflicts between, and relative benefits of these temperature reduction requirements and technologies that provide motor vehicle GHG emission reductions. Finally, ARB must consider the flexibility necessary to achieve overall maximum GHG reductions from motor vehicles.

AB 1507 (Lieu) expands opportunities to fund projects to reduce GHGs. Prior to this law, the Carl Moyer Program was primarily targeted at funding heavy-duty vehicle emission projects to reduce conventional air emissions from diesel engines in order to meet federal ambient air quality standards. The program historically funded the incremental cost to purchase heavy-duty vehicles using alternative fuels, such as transit buses and trash trucks, along with engine replacements for agricultural irrigation pumps, construction equipment, and marine vessels. This law is intended to level the playing field for technologies that both reduce conventional pollutants as well as GHGs. The Assembly floor bill analysis points out that a 2010 diesel truck and a 2010 compressed natural gas (CNG) truck emit the same amount of criteria pollutants emissions; however, CNG trucks emit significantly fewer GHG emissions. Without increasing the Carl Moyer subsidy, fewer CNG trucks would be purchased because they cost more than diesel trucks. This law requires the ARB to revise the cost-effectiveness calculation used pursuant to the Carl Moyer Program. The revised guidelines must be completed by July 1, 2011.

Among other functions, the Strategic Growth Council is authorized to support the planning and development of sustainable communities to manage and fund green projects for the urban environment. These projects can include, among others, community green space; greening of public lands and structures; permeable storm water surfaces and collection basins; and urban streams. SB 1006 (Pavley) expands the list of eligible urban green projects to include special districts and joint power authorities.

Finally, SB 855 (Committee on Budget and Fiscal Review) is an urgency law that became effective October 19, 2010. This law requires the Governor to employ zero-based budget methodology regarding the 2011–12 fiscal year for implementing AB 32.

Air Quality

The Legislature delivered a number of laws promoting cleaner, more efficient vehicles while making some reforms to the smog check program. Other legislation is designed to ease the transition to electric vehicles and

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plug-in hybrids by providing financial assistance to home owners seeking to install electrical charging stations. New laws also provide direction on how air districts use their enforcement authority while offering clarity for penalty assessments involving air quality violations. Finally, we saw limits on regulating air emissions from Mexican power plants selling power in California.

SB 535 (Yee) is one of several bills designed to promote low emission vehicles along with the infrastructure to support electric vehicles. This law extends the types of low emission vehicles that can use the high-occupancy vehicle (HOV) lanes regardless of vehicle occupancy. Beginning on January 1, 2012, up to 40,000 enhanced advanced technology partial zero-emission vehicles will be extended this privilege. This law additionally extends until July 1, 2011, the HOV privilege for single-occupant hybrid vehicles with a fuel economy rating of at least 45 miles per gallon or greater fuel economy highway rating that meets specified design standards such as ultra low emission vehicles and super ultra-low emission vehicles.

Last year, the Legislature passed SB 626 [see Stats. 2009 SB 626 (Kehoe)], which required the California Public Utilities Commission (PUC) develop strategies to overcome barriers to widespread use of plug-in hybrid vehicles by July 1, 2011. By 2020, the State Energy Resources Conservation and Development Commission (otherwise known as the CEC) expects the number of electric vehicles (EVs) such as light-duty plug-in hybrid EVs and full-size battery EVs to reach 1.5 million by 2020. SB 1455 (Kehoe) responds to this projected demand for EVs and assists potential EV buyers in making an informed decision about home charging, electrical features, and safety measures to consider.

This law requires the CEC, by July 1, 2011, in consultation with the California Public Utilities Commission (CPUC), to maintain a Web site with links providing information on plug-in hybrids and fully electric vehicles. The Web site must include, among other sources of information, resources on obtaining a utility service upgrade along with basic charging circuit requirements.

California's smog check program uses an outmoded smog check methodology involving tailpipe, visual, and functional testing for new model-year cars according to Inspection and Maintenance Review Committee the United States Environmental Protection Agency considers this methodology to be cost-ineffective. The California Bureau of Automotive Repair (BAR) and the ARB sponsored AB 2289 (Eng). This law replaces the first generation smog check technology (loaded mode dynamometer or 2-speed idle testing) only on model year 2000 and newer vehicles with onboard diagnostic systems,

beginning no earlier than January 1, 2013. This second generation equipment is a more cost-effective and effective testing procedure.

Prior to this law technicians violating the smog check program were not issued monetary penalties, rather, they were only required to receive additional training. The law authorizes the Department of Consumer Affairs (Consumer Affairs) to adopt regulations that require referees to inspect smog stations or technicians where "prohibitive or unusual inspections circumstances" exist. This law additionally strengthens the penalty structure for stations and technicians who perform improper or incomplete inspections of the smog check requirements. This law authorizes Consumer Affairs to cite violators of smog check requirements by issuing an order of abatement or to assess administrative fines between \$100 and \$5,000 and civil penalties up to \$5,000. It also requires Consumer Affairs to develop inspection standards to evaluate whether smog check stations are performing their duties appropriately.

According to the ARB, 75 percent of motor vehicular air pollution is caused by approximately 25 percent of the oldest vehicles. The BAR's consumer assistance program (CAP) provides financial assistance for eligible consumers whose vehicles fail the biennial smog check. This law allowed a car owner whose car failed the smog check to retire the vehicle in exchange for \$1,500 or more, if cost-effective. Consumers were required to pay \$100 towards the repair and BAR was required to pay an additional \$400 to even wealthy vehicle owners. AB 787 (Hill), among other things, limits financial assistance to vehicle owners whose income level is 225 percent of the federal poverty level. In addition, this law reduces the amount the BAR will pay to a person seeking to retire his or her high-polluting vehicle who does not qualify as low-income from \$1,500 to \$1,000.

With auto manufacturers gearing up to sell new electric vehicles and plug-in electric vehicles in California there will be a need for consumers to make electrical improvements in their homes to accommodate these vehicles. SB 1340 (Kehoe) was introduced to help bridge the funding gap to provide additional funds to install residential electrical charging stations. Specifically, this law provides legislative authority for the CEC to design a program to offset these infrastructure costs. The CEC is now authorized to fund electrical charging stations under the Alternative and Renewable Fuel and Vehicle Technology Program [see Stats. 2007, AB 118 (Nunez)] which annually generates approximately \$120 million from vehicle registration fees and special identification license plates (known as the Alternative and Renewable Fuel and Vehicle Technology Program).

In addition, this law expands the authority for public agencies and property owners to voluntarily agree to be assessed in order to finance electric vehicle charging infrastructure. This law further prohibits public agencies from allowing property owners to participate in contractual assessment programs where the total assessments and taxes on their property exceeds five percent of the property's market value. This law also expands the Property Assessed Clean Energy (PACE) Reserve program to assist local jurisdictions in financing installation of electric vehicle charging infrastructure. It also allows the proceeds of the PACE bonds to finance qualified electric vehicle charging infrastructure. Finally, this law expands the definition of a PACE bond to include finance electric vehicle charging infrastructure.

AB 2037 (Perez) is aimed at power plants located in Mexico that share the air basin comprising California's border region. This law prohibits an investor-owned utility (IOU) or local publicly-owned electric utility from entering into long-term contracts with power plants that do not comply with Best Available Control Technology (BACT) standards for controlling air emissions. As a result, this law is intended to incent new Mexican power plants to also adopt California's BACT standards to control air pollution.

