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**COMMON LAW AND ENVIRONMENTAL PROTECTION**

A gasoline refiner could be liable on a strict liability theory for damage to a privately-owned water system that was caused by the leakage of gas containing MTBE from gas stations (p. 15)

**THE CALIFORNIA ENVIRONMENTAL QUALITY ACT**

New information occurring after a final EIR is released but prior to certification need not be included in the EIR before the agency determines whether such information is significant enough to trigger revision and recirculation (p. 17)

The exhaustion of administrative remedies doctrine was satisfied by a citizen group that objected at the administrative level even though the group did not appeal the planning commission's decision to the city council (p. 24)

## 2006 ENVIRONMENTAL LEGISLATIVE RECAP—ELECTION YEAR BONANZA

*By*

*Gary A. Lucks JD**

In the fall of 2005, Governor Schwarzenegger was on the ropes and the prospect of global warming had not yet registered with the California electorate. In a dramatic turn of fortune, the Governor transformed his dismal approval ratings into a victory in the fall of 2006 by moving to the center and embracing global warming. As the public and the press awakened to the dire predictions of global climate change, Schwarzenegger led the nation in June 2005 when he signed a provocative Executive Order, which served as a framework for the much heralded Assembly Bill (AB) 32 (Nunez)—the California Global Warming Solutions Act of 2006.

The Executive Order urged ambitious, albeit voluntary, reductions in greenhouse gas (GHG) emissions. The Executive Order established voluntary GHG goals to reduce GHG emissions in California to 80 percent below 1990 levels by 2050. The Executive Order also set targets of meeting 2000 levels by 2010 and 1990 levels by 2020. In addition, the Governor created a Climate Action Team (CAT) charged with devising plans to meet these targets.

AB 32, which calls for mandatory GHG reductions, is the crowning achievement of the recently closed legislative session, which produced a bounty of new laws addressing energy, air quality, water quality, land use, and natural resources. Unless otherwise stated, all legislation discussed below becomes effective on January 1, 2007.

### Air Quality and Global Warming

Since the National Aeronautics and Space Administration (NASA) began collecting satellite data over a quarter century ago, the polar ice caps have experienced substantial melting. Current carbon dioxide ($CO_2$) levels in the

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*continued on page 2*

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**COMMON LAW AND ENVIRONMENTAL PROTECTION**

Refiner May Be Liable for MTBE Leakage from Gas Station on a Strict Liability Theory (*Nelson v. Superior Court*) . . . . . . . . 15

**THE CALIFORNIA ENVIRONMENTAL QUALITY ACT**

New Information Need Not Be Included in FEIR Before Agency Determines whether Information Is Significant (*Western Placer Citizens for an Agricultural and Rural Environment v. County of Placer*) . . . . . . . . 17

Exhaustion of Administrative Remedies Doctrine Fulfilled by Citizen Group that Objected to Project (*Citizens for Open Government v. City of Lodi*) . . . . . . . . 24

**WATER QUALITY CONTROL**

Storm Water Discharge Permit Not Required to Contain Numerical Effluent Limitations (*Divers' Environmental Conservation Org. v. State Water Resources Control Bd.*) . . . . . . . . 28

**AIR QUALITY CONTROL**

Regulatory Activity . . . . . . . . 31

**HAZARDOUS WASTE AND TOXIC SUBSTANCE CONTROL**

Regulatory Activity . . . . . . . . 32

**NATIONAL ENVIRONMENTAL POLICY ACT**

Action Challenging EA for Timber Harvest Not Moot although Logging Completed (*Oregon Natural Resources Council v. U.S. Bureau of Land Management*) . . . . . . . . 33

**FORESTRY DEVELOPMENT**

Regulatory Activity . . . . . . . . 35

**SOLID WASTE MANAGEMENT**

Regulatory Activity . . . . . . . . 35

**CUMULATIVE SUBJECT INDEX** . . . . . . . . 36

**CUMULATIVE TABLE OF CASES** . . . . . . . . 36

*text continued from page 1*

atmosphere are the highest levels in the past 650,000 years. With some mathematical models predicting sea levels rising up to 20 feet along the coast, global warming could have a profound and devastating effect on California's diverse ecosystems and economy.

Well before the airing of Al Gore's movie *An Inconvenient Truth*, Governor Schwarzenegger was at odds with his party's global warming position, which rejected the Kyoto Protocol. Responding to inaction at the federal level, a chorus of world and local leaders has come together in support of policies to manage the risk of global warming. Over 30 of California's mayors have signed a resolution committing to GHG reductions while urging the federal government to support policies to meet or exceed the Kyoto Protocol's goal of reducing global warming pollution by 5.2 percent below 1990 levels by 2012. Shortly after signing California's landmark global warming law, Governor Schwarzenegger met with British Prime Minster Tony Blair and signed an agreement to develop new technologies to manage the risk of global warming.

Citing the Stern Review on the Economics of Climate Change, Prime Minister Blair concluded that the scientific evidence of global warming is "overwhelming" and its consequences could be "disastrous." The California Department of Water Resources (DWR) recently issued a technical report predicting the impact of global climate change in California. The report modeled four climate change scenarios that forecast: (1) loss of Sierra snow pack that could impact annual average water supplies and hydropower generation; (2) more variable precipitation and extreme weather events such as floods and droughts; (3) rising sea levels that would place increased pressure on Delta levees and exacerbate saltwater intrusion into Delta water supplies and coastal aquifers; and (4) higher water temperatures that could affect listed fish species.

With this backdrop and much pre-election fanfare, Governor Schwarzenegger signed AB 32, which is designed to significantly reduce heat trapping gases (like $CO_2$) from the 12th largest GHG emitter—California. This new law creates a statewide GHG emission limit that will cap future emissions and reduce them to 1990 levels. This strategy is expected to collectively yield a 25 percent reduction from emissions in 2020. In comparison, the Kyoto Treaty requires signatories to reduce their GHG emissions 5.2 percent below 1990 levels by 2012. The legislation allows the Governor to adjust the 2020 deadline in the event of extraordinary circumstances, catastrophic events, or significant economic harm.

AB 32 will ultimately reduce California's dependence on fossil fuels and increase the use of cleaner burning and



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renewable fuels. AB 32, among other things, sets the stage for a cap-and-trade GHG reduction program by requiring the most significant GHG contributors to: (1) achieve the maximum technologically feasible and cost-effective GHG reductions and (2) monitor and annually report GHG emissions. The California Air Resources Board (ARB) is required, by July 1, 2007, to identify a list of discrete "early action" emission reduction measures that can be achieved prior to the adoption of market-based compliance mechanisms. These measures will be incorporated into forthcoming regulations that will take effect in advance of a number of the AB 32 provisions. Early action measures must be implemented by January 1, 2010.

The Act establishes a broad framework leaving much of the details and heavy lifting to the ARB; however, the devil will be in the details of the forthcoming regulations. Shortly after enactment and contrary to the express language of AB 32, the Governor issued a controversial Executive Order. This order authorizes the California Environmental Protection Agency (Cal-EPA) Secretary to coordinate "all ongoing efforts to the implementation of greenhouse gas emission reduction policies and AB 32." By January 1, 2008, the ARB must adopt regulations establishing a statewide GHG emissions cap (which must include carbon sequestration strategies and best management practices) and requiring GHG emission sources to monitor and report GHG emissions. The ARB must also, by January 1, 2008, adopt rules laying out a plan describing how to achieve reductions from significant GHG sources using market mechanisms and other strategies. This "scoping plan" must be updated every five years. Finally, by January 1, 2011, the ARB must adopt GHG emission limits and measures to achieve the maximum feasible and cost-effective reductions in GHG emissions.

