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THE 2008 ENVIRONMENTAL LEGISLATIVE RECAP: A FISCAL FREEFALL

By

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Owing in part to growing concern about climate change, the green movement has experienced considerable momentum in recent years. The Legislature rode this wave of enthusiasm at the beginning of the 2008–2009 legislative session by offering bold new environmental policies. However, that was before the budget stalemate and the market collapse in 2008.

Once again, the budget for the fiscal year beginning on July 1 was held up due to partisan acrimony. For the second year in a row the fiscal crisis overshadowed environmental policymaking in Sacramento. California is one of three states requiring a super majority to approve its budget. This high budgetary threshold gives the minority Republicans considerable power in shaping the outcome of the budget and significant influence directing environmental policy.

Playing a game of Chicken with the Legislature this summer, the Governor threatened to withhold his signature on all pending legislation unless he received the votes needed to pass the budget. The Governor had a change of heart when the window of opportunity began to close on approving Assembly Bill (AB) 3034, the Governor's favored rail bond (discussed more fully below). Although he made an exception by signing

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the rail bill, he withheld his signature on over 1,000 bills until he eventually received a budget he was willing to sign.

After several false starts, the Governor signed a $145 billion budget 85 days into the fiscal year—the most delinquent budget in state history. Partisan divisions ran deep and contributed to the Governor vetoing 35 percent of bills that crossed his desk—the largest rate of vetoes since records were kept.

About one-third of the vetoed bills carried a generic veto message that stated: "The historic delay in passing the 2008–2009 State Budget has forced me to prioritize the bills sent to my desk at the end of the year's legislative session. Given the delay, I am only signing bills that are the highest priority for California. . . ." He even vetoed some bills that unanimously passed the Legislature, further alienating the Democratically-controlled Legislature.

Despite the ideological cross-currents, the Legislature managed to deliver a number of environmental policies that the Governor signed into law, including key legislation on green chemistry, climate change and land use, green jobs, green building, alternative energy, oil spill and emergency management, plastics recycling, protecting open space, and preserving and restoring habitat. All legislation became effective on January 1, 2009, unless otherwise stated.

Air Quality

This year, garnering 52.2 percent of the vote on November 4, the electorate approved Proposition 1A (The Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century), which authorizes the construction of an 800-mile rail system linking the San Francisco Bay Area to Southern California. This initiative provides $9 billion to build a new high-speed railroad between San Francisco Transbay Terminal and Los Angeles Union Station and Anaheim. Traveling at 220 miles per hour, this nonstop service will deliver passengers between stops in two hours and 40 minutes. Another $950 million will fund connections to the high-speed railroad and support repairing, modernizing and improving passenger rail service, including tracks, signals, structures, facilities and rolling stock.

Over the past 12 years, the California High-Speed Rail Authority has spent $60 million toward pre-construction activities in support of the north-south high speed rail line along with intercity rail connections to the major metropolitan areas of California.

In addition to promoting the bullet train, the Legislature approved two laws amending the privileges granted to drivers of fuel efficient vehicles who use the coveted

carpool lanes. Beginning in 2005, single-occupant drivers of a low emission or hybrid vehicles meeting specified fuel efficiency have enjoyed the privilege of breezing past congested highways in the diamond lane [*see* Stats. 2004, AB 2628 (Pavley)]. The first law—AB 1209 (Karnette) allows "fuel-efficient vehicle" owners to receive a replacement decal for a new fuel-efficient vehicle if the originally decaled vehicle is destroyed (as defined). Prior to enactment of AB 1209, the Department of Motor Vehicles (DMV) was only authorized to issue a replacement decal if the decal was destroyed—not if the vehicle was destroyed. In order to receive a replacement decal for a replacement vehicle owned by the same person he or she must provide proof of the vehicle's destruction and demonstrate that the new vehicle meets the same requirements of the original vehicle. Owners must request new Clean Air decals on or before March 31, 2009, or within six months of a non-repairable or total loss salvage determination, whichever date is later.

The second law—Senate Bill (SB) 1720 (Lowenthal)—is designed to shut down a thriving black market trading in fraudulent and stolen Clean Air decals. Ill-gotten and stolen decals could fetch as much as a few thousand dollars each. Prior to enacting SB 1720, there was no enforcement mechanism to punish perpetrators who forge, falsify, acquire, possess, or sell Clean Air decals. Under the new law, any person who, with intent to prejudice, damage or defraud involving the acts above is guilty of an infraction and is subject to a fine between $100 and $250 for a first offense; between $250 and $500 for a second offense, and a fine of between $500 and $1000 for third or subsequent offense.

Air quality enforcement provisions have not kept pace with new programs governing mobile source regulatory programs governing small off-road engines, large spark ignition engines, and portable fuel containers. AB 2922 (DeSaulnier) directs the Air Resources Board (ARB) to add civil penalty provisions for portable fuel containers, spouts, engines, subject to regulation by the ARB.

The Legislature approved a number of laws to increase motor vehicle fees to support air pollution control programs. AB 2522 (Arambula) authorizes the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) to increase motor vehicle fees from $2 to up to $30 to fund an incentive-based program to achieve surplus emissions reductions. This law requires that at least $10 million of these revenues fund air pollution mitigation measures to serve environmental justice communities in the San Joaquin Valley. SB 348 (Simitian) extends the authority of the City/County Association of Governments of San Mateo County to collect a $4 fee on motor vehicles to manage traffic congestion and storm water pollution for another four years. SB 1646 (Padilla) makes permanent the South Coast Air Quality Management District's authority to collect motor vehicle fees to reduce air pollution through a clean-burning fuel program.

SB 155 (Cox) provides relief to small-volume gasoline service stations located in five rural counties, allowing two

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extra years to install enhanced vapor recovery systems on their pumps. Specifically, this law carves out a temporary exemption (until April 1, 2011) from Enhanced Vapor Recovery Phase II upgrade requirements for gasoline dispensing facilities located in counties that are classified as non-attainment for ozone with a population less than 100,000 and with an annual gasoline throughput of 240,000 gallons or less.

SB 1548 (Florez) adjusts the selection process for the voting members of the SJVUAPCD. Specifically, it creates a local city selection committee to appoint five of the 15 voting members to be appointed to represent cities.

Climate Change

For decades, California land use practices have implicitly promoted long distance commutes for workers that contribute to air pollution and green house gas (GHG) emissions. The transportation sector alone is responsible for approximately half of the ground level smog and 40 percent of GHG emissions in California. SB 375 (Steinberg) is a watershed law that attempts to tackle the seemingly intractable challenge of changing the relationship between land use and vehicle miles traveled (VMT). SB 375 has drawn national attention for aligning planning for housing, land use, and transportation.

This law requires that the regional transportation plans (RTPs) for the Metropolitan Planning Organizations (MPOs) must contain a Sustainable Communities Strategy to achieve GHG emission reductions. The ARB must work in concert with California's 17 MPOs to reduce GHG emissions by preparing a sustainable communities strategy subject to ARB approval. The ARB must provide each region with GHG emission reduction targets (by September 30, 2010) to be achieved by 2020 for autos and 2035 for light trucks. Each MPO must adopt regional growth strategies to achieve these targets. MPOs must then assign housing needs to cities and counties under their respective housing elements that are consistent with the growth strategy. This is intended to align regional transportation spending plans with the reduction strategy. Ultimately, the growth strategy will be implemented by rezoning to accommodate housing needs.

SB 375 additionally modifies the time frames by which local governments must revise their housing elements from every five years to every eight years for those local governments located within an MPO within a non-attainment area.