To minimize exposure to patients of particulate matter and other carcinogenic air emissions [see Stats. 2003, AB 390 (Montanez)], health care facilities (including hospitals, acute psychiatric hospitals, skilled nursing facilities, intermediate care facilities, special hospitals, intermediate care facilities for the developmentally disabled, and nursing facilities) no longer need to weekly test their diesel-powered backup generator. The law requires that health care facilities test their backup generators 12 times a year. AB 1863 (Gaines) extends the sunset date for this law from January 1, 2011 to January 1, 2016.

Senator Wright introduced SB 1224 to address instances where repeated and unsubstantiated odor complaints are lodged with an air district. For example, since 2007 over 80 complaints were lodged to the Bay Area Air Quality Management District against the Custom Alloy Scrap Sales (CASS) with no odor violations issued. SB 1224 (Wright) was introduced to give air districts freedom to manage their finite enforcement resources by authorizing them to issue rules giving them freedom to ignore repeated and unsubstantiated air quality complaints or complaints made in bad faith.

SB 1402 (Dutton) is an urgency law enacted to provide the regulated community clarity on how the ARB assesses penalties and to provide confidence that penalties will be issued in a consistent fashion for similar violations. This law requires the ARB to issue a specified written

communication before issuing an administrative or civil penalty for air quality violations. The written communication must state how the penalty amount was calculated and the regulatory basis supporting the penalty assessment. Finally, if the penalty pertains to a law that limits specified pollution levels, then the ARB must indicate the quantity of the pollutant alleged to have been emitted. This information along with all final settlement agreements must be publicly available.

This law also requires the ARB and the courts to consider specified factors when calculating the administrative or civil penalties connected to vehicular air pollution control laws including, among others: the extent of harm to public health, safety, and welfare caused by the violation; the nature and persistence of the violation; the compliance history of the defendant; the preventive efforts taken by the defendant; the cooperation of the defendant during the course of the investigation; and the financial burden to the defendant.

The California Transportation Commission (CTC) allows local or regional agencies to advance their own funds to begin or continue a project under Proposition 1B (the Highway Safety, Traffic Reduction, Air Quality, and Port Security Act of 2006). This proposition authorizes \$19.925 billion in general obligation bonds to be issued to fund transportation projects. Local or regional agencies can later seek reimbursement when the funds become available. These agencies assume the risk because the timing and amount of potential reimbursement is not guaranteed. A Letter of No Prejudice (LONP) is the vehicle used to effectuate this process. SB 1371 (Correa) is an urgency law that authorizes LONPs for \$950 million generated from a general obligation bond for a high-speed passenger train system to fund intercity and commuter rail lines and urban rail systems. Alternatively, the funds can be advanced to fund capacity enhancements, modernization, rehabilitation, or safety improvements.

The Clean Air and Transportation Improvement Act of 1990 (Proposition 116) authorizes \$1.99 billion in general obligation bonds to fund various rail and transit projects. ABX8 11 (Committee on Budget) allows the California Transportation Commission (CTC) to coordinate with local transportation agencies to expend these funds.

Energy

Since the enactment of AB 32 and establishment of the Renewable Portfolio Standard (RPS), the Legislature has devoted considerable effort to ensure the availability of reliable sources of renewable energy. This year, the Legislature served up a smorgasbord of policies addressing energy storage procurement targets; adjustments to feed-in tariff

provisions; a regional mitigation program to offset species impacts when permitting renewable energy projects; and expanding the PACE program. Other legislation restricts investment in Iran's energy sector; addresses disclosure of energy usage by customers; and addresses energy efficiency for appliances.

AB 2514 (Skinner) requires the CPUC to establish targets for IOUs to establish energy storage system procurement targets by October 1, 2013. These targets must be integrated into the utility's renewable energy procurement plans. The energy storage systems must, among other things, reduce GHGs or demand for peak electrical generation. The initial target for IOUs must be achieved by December 31, 2015, and a second target must be met by December 31, 2020. Publicly-owned electric utilities (POEUs) are required to determine their appropriate targets by October 1, 2014. The initial target for POEUs must be achieved by December 31, 2016, and a second target must be met by December 31, 2021. IOUs serving electricity to customers outside California and having no more than 60,000 customers inside California are exempt from these requirements.

In 2007, the legislature created the California Solar Initiative (CSI), which established a goal for IOUs and publicly owned utilities (POUs) to install 3,000 megawatts of photovoltaic solar energy in California by 2017. The CSI requires that the solar energy system be located on the participating rate payer's premises and must offset part or all of that their electricity demand. AB 1947 (Fong) was enacted to assist POUs in their efforts to meet the CSI goal by exempting the POU from these offsetting requirements if its capacity is less than five megawatts and meets other specified conditions.

The RPS requires at least 20 percent of electricity delivered to ratepayers be sourced from specified renewable energy such as wind, solar, and geothermal energy. AB 1954 (Skinner) addresses a financial impediment to financing renewable energy known as a feed-in tariff where utilities are required to reimburse eligible renewable energy projects that deliver up to three megawatts of power to the transmission and distribution grid. AB 1954 allows the CPUC to ensure that electrical corporations reflect transmission costs in their retail rates established by the federal Energy Regulatory Commission. This must occur upon granting a certificate of public convenience and necessity for new transmission facilities to achieve the renewable energy objectives established by the RPS.

AB 2724 (Blumenfeld) is a feed-in tariff law that directs the CPUC to authorize the award of monetary incentives to state agencies for generation of up to 5 MW of power. The incentive rebate payments will be capped at 25 MWs and will be in place through January 1, 2013.

SBX8 34 (Padilla) is an urgency law that facilitates siting solar thermal and solar photovoltaic projects in the Mojave and Colorado desert regions of California. This desert region—known as in the Desert Renewable Energy Conservation Plan (DRECP) planning area—is being developed by the Department of Fish and Game (DFG), CEC, federal Bureau of Land Management and the United States Fish and Wildlife Service, to serve as a regional habitat conservation plan. This plan is designed to fully mitigate under the California Endangered Species Act (CESA) the “take” of endangered, threatened, or candidate species resulting from the construction and operation of power plants. This law employs a regional advance mitigation approach that allows an applicant to pay the DFG a one-time permit application fee of \$75,000.

Power projects that are eligible to participate in this program include those where the power developer has: (1) submitted a completed permit application to the CEC, which was received by February 1, 2010; and (2) where the developer or owner applied for and qualifies for federal American Recovery and Reinvestment Act (ARRA) funding. ARRA funding can offset up to 30 percent of project costs as long as construction was begun by December 31, 2010. This law also loans \$10 million from the Renewable Resource Trust Fund to the Renewable Energy Resources Development Fee Trust Fund and authorizes DFG to use these funds to purchase mitigation lands or conservation easements for later use by energy developers. This law also requires DFG to develop an interim mitigation strategy that must include, among other things, a description of how it will preserve and restore habitat within the DRECP planning area. Finally, this law clarifies that it does not affect the mitigation authority under CESA, California Environmental Quality Act (CEQA), or the Warren Alquist Act which governs the siting of power facilities.

As more fully discussed elsewhere in this article, SB 855 (Committee on Budget and Fiscal Review) is an urgency law that expands the authority of the CEC to use ARRA funds for loan guarantees, loan loss reserves, and credit enhancement for energy projects. SB 855 also increases the fee for an application for certification (AFC) for siting a thermal power plant or electric transmission line to \$250,000 plus \$500 per megawatt while capping the fee at \$750,000. In addition, this law increases the annual fee to \$25,000.