According to the Assembly Speaker, Schwarzenegger's Executive Order undermines critical provisions of AB 32. Among other things, it authorizes the Cal-EPA Secretary to establish a "market advisory committee to advise the ARB . . . on the design of a market-based compliance program." The Executive Order fails to set forth detailed standards governing the public process in contrast with AB 32, which outlines specific public processes that the ARB must follow to develop market mechanisms. The Executive Order additionally advances the schedule for implementing market-based mechanisms ahead of the timetable established in AB 32.

The Legislature approved complementary policies to augment AB 32's objectives by regulating out-of-state power imports and by promoting carbon sequestration. Power plant GHG emissions are second only to emissions from motor vehicles. Although California power plants run largely on cleaner burning natural gas, approximately 20 percent of the state's electricity is imported from coal-fired plants that produce higher levels of GHGs compared to natural gas. Senate Bill (SB) 1368 (Perata) prohibits California utilities from importing electricity generated from power plants in other states unless the

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power meets the same GHG standards governing California power plants. This prohibition could impact plans for the twenty or so power plants proposed in Nevada, Wyoming, and Utah. SB 1686 (Kuehl) allows the State Public Works Board to consider land acquisitions that beneficially reduce or sequester greenhouse gas emissions when acquiring forest lands to support wildlife. The bill authorizes the use of relevant information from the California Climate Action Registry as a basis for determining a project's potential to reduce GHG emissions.

With motor vehicles emitting 30 percent of the $CO_2$ generated in California, the nation's six major auto manufacturers find themselves on the defensive facing a first-of-a-kind public nuisance lawsuit filed by outgoing State Attorney General Bill Lockyer. At the same time, the auto industry is responding to SB 1505 (Lowenthal), which discourages auto manufacturers from producing fossil fuel-powered autos. Ultimately, this law is intended to reduce dependency on petroleum while lowering GHG emissions, criteria air pollutants, and toxic air contaminants. SB 1505 requires the ARB to adopt regulations by January 1, 2008, establishing environmental performance standards governing the production and use of hydrogen fuel for transportation. The forthcoming rules must ensure availability of state funding to produce and use hydrogen fuel, as described in the California Hydrogen Highway Blueprint Plan (which was created pursuant to Executive Order S-7-04). AB 2264 (Pavley) will indirectly influence the market for fuel efficient vehicles by requiring the Department of General Services (DGS), in consultation with the State Energy Resources and Conservation Development Commission (CEC), to establish a more aggressive minimum fuel economy standard for state purchases of passenger vehicles and light-duty trucks. State agency vehicle purchases occurring on or after January 1, 2008, must meet this standard.

Other legislation is focused on improving traditional air quality from mobile sources. AB 1430 (Goldberg) requires the ARB Advisory Committee on Environmental Justice to update the methodology used to calculate the value of emissions reduction credits (ERCs) issued for stationary, mobile, indirect, and area-wide sources. This law is aimed at ensuring that ERCs are equitably valued without undue burden to low-income, minority communities. AB 679 (Calderon) responds to the California Trucking Association's (CTA) objection to ARB's efforts to restrict out-of-state diesel imports. In 2001, the United States Environmental Protection Agency (US EPA) finalized new rules requiring refiners to produce reformulated diesel fuel meeting "ultra low sulfur levels" that allow heavy-duty engines to run 97 percent cleaner and operate with after-treatment devices. The CTA contended that California's alternative diesel formulation created a closed market for diesel fuel limited to California refineries. CTA argued that the California formulation will be more expensive, thereby placing California trucking firms at a competitive disadvantage. CTA also complained that the ARB fuel has not been sufficiently tested and that the agency ignored the beneficial impact of the US EPA's diesel fuel formula. ARB prefers its fuel formulation because it can be readily used in older heavy-duty trucks, which dominate the on-road truck fleet, while the US EPA fuel formulation—which can only be used in newer trucks (2007 model year or later)—will not yield benefits until many years into the future when the newer models dominate. AB 679 restricts ARB from excluding importation of the US EPA ultra low sulfur diesel fuel from out-of-state refineries. ARB may approve diesel fuel if an importer demonstrates that the relevant properties of the diesel fuel are equivalent to the properties of certified ARB diesel fuel sold in California. AB 679 also requires ARB to test the emissions benefits of ARB's diesel fuel formulation against the federal diesel formulation.

The Legislature enacted two bills affecting the Carl Moyer Memorial Air Quality Standards Attainment Program (Carl Moyer Program), which provides grants to offset the incremental cost of environmental improvement projects that reduce nitrogen oxides (NOx) emissions from heavy-duty mobile sources. The same workgroup that fashioned legislation boosting funding for the Moyer program in 2004 (2004 Stats., Ch. 707, AB 923 [Firebaugh]), was the brainchild behind SB 225 (Soto). This new law represents a broad-based consensus strategy to further reduce NOx emissions. SB 225 allows ARB, when determining grant eligibility for grant awards, to determine a higher cost effectiveness formula for NOx emissions (on a per ton basis of oxides of nitrogen) based on consumer price index adjustments. AB 2843 (Saldana) removes the January 1, 2007, sunset date requiring large air districts (with a million or more residents) to ensure that at least 50 percent of funds are set aside for the Carl Moyer Program to purchase reduced-emissions school buses and to support diesel mitigation programs.

Originally, high occupancy vehicle HOV carpool lanes were designed as part of a traffic management strategy to reduce traffic congestion by limiting the number of single occupancy vehicles during the peak commute. The Legislature extended the privilege of using the HOV lane to vehicles operating on battery power or compressed natural gas in 1999 [*see* 1999 Stats., AB 71 (Cunneen)]. In 2004, the Legislature further extended the privilege to use hybrid vehicles achieving 45-miles per gallon fuel economy or more [*see* 2004 Stats., AB 2628 (Pavley)]. That legislation limited the aggregate number of hybrid users to 75,000. AB 2600 (Lieu) extends the use of the HOV lanes on state highways by single-occupant drivers of certain low-emission and hybrid vehicles until January 1, 2011.



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This law additionally increases the number of Department of Motor Vehicle-issued Clean Air decals, labels, and other identifiers for certain hybrid or alternative fuel vehicles from 75,000 to 85,000. AB 1407 (Lieber) extends HOV lane access privileges to HOV lanes on roadways operated by cities and counties located in the San Francisco Bay Area. AB 2154 (Goldberg) promotes carpooling and car share programs that operate regional fleets for vehicle sharing on a daily or hourly basis. This law also authorizes cities and counties to designate certain streets or portions of streets for motor vehicles that participate in a car share vehicle or rideshare program.

Currently, the smog check program does not evaluate for tailpipe smoke or particulate matter caused by burning excess motor oil. AB 1870 (Lieber) addresses the situation where smoking vehicles could pass a smog check inspection that only examined exhaust emissions such as hydrocarbons, carbon monoxide, and NOx. This new law tightens the program by requiring the Bureau of Automotive Repair to implement, by January 1, 2008, a visual smoke inspection procedure. Under the new law, visible smoke from the tailpipe or crankcase of a vehicle will result in a test failure.

California voters were in a generous mood this election cycle and approved approximately $37 billion in infrastructure bonds. For example, voters approved Proposition 1B [submitted to the voters via SB 1266 (Perata)]—the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006. This bond authorizes $19.925 billion of state general obligation bonds to fund, among other projects, high-priority transportation corridor improvements to improve congestion; State Route 99 corridor enhancements; trade infrastructure and port security projects (involving goods movement through ports, highways and rail); school bus retrofit and replacement; local bridge, ramps, and overpass seismic retrofit projects; disaster preparedness on transit systems; rail safety crossing; and improving security and disaster planning for publicly owned ports, harbors, and ferry terminals. California voters also approved Proposition 1A, a companion transportation initiative that amends the State Constitution. This measure expands limitations governing the transfer of gasoline sales tax revenues for transportation uses. Specifically, Proposition 1A requires suspensions of gasoline sales tax revenues for transportation uses to be treated as loans to the General Fund. These loans must be repaid in full and with interest within three years of the suspension.