Perhaps the only controversial provision of this law involves tinkering with the California Environmental Quality Act (CEQA) in an effort to facilitate infill development. The provision offers CEQA relief to residential or mixed-use residential developments consistent with the MPO sustainable communities growth strategy and Alternative Planning Strategy. The applicant would not be required to evaluate growth inducing impacts or the impacts from cars and light-duty truck trips generated by the project on global warming or the regional transportation network.

This law allows a "Transit Priority Project" that is consistent with an MPO's Sustainable Communities Strategy to be evaluated pursuant to a "Sustainable Communities Environmental Assessment." Where the lead agency determines that a cumulative impact was adequately addressed and mitigated pursuant to a previous environmental document, the cumulative effect must not be considered for purposes of an initial study or an environmental impact report (EIR). An EIR need not evaluate off-site alternatives nor must it adopt mitigation measures to address traffic impacts if the local jurisdiction issuing discretionary approval has already adopted traffic mitigation measures.

In another provision of the law, the California Transportation Commission (CTC) must maintain guidelines for use in travel demand models that forecast potential outcomes of transportation and land use policy options. These models must, among other things, account for the relationship between land use density, household vehicle ownership, and VMT. In addition, the models must consider the impact of enhanced transit service levels on household vehicles ownership and VMT.

With AB 1338 (Budget Committee), the Legislature required the California Environmental Protection Agency (Cal-EPA) to estimate its own GHG emissions. Each Cal-EPA Board, Department, and Office (BDO) must list measures it adopted to meet GHG emission reduction targets and provide a status report on actual GHG emissions reductions achieved. The BDOs must also provide a list and timetable to adopt additional measures needed to meet GHG emission reduction targets. Cal-EPA must then take this information and compile it into a GHG emission reduction report card comparing their efforts to reduce GHGs against their reduction targets.

The BDOs must annually submit to the Legislature "a comprehensive budget display" identifying funding proposals for state agencies implementing climate solutions to meet the AB 32 (otherwise known as the California Global Warming Solutions Act of 2006) GHG emission reduction targets. The budget display must include a five-year work plan summarizing how to deploy BDO staff and its contracting resources to achieve reductions.

AB 2991 (Nunez) adds two climate change experts to the ARB's nine-member Research Screening Committee,

which reviews hundreds of research proposals and advises ARB on which studies to fund. The current membership is based on a 1975 law that was oriented to reducing traditional air pollutants. This law expands the charge of the Committee to include reviewing climate change related research, which will allow it to more effectively build regulatory programs implementing AB 32.

A broad scientific consensus predicts that even if Herculean efforts and resources are devoted to combating climate change, significant environmental effects are unavoidable. According to the ARB, sea level has risen seven inches in the last 100 years and under the best case scenario, over the next century, sea level will rise another 6 to 14 inches. AB 1225 (DeSaulnier) provides funding to support strategies to adapt to this challenge. This law augments the California Ocean Protection Trust Fund to support adaptive management, planning, coordination, monitoring, and research activities to minimize the adverse impacts of climate change on California's ocean ecosystems. In addition to funding strategies to manage the effects of sea level rise, it will support strategies to combat changes in ocean productivity and ocean acidification impacts to ocean ecosystems. Finally, it will support research to increase understanding of the ocean's role in carbon sequestration. Information developed under this law will provide guidance to ARB as it adopts early action measures under AB 32.

Thanks to bond funds from Propositions 12, 40, and 84, over 135,000 trees were planted in the past ten years through direct grants to seven regional urban forest councils.

Recognizing the role that carbon sequestration will play in managing climate change, AB 2045 (De La Torre) recasts and updates provisions of the California Urban Forestry Act of 1978. Revisions to the Act underscore the importance of trees in sequestering GHGs. The law is designed to improve public health impacts related to poor air and water quality and responds to a dearth of urban parks and green space. Specifically, this law expands the powers and duties of the Department of Forestry and Fire Protection. The Department must coordinate with state agencies (including statewide and regional urban forestry and arboricultural organizations) to provide technical assistance regarding forest ecology considerations in urban planning, including climate change and GHG reductions, air quality, watershed problems, and energy conservation.

Energy

The Governor signed a number of energy laws designed to expedite permitting of renewable power, developing alternative fuels, promoting distributed energy sources, and developing fossil fuels along the California coast.

The mantra "drill baby drill" dominated the campaign trail this summer as gasoline prices spiked to over $4 per gallon and the cost of a barrel of oil reached heights that seemed unimaginable. AB 2165 (Karnette) rode this wave of enthusiasm by authorizing fossil fuel drilling along the California coast. This urgency law became effective on September 27, 2008. This law authorizes the State Lands Commission (SLC) to contract with the City of Long Beach to explore and develop additional oil reserves beneath tidelands and submerged lands off the coast of Long Beach. This law authorizes the SLC to provide financial incentives to the city's tidelands operating contractor to explore and develop these resources. Among other details associated with the contract, any oil produced must maintain the same environmental footprint that existed as of July 1, 2008.

$100 million in bond funds is now available to fund energy projects using the guidelines for Collaborative High Performance Schools. The Legislature approved two laws to expedite the installation of solar energy on school buildings. AB 1062 (Ma) was enacted to spur the installation of solar technologies on schools throughout California. Assembly Member Ma points out that school districts could save energy and costs because many schools have large areas of open space suited for solar energy generation. This law responds to the "time-consuming, confusing, and inefficient" process of obtaining approval to construct solar facilities. AB 1062 requires the Division of the State Architect to develop uniform criteria for precheck approval processes for solar design plans for school facilities. In addition, the Department of General Services (DGS) must now complete a review of a solar design plan application within 45 calendar days of receipt of a complete application.

The California Solar Initiative [*see* Stats. 2006 SB 1(Murray)] or "CSI" was designed to encourage the installation of 2,000 megawatts of solar energy in California over a 10-year period through subsidies on solar energy systems. AB 2804 (Hayashi) was enacted to expedite receipt of rebates from the California Public Utilities Commission (CPUC). This law allows additional time for schools to complete the installation of solar energy systems without losing their right to receive rebates from the CPUC. Due to the complexity of the permitting and procurement processes, schools were having difficulty completing installation of their solar energy systems within the18 month time window to receive rebates. Finally, this law requires the CPUC to grant school district and community college applicants up to three 180-day

extensions in order to receive rebates under the California Solar Initiative.

The ARB recently approved the AB 32 "Scoping Plan," which serves as a regulatory blue print for meeting the ambitious GHG reduction targets of AB 32. One of these policies requires California's investor-owned utilities (IOUs) to ensure that they generate one-third of their electricity from renewable sources by 2020. Because the utilities will face considerable challenges permitting and securing so much renewable energy in a relatively short time frame, AB 1510 (Plescia) takes a step toward streamlining the approval of renewable energy projects. This law expands an existing Subdivision Map Act (SMA) exemption for wind energy projects involving land use approvals seeking to divide larger properties into smaller parcels. This exemption was expanded to include solar and biogas projects thereby removing a permitting obstacle that could cause delays in obtaining a lease or financing. This new exemption specifically applies to solar electrical and biogas projects that are subject to local land use review for design and improvement or if the project is subject to discretionary action.