AB 1873 (Huffman) builds upon the success of AB 811 [see Stats. 2008, AB 811 (Levine)], which authorized local government to provide home-owners up-front funds to pay for energy efficiency or renewable energy projects while the participating property owner repays the loan annually over time. AB 1873 expands this program (otherwise

known as the local PACE) state-wide by authorizing the state to purchase bonds to finance distributed generation renewable energy sources or energy or water efficiency improvements via PACE programs. Specifically, the State Treasurer, the California Public Employees Retirement System Board (CalPERS), and the State Compensation Insurance Fund (SCIF) are authorized to purchase the bonds. This law additionally authorizes joint powers authorities (JPA) to purchase, and a local agency to sell, the right, title, and interest in a PACE assessment contract.

AB 1106 (Fuentes) is an urgency law that, among other things, indefinitely extends the CEC's contracting authority to issue competitive grants and loans supporting innovative technologies to help attain the state's climate change policies. Specifically, this law authorizes the CEC to contract with the Treasurer to issue competitive grants and loans. The funds are designed to support innovative technologies to transform the state's fuel and vehicle types. These grants can be issued to public agencies, vehicle and technology entities, businesses and projects, public-private partnerships, workforce training partnerships and collaboratives, fleet owners, consumers, recreational boaters, and academic institutions. This law additionally authorizes the CEC to contract with small business financial development corporations (FDCs), which are authorized to use funds from the Alternative and Renewable Fuels and Vehicle Technology Program [see Stats. 2007, AB 118 (Nunez)].

AB 1809 (Smyth) authorizes a home inspection to include, if requested by the customer, a Home Energy Rating System (HERS) audit that meets the requirements of the State Energy Resources Conservation and Development Act.

AB 1650 (Feuer) prohibits persons from bidding on or entering into contracts with a public entity for goods and services of \$20 million or more in Iran's energy sector. Further, beginning June 1 2011, financial institutions are prohibited from extending \$20 million or more in credit to persons providing goods or services to Iran's energy sector. Beginning June 1 2011, this law additionally prohibits persons from contracting with a public entity for goods or services of \$1 million or more in Iran's energy sector.

The Consumer Electronics Association sponsored SB 1198 (Huffman). This law is designed to delay implementation of the CEC's television energy use disclosure and labeling requirement until July 1, 2011. The CEC was poised to implement energy efficiency standards for new televisions that would reduce energy consumption on average by 33 percent effective January 1, 2011, and 49 percent effective 2013. This will allow the Federal Trade Commission (FTC) time to develop energy efficiency

labeling requirements for electronics products, including televisions.

SB 1476 (Padilla) requires an IOU or POU using smart meters to safeguard from unauthorized access their customer's energy usage data. Specifically, this law prohibits electrical corporations or gas corporations from disclosing customer's electrical or gas consumption data. These utilities must employ reasonable security practices to protect a customer's unencrypted electrical and gas consumption data from unauthorized access, destruction, use, modification, or disclosure. This law also prohibits these utilities from selling a customer's energy consumption data or any other personally identifiable information for any purpose.

California Environmental Quality Act

Those attempting to reform CEQA to accomplish consensus-driven objectives often come up short. This is because the environmental community is loathe to open the door for even consensus-driven beneficial changes, fearing that other CEQA provisions could be compromised. This year, legislative results belied this axiom. New laws were approved promoting mediation of CEQA disputes; allowing the use of cumulative impact analysis from a previous environmental document; and expanding use of focused environmental impact reports (EIRs). Other changes to CEQA included allowing a lead agency to use a prior finding of overriding consideration in approving a new EIR. Finally, lead agencies are authorized to charge for the costs of printing environmental documents.

CEQA has procedures to resolve law suits through settlement meetings that can be held concurrently with any judicial proceedings. CEQA also permits challenges to be resolved via mediation proceedings. SB 1456 (Simition) is an urgency law that, until January 1, 2016, allows mediation proceedings to also run concurrently with any judicial proceedings. Specifically, beginning July 1, 2011, this law allows a plaintiff to request mediation within five days after the filing of a notice of determination. If the lead agency does not respond within five business days of receiving a request for mediation, the notice for mediation is denied. This law, until January 1, 2016, authorizes the Attorney General to issue a motion in court seeking an expedited schedule to resolve an action. In addition, this law empowers courts to penalize parties bring frivolous CEQA challenges on or before December 31, 2015. Finally, this law, until January 1, 2016, permits a lead agency to rely upon a prior cumulative effect analysis previously addressed in an EIR, mitigated negative declaration, or negative declaration evaluating a program, plan, policy or ordinance. The lead agency must determine that the cumulative effect was adequately examined in a prior environmental analysis as long as the later project is

consistent with (1) the program, plan, policy, or ordinance for which an EIR was prepared and certified; and (2) with applicable local land use plans and zoning in which the later plan would be located.

Under limited circumstances, CEQA allows a lead agency to approve a project notwithstanding significant adverse impacts that cannot be mitigated to less than significance. In this instance, the lead agency is required to find the existence of “overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment.” Under current law, a lead agency can adopt a statement of overriding consideration for an EIR for a General Plan (or other plan, policy or ordinance) pursuant to a tiered EIR. AB 231 (Huber) is an urgency law that authorizes a lead agency when using a tiered EIR based on a prior EIR to use the prior finding of overriding consideration in approving a new EIR. This is allowed if the lead agency determines the project is consistent with the program, plan, policy, or ordinance that creates the same adverse environmental impact; however, the impact must be not greater or different at the project level than at the plan level. In addition, the later project’s significant environmental impacts must be not greater than or different from those identified in the earlier EIR.

AB 1846 (Perez) authorizes a lead agency under CEQA to use a “focused” EIR to evaluate the potential environmental effects associated with a proposed regulation requiring pollution control equipment or a performance standard or treatment requirement adopted to reduce GHG emissions to comply with AB 32. This law additionally requires the use of a focused EIR for rules requiring pollution control equipment adopted by the CEC and the CPUC.

SB 855 (Committee on Budget and Fiscal Review) requires the SWRCB to publish a report to the Joint Legislative Budget Committee on the effectiveness of directly contracting with environmental consultants to prepare CEQA environmental documents. SB 855 also requires that report to evaluate the effectiveness of recovering from water rights applicants and petitioners the costs of preparing environmental documents. The report must be published and displayed on the agency’s website by July 1, 2013.

AB 2565 (Ammiano) allows lead agencies to charge and collect a reasonable fee from members of the public to receive a copy of an initial study, negative declaration, draft and final EIR, among others. The fee must not exceed the cost of reproducing the environmental document. This law also provides that the environmental document may be provided in an electronic format.

Solid Waste

Although the solid waste field is relatively settled, the Legislature made some changes including establishing a fee to mitigate closed solid waste landfills. Other legislation requires manufacturers of compostable bags to meet specified labeling requirements. Finally, the Legislature extended for another ten years a loan program that assists recycling businesses.

AB 1004 (Portantino) extends by six months the dates by which operators of solid waste landfills may opt into a trust fund. This fund was established last year to insure against liability associated with potential future cleanup costs during the closure/postclosure phase of the life of a landfill. During the 2009 legislative session, the same author [see Stats. 2009, AB 274 (Portantino)] established the Postclosure and Corrective Action Trust Fund. The fee is intended to provide a safety net to mitigate potential environmental impacts created during the post-closure phase of solid waste landfills. According to the provisions of that law, the trust fund would only become operative if 50 percent of the operators choose to participate in the program by July 1, 2011. AB 1004 was enacted to allow additional time to accommodate the time necessary to transition from the former Integrated Waste Management Board (IWMB) to the new Department of Resources Recycling and Recovery (DRRR) along with the transition from the Schwarzenegger administration to the new Brown administration.