Currently, no state agency has express authority to mitigate the health risks associated with indoor ozone. AB 2276 (Pavley) fills this regulatory void by requiring the ARB to adopt regulations for ozone-generating air cleaning devices, including both medical and non-medical devices, used in occupied spaces. These regulations must be adopted to protect public health by December 31, 2008.

## Energy

The energy crisis of 2000 and 2001 continues to cast a long shadow reminding lawmakers that California's environmental and economic health is integrally tied to the availability of clean energy. The recently closed legislative session produced a considerable bounty of energy legislation designed to boost energy supplies and provide incentives for cleaner, renewable power while managing the risk of global warming. Legislative policies include expanding the California Solar Initiative (CSI) and other energy conservation and efficiency programs, promoting solar power for low income families, and establishing more aggressive alternative energy targets for the Renewable Portfolio Standard (RPS) [*see* 2002 Stats., SB 1078 (Sher)].

The RPS previously required investor-owned utilities to achieve a 20 percent renewable electricity portfolio no later than December 21, 2017. SB 107 (Simitian) requires power suppliers to meet a more aggressive target to procure alternative energy. SB 107 accelerates this 20 percent goal by implementing a 2010 deadline. This law also changes the eligibility criteria for power produced outside California that is delivered to an in-state location. Out-of-state power suppliers qualify for supplemental energy payments to offset above-market costs of renewable energy under specified circumstances. AB 2189 (Blakeslee) alters the RPS eligibility of hydroelectric generation facilities. This law allows these facilities to be eligible for the RPS for those power plants producing 30 megawatts or less before January 1, 2003, that undergo efficiency upgrades causing its capacity to exceed 30 megawatts (MW). RPS eligibility is conditioned on the energy efficiency improvements not resulting in a new or increased appropriation or diversion of water from a watercourse. AB 1969 (Yee) encourages water and wastewater agencies to develop renewable electricity generation. This law requires all electrical corporations to purchase net renewable energy (less than 1 MW) produced by water and wastewater agencies. Water and wastewater facilities are expected to generate supplemental alternative energy by installing biogas digesters, conduit hydroelectric facilities, and solar panels.

Since legislation designed to install a million solar roofs for homes and businesses was vetoed, the California Public Utilities Commission (PUC) adopted the CSI. The CSI is designed to administratively achieve one million solar roofs by 2018. SB 1 (Murray) was enacted to complement and expand on the CSI. SB 1 does not modify the CSI program funding of $3.350 billion; rather the law alters the specific programs subject to the funding. SB 1 is intended to install 3,000 MWs of solar generating capacity



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and photovoltaic (PV) systems on 50 percent of new homes within 13 years. Under SB 1, the CEC must establish eligibility criteria for solar energy systems receiving monetary incentives. The law also increases the net metering cap from 0.5 percent of a utility's aggregate customer peak demand to 2.5 percent. This increase is intended to direct electrical utilities to accept the additional net solar energy generated from businesses and homes. SB 1 also requires local publicly owned electrical utilities that sell electricity at retail to adopt, implement, and finance a solar initiative program by January 1, 2008. Finally, beginning January 1, 2011, developers of production homes (i.e., single-family residences constructed as part of a development of at least 50 homes), must offer the solar energy systems as an option to home purchasers. AB 2723 (Pavley) requires the PUC to ensure that at least 10 percent of CSI funds are used to install solar energy systems on low-income residential housing. Under this law, the PUC must establish a low-interest, long-term loan program to support solar energy systems for low-income housing projects.

In an effort to maintain support for distributed generation, AB 2778 (Lieber) extends the sunset date for the Self Generation Incentive Program (SGIP) covering distributed generation resources from January 1, 2008 to January 1, 2010. The SGIP provides incentives to install renewable and clean power generation by offering rebates for specified electricity generation systems with up to five MWs of generating capacity. This law removes photovoltaic (solar) systems from the SGIP which is now administered separately by the CEC under the CSI. This leaves SGIP with the following technologies: microturbines, fuel cells, wind turbines, and certain fossil fueled combustion engines with qualifying emissions standards. Finally, this law requires the CEC and the ARB to complete a cost-benefit analysis for evaluating ratepayers' subsidies to support distributed energy generation of renewable and fossil fuels "ultra clean" and low-emission sources of power. AB 2573 (Leno) increases the amount of solar generation permissible for the City and County of San Francisco's Hetch-Hetchy Water and Power (HHWP) net-metering facilities. This law requires Pacific Gas and Electric Company (PG&E) to accept power generated from the HHWP at one location and to offer electricity to a remote location in an amount equal to that generated at that location.

In addition to promoting cleaner, alternative energy sources, the Legislature approved two energy efficiency and conservation bills. AB 2021 (Levine) is designed to reduce electrical consumption by 10 percent over the next 10 years by employing cost-effective energy efficiency measures. On or before November 1, 2007, and by November 1 of every third year, the CEC and local public utilities must develop and report on potentially achievable cost-effective electricity and natural gas efficiency savings statewide and locally. The CEC must also establish statewide energy reduction targets for the next 10 years. The CEC and local public utilities must also investigate and develop a plan to achieve improved energy efficiency for air-conditioners by January 1, 2008. AB 2390 (Committee on Utilities and Commerce) requires the PUC to report triennially to the Legislature (beginning July 15, 2009) on its programs addressing energy efficiency and conservation. In addition, this law changes the procedure governing when an aggrieved party may petition the CEC for a writ of review challenging an order or decision issued by the agency. It specifies that the 30-day period to commence a writ of review begins when the CEC issues a decision or grants an application instead of the date on which the CEC mails the decision. The law also requires the petition for review to be served on the General Counsel of the Commission instead of the Executive of the CEC.

Other legislation promotes long-term investments in power plants with zero- or low-carbon emissions. SB 1368 (Perata) codifies the conclusions of the CEC's 2005 Integrated Energy Policy Report, which recommended that utility procurement meet GHG levels that are no higher than emission levels from new combined-cycle natural gas turbines. The CEC must disapprove electrical corporation's long-term financial commitments if the base load generation fails to meet the GHG emission performance standard established by CEC. The CEC is required to establish the GHG emission performance standard for base load generation of local publicly owned electric utilities by February 1, 2007. AB 1925 (Blakeslee) requires the CEC, the Division of Oil, Gas, and Geothermal Resources (in the Department of Conservation [DOC]) to formally report to the Legislature (by November 1, 2007) recommending geothermic sequestration strategies to manage industrial carbon dioxide over the long-term. The report must at a minimum address: (1) key parts of a site certification protocol; (2) integrity and longevity standards for storage sites; and (3) mitigation, remediation, and indemnification strategies to manage long-term risks.

SB 1059 (Escutia) was crafted to improve statewide infrastructural support for transmitting and distributing energy. This law authorizes the CEC to identify and reserve future land suitable for high-voltage transmission lines to serve as electric transmission corridor zones. With few exceptions, the transmission corridor area cannot exceed 1,500 feet in width. The CEC is designated as the lead agency for purposes of the California Environmental Quality Act (CEQA). Finally, the CEC is required to regularly revise the designated transmission corridor zones as necessary and not less frequently than every ten years.