Sponsored by the State Treasurer, SB 1754 (Kehoe) was enacted to reduce GHG emissions by significantly increasing renewable energy generation. This law authorizes the California Alternative Energy and Advanced Transportation Financing Authority (Authority) to enter into power purchase agreements (PPAs) with public and private entities to purchase and sell alternative energy. A PPA is a mechanism for solar power companies to install solar projects on private property while allowing the company to retain ownership and maintenance responsibilities. The solar company is authorized to sell the solar power to the property owner through a long-term purchase agreement while collecting CSI rebate money and maintaining eligibility for federal renewable energy investment tax credits. Ultimately, the law is intended to allow the building owner or its tenants to enjoy reduced electricity costs.

The renewable energy projects will be financed with pre-payment bonds instead of via private financing. Renewable energy developers constructing renewable energy projects at government buildings or schools must now enter into a PPA with the Authority. The PPAs authorize the Authority to purchase and sell alternative source energy or projects.

PPAs have been a popular mechanism to finance and install solar energy systems in the commercial sector; however, institutional investors have been less willing to invest in the residential market. They are concerned that PPAs will be regulated by the CPUC as monopoly electrical corporations. AB 2863 (Leno) is intended to allay fears of institutional investors and clarify that independent solar energy producers offering solar PPAs are not "electrical corporations" and are thus exempt from regulation as monopoly electrical corporations by the CPUC.

SB 380 (Kehoe) modifies a program that allows small-scale renewable generators to sell renewable electricity to IOUs. Currently, IOUs must pay electric generation facilities for up to 1.5 megawatts of electricity at a rate set by the CPUC. This law expands this capacity to a combined statewide cumulative generating capacity of 500 megawatts of electricity for customers.

AB 1451 (Leno) expands the duration of the solar property tax exclusion that was set to expire in this fiscal year and extends it until the 2015–2016 fiscal year. The exclusion was originally available to a person who constructs a new building (on land he owns) with a solar energy system where the builder does not intend to occupy the building. The exclusion was not available to someone who purchased that building from the developer. This law reconciles this discrepancy by extending the exclusion to the initial purchaser of a new building,

A court recently ruled that a property owner in Sunnyvale had to remove two redwood trees that cast a shadow on a neighbor's photovoltaic panels. The court weighed in on the 1978 Solar Shade Control Act, which prohibits a person from allowing vegetation to cast a shadow on the solar energy device of another. The Legislature entered the fray by enacting SB 1399 (Simitian) which amends the Act and establishes a "first in time/first in right" rule with respect to vegetation and solar collectors. This new law provides that after installing a solar collector, anyone who owns or controls another property is prohibited from allowing a tree or shrub to cast a shadow on the solar collector. The prohibition is limited to shadows greater than 10 percent of the collector's absorption area from 10 am and 2 pm. However, any tree or shrub that was planted prior to the solar collector, including replacement trees and shrubs, is exempt from the Act.

The Legislature approved two bills addressing solar energy in common interest developments (CIDs). AB 1892 (Smyth) promotes the use of solar energy systems in CIDs. It voids CID governing documents that effectively restrict the installation or use of a solar energy system; the law nonetheless allows for reasonable restrictions on the use of solar energy systems. Under AB 2180 (Lieu), a home owners association (HOA) in a common interest development (CID) must respond to member requests to install a solar system in his or her separate interest. Failure to issue a written response within 60 days renders the request approved.

The California Alternative and Renewable Fuel, Vehicle Technology, Clean Air, and Carbon Reduction

Act of 2007 [*see* Stats. 2007 (AB 118 (Nunez)] established a funding source to research, develop, and deploy clean fuels and innovative technologies to improve air quality. The State Energy Resources Conservation and Development Commission (CEC) and the ARB have concluded that additional data is required to determine the carbon footprint of alternative fuels. AB 109 (Nunez) expands the types of projects to be subject to a full life cycle and multi-media sustainability analysis to include battery electric vehicle technology, increasing low carbon transportation fuels, feedstock cultivation, fuel manufacturing and marketing, the transportation and use of water, and changes in land use and land cover. This law further eliminates the preference to study renewable diesel or biodiesel infrastructure, fueling stations, and equipment.

California has been transitioning from generating power from traditional large-scale power plants toward distributed energy generation. This includes a widespread network of small generation facilities (e.g., solar panels and micro-turbines) located close to areas of electrical demand. Three distributed energy laws were enacted during this legislative session. AB 811 (Levine) is urgency legislation that became effective July 21, 2008. This law authorizes local governments to designate contractual assessment districts within which property owners may obtain low interest loans for distributed generation projects that will be repaid as assessments on property tax bills. These projects include renewable energy sources or energy efficiency improvements that are permanently fixed to real property.

Assembly Member Blakeslee authored the second distributed energy law. AB 578 promotes reliable distribution and transmission of energy by helping to provide sufficient infrastructure to manage inconsistent surges of electricity. AB 578 requires the CPUC to study the impact of distributed energy sources on the state's distribution and transmission grid. The results of the evaluation must be included in a report that is to be submitted to the Legislature and the Governor by January 1, 2010, and biennially thereafter. The CPUC is also required to assess the impacts of the CSI program, the Self-Generation Incentive Program (SGIP), and the biogas customer-generator net energy metering pilot program.

Finally, AB 2267 (Fuentes) awards grants from the Public Interest Energy Research (PIER) program. This law requires the CEC to offer a 20 percent additional incentive to California suppliers that install eligible distributed generation resources for the SGIP.

Prior to AB 2466 (Laird), utilities treated each electrical meter as a separate account for purposes of net energy metering (which is a mechanism to sell excess power back to the utility), even if one entity had multiple meters. That meant that a municipality could not receive credit for renewable energy generated at a city dump, park, or reservoir connected to a separate meter. This law is designed to expand the reach of net energy metering for local governments. It allows local governments to obtain credit for renewable energy generated at facilities located on other properties.

In a 2005 report, "California's Water-Energy Relationship," the CEC concluded that a considerable amount of energy is consumed in California moving water from its source to the tap. This includes 19 percent of the state's electricity; 30 percent of the state's natural gas; and 88 billion gallons of diesel fuel each year. In December 2007, the CPUC issued an order directing utilities to implement one-year pilot projects to verify the embedded energy savings derived from water pilot programs. AB 2404 (Salas) requires the CPUC to study and recommend whether, based on the pilot programs, electric and gas utilities could realize cost-effective energy efficiency improvements by implementing water conservation projects. The report is due to the Legislature by March 31, 2010.

Electric and gas corporations are obligated to display energy charges based on a tiered structure. This inverted block rate structure, which imposes higher rates for higher consumption, can be confusing to ratepayers. AB 1763 (Blakeslee) is designed to make more understandable the energy consumption information supplied on a customer's monthly energy bill. This is expected to allow customers feedback to assist in making informed choices to reduce their energy consumption and save money on their energy bills.

Most residential and small commercial customers pay flat rates for their electricity. The CSI required solar customers to obtain their electricity service using time-of-use (TOU) rates. Under this time-variant rate structure, rates differ based on when the electricity is consumed. Under TOU rates, electricity rates are higher during the hottest part of the day when electricity is most expensive, thus rewarding customers who use energy during times when energy demand is low. TOU rates were designed to promote installation of solar energy projects so as to maximize electricity production during peak energy demand. Since the enactment of the CSI, the CPUC has developed a tool that obviates the need for TOU rates. The CPUC can now determine a customer's solar rebate based on the actual expected electrical output from their particular solar panels. The tool estimates the time of day that the electricity is generated and thus rewards customers for locating their panels to maximize electrical output. AB 2768 (Levine) implements this change by deleting the requirement that ratepayers who install solar energy

projects be subject to TOU rates and authorizes the commission to develop a time-variant tariff.