SB 228 (DeSaulnier) builds upon a California law that prohibits the sale of plastic bags labeled “compostable” or “marine degradable” unless the bag complies with a specified ASTM standard. This law requires manufacturers of compostable bags, beginning July 1, 2011, to ensure that the compostable plastic bag is readily and easily identifiable from other plastic bags, is labeled with a certification logo indicating the bag meets the ASTM D6400 specification and is labeled “compostable.” Manufacturers must abide by the Federal Trade Commission Guides for the Use of Environmental Marketing Claims and may not sell or distribute compostable plastic bags that display a recycling symbol (e.g., a chasing arrow).

The California’s Recycling Market Development Zone (RMDZ) Loan Program was developed to promote recycling businesses by providing low-interest loans to businesses and non-profit organizations located within RMDZs. The objective is to increase diversion of non-hazardous solid wastes from class III landfills and to expand market demand for “secondary and post consumer materials.” SB 390 (Kehoe) extends the sunset on the RMDZ Loan Program from July 1, 2011 to July 1, 2021. The RMDZ Loan Program provides direct low-interest loans to businesses and non-profit organizations located

in RMDZs that increase diversion of non-hazardous solid waste from California landfills and that promote market demand for secondary and post consumer materials.

Storage Tanks.

The Legislature offered a handful of changes to the management of above and below ground storage tanks. One law increases the petroleum storage fee to fund backlogged underground storage tank (UST) claims while another establishes a limited exemption for UST construction and operational requirements. Finally, the definition of a “tank facility” for aboveground storage tanks was changed.

AB 1188 (Ruskin) is an urgency law intended to address a shortfall in the Underground Storage Tank Cleanup Fund (Barry Keene Underground Storage Tank Cleanup Act of 1989) which pays for certain costs to clean up petroleum releases from USTs. The fund is overspent by approximately \$80 million, which has resulted in the suspension of payments to businesses and consulting firms for work already performed. This law temporarily increases the petroleum storage fee paid by owners and operators of petroleum USTs by \$0.006 per gallon of petroleum stored, between January 1, 2010, and December 31, 2011. These revenues are intended to fund the currently backlogged claims. This law also expands the eligibility for use of State Water Resources Control Board (SWRCB) grants and loans to gas station operators subject to the Enhanced Vapor Recovery (EVR) regulations established by the ARB. This law revises the definition of “project tank” to include one or more tanks that are upgraded to comply with the Enhanced Vapor Recovery Phase II regulations. If the ARB received an applicant’s grant application on or before April 1, 2009, grant funds can be used to reimburse up to 100 percent of the applicant’s costs to meet the Enhanced Vapor Recovery Phase II regulations.

AB 1674 (Saldana) provides exemptions for specified petroleum USTs from current design, construction, installation, and monitoring requirements. It allows a certified unified program agency and other local agencies to exempt tanks installed on or after July 1, 2003. The exemption can be granted if (1) the local agency determines the tank meets or exceeds the requirements for USTs installed after January 1, 1984; and (2) any portion of a vent line, vapor recovery line, or fill pipe that is beneath the surface of the ground is regulated as a “pipe.” This law deletes a prior requirement that the local agency determination needed to be made without objection from the SWRCB. This law additionally exempts vaulted tanks (i.e., below-grade tanks that are not buried in the ground) that are connected to an emergency generator tank system that meets specified conditions. These tanks do not have to comply with all standards imposed on USTs installed

after July 1, 2004, which include, among other things, pressure monitoring between the soil and the exterior walls of the tanks. The tank must be (1) situated above the surface of the floor in such a way that all of the surfaces of the tank can be visually inspected by either direct viewing or through the use of visual aids monitored through the use of a continuous leak detection and alarm system capable of detecting unauthorized releases; (2) for single-walled tanks the structure or a separate discrete secondary structure must be able to contain the entire contents of the liquid stored in the tank, and must be sealed with a material compatible with the stored product; (3) the owner or operator of the tank must keep a log of visual inspections conducted each time the emergency generator tank system is operated, or at least once a month; and (4) the tank or combination of tanks in the below-grade structure must have a cumulative capacity of 1,100 gallons or less of diesel fuel.

The Aboveground Petroleum Storage Act previously defined “tank facility” as one or more aboveground storage tanks, including any piping that is integral to tanks that contain petroleum and that are used by a single business entity at a single location or site. This law modifies the definition of “tank facility” as being used by an owner or operator.

Sustainability

In recent years, the Legislature has begun to fashion policies to shrink “environmental footprints” with product stewardship, including a new law requiring carpet manufacturers to adopt strategies to increase the recycling and collection of carpets in California. Another sustainability initiative paves the way for federal grants to promote green jobs in California. Former Assembly member Jones—now the new Insurance Commissioner—championed two other sustainability laws. One provides incentives to reduce driving and promote green buildings while another exempts private passenger cars used for personal vehicle sharing program (PVSP) from being considered commercial vehicles for insurance purposes.

The DRRR published a Statewide Waste Characterization Study in 2008 which estimated that 1.3 million tons of carpet are annually disposed in California landfills; this constitutes 3.2 percent of all solid waste disposed of in landfills. AB 2398 (Perez) was enacted to increase the rate of landfill diversion for carpets and addresses one of the barriers to increasing carpet recycling rates by establishing infrastructure to collect and process waste carpet. This law requires carpet manufacturers in California, by September 30, 2011, to submit to the DRRR a carpet stewardship plan. This plan is intended to increase carpet

recycling by implementing product design, use, and end-of-life management strategies.

Beginning July 1, 2011, a carpet manufacturer must add a \$0.05 per square yard assessment on the purchase price for carpet sold in California. Retailers and wholesalers are obligated to add this assessment to the purchase price. Beginning April 1, 2012, the law prohibits manufacturers, wholesalers, and retailers from selling carpets in California without a DRRR-approved stewardship plan. DRRR is required to post on its Internet Web site manufacturers that are in compliance with this law. The Department of General Services must revise its procurement rules so that carpet that is removed from state buildings is managed in accordance with AB 2398.

AB 1011 (Jones) declares that the insurance industry can help reduce GHG emissions by increasing incentives to reduce driving, by promoting “green buildings,” by investing in energy efficiency improvements and renewable energy projects, and conserving natural resources. The law additionally declares that by making investments that support community development financial institutions in low- and moderate-income communities in “green investments,” the insurance community can help those communities better accommodate new growth in compact forms, de-emphasize car dependency, integrate new growth into existing communities, and support a diversity of affordable housing near employment centers, and create jobs. This law defines “green investments” as investments in low- and moderate-income communities that emphasize renewable energy, economic development, and affordable housing on infill sites, as well as investments that promote the reuse and rehabilitation of city centers including solar and wind power, multimodal transportation systems, transit-oriented development that advances economic development, housing and jobs.

This law additionally requires that the Insurance Commissioner post information on the Department of Insurance (DOI) Internet Website information on green investments pursuant to its biennial obligation to publish the results by insurance companies on their investments in development and community development infrastructure.

AB 1871 (Jones) provides that private passenger motor vehicles used for a personal vehicle sharing program (PVSP) are exempt from being classified as commercial vehicles for insurance purposes. The annual revenues generated by vehicle sharing must be less than the annual expenses of owning and operating the vehicle.

California received over \$400 million from the federal American Recovery and Reinvestment Act of 2009 (ARRA) for the purpose of job training. AB 2696 (Bass) was enacted to assist in creating “green jobs” that may

include energy efficiency building retrofits, green building, solar and green technology. This law allows the California Workforce Investment Board to accept grants and other funds, good and services from federal and state and other sources to implement AB 3018 [see Stats. 2008, AB 3018 (Nunez)]. AB 3018 established the Green Collar Jobs Council (GCJC) whose mission is to identify strategies to support green jobs in California. Under this new law, the GCJC must consult with state and local agencies to identify opportunities to use ARRA funds.