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## Water Quality

The heavy lifting behind California's water quality regulatory structure has been replaced with a legislative interest in fine-tuning water quality programs and fostering water conservation. The Legislature served up policy designed to enhance water quality monitoring, assessment, reporting and transparency in an effort to reduce redundancy and promote efficiency. The Legislature approved water conservation legislation targeting landscape irrigation practices and drought tolerant vegetation along with initiatives to promote water recycling. Other legislation was aimed at adjusting the water quality enforcement program requiring mandatory penalties.

California law [1999 Stats., AB 1104 (Migden)] authorizes the State Water Resources Control Board (SWRCB) and California regional water quality control boards (RWQCBs) to impose mandatory minimum penalties for violations of waste discharge requirements (WDRs). It also authorizes these agencies to alternatively allow a publicly owned treatment works (POTWs) serving small communities to, in lieu of paying penalties, spend an equivalent amount for an environmental compliance project. AB 1752 (Levine), an urgency measure that became effective on August 31, 2006, extends the operative date (from January 1, 2007 to July 1, 2007) to determine whether a small community POTW is eligible for an exception to the mandatory minimum penalties. SB 1733 (Aanestad)—a companion bill—revises the process the SWRCB and RWQCBs must follow before electing to require POTWs serving small communities to fund a compliance project in lieu of imposing mandatory minimum penalties. The water boards now have more discretion to work with POTWs experiencing financial hardship in correcting violations while offering more flexibility on spending funds for compliance projects. This law further requires the SWRCB to annually train RWQCB members to improve adjudication procedures. SB 729 (Simitian) authorizes the SWRCB to investigate and enforce water quality laws after consulting with the appropriate RWQCB and the SWRCB determines that it will not duplicate the efforts of the regional board. Additionally, this law requires the SWRCB and RWQCBs to inform the public of their enforcement activities and to publish rates of compliance.

SB 1070 (Kehoe) responds to the Legislature's belief that the water quality regulatory framework is essentially well designed, but not implemented effectively. SB 1070 was enacted to enhance agency efficiency in implementing California's water quality regulatory programs. This law establishes the California Water Quality Monitoring Council (Council), which is required to review existing water quality monitoring, assessment, and reporting programs and recommend actions and funding needs to better coordinate these efforts. The Council is charged with identifying opportunities to reduce redundancies, inefficiencies, and inadequacies in existing water quality monitoring and data management programs. Additionally, the Council is required to identify water quality improvement projects to track their effectiveness in achieving clean water and healthy ecosystems. Finally, the law is designed to increase government transparency by requiring the SWRCB to implement a public information program and requires the SWRCB's web site to include information on water quality monitoring, assessment, research, standards, regulations, enforcement, and other water quality matters. SB 1425 (Kuehl) requires the SWRCB to designate a local agency to receive and maintain groundwater extraction data for groundwater users.

As California comes to terms with future of water shortages brought on by increased consumption and climate change, the Legislature fashioned policies to conserve the state's water supply by specifically focusing on landscape irrigation. AB 1881 (Laird) is intended to increase water conservation by adopting several policies to reduce water for landscaping. This law requires the CEC to adopt performance standards and labeling requirements for landscape irrigation equipment reflecting technological improvements that increase conservation of landscape water. AB 1881 also requires the DWR to develop an updated landscape water conservation ordinance for adoption by local agencies by January 1, 2010. Finally, AB 1881 promotes water conservation by prohibiting common interest developments (community apartment projects, condominium projects, planned developments, and stock cooperatives) from placing restrictions on the use of low water-using plants. AB 371 (Goldberg) enacts the Water Recycling Act of 2006 to encourage the production and use of recycled water. This law requires recycled water producers to notify the California Department of Transportation (Caltrans) and the DGS of their intent to provide recycled water for state landscape irrigation projects proposed within 10 years. The recycled water producer must identify the area eligible to receive recycled water along with the proposed infrastructure necessary to provide recycled water delivery. All piping installed pursuant to the notice must be colored purple or distinctively wrapped with purple tape. AB 2515 (Ruskin) provides legislative muscle to the recently approved PUC Water Action Plan (WAP). The WAP identifies policy objectives to guide investor-owned water utilities in conserving and efficiently using water. This law requires the PUC to report its progress on implementing the WAP by June 30, 2008. Specifically, the WAP includes initiatives designed to: (1) encourage water conservation and efficient water use and (2) remove financial disincentives for water corporations to conserve water that exists in its current rate structure. The PUC must also report on the impacts of water conservation and efficiency



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programs on future water, energy, and wastewater treatment costs to ratepayers.

Voters approved two infrastructure bond initiatives to fund over nine billion dollars to protect water resources and manage flood risk. Proposition 84 (the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Bond of 2006) funds $5.4 billion for safe drinking water, water quality, water supply, flood control, natural resources protection, and park improvements. Proposition 1E (the Disaster Preparedness and Flood Prevention Bond Act of 2006)—initially approved by the Legislature and submitted for voter approval via AB 140 (Nunez)—authorizes the issuance and sale of $4 billion in general obligation bonds to finance disaster preparedness and flood prevention projects.

SB 1347 (Machado) makes permanent the regulatory framework governing the design, construction, operation, and closure requirements for solar evaporator systems. These devices are used in agricultural operations to control potentially harmful high-salt content found in agricultural drainage to surface and ground waters. This law also revises informational submissions due to the SWRCB. Solar evaporator operators must submit information to the SWRCB regarding water flow and water quality bimonthly instead of annually and groundwater monitoring data semi-annually instead of annually (every April and October). Finally, operators must manage the collection and removal of evaporated salt from solar evaporators pursuant to a specified plan.

SB 497 (Simitian) expands on recent programs administered by the California State Lands Commission (SLC) that manage, from a procedural standpoint, ballast water discharges of invasive species into state waters. The SLC is required to adopt ballast water treatment and performance standards by January 1, 2008. These standards will require ships entering California ports to treat ballast water and ensure that no invasive species will be discharged from any ship by 2020. The SLC must submit to the Legislature routine reviews of efficacy, availability, and environmental impact of current technologies to treat ballast water. The law also increases civil penalties to $27,500 per day for each intentional or negligent failure to comply.

AB 1953 (Chan) requires that by January 1, 2010, all faucets and plumbing fittings used to deliver drinking water that are sold in California must meet lower lead concentrations to be considered "lead-free." The weighted average lead content must be no more than 0.25 percent in 2010. This standard does not apply to pipes used in manufacturing or industrial processing.

## Hazardous Materials

Approximately 100,000 chemicals are registered for commercial use in the United States with another 2,000 added each year. Only 90 percent or more of these chemicals have been tested to determine human health effects while only some toxicological screening data exists for 10 percent or less of these chemicals. Many of these chemicals are found in cosmetics, personal care products, pesticides, food dyes, cleaning products, fuels, and plastics. The Legislature stepped closer to adopting the "precautionary principle" which shifts the burden on chemical manufacturers to prove that the chemicals they offer do not cause harm.

Humans are exposed to a multitude of chemicals, many which are toxic and accumulate in body fat. Some of these chemicals persist in the environment. The federal Centers for Disease Control and Prevention has determined the presence of approximately 150 environmental chemicals in the blood and urine of Americans of all ages and races. SB 1379 (Perata) establishes the nation's first statewide biomonitoring program to monitor the presence and concentration of "designated chemicals"—those known to, or strongly suspected of, adversely impacting human health or development. The program is intended to help determine the presence of toxic chemicals in a representative sample of Californians and establish trends in the levels of these chemicals in bodies over time. Ultimately, the law is intended to assess the effectiveness of public health efforts and regulatory programs to decrease chemical exposures to Californians. The statewide and community-based biomonitoring program will provide data to help scientists and public health personnel explore linkages between chemical exposures and health. By identifying trends in chemical exposures and highly exposed communities, biomonitoring is intended to help inform health policy. This law requires the Department of Health Services (DHS) and the California Cal-EPA to establish a Scientific Guidance Panel to provide scientific peer review and to make recommendations regarding the design and implementation of the biomonitoring program. The panel is also authorized to make recommendations on specific chemicals that are priorities for biomonitoring. DHS must make this information publicly accessible and report to the Legislature.