AB 2176 (Caballero) establishes a vehicle to allow federal block grants to flow through the CEC down to local governments in a more expeditious and efficient manner. The revenues can fund local energy initiatives such as energy conservation programs, energy audits, ''smart growth'' planning, and alternative energy programs.

During California's energy crisis in 2001, the California Department of Water Resources (DWR) entered into PPAs with dozens of power suppliers on behalf of the state's IOUs. AB 3058 (Committee on Utilities and Commerce) requires that the CPUC provide a transparent, third-party review of DWR contracts that are renegotiated or modified. This scrutiny is intended to allow consumer groups and the utilities to weigh in on whether the contract value is fair to ratepayers. Under this law, DWR must issue a written report to the CPUC describing its rationale supporting a contract change that is just and reasonable. The CPUC must review the written report and publicize its comments. DWR is prohibited from changing a contract if the CPUC recommends against it.

Sustainability

The University of California Berkeley estimated that AB 32 will spawn the creation of 83,000 new ''green jobs'' by 2020. This is predicted to bolster the state's green economy and increase the demand for a highly skilled and well-trained green collar workforce. Another report published by the Natural Resources Defense Council estimates that up to 114,000 green collar jobs will be created in California by 2010 generating up to $25.3 billion in annual revenues. According to Assembly Member Nunez there is no coordinated administrative infrastructure to assist the private, public and NGO sector in promoting green collar jobs. Against this backdrop of green capital investment and jobs, AB 3018 (Nunez) was enacted to coordinate programs to provide workforce training opportunities supporting green collar employment opportunities.

This law creates the California Green Collar Jobs Act of 2008 and requires the California Workforce Investment Board (CWIB) to establish a Green Collar Jobs Council (GCJB). The Council is charged with developing a comprehensive approach to manage the emerging green workforce. The Council's mission is to assist in identifying and linking green collar job opportunities with workforce development training opportunities in local workforce investment areas. The Council must provide job training guidance to assist and prepare at-risk youth, displaced workers, and veterans for jobs in the green and clean technology economy. Additionally, the Council must develop partnerships to build and expand the state's workforce development programs, network, and infrastructure. Finally, the Council must identify funding resources and make recommendations on how to expand and leverage these funds. The CWIB must report to the Legislature on the progress of the GCJC by April 1, 2009, and each April 1 thereafter.

AB 2855 (Hancock) establishes the Green Technology Partnership Academy and the Goods Movement Partnership Academy administered by the Superintendent of Public Instruction. The Superintendent is required to issue grants to establish partnership academies to educate young people on emerging environmentally sound technologies and in goods movement. This program expands on the California Partnership Academies (CPA) program, which functions as a ''school-within-a-school'' serving at-risk students for grades 10–12.

A number of green building certification systems have emerged in recent years with varying levels of stringency and definitions as to what constitutes a ''green building.'' Certification programs include, among others LEED (Leadership in Energy and Environmental Design) and the Green Point Rated system. These rating systems serve as a guide to architects and developers in efforts to attain levels of sustainability addressing energy efficiency and resource conservation.

The Green Building movement has expanded rapidly in the past decade via voluntary industry standards as opposed to a command and control regulatory structure. Despite these voluntary standards, there is no definition of what constitutes a ''green building'' in state law. SB 1473 (Calderon) is intended to clarify that the California Building Standards Commission (BSC) has authority to update and establish green building standards where no state agency has either authority or expertise in this field. Without minimum requirements defining what constitutes a green building under state law, developers could abide by the least stringent voluntary standard for green buildings, which could weaken the drive to construct buildings that meet more stringent standards, like those in LEED. This law additionally authorizes cities and counties to collect a fee from applicants seeking building permits, to fund green building standards.

During the last legislative session, the Governor approved the Waste Heat and Carbon Emissions Reduction Act [*see* Stats. 2007, AB 1613 (Blakeslee)] which requires IOUs to purchase power generated from specified cogeneration systems. This includes systems with a generating capacity of up to 20 megawatts that follow specified emissions and efficiency standards. This pay-as-you-save

pilot program allows eligible participants to also finance up-front installation costs for combined heat and power systems.

This pilot program was originally limited to nonprofit entities, which precluded participation from government institutions. AB 2791 (Blakeslee) expands the definition of eligible participants to include federal, state, and local government facilities that have significant thermal and electric loads such as public universities, state hospitals, and correctional facilities. Cal-EPA states that cogeneration technology is an efficient strategy to generate power and thermal energy from a single fuel source while reducing energy costs and GHG emissions.

Land Use

In 2006, voters approved Prop 84 (The Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006) which authorized the sale of $5.4 billion in general obligation bonds for safe drinking water, water quality, water supply, flood control, natural resources protection, and park improvements. SB 732 (Steinberg) establishes the Strategic Growth Council and allocates $500,000 of the bond monies to support the Council. The Council is directed to identify opportunities to coordinate with state agencies to improve environmental protection (air quality, water quality, natural resources protection), and transportation. The Council must additionally work with agencies to increase the availability of affordable housing, meet the goals of AB 32, encourage sustainable land use planning, and revitalize urban and community centers in a sustainable way. The Council must also distribute information to local governments and regional agencies to help them plan and develop sustainable communities. Additionally, the Council is authorized to award grants and loans to support sustainable community development. Finally, it must review and comment on the state's five-year infrastructure plan and Environmental Goals and Policy Report.

The California Land Conservation Act of 1965 (commonly known as the Williamson Act) is designed to conserve agricultural and open space land by offering lower property taxes to land owners who commit to restricting their land to agriculture, open space, and compatible uses. AB 1764 (Blakeslee) clarifies that crops grown for biofuels are considered an ''agricultural commodity'' for purposes of the Williamson Act. The law expands the Williamson Act's definition of ''open space'' to include land enrolled in the United State Department of Agriculture's Conservation Reserve Program or the Conservation Reserve Enhancement Program.

Assembly Member Jones introduced AB 3005 in an effort to adjust mitigation fees to promote smart growth development. The law's author believes that many local governments are using the same methodology to calculate traffic impact fees for housing developments regardless of whether they are located near transit stations. This may result in some housing developments located near transit being overcharged for traffic impact fees while not receiving credit for reducing traffic impacts. This new law requires local agencies to set mitigation fees at a rate reflecting reduced vehicle trip generation for housing developments located near transit stations. However, the lower mitigation fee is not required where a local agency finds that the housing project would not significantly reduce vehicle trip generation.

California's 1,100 mile coastline is at risk of significant coastal erosion as a result of projected sea level rise due to climate change. AB 2094 (DeSaulnier) authorizes the Bay Conservation and Development Commission (BCDC) to develop regional strategies to address the impacts of sea level rise on the San Francisco Bay and affected shoreline areas. This law additionally alters the composition of the Bay Area's Metropolitan Transportation Commission (BAMTC). The BCDC must be represented on the BAMTC's joint policy committee coordinating major policy documents by the member agencies.

AB 1252 (Caballero) is an urgency measure (which became effective on June 30, 2008) that authorizes the release of additional Proposition IC (The Housing and Emergency Trust Fund Act of 2006) bond funds to support smart growth land uses. Funds will be used to provide incentives to induce cities and counties to support affordable housing and transportation infrastructure. This law is designed to promote housing uses closer to jobs. This law appropriates additional Proposition 1C money to: (1) the Department of Housing and Community Development (DHCD) to augment the Infill Incentive Grant Program and the Transit-Oriented Development Program; and (2) the county portion of the Local Streets and Roads Program.