SB 855 (Committee on Budget and Fiscal Review) sets forth specified goals for biorefiners to meet in order to receive receiving loans from the Energy Commissioner’s California Ethanol Producer Incentive Program.

Last year, the Legislature approved the streamlining of higher education-related reporting requirements [see Stats. 2009, AB 1182 (Brownley)]. The Sustainable Agriculture Research and Education Program (SAREP) operated by the University of California was inadvertently deleted from the law. AB 1891 (Committee on Higher Education) restores the SAREP in the statute.

Hazardous Materials and Green Chemistry

In recent years, the chemical policy focus has shifted up stream. Manufacturers must now identify more benign chemicals and reduce the toxicity and volumes of hazardous wastes downstream. To that end, the Legislature approved a product stewardship law requiring paint manufacturers to develop a paint stewardship plan to recover unused paint. Another law limits the use of brake pads containing specified metals and asbestos while other legislation prohibits specified levels of cadmium in children’s jewelry.

Several years ago, the Department of Toxic Substances Control (DTSC) was authorized to remove mercury-containing vehicle light switches from vehicles. SB 346 (Kehoe) builds on this program by limiting for sale in California specified metals and asbestos from motor vehicle brake pads on and after January 1, 2014. Motor vehicle brake friction materials that exceed the following concentrations may not be sold in the state: 0.01 percent by weight for cadmium and its compounds, and 0.1 percent by weight for chromium (VI)-salts, lead and its compounds, mercury and its compounds. The prohibition applies to asbestiform fibers in any amount. In addition, beginning January 1, 2014, new motor vehicles sold in California must be equipped with brake friction materials that meet the limits specified above. In addition, this law prohibits copper in motor vehicle brake pads. By January 1, 2021, the limit is five percent by weight of copper and 5 percent by weight of copper by January 2025. A violation

of these limits subjects manufacturers to a civil fine of up to \$10,000 per violation.

Manufacturers of vehicle brake pads must use the newly established Toxics Information Clearinghouse to evaluate and analyze potential alternatives to lower the potential hazard to public health and the environment. Finally, DTSC and the SWRCB, by January 1, 2023, must report to the Governor and the Legislature on how this law affects the total maximum daily load allocations for copper in impaired waters.

California law prohibits the manufacture or sale of toys contaminated with specified levels of lead, antimony, arsenic, cadmium, mercury, selenium, or barium contained in paint and lacquer coatings. SB 1365 (Corbett) updates this law and makes reference to the lead content allowed pursuant to the federal Consumer Product Safety Act and the Consumer Product Safety Improvement Act of 2008. This law prohibits the manufacture or sale to a toy retailer of chromium identified in ASTM [American Society for Testing and Materials] International Standard F963-08. Notwithstanding the recent developments with green chemistry regulation in California, SB 929 (Pavley) expands on prior legislation by the same author [see Stats. 2006, AB 1681 (Pavley)] that prohibited lead in jewelry. According to the author, jewelry manufacturers have since substituted lead with cadmium in children's jewelry products. Cadmium and cadmium compounds are known to the state to cause cancer and reproductive toxicity. Long-term exposure to cadmium could lead to kidney disease and cause fragile bones.

Commencing on January 1, 2012, this law prohibits a person from manufacturing, shipping, or selling children's jewelry that contains cadmium at any level above 300 parts per million. Toys regulated for cadmium exposure under California's Green Chemistry laws and the federal Consumer Product Safety Improvement Act of 2008 are exempt from SB 929.

Waste latex and oil-based paints generated by consumers in California represent the largest source of household hazardous waste (HHW) for consumers. With only five percent of California households using HHW programs, AB 1343 (Huffman) was introduced to establish an architectural paint recovery program to recover and properly manage leftover paint. According to the author, this new law will reduce the financial burden on local governments and protect the environment by requiring manufacturers to take responsibility for establishing and financing a safe and reliable system for the recovery and proper management of leftover paint. The program will be administered by the DRRR no later than April 1, 2012.

This program requires paint manufacturers or a designated stewardship organization to develop and implement an architectural paint stewardship plan. The plan must be designed to recover and reduce the generation of and promote the reuse of postconsumer architectural paint. In addition, the plan must manage the end-of-life of postconsumer architectural paint in an environmentally sound fashion, including collection, transportation, processing, and disposal. The manufacturer or its stewardship organization must submit the plan to the DRRR for review and approval. The manufacturer must implement the plan three months after approval or not later than July 1, 2012. Manufacturers must submit to DRRR a report summarizing their paint recovery efforts each year, beginning on July 1, 2013. Manufacturers or retailers are prohibited from selling or offering for sale architectural paint unless the manufacturer is listed on DRRR's Internet Web site as meeting the requirements of this law. Failure to comply could subject a violator to civil penalties.

SB 70 (Committee on Budget and Fiscal Review) establishes an exemption to the Motor Vehicle Fuel Tax Law established under ABX8 6. This law was enacted to achieve revenue neutrality by raising the sales tax on storage, use, or consumption of diesel fuel (on or after July 1, 2011) by 1.75 percent and decreasing other specified taxes by a similar amount elsewhere. SB 70 exempts aviation gasoline from the motor vehicle fuel tax increase.

Hazardous Waste

The Legislature served up a few new laws addressing hazardous waste management, including a law requiring DTSC to develop guidance to achieve hazardous waste pollution prevention. Another new law limits the arsenic and lead content in blasting media. Other legislation expands the eligibility for grants involving lubricating oil.

The California Pollution Control Financing Authority (CPCFA) provides low-cost loans of up to \$1.5 million for waste and recycling projects. SB 1477 (Committee on Environmental Quality) is an urgency law to clarify that eligible projects may include environmental projects that qualify for tax-exempt financing under federal tax law.

The DTSC is required to develop a technical assistance and outreach program to assist businesses in minimizing hazardous waste generation. The Hazardous Waste Source Reduction and Management Review Act of 1989 requires DTSC to develop model pollution prevention guidance for two categories of industrial hazardous waste generators every two years. AB 2379 (Feuer) increases from two to four the number of industrial categories to include in the source reduction technical assistance guidance. It further

requires that one of these industrial categories include businesses impacted by the Green Chemistry program.

Glass beads used to treat or otherwise to strip paint from parts and materials contain dust with elevated levels of toxic heavy metals. These metals present a health hazard to employees and an environmental risk to soil and water. AB 1930 (De La Torre) follows the lead of the United States military, which established maximum levels of arsenic and lead to protect individuals and the environment. AB 1930 adopts this standard and prohibits the manufacture or sale of glass beads containing arsenic or lead above specified limits if those glass beads will be used in blasting equipment. The law specifies that each container or bag of glass beads must be labeled: "Glass bead contents contain less than 75 ppm arsenic and less than 100 ppm lead."

The California Oil Recycling Enhancement Act is designed to prevent illegal disposal of used oil through curbside oil pickup programs and local collection facilities. This Act is administered by the DRRR, which is authorized to award grants "to develop and advance certain developments in lubricating oil including . . . oil recycling, collection, research, testing, and rerefining." SB 579 (Lowenthal) changes the purpose for which the grants are issued from "protecting" advancement and developments in lubricating oil to "product" advancements and developments in lubricating oil. Prior law required DRRR to pay an incentive to recycling facilities to produce rerefined lubricants, which was to become effective on January 1, 2014. SB 579 advances that date by one year to January 1, 2013. This law additionally revises the conditions governing the transfer of used oil to a registered or certified out-of-state recycling facility.

SB 855 (Committee on Budget and Fiscal Review) clarifies that accelerated remediation of orphaned oil facilities funded by increased fees imposed by the Department of Conservation (DOC) will last for only four years.