AB 289 (Chan) authorizes state environmental agencies to require chemical manufacturers and importers to provide information necessary to detect in the environment the presence of chemicals they sell. On request, chemical manufacturers and importers must provide information on analytical test methods and the fate and transport of the chemical in the environment. The requested information must be submitted within one year of the request. AB 1681 (Pavley) is intended to reduce the levels of lead in costume jewelry, particularly in jewelry sold to children and teenagers. This law targets the jewelry industry and prohibits on and after March 1, 2008, the manufacturing, shipping, selling, or offering for sale of jewelry, children's



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jewelry, or jewelry used in body piercings unless the jewelry is made from specified concentrations of lead.

## Hazardous and Medical Waste

The hazardous waste regulatory programs have been largely settled for years and only subject to periodic minor statutory fixes; this session was no different with only three bills of note. AB 2155 (Wolk) carves out an exemption from the Byzantine and cumbersome provisions governing treatment of hazardous waste. This law tinkers with the complex provisions contained in Health and Safety Code Section 25143.2 et seq. by establishing a hazardous waste treatment exemption for the pharmaceutical industry. Pharmaceutical neutralization activities meeting specified conditions are exempt from obtaining a hazardous waste facilities treatment permit if the operator of the pharmaceutical neutralization unit "deactivates" materials generated by, or used in, pharmaceutical manufacturing or pharmaceutical process development activities. "Deactivation" involves the addition of a reagent before managing the material as a hazardous waste.

SB 1294 (Ducheny) carves out a conditional exemption from the hazardous waste control laws for geothermal wastes generated from the exploration, development, or production of geothermal energy so long as the waste is not generated by drilling for geothermal resources. To enjoy the exemption, the geothermal waste must: (1) be contained within a piping system, nonearthen trench, or descaling area and (2) be located within the physical boundaries of a lined surface impoundment associated with the geothermal plant where the waste was generated. AB 2335 (Saldana) makes changes to the handling, containment, and storage of biohazardous wastes pursuant to the Medical Waste Management Act. The law expands the definition of "infectious agent" to include organisms classified as Biosafety Level II, III, or IV by the federal Center for Disease Control and Prevention. In addition, it requires small quantity generators of biohazardous wastes to maintain records for at least two years and clarifies that a biohazardous waste generator who consolidates wastes into a common container must follow the containment and storage time limits for each waste category. Finally, medical wastes accumulated must be stored in an area that is either locked or under direct supervision or surveillance.

## Cleanup and Brownfields

The Legislature has been especially interested in expediting the clean up of underutilized brownfield sites. This year, the Legislature expanded the reach of two recent brownfields programs: The California Land Environmental Restoration and Reuse Act (CLERRA) and the California Land Reuse and Revitalization Act (CLRRA). It also offered refinements to the Methamphetamine Contaminated Property Cleanup Act of 2005 (MCPCA).

SB 354 (Escutia) expands the reach of the CLERRA, which establishes procedures for selecting an oversight agency for brownfield properties subject to the Department of Toxic Substances Control (DTSC) and SWRCB oversight. This law increases the categories of contaminated property subject to the CLERRA by deleting the following exclusions from the term "property": (1) a site that is or becomes subject to a specified enforcement action or order issued by a RWQCB or the DTSC; (2) a site that is or becomes subject to a corrective action requirement or for which a no-further-action determination has been issued by a RWQCB or a local oversight agency; (3) a site that is or becomes subject to a corrective action order; and (4) a site that is or becomes authorized or permitted for the treatment, storage, or disposal of hazardous waste.

SB 989 (Committee on Environmental Quality) broadens the immunity provisions under the CLRRA. Prior to SB 989, CLRRA provided immunity for cleaning up contaminated property to innocent landowners, bona fide purchasers, or contiguous property owners if they complete an agency-approved clean up response plan. SB 989 is intended to facilitate cleanup and redevelopment of brownfield properties by extending liability immunity to "bona fide ground tenants." Specifically, SB 989 expands relief from liability to developers who occupy property as long term ground tenants (e.g., those leasing land for a 99-year ground lease). AB 2144 (Montanez) is intended to bring a level of uniformity to cleanup projects led by either the DTSC or a RWQCB. This law codifies a recently adopted agency memorandum of agreement (MOA) harmonizing the public participation processes governing cleanup of contaminated sites and replaces separate public participation processes for DTSC and RWQCB. In April 2005, the DTSC, the SWRCB and the regional boards approved an MOA for oversight of investigation and clean up of brownfields. The MOA was developed to ensure a single oversight agency for all covered sites and provide a uniform site assessment procedure to be used by DTSC and the regional boards. This law codifies a primary objective of the MOA, which is to ensure ample opportunity for public comments on proposed site cleanups and establishes a minimum threshold for public participation for RWQCBs and DTSC for cleanup activities. AB 2144 also amends the CLRRA by revising the public participation procedures required for the cleanup response plan. The lead agency must notify all other appropriate governmental entities and local agencies not party to the response plan 30 days before taking action. The lead agency must consider environmental justice considerations for communities



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most impacted and provide notice of the proposed clean up response plan via a newspaper of general circulation and on the project site.

AB 2211 (Karnette) makes solid waste facilities and sites involving solid waste handling eligible for emergency action funding from the Solid Waste Disposal Site Cleanup Trust Fund. Funds are available if responsible parties cannot be found or if they are unable to pay the cleanup costs. The California Integrated Waste Management Board (CIWMB) is authorized to fund these clean ups if it determines that the solid waste facility lacks resources or expertise to perform a timely cleanup. AB 2211 also makes available partial grants to support the cleanup of illegal disposal sites involving municipal storm sewer systems.

AB 2587 (Liu) extends the provisions of the MCPCA to include mobile homes or manufactured homes located on private property, located in a mobile home park, and recreational vehicles located in a mobile home park. The MCPCA requires DTSC to establish and adopt uniform standards for the remediation of meth-contaminated properties [*See* Stats. 2005, AB 1078 (Keene)].

AB 2861 (Ridley-Thomas) increases the penalties for persons failing to abate a lead hazard after receiving an order from DHS or a local enforcement agency (LEA). A second or subsequent violation can result in a misdemeanor punishable by a fine of up to $5,000, and/or up to six months imprisonment in the county jail.

## Land Use

The acute shortage of affordable housing and the United States Supreme Court ruling on eminent domain [*Kelo v. City of New London* [(2005) 545 U.S. 469, 2005 CELR 346]] took center stage in 2006. The Legislature approved a number of bills addressing these issues. The Legislature and the voters also approved policies affecting increased land use density, long commutes and traffic congestion, housing elements, and development fees.