California Environmental Quality Act

In an effort to resolve conflicts between the California Department of Transportation (Caltrans) and local agencies over state highway interchange projects, Senator Hollingsworth authored SB 947. This law is intended to enhance communication between project proponents, CEQA lead agencies, and regional and local agencies that could be affected by a regional transportation project. This law increases notification and consultation requirements for lead agencies under CEQA. Lead agencies for projects with statewide, regional, or area wide

significance must notify transportation and other public agencies that have transportation facilities. The notice is only required if the proposed project could affect overpasses, on-ramps, and off-ramps.

Underground Storage Tanks

SB 1161 (Senate Rules Committee) extends the authorization of the Underground Storage Tank Cleanup Fund Act of 1989 from January 1, 2011 to January 1, 2016. This program, among other things, reimburses eligible owners and operators of underground storage tanks (USTs) for cleanup costs associated with contaminated soil and groundwater from an unauthorized release from a UST. If the program was not extended, approximately 4,400 unpaid claims would not be funded. Additionally, this law transfers $10 million for the next three one-year budget cycles to a newly established fund to support clean up of petroleum contamination of a Brownfield Site. This law also expands the definition of UST to include spill containment structures, portions of vent lines, vapor recovery lines, and fill pipes beneath the surface of the ground.

The State Water Resources Control Board (SWRCB) has identified over 100 California schools with leaking USTs. AB 2729 (Ruskin) establishes the School District Account in the Underground Storage Tank Cleanup Fund to reimburse school districts for cleanup costs associated with petroleum USTs. In addition, the law increases the cleanup cost cap making larger projects eligible for a streamlined clean-up process known as a "removal action." Prior to enactment of this law, projects requiring clean up costs of up to $1 million were eligible; now projects with a $2 million cleanup threshold can qualify.

Hazardous Waste

AB 2901 (Brownley) clarifies DTSC's authority to enforce the Toxics in Packaging Prevention Act and Lead-Containing Jewelry program. These laws establish prohibitions for lead in jewelry and heavy metals (containing lead, mercury, cadmium, or hexavalent chromium) in packaging. This new law clarifies DTSC's authority to enter locations and collect evidence to determine whether tainted products are resold. This authority gives DTSC the ability to enforce these programs without having to purchase jewelry and packaging to evaluate their metal content.

Hazardous Materials

This year, the Legislature generated laws governing the collection of mercury-containing thermostats and electronic reporting of hazardous chemicals while pioneering strategies to reduce the hazards associated with chemical products and promoting consumer awareness of the hazards associated with chemical products.

Governor Schwarzenegger's Green Chemistry Initiative (GCI), which concluded in the summer of 2008, was intended to establish "a comprehensive and unified approach [and] . . . policy" for "green chemistry." Green chemistry shifts the paradigm from managing hazardous wastes at the end of the chemical life cycle to reducing or eliminating hazardous chemicals and the resulting wastes altogether. The objectives of the GCI were to evaluate risk, reduce exposure, encourage less-toxic industrial processes, and identify safer, non-chemical alternatives. This necessarily involves fundamentally changing product design and manufacturing processes along with promoting less-toxic industrial processes and safer, non-chemical alternatives.

According to DTSC, notwithstanding four decades of environmental and occupational laws regulating hazardous chemicals, major health and environmental data gaps remain for most of the 83,000 chemical substances appearing in the federal Toxic Substances Control Act inventory. AB 1879 (Feuer) responds to this dearth of information by establishing a comprehensive chemical policy in California to address the dangers of chemicals contained in consumer products. This law expands DTSC authority, which has traditionally been limited to regulating hazardous waste and only certain classes of consumer products such as heavy metals in packaging and lead in jewelry and water faucets. This law requires DTSC, by January 1, 2011, to establish a regulatory program to identify, prioritize, and evaluate chemicals of concern (COC) and their potential alternatives. The COCs must be evaluated to identify the best ways of limiting exposure or reducing the level of hazards posed. DTSC must incorporate life cycle assessment into this analysis which must consider the product's environmental and economic impacts. DTSC must also establish a Green Ribbon Science Panel to advise the agency on science, technical and policy matters.

SB 509 (Simitian) is the other key green chemistry law enacted this session. It requires DTSC to establish a web-based Toxics Information Clearinghouse to collect, maintain, and distribute chemical hazard traits and environmental and toxicological end-point data. By January, 1, 2011, OEHHA must evaluate and specify hazard traits and environmental and toxicological end-points for the clearinghouse. The law excludes from the definition of "consumer products" dental restorative materials, certain dangerous drugs and medical devices, food, related packaging and pesticides, and mercury-containing lights.

Continuing a chemical-by-chemical strategy to manage chemical hazards, the California Legislature banned the sale of new mercury-added thermostats for most uses beginning January 1, 2006 [*see* stats. 2004, AB 1369 (Pavley)]. AB 2347 (Ruskin) took the next step by requiring a system to collect and recycle those mercury-added thermostats that are still in use when they are taken out of service. This law requires thermostat manufacturers to establish a mercury-added thermostat collection and recycling program. Manufacturers must, beginning January 1, 2009, provide wholesalers bins to collect thermostats and provide government agencies that administer household hazardous waste collection facilities with collection bins, on request by the agency. Manufacturers are responsible for picking up the collection bins and providing education and outreach efforts to promote and facilitate thermostat recycling. Heating, ventilation, and air conditioning contractors and persons responsible for demolishing buildings involving the removal of mercury-added thermostats must follow these handling requirements.

Synthetic turf is gaining in popularity for sports fields, median strips and around public buildings due to its low maintenance: it does not require irrigation, pesticides, and fertilizers. Crumb rubber derived from used tires serves as a key ingredient in the new generation of synthetic turf; however, it also contains heavy metals including arsenic, cadmium, chromium, zinc, iron, and volatile organic compounds. The New England Journal of Medicine sees a possible relationship between synthetic turf and antibiotic-resistant staph infections. Because there are competing scientific schools of thought, SB 1277 (Maldonado) directs the California Integrated Waste Management Board (IWMB), in consultation with the Office of Environmental Health Hazard Assessment (OEHHA) and the Department of Public Health (DPH), to evaluate the environmental and public health effects of synthetic and natural turf. This study must be provided to the Legislature by September 1, 2010, and posted on the IWMB's internet web site.

SB 1668 (Migden) was enacted in response to new International Building Codes (IBC) standards that impose restrictions on laboratories and chemical use in facilities that are two stories or taller. According to the author's office, these restrictions make it virtually impossible to build in the biotech hub south of San Francisco which, due to the dearth of available land, is dominated by multi-story buildings. The IBC standards prompted the State Fire Marshall (SFM)-led working group to develop alternative building standards. These alternative standards were designed to ensure safe practices for research and development involving regulated hazardous materials. SB 1668 clarifies that the SFM has authority to implement regulatory standards governing laboratory research and development facilities. Specifically, this law provides authority for the SFM to adopt alternative regulations establishing minimum fire protection requirements for laboratory or research and development facilities that store, handle, or use regulated hazardous materials.

AB 2286 (Feuer) expands on an existing web-based electronic reporting program established for Certified Unified Program Agencies (CUPA) that is capable of collecting hazardous materials data from all CUPAs. Currently, 80 of the 85 CUPAs in California collect hazardous materials data via paper submission. This law provides funding to establish a web-based electronic reporting system to allow regulated businesses to submit their hazardous materials data to their respective CUPAs. This electronic program is intended to minimize the paperwork burden on businesses and to avoid delays associated with communicating vital chemical information. All CUPAs, participating agencies, and regulated businesses must report electronically no later than three years after the establishment of the Statewide Information Management System, which must be in place by January 1, 2010.