Water Quality

The Legislature postponed an \$11 billion water bond for 2012, while expanding the eligibility to spend approved bond revenues to clean up groundwater. Another new law authorizes development of uniform recycled water criteria to reuse potable water for groundwater recharge and surface water augmentation. Other legislation requires adoption of graywater standards for indoor and outdoor uses in non-residential buildings. Finally, the Legislature adjusted procedures for review of RWQCB decisions.

As part of the Seventh Extraordinary Session of 2009–10, the legislature enacted the Safe, Clean, and Reliable Drinking Water Supply Act of 2010 [SB2 X7 (Cogdill)],

which would have placed a \$11.14 billion in general obligation bonds on the November 4, 2010, ballot to fund a number of water resources programs (to finance a safe drinking water and water supply reliability program). The bond would have included drought relief (\$455 million); water supply reliability (\$1.050 billion); Delta Sustainability (\$2.250 billion); Statewide Water System Operational Improvement (\$3 billion); Delta sustainability, conservation and watershed protection (\$1.785 billion); groundwater protection and water quality (\$1 billion); and water recycling (\$1.25 billion). Given the difficult economic climate, the Legislature withdrew this water bond in an effort to maximize the potential for approval during the 2012 election cycle. AB 1265 (Caballero) is an urgency measure that delays the vote on this proposed water bond measure until 2012.

AB 153 (Hernandez) is an urgency law that further amends the proposed Safe, Clean, and Reliable Drinking Water Supply Act of 2012 (Water Bond), which authorizes \$1 billion for groundwater protection. AB 153 expands the eligibility for expenditures, grants, and loans of at least \$100 million to support groundwater cleanup projects.

According to Senator Pavley "each year, California discharges nearly four million acre feet of wastewater into the ocean . . . much of that water could be recycled." However, because the state has not adopted uniform safety standards, the permitting and design processes for building and operating water recycling facilities are unpredictable, discouraging local communities from tapping into this major water source. The Water Recycling Act of 1991 established a statewide goal to recycle 1,000,000 acre-feet of water each year by 2010. SB 918 (Pavley) expands the authority of the State Department of Public Health (DPH) to establish uniform statewide recycling criteria for recycled water beyond its existing authority to protect public health. This law requires DPH to adopt uniform water recycling criteria for indirect potable water reuse for groundwater recharge and surface water augmentation by December 31, 2013, and December 31, 2016, respectively. DPH is conditionally authorized to approve the water recycling criteria if an expert panel on uniform water recycling criteria determines the recycling criteria would adequately protect public health.

California law requires a statewide 20 percent reduction in urban per capita water use by December 31, 2020. To that end, urban retail water suppliers must develop urban water use targets and an interim water use target by July 1, 2011. Urban retail water suppliers were granted a six-month extension (to July 1, 2011) to adopt their urban water management plans (UWMP); however, SBX7 7 (Steinberg) unintentionally neglected to grant the same extension to wholesale water suppliers. SB 1478

(Committee on Natural Resources and Water) permits urban wholesale water suppliers the same six-month extension to adopt the UWMP. These provisions also apply to urban retail water suppliers that provide water to the United States Department of Defense military installations. AB 2277 (Fletcher) requires these urban retail water suppliers to consider the conservation of that military installation pursuant to Presidential Executive Order 13514 when preparing the implementation plan. This executive order, signed by President Obama, requires federal agencies to reduce water consumption intensity 26 percent by 2020.

The Governor's Climate Action team anticipates more frequent and more severe water shortages due to the effects of climate change and growing population. AB 518 (Lowenthal) builds upon recent legislation that promoted reuse of graywater by requiring the Department of Housing and Community Development to establish graywater standards for residential uses. Graywater is untreated wastewater such as from clothes washers and showers. This law requires the California Building Standards Commission to adopt building standards for indoor and outdoor uses in non-residential occupancies. In so doing, this law terminates prior authority of the Department of Water Resources.

SB 1169 (Lowenthal) makes numerous technical amendments to update and clarify the Water Code. Among other things, this law modifies the procedures governing appeal of a decision or order issued by the State Water Resources Control Board (SWRCB). SB 1169 clarifies that the SWRCB, on its own motion, may review RWQCB basin planning decisions. This law also provides that an aggrieved party must file a petition for reconsideration with the SWRCB to exhaust its administrative remedies if the SWRCB has authorized a petition for reconsideration via regulation. This law also modifies appeal procedures governing an aggrieved party challenging a CEQA decision by a RWQCB or reconsideration by the SWRCB. The administrative appeal begins upon the SWRCB's completion of that review or reconsideration. Finally, in order to achieve consistency and uniformity with other RWQCB member terms, this law extends the terms of two board members on each of the nine RWQCBs to September 30, 2014.

California law requires the SWRCB and RWQCBs to impose mandatory minimum penalties of \$3,000 for each "serious" waste discharge violation. These penalties are also imposed where specified violations occur four or more times in any period of six consecutive months involving a water quality violation. Prior to SB 1284 (Ducheny), a serious water discharge violation included a failure to file a timely discharge monitoring report for a required

30-day interval. This law was introduced to narrow the definition of "serious violation," which penalized public agencies who failed to file a report even if it indicated there were no discharges. SB 1284 (Ducheny) provides that a failure to file a discharge monitoring report is not a serious waste discharge violation under specified circumstances. The discharger must submit a statement to the SWRCB or the RWQCB that "there were no discharges to waters of the United States reportable under the applicable waste discharge requirements during the relevant monitoring period." The statement must include the reason or reasons the required report was not submitted to the RWQCB by the deadline for filing that report. Until January 1, 2014, the law further limits the mandatory minimum penalty for failure to file each discharge monitoring report. Prior to this law the penalty could be imposed for each 30-day period after the deadline for submitting the report. Finally, this law increases from five to 10 years the time in which dischargers must comply with a permit requirement if the discharger can demonstrate the necessity in order to comply with effluent limitations.

The Sacramento-San Joaquin Delta Reform Act of 2009 was enacted to help ensure more reliable water supply and protection, restoration, and enhancement of the Delta ecosystem. SB 855 (Committee on Budget and Fiscal Review) requires the Governor to use zero-based budget methodology when submitting his 2011–12 fiscal year budget report to the Legislature for (1) addressing the costs to implement water and ecosystem restoration activities in the Sacramento-San Joaquin Delta; and (2) for the CALFED Bay-Delta Program.

SB 1450 (Simitian) is an urgency measure that allows the recently established Delta Stewardship Council (DSC) to use competitive but streamlined contracting procedures to hire consultants and engineers to develop the long-term Delta Management Plan.

Land Use

The Legislature fashioned a number of changes to the land use laws designed to promote "Smart Growth" policies; expand on siting new renewable energy facilities; and to promote land conservation and agricultural uses.

The Transit Village Development Planning Act of 1994 is designed to address unrestricted growth and sprawl. This Act establishes procedures to develop transit village plans within transit village development districts (TVDDs). A TVDD was originally required to include all land within at least 1/4 mile of the exterior boundary of the parcel containing a transit station. AB 987 (Ma) increases the scope of a TVDD to include all parcels located within

one half mile of the main entrance of the transit station. By increasing the planning horizon the author hopes to encourage local residents to live close to and use mass transit.

SB 1319 (Pavley) was enacted to expand siting of alternative energy generating facilities by clearing the way for commercial scale alternative energy facilities near existing transmission and distribution networks. This law is intended to steer these projects away from productive farmland or desert habitat by allowing the merger of smaller unbuildable lots. The law modifies provisions of the Subdivision Map Act (Map Act) to allow renewable energy corporations, among other parties, to defray the costs of merging together separate parcels. This law specifically provides that the Map Act may not prohibit a party from seeking state financial assistance to help defray the costs of merging parcels on private or public lands. In addition, the Map Act must not prohibit recovery costs for establishing or administering a joint powers authority to merge parcels to site renewable energy facilities. However, this law does not authorize the use of state funds to acquire real property for a parcel merger.