Despite the cooling housing market, most Californians remain priced out of home ownership, leaving over one million families spending over one-half of their income on rent. AB 2511 (Jones) responds to a dearth of affordable housing, which according to the bill's author, stems from restrictive, complex and ambiguously drafted land use rules that make affordable housing approvals contentious and "wrought with litigation." AB 2511 is intended to encourage development of affordable housing and prevent delays in processing applications for development projects. Specifically, this law extends existing anti-discrimination provisions by prohibiting local government agencies from discriminating in their planning and zoning activities against persons or families of very low-income. AB 2511 additionally authorizes courts to compel municipalities that fail to annually report on the status of and progress towards implementation of its general plan. Finally, this law provides more latitude for cities and counties to reduce residential land use densities. AB 2634 (Lieber) attempts to refine the Regional Housing Needs Allocation (RHNA) process—a process designed to determine each region's share of projected housing. Each council of governments (COGs) is required to allocate to cities and counties within its region the need for projected housing covering the following income categories: very low, low, moderate, and above moderate income levels. The author contends that current income categories inadequately account for lower income workers, seniors, and others that make up a large segment of a city or county's population. This law requires cities and counties to include within their housing elements an analysis of population and employment trends along with quantifying the municipality's existing and projected housing needs for all income levels. Housing elements must now include extremely low-income households (defined as those earning no more than 30 percent of the median income). AB 2572 (Emmerson) is designed to address the impact a university has on a community's housing supply. Colleges and universities often have insufficient on-campus housing, which impacts demand for off-campus housing for both students and existing residents. This law requires COGs to consider the housing needs generated by the presence of a public or private college or university. COGs must also consider regional housing needs when developing a methodology to distribute RHNA to local governments under the state Housing Element Law.

Voters tackled a wide range of land use concerns by approving Proposition 1C, the Housing and Emergency Shelter Trust Fund Act of 2006 (SB 1689 (Perata). Proposition 1C makes $2.85 billion in general obligation bonds available to build affordable homes, housing-related infrastructure throughout California, and emergency shelter. The bond authorizes the Transit-Oriented Development Implementation Program to facilitate development of higher density land uses within close proximity to transit stations in an effort to increase public transit ridership. Proceeds from the sale of these bonds will be used to finance state housing programs, infill development, and housing-related parks.

The 2005 United States Supreme Court's controversial eminent domain decision [*Kelo v. City of New London*] approving a land transfer to further economic development sparked a legislative firestorm. In its 5-4 decision, the Court allowed a public development corporation to condemn private homes under the Takings Clause of the Fifth Amendment in order to build a hotel and conference center as part of a comprehensive redevelopment plan. The Court found that the redevelopment plans qualified as a



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permissible "public use" by benefitting the general community through projected economic growth. This "private-to-private" or "economic development" condemnation stirred up opposition from scholars and the proverbial man on the street. Although the California Legislature responded earlier in the legislative session by attempting to bar economic development takings, no legislation on this topic was approved.

Proposition 90 was introduced as both a response to the economic development ruling under *Kelo* and an opportunity by property rights advocates to scale back authority for regulatory takings. Proposition 90 would have required California's state and local governments to compensate private property owners where government regulatory programs "result in substantial economic loss to private property." The failure of Proposition 90 preserves preexisting law that requires state and local government to compensate for losses resulting from laws depriving owners of virtually all beneficial use of property.

Senator Kehoe succeeded in passing several narrowly drawn bills to limit the grounds for establishing blight for purposes of redevelopment. SB 1206 (Kehoe) (1) narrows the description of conditions underlying a finding of blight, and (2) establishes a performance standard to justify a finding of blight. Prior to SB 1650 (Kehoe), public entities could only use eminent domain by approving a "resolution of necessity" that, among other things, described the public use for which the property was to be taken and declared that the "public interest and necessity require the project." SB 1650 requires that public entities, within 10 years, sell any property that is not used for the public use described in the original resolution of necessity unless the entity adopts a new resolution supporting the new public use. Additionally, the public entity must offer the original property owner the first right-of-refusal to purchase the property if the public entity fails to adopt a new resolution reauthorizing the stated public use. This law also requires the public entity acquiring the property to offer the owner a one-year leaseback agreement. Finally, SB 53 (Kehoe) requires redevelopment agencies to make new findings of blight before extending the time limits authorizing eminent domain actions. In addition, redevelopment agencies must, in their redevelopment plans, describe in detail the agency's program for acquiring real property by eminent domain.

Other legislation addressed development fees and extensions of utility service. AB 2259 (Salinas) closes a previous loophole that allowed growth in unincorporated areas to escape local agency formation commission (LAFCO) review where the project did not require a special district boundary change. AB 2259 extends the sunset date (to January 1, 2013) thus allowing LAFCOs to continue to "review and approve" proposals that extend utility service into previously unserved territories within unincorporated areas. AB 2140 (Hancock) is designed to encourage cities and counties to adopt hazard mitigation plans (HMPs) pursuant to the Federal Disaster Mitigation Act of 2000. AB 2751 (Wyland) amends the Mitigation Fee Act of 1987, which authorizes local agencies to charge a variety of fees, dedications, reservations or other exactions in connection with the approval of certain development projects. The Act further permits development project fees to optionally cover the costs attributable to increased demand on public facilities reasonably related to the development project. AB 2751 limits the use of these fees for costs attributable to existing deficiencies in public facilities. The HMPs must include, among other things, an inventory of potentially hazardous private facilities, earthquake performance evaluations of public facilities, and disaster plans. Local agencies that adopt an HMP are eligible for state reimbursement for up to 100 percent of disaster assistance costs compared to 75 percent reimbursement for local government facilities not adopting an HMP.

AB 2867 (Torrico) is intended to improve notice to owners of mineral rights for land use decisions. This law requires that Subdivision Map Act notices be given to owners of mineral rights who have expressed notice of intent to preserve their mineral rights. The law is designed to promote early dialogue between the interested parties process largely to avoid litigation that inevitably ensues when the mineral rights owner challenges a land use decision for which s/he was not aware. AB 2184 (Bogh) responds to parochial conflicts surrounding with "parolee homes" located in residential communities. This law authorizes local public entities to regulate residential care facilities serving up to six persons through local zoning ordinances that address applicable health, safety, building, or environmental impact standards. This law clarifies that nothing in state law governing residential care facilities limits the ability of local governments to enforce zoning ordinances affecting health, safety, building, or environmental standards for residential care facilities.

SB 1627 (Kehoe) removes local control from cities and counties for approving collocation facilities (e.g., such as towers, utility poles, and transmitters that support wireless telecommunication facilities). This law requires municipalities to administratively approve, as a permitted use, collocation facilities on or adjacent to existing wireless telecommunications facilities. Municipalities must treat these uses as permitted and not subject to a discretionary permit if the preexisting wireless telecommunications facility was subject to review under CEQA. Specifically, the wireless telecommunications facility must have been subject to a discretionary permit issued by a municipality and either an environmental impact report (EIR) or negative declaration.



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## California Environmental Quality Act

Once again, the development community's desire to reform CEQA was held back by the environmental community, which prefers maintaining the status quo. By entertaining few CEQA bills in 2006, the CEQA reform stalemate continued for yet another year. AB 1387 (Jones)—a relatively modest bill designed to promote infill development—successfully carved out a narrow CEQA exemption for infill projects. AB 1387 promotes infill development by authorizing a lead agency under the CEQA to approve residential projects on urban infill sites (no bigger than 100 units within a half mile of a transit stop) without having to mitigate traffic impacts under specified circumstances. Lead agencies may also approve such projects without issuing a finding of overriding considerations for significant impacts on traffic for an EIR. These CEQA considerations are conditioned on the applicant complying with: (1) the traffic, circulation, and transportation policies of the general plan, and (2) mitigation measures previously approved of in a certified project area EIR applicable to the project. According to the bill's author, the law does not eliminate a local government's authority to impose traffic mitigation if the local government desires project-specific mitigation; rather it eliminates the CEQA provision that traffic mitigation must be carried out on qualifying infill projects. SB 974 (Committee on Environmental Quality) removes a CEQA exemption for any activity or approval necessary for, or incidental to, project funding by the Rural Economic Development Infrastructure Panel. SB 1814 (Torlakson) amends CEQA to allow a lead agency to prepare a master EIR for school project plans undertaken by school districts that comply with applicable school facilities requirements.