Assembly Member Ruskin authored a law [stats. 2006 AB 2022 (Ruskin)] establishing safety standards governing child resistant caps on portable gasoline cans; however, that law did not provide an exemption for "safety cans." Safety cans are gasoline containers, usually with a capacity of 50 gallons or less that are designed to release pressure when exposed to fire or high temperatures. Safety cans with child resistant caps are not capable of meeting federal and Cal-OSHA regulations that establish venting standards. AB 1100 (Ruskin) was enacted as an urgency measure to ensure that safety cans can still be sold in California. This law carves out an exemption from the child resistant cap standard from the definition of "portable gasoline container," provided the can conspicuously displays the words "NOT CHILDPROOF."

Water Quality

The delayed and ineffective response to a major oil spill in the San Francisco Bay prompted the Legislature to approve a package of laws addressing maritime spill response. Other water-related laws require monitoring for lead in plumbing; establishing gray water building standards; clarifying a process for water suppliers to promote water conservation; and providing funds to support water supplies to small, disadvantaged communities.

On November 7, 2007, the Cosco Busan cargo ship collided with the San Francisco-Oakland Bay Bridge and

spilled approximately 54,000 gallons of bunker fuel into San Francisco Bay. AB 2911 (Wolk) is one of several laws designed to improve and coordinate the prevention and response to oils spills in marine waters. This law expands the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act (OSPRA) by giving authority to the Administrator of the Office of Spill Prevention and Response (OSPR) to serve as a State Incident Commander. In that capacity, the Administrator is authorized to direct the removal, abatement, response, containment and cleanup efforts involving petroleum or petroleum products in the waters of the state, including inland waters. The Administrator is required to submit to the Governor and Legislature an amended California Oil Spill Contingency Plan that includes inland and marine waters by January 1, 2010. Revised plans will then be due on a triennial schedule.

This law significantly increases and expands the penalty structure for a range of acts and omissions including the doubling of the maximum civil and criminal penalty for intentional or negligent spills to no less than $50,000 and no more than $1 million for a marine oil spill. It also establishes for the first time for OSPR to issue a civil administrative penalty for inland spills up to a maximum penalty of $50,000 while increasing the maximum administrative civil penalty for a marine oil spill from $100,000 to up to $200,000. For spills that occur without regard to intent or negligence, the law establishes a maximum penalty of $10 per gallon of oil released for an inland spill and a $20 per gallon maximum for a marine spill (increased from $10 per gallon). Additionally, the penalty structure for gross negligence or reckless conduct includes a penalty of up to $30 per gallon of oil released for an inland spill and up to $60 per gallon for a marine spill (increased from $30). The law expands the mission of the Oiled Wildlife Care Network (OWCN) beyond rehabilitative care to include proactive search and rescue efforts. Finally, the law increases funding to $2 million to cover the costs incurred by OWCN.

SB 1739 (Simitian) requires that Oil Spill Contingency Plans pursuant to the OSPRA include training and drills on all elements of the plan at least annually with all elements of the plan subject to a mock drill at least once every three years. In addition, the law requires that independent drill monitors evaluate these mandatory drills if the Administrator of the OSPR or the United States Coast Guard is unable to attend drills. Finally, the Oil Spill Response Organizations (OSRO) must now be "rated" by demonstrating their ability to implement specified aspects of its oil spill contingency plan. Satisfactory completion of one unannounced drill must occur before being granted a renewal or prior to reinstatement of a revoked or suspended rating.

AB 2031 (Hancock) requires the OSPR Administrator, on request by a local government, to provide a program to train and certify local emergency responders to respond to and clean up spills in marine waters. In the event of an oil spill, these local spill response managers will serve as the state on-scene coordinators who are to cooperate with the Administrator. The Administrator is required to offer grants to local governments with jurisdiction over or directly adjacent to marine waters. These funds are intended to support deployment of oil spill response equipment by local spill response managers.

This law also requires that if the information initially reported on an oil spill was inaccurate or incomplete, responsible parties must report the updated information immediately to OES (now known as the California Emergency Management Agency or "CEMA" which is more fully described below). CEMA must also provide corrected information to the appropriate local governmental agencies in the area surrounding the discharged oil.

Other legislation emerged from the Legislature's concern over California's approach to emergency preparedness and response involving natural and man-caused disasters. The state has experienced difficulty spending federal grants funds because local agencies are often unclear about which state agency has jurisdiction to meet their needs. AB 38 (Nava) responds to this perception of inefficiency by reorganizing the Office of Emergency Services (OES) and the Office of Homeland Security (OHS) to create the CEMA. This new agency addresses overlapping responsibilities in an effort to more efficiently earmark federal funding to address disasters and homeland security. The CEMA is under the supervision of the Secretary of the Department of Emergency Services and Homeland Security, appointed by the governor.

AB 2935 (Huffman) establishes a procedure to close and reopen fisheries that may be impacted from an oil spill. It also expands requirements on oil spill contingency plans to protect environmentally and ecologically sensitive areas. The Director of the Department of Fish and Game (DFG), within 24 hours of a spill or discharge, must close waters impacted by the spill to the taking of all fish and shellfish. The law further requires specific content in the environmentally and ecologically sensitive areas element of the marine oil spill contingency planning section of the California Oil Spill Contingency Plan. That element must include among other things: (1) the identification and prioritization of environmentally and ecologically sensitive areas, and (2) a plan to protect actions to be taken in the event of an oil spill in those areas.

AB 1960 (Nava) responds to data that oil spills occur at twice the rate for inland spills compared to spills to marine waters; however, the state responds to less than one third

of reported inland spills. Under this law, the Division of Oil, Gas, and Geothermal Resources (DOGGR) must develop regulations governing minimum facility maintenance standards for oil and gas production facilities. This includes, among other things, equipment attendant to oil and gas production or injection operations such as tanks, flow lines, headers, gathering, lines, wellheads, heater treaters, pumps, valves, compressors, injection equipment, and pipelines. Any person proposing to construct, acquire, maintain, or alter a production facility is required to comply with these standards. The DOGGR is authorized to inspect production facilities to ensure compliance with these standards.

This law also increases penalty levels to serve as a more effective deterrent to inland spills. Knowingly making a false or misleading marine oil spill report to OES (now CEMA) is punishable by imprisonment and/or fine under the Oil Spill Prevention and Response Act (OSPRA). In addition, failure to provide the required report or knowingly making a false or misleading report on an oil spill in waters of the state is punishable by a maximum fine of $50,000. Finally, this law increases by five-fold the maximum civil penalty for an oil and gas well violation to $25,000.

The Legislature recently enacted a law [stats. 2006 AB 1953 (Chan)] which requires, by January 1, 2010, use of only lead-free plumbing to convey or dispense water for human consumption. SB 1395 (Corbett) requires DTSC to monitor and test lead plumbing for compliance with these standards. In addition, DTSC must annually select up to 75 drinking water faucets (or other drinking water plumbing fittings and fixtures) from publicly accessible wholesale or resale locations to test and evaluate compliance with the lead limits. SB 1334 (Calderon) is intended to help prevent consumers from unknowingly purchasing water faucets and fixtures that fail to meet the lead-free standards established under AB 1953 (above). SB 1334 requires all plumbing products to be certified by an independent American National Standards Institute (ANSI) accredited third-party for compliance with existing lead standards. Certification must meet the requirements of SB 1395.