The Land Conservation Act (otherwise known as the Williamson Act) allows property owners to receive lower property taxes in exchange for limiting land uses to agricultural and open space. Land owners enter into voluntary contracts with cities and counties that restrict the land uses. Cities and counties have historically been reimbursed for the shortfall in property taxes through state subventions. Governor Schwarzenegger virtually eliminated the state subvention in the 2009–10 state budget which has made it more difficult for municipalities to promote the Williamson Act contracts to farmers and ranchers. AB 2530 (Nielsen), until January 1, 2015, authorizes counties to revise Williamson Act contracts where state revenues fail to defray the lost property tax revenues. They can renegotiate the terms of a contract allowing counties to recoup a portion of lost revenues from the state. This law provides that a landowner may choose to nonrenew and begin the cancellation process.

Land that is restricted pursuant to a Williamson Act contract may not be subdivided so that parcels are too small to support agricultural uses. To facilitate a lot line adjustment, prior law allowed a municipality and land owner to agree to simultaneously rescind and create a Williamson Act contract conditioned on meeting seven findings. AB 1965 (Yamada) extends to January 1, 2013, the sunset date for local officials to rescind a contract under the Williamson Act to facilitate a lot line adjustment.

Pesticides

The Legislature produced a number of laws designed to protect farm workers from chemical exposure, modify educational requirements for the Department of Pesticide Registration (DPR) licensed professionals, and streamline and reform the organic registration process.

AB 1963 (Nava) was introduced to enhance monitoring of farm workers for exposures to organophosphates and carbamate pesticides that suppress cholinesterase levels. When the cholinesterase nerve enzyme is suppressed, it can lead to impaired reproductive function; birth defects; a weakened immune system; an increased risk of non-Hodgkin's lymphoma and leukemia; nerve damage; severe neurological effects; and even death. The state cholinesterase medical supervision program requires that farm workers who are regularly using organophosphate and carbamate pesticides must undergo medical supervision to monitor whether the pesticides are suppressing the workers' cholinesterase levels. Employers must remove from the work environment employees whose cholinesterase levels are suppressed. In order to improve the effectiveness of the cholinesterase medical supervision program, AB 1963 requires clinical laboratories to electronically submit the cholinesterase testing data to DPR. This enables the employer to satisfy his or her responsibilities for medical supervision of employees who regularly handle organophosphates and carbonates. The same data must also be reported in response to alleged cholinesterase inhibitor exposures or known exposures resulting in illness. DPR must share this data with the Office of Environmental Health Hazard Assessment and DPH on an ongoing basis.

AB 2122 (Mendoza) makes adjustments to minimum education and continuing education requirements for DPR licensed professionals. This law provides that the curriculum must include, among other subjects, organic and sustainable practices, water and air monitoring and residue mitigation, maximum residue levels, quarantine practices, and on-farm storage of fumigants.

Prior to enactment of AB 2612 (Committee on Agriculture), registrants of agricultural- or structural-use pesticide products were required to establish a specified recycling program. The program was required for pesticides packed in rigid, non-refillable, high-density polyethylene (HDPE) 55 gallon containers or smaller. The law required that the recycling program be certified by an accredited third-party organization. AB 2612 deletes the third-party certification provision and instead requires the registrant to establish a recycling program, or prove participation in a recycling program ensuring that HDPE containers are recycled.

This law also streamlines and reforms the organic registration process which, according to the bill analysis, “is a complex and time consuming process that duplicates much of the information collected by accredited certifying agencies.” Registered organic producers must list all substances applied to the crop, soil, or irrigation water. This law exempts organic producers who sell \$5000 or less from submitting more extensive registration information. They now must only provide information on the precise location of the farm where their products are produced to allow agricultural commissioners to identify their location.

The Farmland Conservancy Program provides grants to purchase conservation easements to help willing farmers and ranchers keep their lands in agricultural production. State law provides that these grant funds may not impose restrictions on any commercial agricultural activities taking place on the conservation easements. This limits land owners with property capable of being used for other uses including flood corridors or wildlife habitat. SB 1142 (Wiggins) creates the California Farmland Conservancy Program Fund, which allows the DOC authority to fund the protection of riparian zones, wildlife habitat or flood corridors while maintaining agricultural uses on the farmed portions of the property.

AB 1736 (Ma) modifies the appointment process for three of the seven members of the Structural Pest Control Board within DPR. This Board provides licensure and regulation of structural pest control operators. This law authorizes the Governor to appoint three licensed board members. This law additionally prohibits a manufacturer from being appointed to the Board.

Natural Resources

The Legislature preserved and expanded exemptions to CESA, clarified the judicial standard of review for enforcement actions involving oil, gas, and geothermal wells, and required establishment of a blue ribbon commission to improve statewide management of fish and wildlife resources. Another law modifies the process for districts to accept donations of park lands.

As part of a legal settlement that reestablishes the historic flow of the San Joaquin River, spring-run Chinook salmon must be reintroduced into the river. Because Chinook salmon are protected under the CESA and the federal Endangered Species Act (FESA), it is possible that the introduction process could violate these Acts by creating fish mortality. Under the FESA, the salmon can be reclassified as an “experimental population” permitting the Secretary of Commerce to allow “take.” Prior to SB 1349 (Cogdill), the CESA did not

have a comparable provision. This new law amends CESA by authorizing the incidental take of spring run Chinook salmon in the San Joaquin River if the Director of the DFG finds that an enhancement of survival permit will further the conservation of the species.

CESA provides an exemption for the accidental take of candidate, threatened, or endangered species that occur on a farm or a ranch “in the course of otherwise lawful routine and ongoing agricultural activities.” SB 1303 (Wolk) extends the sunset date for this exemption from January 1, 2011, to January 1, 2014.

AB 2453 (Tran) clarifies the judicial standard governing enforcement actions involving the State Division of Oil, Gas, and Geothermal resources. This agency is part of DOC, which regulates oil and gas operations and geothermal wells. This law establishes the standard of review to evaluate the efficacy of an enforcement action by the State Oil and Gas Supervisor or a district deputy attorney. This law requires an appellate court to apply the more deferential “substantial evidence” standard as opposed to the “independent judgment standard.” The former will increase procedural safeguards for oil, gas, and geothermal wells operators. In addition, this law establishes an appeal process governing enforcement actions before an Administrative Law Judge.

Assembly member Huffman introduced AB 2376 to respond to long-standing interest in reforming the DFG. A number of reports over the years by the Legislative Analyst’s Office, the State Auditor, and the Little Hoover Commission have called for reforming the DFG. This law requires the Secretary of the Natural Resources Agency to create a state agency-level committee to develop a strategic vision to better manage fish and wildlife resource management. This committee will be assisted by a blue ribbon commission and stakeholder advisory group. The Secretary must produce the vision for DFG and the Fish and Game Commission in a report due to the Governor and Legislature before July 1, 2012.

Prior to enactment of AB 1929 (Hall), the law prohibited the possession, importation, shipment and transport of dreissenid mussels in California. This law now exempts an operator of a water delivery and storage facility from civil and criminal liability for introducing mussels as long as they implement a prescribed plan to control or eradicate dreissenid mussels. These operators are also exempt from the prohibition to possess, import, ship or transport the mussels.