## Solid Waste

As cities and counties approach or exceed the 50 percent solid waste diversion targets set by the Integrated Waste Management Act of 1989, recycling advocates have persuaded the Legislature to address the next highest hanging fruit options. The Legislature advanced several recycling and solid waste laws including a "tune up" of the "Bottle Bill" (Beverage Container Recycling and Litter Reduction Act); increasing grants to promote and increase solid waste recycling; taking aim at plastic bags recycling; and fine tuning requirements governing the closure and post-closure of municipal solid waste landfills.

California residents and businesses generate over 19 billion disposable plastic bags each year, which results in over 147,000 tons of waste. Approximately 60 percent of these non-biodegradable bags are generated by grocery stores. AB 2449 (Levine) establishes an in-store recycling program to allow consumers an opportunity to return plastic bags to the store. This policy has the salutary secondary benefit of reducing the number of plastic bags in the waste stream that could enter the state's waterways. By July 1, 2008, supermarkets and retail stores (with more than 10,000 feet of retail space and an associated pharmacy) must maintain an on-site plastic bag take-back and recycling program. Each store must establish conspicuous and easily accessible collection bins for bags. All bags offered by the retailer must be labeled "Please Return to a Participating Store for Recycling." Retailers must also make available for purchase reusable bags and manufacturers must implement a public education program designed to encourage reduction, reuse, and recycling of plastic carry out bags. AB 2147 (Harman) expands a recent law prohibiting the sale of plastic bags labeled "biodegradable," "compostable" or "degradable," unless the bag meets current American Society for Testing and Materials (ASTM) standard specifications. AB 2147 now requires those selling plastic food and beverage containers to also abide by the labeling restrictions.

Two bills address rigid plastic pallets, containers and storage units. AB 2289 (Ruskin) is designed to address the situation involving stolen crates, pallets and shells from grocery store docks that are offered to recyclers for shredding. This bill requires businesses purchasing five or more plastic bulk merchandise containers for recycling, shredding or destruction to obtain proof of ownership before accepting containers for recycling. Businesses must retain the proof of purchase records for one year from the date of purchase or delivery, whichever is later. Violators are guilty of a misdemeanor. SB 1344 (Chesbro) revises the methods manufacturers of rigid plastic packaging containers must use to demonstrate compliance with the 25 percent post-consumer content standard.

The Bottle Bill received another 20,000 mile tune up with passage of AB 3056 (Committee on Natural Resources). AB 3056 modifies the Bottle Bill by increasing the consumer refund (up to $0.01) for a six month period (until July 1, 2007). In addition, this law expands the definition for convenience zones in rural areas to include locations within a three mile radius of a supermarket, if the expanded convenience zone will be served by one existing certified recycling center. Convenience zones can also be established in rural areas not served by a supermarket where two or more dealers are located within a one-mile radius of each other. This law allows the DOC to offer up to $20 million of grant money available for competitive grants to: (1) a community conservation corps; (2) for recycling market development; and (3) expansion-related activities aimed at increasing the recycling of beverage containers. The law authorizes DOC to pay up to $5 million annually for market development payments for empty plastic beverage containers collected and either



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recycled or used in manufacturing. This law also authorizes DOC to expend up to $5 million in coordination with the Department of Parks and Recreation (DPR) to install source separated beverage container recycling receptacles at state parks and another $5 million for local government or nonprofit grants to place source separated beverage container recycling receptacles in multifamily housing located in low-income communities. Another $5 million is now available to fund a statewide public education and information campaign to increase beverage container recycling. Finally, the law makes related administrative changes governing how the DOC manages handling fees and related administrative manners.

SB 369 (Simitian) revises the eligibility criteria the CIWMB must follow in issuing grants to cities, counties, districts, and other local governmental agencies for the funding of public works projects that use rubberized asphalt concrete (RAC) and increases the maximum grant from $50,000 to $250,000. To be eligible, grantees must use at least 1,250 tons of RAC. The new law also requires the CIWMB to provide technical support to local agencies to assist with the design and application of RAC projects.

AB 2296 (Montanez) requires the CIWMB to complete a study by January 1, 2008, identifying the potential long-term threats affecting the state's solid waste landfills. The study must examine, among other things, long-term post-closure maintenance or corrective action costs if a landfill owner or operator fails to meet its obligations to fund post-closure maintenance or corrective action obligations. The CIWMB must adopt regulations and develop recommendations by January 1, 2008, requiring that closure and post-closure maintenance cost estimates be based on reasonably foreseeable costs.

AB 1992 (Canciamilla) strengthens the law prohibiting illegal dumping of solid waste on public and private property by clarifying that the unconsented placing, depositing, dumping, or the overflow of solid waste onto private property is a misdemeanor. The law also includes LEAs as entities able to determine whether the dumping of solid waste is a public health and safety hazard. AB 1992 increases the mandatory minimum fines for illegal littering on roads or highways to at least $250 for the first violation. AB 1333 (Frommer) is designed to elevate to a criminal misdemeanor disposal of grease waste in manholes or sanitary sewer appurtenances. Violators are now subject to imprisonment in county jail for no more than six months and a fine of $10,000 for a first offense and up to one year of imprisonment and a $25,000 fine for a second offense. The law also establishes civil penalties for grease waste haulers who improperly remove grease from a trap or interceptor.

SB 1305 (Figueroa) alters the California Medical Waste Management Act, which previously exempted from the Act's provisions "home-generated sharps waste" such as hypodermic needles. Under the new law, persons are prohibited from knowingly placing home-generated sharps waste into commercial and residential solid waste collection containers (including recycling and green waste receptacles) on or after September 1, 2008. After that date, home-generated sharps waste must be managed only at licensed household hazardous waste or medical waste facilities and transported only in approved sharps containers.

## Natural Resources and Wildlife

The Legislature served up a potpourri of natural resources programs. These new laws establish or expand recreational corridors; addressing the mechanics of establishing and maintaining open space and conservation easements; protect sea otters; and establishing operational practices for domestic finfish aquaculture.

SB 201 (Simitian) creates the Sustainable Oceans Act, requiring the Department of Fish and Game (DFG) to prepare a programmatic EIR evaluating a program to manage marine finfish aquaculture in a sustainable manner. This law additionally requires persons engaging in finfish aquaculture in state waters to obtain a lease meeting specified standards for siting operations. Sites must not unreasonably interfere with fishing or public trust values or unreasonably disrupt wildlife or harm the environment. Meanwhile operations must minimize the use of fish meal, fish oil, drugs, chemicals, and antibiotics. Operators must establish best management practices, approved by the Fish and Game Commission, which include a regular monitoring, reporting and site inspection program. All farmed fish must be marked, tagged, or otherwise identified as belonging to the operator. Finally, all facilities and operations must be designed to prevent the escape of farmed fish and to withstand severe weather conditions and marine accidents. AB 2485 (Jones) establishes the California Sea Otter Fund to support increased enforcement and research to protect specific marine mammals. It also increases penalties for illegal taking of sea otters, and requires any cat litter offered for sale in the state to contain one of two disclosure statements regarding the proper disposal of cat feces.

AB 948 (Laird) requires the DWR, in partnership with the United States Department of Agriculture (USDA), the DFG, and the Colorado River Board of California, to prepare a plan to control or eradicate tamarisk in the Colorado River watershed and to reestablish native vegetation. Tamari, a non-native plant inhabiting the majority of waterways and wetland habitats in the Southwest, outcompetes native habitat and evaporates significantly more water than native vegetation.