As California enters its second year of drought, the Legislature is focused on promoting strategies to conserve water supply and promote water conservation. SB 1258 (Lowenthal) builds on state law governing gray water standards addressing subsurface irrigation for residential, commercial, and industrial land uses. This law requires DHCD to convene a stakeholder group to develop gray water building standards for indoor and outdoor use. These standards must be submitted to the California BSC, for approval at the next triennial building standards rulemaking that commences on or after January 1, 2009. This law authorizes municipalities and local agencies to adopt building standards that prohibit the use of gray water or standards that are more restrictive than those published in the California Building Standards Code.

The California Supreme Court in *Bighorn-Desert View Water Agency v. Verjil* [(2006) 39 Cal.4th 205] reversed a widely held belief that water rates are not ''property-related'' fees. The court held that consumption-based water fees constitute ''property-related'' fees that require compliance with Proposition 218 (Article XIII of the California Constitution). Proposition 218 prohibits waste or unreasonable use of water, which has led some water agencies to conclude that the ruling may limit their ability to impose tiered water rates to promote water conservation. AB 2882 (Wolk) authorizes water suppliers to charge allocation-based conservation water pricing while staying in compliance with Proposition 218. This pricing strategy establishes a basic use allocation which provides a ''reasonable amount of water for the customer's needs and property characteristics'' and then charges more for increments that exceed this allocation. Revenues generated from the water pricing scheme must not exceed the reasonable cost of water service as well as the basic and incremental costs to encourage water conservation.

SBX2 1 (Perata) replaces DWR's regional water plans with integrated regional water management plans. These plans must "describe the major water-related objectives and conflicts within a region [and consider] a broad variety of water management strategies ... to provide long-term, reliable, and high-quality water supply. . . ." In addition, this law appropriates $821 million of bond money from Propositions 1E, 13, 50, and 84 for various water-related purposes.

The SWRCB developed the Groundwater Ambient Monitoring and Assessment (GAMA) program which required the development of a comprehensive groundwater quality monitoring program. AB 2222 (Caballero) builds on this effort by requiring the SWRCB to develop a report on groundwater contamination and water quality, identifying contaminated drinking water supplies. The report must offer recommendations, on or before June 1, 2009, to improve policy and to identify possible sources to fund comprehensive ground water quality monitoring.

AB 2356 (Arambula) provides the SWRCB with a tool to assist small disadvantaged communities to improve their drinking water and wastewater systems. This law provides additional funds to assist these communities with financial, technical, and regulatory resources to help them comply with the state and federal Safe Drinking Water Acts and waste water regulatory programs under the state and federal Clean Water Acts. This law, among other things, authorizes the SWRCB to support this grant

program by redirecting up to $50 million generated from interest that would otherwise be paid to the State Water Pollution Control Revolving Fund.

AB1903 (Hernandez) restores qualified immunity to public entities for liability stemming from flood control and water conservation activities. The liability is limited and conditional and it only extends to injuries involving unlined flood control channels or adjacent groundwater recharge spreading grounds.

Solid Waste

Since the enactment of the Integrated Waste Management Act (IWMA) of 1989, California has diverted 52 percent of solid waste away from landfills by recycling, composting, and "transformation." Part of the recycling solutions has been achieved by cities and counties implementing source reduction and recycling elements (SRREs) which outline their strategy to increase recycling. SB 1016 (Wiggins) authorizes the IWMB to issue an order of compliance if it finds that a city or county failed to make a good faith effort to implement its SRRE or its household hazardous waste element.

Recyclables left at the curb for collection have been historically collected by low income scavengers who exchanged the recyclables for the refund money—known as the California Redemption Value (CRV). AB 1778 (Ma) responds to a significant shift in this practice which now involves underground businesses with organized crews and large trucks. This limits the number of recovered beverage containers and lowers the amount of the CRV for recyclables leading to increased costs to consumers when purchasing beverages from a retailer. This law prohibits "junk dealers" and "recyclers" from paying for CRV containers unless the junk dealer or recycler collects identifying information including the address of the seller. AB 844 (Berryhill) responds to a significant increase in metal theft incidents including theft of brass couplings from fire hydrants and copper wire cut from utility lines. This new law imposes a number of reporting requirements on junk dealers and recyclers. Recyclers are subject to payment restrictions when they purchase specified nonferrous materials (i.e., copper, copper alloys, stainless steel, and aluminum, excluding beverage containers). The law also doubles the fines imposed on junk dealers and recyclers who fail to maintain records documenting their transactions pursuant to this law.

California's AB 2020 program (known as the "Bottle Bill") makes available handling fees to nonprofit recycling centers that operate in a "convenience zone." To qualify as a "convenience zone," the recycling center must be located within one-half mile of a supermarket that is unserved by a recycling center. Prior to the enactment of AB 2730 (Leno), a regulatory gap existed for those instances where the nearby supermarket closed. This made the recycling center ineligible for handling fees. AB 2730 closes this gap by allowing funding to these existing recycling centers as long as they operate within one-mile of an unserved supermarket. SB 1357 (Senate Rules Committee) authorizes the California Department of Conservation (DOC) to increase the amount of grant money that may be annually expended for beverage container recycling and litter reduction programs from $1.5 million up to $20 million through January 1, 2012.

The environmental impacts from expanded polystyrene (EPS) loose fill packing material (i.e., "peanuts") have caught the attention of the California Legislature. Only 30–50 percent of all EPS are reused and due to their light weight and low scrap value they are not easily recyclable. When littered, they contribute to marine pollution. This situation prompted enactment of AB 3025 (Lieber) which prohibits EPS wholesalers or manufacturers from selling or offering for sale in California EPS beginning January 1, 2012, unless the material is comprised of 60 percent recycled material. On and after January 1, 2014, EPS must be comprised of 80 percent recycled material, and 100 percent recycled material on and after January 1, 2017. Violations are considered an infraction and are punished by a maximum fine of $1,000.

According to the IWMB, the sponsor of AB 2679 (Ruskin), penalties for violations of solid waste laws do not serve as an effective deterrent for future violators. This law strengthens enforcement provisions of the IWMA. It additionally specifies the enforcement authority of a local enforcement agency (LEA) or the IWMB during inspections uncovering minor violations including notices to comply within 30 days of that notice. It further provides that a false certification indicating that a violation has been corrected is punishable as a misdemeanor.

In 2004, the Legislature enacted a law [stats. 2004 SB 1749 (Karnette)] which prohibits the sale of plastic bags and plastic food and beverage containers labeled as "biodegradable," "compostable," or "degradable" unless the plastic meets the American Society for Testing and Materials (ASTM) standards for the term used on the label. That law did not include enforcement provisions. AB 2071 (Karnette) establishes penalties for non-compliance and authorizes LEAs and the Attorney General to enforce violations. AB 1972 (DeSaulnier) authorizes the board to adopt more stringent labeling standards if upon review it determines that new ASTM standards are not as stringent and do not protect the public health, safety, and the environment.

SB 1723 (Maldonado) was enacted to reduce the number of plastic containers that end up in landfills. It requires those who first sell specified pesticide or agricultural product packaging to either establish a recycling program or participate in such a program to ensure that HDPE (high density polyethylene) containers are recycled. This program applies to persons that sell packaging in rigid, non-refillable, HDPE containers for agricultural-or structural-use pesticides up to 55 gallons in capacity.

Natural Resources

The Legislature both expanded natural resources protections while approving the extension of an endangered species act exemption and permitting temporary roads and motorized equipment in wilderness areas. The Legislature also advanced protections enacting safeguards to aerial pesticide spraying; protecting against the introduction of non-native mussels into public reservoirs; allocating resources to restore wetlands and wildlife habitat; promoting wildlife corridors; and funding salmon and steelhead protection while restoring the Salton Sea.