Prior to enactment of AB 1962 (Chesbro), landowners wishing to dedicate real property for parks or open space were first required to make an irrevocable offer of real property to a city or a county. The local government

would then transfer the land to a regional park, regional park and open-space, or regional open-space district. This law was introduced to streamline the process by allowing districts to directly accept dedications while awaiting satisfaction of details associated with planning, financing and regulatory compliance. This law permits a district to defer acceptance of an offer of land, allowing it to respond to changing circumstances. In the event that the district decides that the acquisition is not in the public's interest, it can avoid the premature commitment of funds or resources to acquire the property.

The Ocean Protection Council (OPC) coordinates efforts of state agencies to protect and conserve coastal waters and ocean ecosystems. AB 2125 (Ruskin) addresses inefficiencies in accessing key technical and environmental information before issuing permits or long-term planning decisions. This law requires the OPC to evaluate the needs of multiple state agencies to share in scientific and geospatial information to protect and manage coastal and ocean-relevant decision-making.

AB 2163 (Mendoza) is an urgency law that allows four one-year extensions to complete a timber harvesting plan on which work has commenced but not been completed if, among other things, "good cause" is shown.

Health and Safety

The Legislature established a program to regulate the testing of carbon monoxide devices. Other legislation increases enforcement for motorcycles violating noise standards, while other laws require healthcare facilities to record radiation doses involving CT examinations.

SB 183 (Lowenthal) enacts the Carbon Monoxide Poisoning Prevention Act of 2010, requiring houses with a fossil fuel burning appliance, a fireplace, or an attached garage to install a carbon monoxide (CO) device approved by the State Fire Marshal (SFM). CO devices must be installed no later than July 1, 2011, for all existing single-family dwelling units intended for human occupancy and by January 1, 2013, for all other dwellings intended for human occupancy. These requirements allow owners or their agents to test and maintain carbon monoxide devices in rental units. This law allows the owner or the owner's agent to enter the rental unit to install, repair, test, and maintain CO devices. Before entering the premises, the owner must provide at least 24 hour notice to a tenant to install, repair, test or maintain a CO device. Tenants are obligated to notify the manager or owner of a rental unit if the CO device is not working. The SFM must certify and approve CO devices for residential use. Sellers of real property are required to provide specified notices to the prospective purchaser regarding

the installation of smoke detectors and bracing, anchoring, or strapping of water heaters. This law also revises the disclosure forms, to provide a confirmation that requirements for smoke detectors, water heaters and CO devices will be met at the close of escrow.

SB 435 (Pavley) gives state and local law enforcement authority to issue citations for operating motorcycles that do not comply with federal noise control standards. Specifically, this law establishes a crime for persons operating a California-registered motorcycle, equipped with after-market exhaust system equipment manufactured on or after January 1, 2013, not labeling the equipment with a specified noise emission control label. According to the American Lung Association-the law's sponsor-this "will increase enforcement of current anti-tampering and noise-level statutes for motorcycles, and ensure that motorcycles on California roads operate with approved emission control systems."

AB 2001 (Harkey) transfers to the California Standards Commission (CBSC) the responsibilities of the DPH pertaining to building standards.

SB 1237 (Padilla) was enacted to protect the patients from overexposure to radiation that can lead to an increased risk of cancer. Beginning July 1, 2012, hospitals and clinics that use imaging procedures that involve computed tomography X-ray systems (CT) for human use must record radiation doses on every CT studies and examinations. Unless the facility is accredited, radiation doses must be verified annually by a medical physicist. In addition, facilities furnishing CTs must be accredited and must report radiation events resulting in an overdose to the DPH.

Looking Ahead

The last legislative session was once again mired in financial crisis, owing to the insurmountable supermajority required to pass a budget. The Legislature and outgoing Governor recently closed a \$19 billion dollar budget hole in October 2010 ending the longest budget impasse in legislative history. Without significant structural changes, we can expect \$20 billion annual shortfalls for the next five years.

After two decades, Jerry Brown returns to Sacramento as a third term governor facing this crippling budget deficit. During his absence, the political climate in Sacramento became more polarized and dysfunctional. Amid this backdrop, Governor Brown appears poised to tackle the state's irrational budgeting system. He is expected to call for a special election to raise revenues, which may well embrace rethinking some aspects of Proposition 13. The outcome of this effort has the potential to dominate his

administration and distract from policy making in the near term. However, if he can succeed in reforming California's fiscal process, he would finally break the fiscal log jam. By removing a significant barrier to generating meaningful policy in Sacramento, he would indeed deliver an encore performance.

THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

Cases

EIR for Road Extension Improperly Used 2020 as Baseline for Assessing Impacts

Sunnyvale West Neighborhood Ass'n v. City of Sunnyvale City Council
No. H035135, 6th App. Dist.
2010 Cal. App. LEXIS 2118
December 16, 2010

The city violated CEQA by using projected traffic conditions in the year 2020 rather than current existing conditions as the baseline in an EIR for road construction.

Plaintiffs sought to compel defendant city council to set aside its approval of the proposed Mary Avenue Extension (MAE) project until a legally adequate EIR had been prepared and considered. Plaintiffs filed a petition for writ of mandate, alleging that the EIR prepared for the project was legally deficient because it used the year 2020 as a "baseline" for assessing the project's impacts. The final EIR did not consider the project's traffic and related impacts on the existing environment.

The trial court granted the petition. It concluded that the administrative record did not contain substantial evidence supporting the city's decision to deviate from the normal procedure of using a baseline of current environmental conditions and to instead "use estimates of the conditions in the year 2020 that assumed a complete build-out of projects in the City's General Plan." The trial court further concluded that this decision "constituted a failure to proceed in the manner required by law." It determined

that the "decision had the effect of minimizing potential project impacts on traffic, noise, and air quality and tainted the comparison of the proposed project with project alternatives."

The trial court stated that, under cited case law, deviation from normal procedures is limited to "unusual circumstances properly documented in an administrative record." It found that this case resembled the circumstances in *Woodward Park Homeowners Assn., Inc. v. City of Fresno* [(2007) 150 Cal. App. 4th 683, 58 Cal. Rptr. 3d 102], in which the City of Fresno approved new commercial development on vacant land based on an EIR that "in many instances" "evaluated environmental impacts by comparing the project's impacts with those of the maximum buildable development under existing zoning and plan designations." *Woodward* agreed that the EIR would have been legally sufficient if it had "evaluated the proposed project's impacts in relation to both a vacant lot and a large development permissible under existing zoning and plan designations." *Woodward* also determined that "the EIR's air pollution discussion" was inadequate because "it proceeded from the wrong environmental baseline, assessing the project's impacts as slight because they are not much greater than the impacts of a builtout development under preexisting zoning and plan designations."

The trial court noted that the only grounds advanced by the city to justify the use of projections for the year 2020 as the environmental baseline in the EIR were that such projections were used by the Santa Clara Valley Transportation Authority ("VTA") in its Transportation Impact Analysis Guidelines (2004), as part of the VTA's responsibilities under the Congestion Management Law [Gov. Code §§ 65088–65089.10], and that the proposed MAE would not be complete and in use until the year 2020. The trial court concluded that, as to the latter, there was not substantial evidence in the record establishing when the proposed project would be complete and statements by city personnel in the record were inconsistent. With respect to the former, the trial court found that efforts undertaken by the VTA and local governments to comply with the Congestion Management Law are irrelevant to whether a proposed project complies with CEQA.

The trial court stated that "even if [the city's] claim (presently unsupported by substantial evidence) that there is little or no practical difference in project impacts measured against present conditions versus 2020 estimates proves correct, that does not justify the decision to use 2020 as a baseline in the EIR without an analysis of present conditions." The court granted a peremptory writ of mandate, ordering the city council to set aside its approvals of the MAE project and its certification of the