The Legislature approved several measures addressing the administration of open space preservation and historic



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preservation. SB 1360 (Kehoe) requires the Secretary of the Resources Agency to establish a central public registry of all state held conservation easements as well as easements that are required by the state, or purchased with state grant funds on or after January 1, 2006. This registry must be publicly available on or before January 1, 2009, and updated biennially. AB 2746 (Blakeslee) affirms that state agencies or entities may allow nonprofits to accept and hold title to open space or conservation easements required by an agency to mitigate adverse impacts of a permitted project or facility. The nonprofit must be: (1) a 501(c)(3) organization, recognized as tax-exempt by the Internal Revenue Service (IRS); (2) a "qualified organization" as defined by Section 170(h)(3) of the Internal Revenue Code in order to hold conservation easements; and (3) an organization whose principal purpose is to protect natural land or resources, or cultural or historic resources. AB 2900 (Plescia) enacts the California Natural Landmarks Program authorizing the DPR to designate California natural landmarks and to maintain the California Registry of Natural Landmarks.

SB 1843 (Committee on Natural Resources and Water) is a permit streamlining law allowing the California Coastal Commission (Commission) to process a single coastal development permit application for a project falling under dual jurisdiction of the Commission and a local government with a certified local coastal program. This permitting process involves the relatively unique situation involving projects with seawalls and bridges which often require permit approvals from both agencies. The single permitting system is designed to avoid duplicate fees, hearings, and shorten the time to process permits. SB 1556 (Torlakson) requires the Delta Protection Commission to establish a continuous recreation corridor called the Great California Delta Trail. The corridor will extend bicycle and hiking trails around the Sacramento-San Joaquin Delta and link the San Francisco Bay Trail system to river trails planned in Sacramento and Yolo Counties. SB 1574 (Kuehl) requires the Secretary of the Resources Agency to convene a committee to develop and submit to the Governor and the Legislature, on or before December 31, 2008, a strategic vision for a Sustainable Sacramento-San Joaquin Delta. The strategic vision must include a discussion of sustainable ecosystem functions, sustainable land use and land use patterns, sustainable transportation uses, sustainable utility uses, sustainable water supply uses, sustainable recreation uses, and sustainable flood management practices.

## Sustainability

Sustainability and "beyond compliance" initiatives are beginning to gain some traction with the state Legislature. This year, the Legislature passed measures advancing green building which is designed to efficiently use energy and water resources and maximizes use of recycled materials.

AB 2160 (Lieu) directs the CEC in consultation with the DGS and the Treasurer's office to identity and develop financing and project delivery mechanisms for state green building projects. These agencies must also identify obstacles and incentives affecting the viability of energy and resource efficiency projects for private sector commercial buildings. Findings associated with this inquiry must be reported to the Governor's "Green Action Team" by January 1, 2008. Additionally, the DGS must, by July 1, 2007, develop a "life-cycle" cost model that evaluates the cost-effectiveness of state building design and construction decisions and their impact over a facility's life cycle.

Proposition 1D (AB 127 (Nunez)) enacted the Kindergarten-University Public Education Facilities Bond Act of 2006. This successful initiative authorizes more than $10 billion of state general obligation bonds to provide aid to school districts, county superintendents of schools, county boards of education, the California Community Colleges, the University of California, the Hastings College of the Law, and the California State University to construct and modernize education facilities. Among other things, this proposition authorizes the State Allocation Board to include green building designs that promote the efficient use of energy and water, the maximum use of natural lighting and indoor air quality, the use of recycled materials, and materials that emit a minimum of toxic substances. AB 2865 (Torrico) amends the Healthy Schools Act of 2000, which requires use of the least toxic pest management practices at school sites. Schoolsites (including private child day care facilities) must maintain records of all pesticides used at the school site for at least four years. Property owners must now notify tenants operating child day care facilities of their pest management practices and provide a specified notice before applying pesticides.

Other legislation expands grants to support sustainability. AB 1341 (Committee on Environmental Safety and Toxic Materials) extends operation, until January 1, 2012, of the Sustainable Communities Grant and Loan Program (Sustainable Communities Program) which authorizes the California Pollution Control Financing Authority (CPCFA) to issue grants and loans to cities and counties. AB 1341 increases the Sustainable Communities Program funds available for grants and loans from $5 million to $7.5 million.

## Looking Ahead

Governor Schwarzenegger staged a dramatic comeback after suffering a humiliating special election defeat last



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year when he lost all four of his ballot measures. A short 52 weeks later, California voters were in a more generous mood, approving all of the Governor's infrastructure bonds and handing him his first full term and a place in the history books.

It is often said that a year in politics can be an eternity—a lot can happen in a short time. Thanks to robust stock and home sales, the Governor managed to avoid the usual end-of-the-fiscal-year acrimony this election cycle. This good fortune, combined with a retooled team of advisors and a revised political playbook, convinced the voters that he is capable of leading in a bipartisan way.

The last time the Governor fell out of favor with the California electorate, he faced huge budget deficits, spear-headed a special election power grab, and failed to work with his Democratic colleagues. His relatively few environmental legislative achievements at that point were due in part to his weakened position.

Many of the same circumstances that hurt the Governor's standing in the past have resurfaced. For example, The Independent Legislative Budget Analyst's office is once again projecting a multi-billion dollar budget shortfall (for the 2007-2008 fiscal year) thanks to a sagging housing market and an unresolved structural deficit. The political fortunes of the Governor and his legislative accomplishments not only depend on the health of the California economy, but also on his willingness to continue working with the Democratically-controlled Legislature. The 2007 Assembly is expected to be more liberal and thus greener than its 2005-2006 predecessors while the Senate will likely be more business-friendly and conservative.

The current bipartisan harmony and the prospects of building on last year's legislative achievements could be short-lived if the Governor reneges on his promise to work with the green-leaning Legislature. If he follows through on his renewed pledge to redraw legislative districts and capture more power for his party, history could repeat itself.

# COMMON LAW AND ENVIRONMENTAL PROTECTION

## Cases

### Refiner May Be Liable for MTBE Leakage from Gas Station on a Strict Liability Theory

*Nelson v. Superior Court*
*No. C052420, 3d App. Dist.*
*144 Cal. App. 4th 689; 2006 Cal. App. LEXIS 1748*
*November 6, 2006*

***A gasoline refiner could be liable on a strict liability theory for damage to a privately-owned water system that was caused by the leakage of gas containing MTBE from gas stations.***

**Facts and Procedure.** Plaintiff owns and operates a water company. Defendant Exxon refined gasoline containing the additive methyl tertiary butyl ether (MTBE), which was supplied to gas stations near plaintiff's water system. Plaintiff claimed that MTBE leaked into its water system from the stations and asserted causes of action against defendant for strict liability, negligence, trespass, and nuisance.

Plaintiff alleged strict liability based on a defect in the design and manufacture of MTBE (specifically that the benefits of MTBE were greatly outweighed by its costs and negative impact) and by defendant's failure to adequately warn of its dangers. Defendant and other refiners moved for judgment on the pleadings on that cause of action, claiming strict liability did not apply because plaintiff was not harmed by a use of the product (the MTBE-laden gasoline) after it had reached an ultimate consumer or user. Defendant also argued that applying strict liability in these circumstances was inconsistent with the purpose of the theory and that existing law provided ample alternative means for plaintiff to pursue its claims.

The trial court granted the motion, citing case law emphasizing that the strict liability doctrine was developed mainly to protect consumers, users, and (to some extent) bystanders who are not in a position to protect themselves. The trial court found no case authority supporting the proposition that a bystander who is injured by a product



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