In order to more accurately reflect its core mission, SB 1464 (Maldonado) renamed the Resources Agency to the Natural Resources Agency and updated the list of departments, boards, and commissions under the new agency.

The California Farm Bureau Federation sponsored SB 1436 (Ducheny). This law is intended to promote development of wildlife habitat together with agricultural operations while providing protection from the California Endangered Species Act (CESA). DFG implemented locally-designed voluntary programs to develop habitat for wildlife, including candidate, threatened or endangered species. To encourage participation by farmers and ranchers in the program, the enabling law exempted farmers and ranchers from liability under the CESA from inadvertent or ordinary negligent acts. SB 1436 (Ducheny) extends, by two years (to January 1, 2011), the sunset date on the CESA exemption. Specifically, people are exempt from the accidental killing of candidate, threatened or endangered species that occurs on a farm or ranch in the course of routine and ongoing agricultural activities.

The California Department of Food and Agriculture (CDFA) and the United States Department of Agriculture proposed aerial spraying to eradicate the Light Brown Apple Moth (LBAM) in Berkeley in February, 2007. This plan met with a firestorm of resistance from residents and local governments arguing for alternatives to aerial spraying. This led to the enactment of two laws which establish alternative strategies to eradicate non-native and invasive species. AB 2763 (Laird) responds to the risk of introducing non-native and invasive pests from imported food. This law requires the CDFA to develop and maintain a list of non-native and invasive animals, plants, and insects likely to enter California. The CDFA must also develop a plan to appropriately respond to these exotic and invasive pests and to follow specified protocols based on the plan if pests enter the state. AB 2765 (Huffman) requires the Secretary of the CDFA or the county Agricultural Commissioner to hold at least one public forum to consider alternatives to aerial spraying prior to aerial application of a pesticide under an eradication project in an urban area. In addition, the Secretary or Commissioner must include in the public notice a list of the active ingredients contained in the pesticide proposed for aerial spraying. Finally, the Department of Pesticide Registration (DPR) and the OEHHA must perform a human and environmental health risk evaluation of the risks of the proposed aerial spraying.

AB 2065 (Hancock) is intended to prevent the introduction of nonnative mussels into public reservoirs that allow boating and fishing activities in California. This law requires owners or managers of these reservoirs to evaluate the vulnerability of the reservoir to nonnative mussels. This law additionally requires that the owners and managers of these reservoirs develop and implement a program to prevent the introduction of nonnative mussels; this program must include public education, monitoring, and management of recreational activities.

Two laws were enacted to better manage the wetlands that have been recently acquired in the San Francisco Bay and in Southern California for the purpose of restoration. According to Save the Bay, the sponsor of AB 2954 (Lieber), scientists believe that over 50,000 acres of wetlands must be restored to ensure a sustainable San Francisco Bay. To achieve this goal, the sponsor estimates that $1.43 billion will be needed over 50 years to restore, monitor, and maintain approximately 36,000 acres of wetlands that have already been acquired but not restored; this cost does not account for the funds necessary to acquire and restore an additional 22,912 acres needed to sustain a healthy bay according to the bill's sponsor. AB 2954 enacts the San Francisco Bay Restoration Authority Act to allocate resources to restore these wetlands and wildlife habitat in the San Francisco Bay and along its shoreline. The law establishes the San Francisco Bay Restoration Authority with powers to levy benefit assessments, special taxes, or property-related fees and to solicit and accept gifts, fees, grants, allocations, issue revenue bonds, and incur bond indebtedness. AB 2133 (Hancock) was enacted to increase efficiency and promote the cost-effective restoration of these wetlands in California. It allows departments within the Resources Agencies (now

the Natural Resources Agency) that have restoration expertise, with DGS authorization, to carry out the restoration.

SB 286 (Lowenthal) establishes criteria to prioritize selection of the California Conservation Corps (CCC) and other community conservation corps (CCC) to implement transportation enhancement projects including bicycle lanes, landscaping, and environmental mitigation. The selection criteria must be developed by Caltrans in conjunction with the CCCs, the California Transportation Commission, the regional transportation planning agencies, county transportation commissions, and congestion management agencies.

Dependent upon the availability of funding, AB 2785 (Ruskin) requires DFG to identify areas that are most essential as wildlife corridors and habitat linkages and to prioritize vegetative data development in those areas. DFG is further required to develop and maintain a spatial data system capturing this data and making it publicly available. AB 2945 (Laird) makes changes to the California Wilderness Act authorizing temporary roads and use of motorized equipment within a wilderness areas. This is only permitted: (1) when necessary in an emergency involving health and safety of people in the wilderness area or (2) if it is the minimum tool necessary to meet minimum management requirements. In addition, this law authorizes state agencies with jurisdiction over wilderness areas to implement measures to mitigate environmental damage or degradation affecting wilderness character and resources. Finally, this law reappropriates bond funds from Proposition 84 for various park projects.

Two other laws allocate Proposition 84 bond funds. SB 562 (Wiggins) makes $5.239 million available for fisheries from Proposition 84. DFG will be responsible for implementing projects to protect coastal salmon and steelhead fishery restoration projects, including the Coastal Salmonid Monitoring Plan. SB 187 (Ducheny) allocates bond money from Proposition 84 to restore the Salton Sea ecosystem. The funds must be expended on activities identified in the Resources Agency's (now the Natural Resources Agency) report on a preferred alternative for the Salton Sea in the first five years of program implementation. This project is aimed at addressing the increasing salinity of the Salton Sea which has caused wildlife, environmental, and health concerns.

SB 1690 (Wiggins) requires the Ocean Protection Council to make a grant, conditioned upon funding by the Legislature, to develop and administer a Dungeness crab task force to evaluate crab management measures and make recommendations to DFG.

Looking Ahead

In light of the current fiscal preoccupation, it is unclear whether the Legislature's appetite for advancing green legislation has hit a temporary speed bump or is on a lengthy detour. Even if the state's economy begins to recover in 2009, the state treasury faces a breathtaking projected budget deficit of $42 billion over the next 18 months. The Governor and the majority Democrats have run out of financial tricks to pass a balanced budget while unsuccessfully engaging the minority Republican legislators. These dynamics have helped the business-friendly GOP forestall some environmental initiatives advanced by the environmental community.

The deeply held ideological divide, combined with the structural impediments to passing a budget, will continue to plague law makers unless the budget process is reformed. Absent the Democrats achieving the seemingly unreachable two-thirds majority in both houses, we will likely see an attempt to lower the two-thirds threshold necessary to pass a budget. Perhaps this will manifest in a Constitutional Convention or a ballot initiative aimed at overhauling the budget process. Otherwise, the pace of environmental policy development will once again slow as the next budget comes up for a vote.

WATER QUALITY CONTROL

Cases

CWA Permit Not Required for Nonpoint Source Discharge

Oregon Natural Desert Assn. v. U.S. Forest Service
No. 08-35205, 9th Cir.
2008 U.S. App. LEXIS 24980
December 11, 2008

Ninth Circuit precedent holding that "discharge" as used in section 401(a) of the Clean Water Act does not include the discharge of pollutants from nonpoint sources, such as livestock grazing, was not overruled by the Supreme Court decision in *S. D. Warren Co. v. Me. Bd. of Envtl. Prot.* [(2006) 547 U.S. 370].

Facts and Procedure. The federal Clean Water Act requires that "any applicant for a Federal license or