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2009 ENVIRONMENTAL LEGISLATIVE RECAP-A NATION-STATE ON ITS KNEES

By

*Gary A. Lucks**

Introduction

California policy-making in 2009 took a back seat to the Great Recession, a dysfunctional budget process, and the third consecutive year of drought. This prompted the Governor to call an unprecedented number of extraordinary legislative sessions to tackle these daunting challenges.

Despite holding a minority of seats in both houses, the Republicans leveraged their financial muscle, causing another in a long series of budget showdowns that overshadowed policy priorities. After plugging a gaping budget hole in the fall of 2008, the Legislature and Governor closed two additional budget shortfalls (exceeding $67 billion in total) within a ten-month period. Throughout the process, the GOP succeeded in extracting significant budget cuts while holding the line on tax increases.

Except for a series of significant water reforms, other new policy efforts were eclipsed by the fiscal and water problems. Several laws were nonetheless enacted to improve mobile source air pollution, advance the smart grid and plug-in hybrid technology, abolish the Integrated Waste Management Board (IWMB), add a new regulated greenhouse gas (GHG), and

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establish controversial exceptions to the California Environmental Quality Act (CEQA). All legislation became effective on January 1, 2010, unless otherwise stated.

Water Quality and Supply

Facing a third year of drought, Governor Schwarzenegger declared a state of emergency (on February 27, 2009) requesting Californians to reduce water consumption by 20 percent. He also called for an extraordinary session of the Legislature to tackle unabated water quality and water supply challenges stemming from ecological deterioration of the Bay Delta and perceived failure of the CALFED process.

Since term limits, the lack of institutional memory and longevity has hampered the Legislature's ability to take on sweeping, comprehensive legislative reforms. Notwithstanding these limitations, with few senate votes to spare, the Legislature struck a historic accord agreeing to a water reform package that divided the environmental community and rewarded the agricultural interests. The package establishes strategies to achieve water conservation, improve the health of the Bay Delta, and attempts to raise $11 billion through a bond initiative scheduled for November 2010. If the bond passes, it would fund dam and levee construction and reroute water from the Sacramento River to Central and Southern California while bypassing the Delta.

Senate Bill (SB) X7 7 (Steinberg) is perhaps the most contentious part of the water package. This law imposes strict conservation requirements on urban water users, requiring them to reduce water consumption by 20 percent by 2020. Those cities that historically embraced significant conservation programs will receive a credit for their efforts. The agricultural community, which uses approximately 85 percent of all water in the state, escaped mandatory water reductions. Instead, the agricultural industry must develop agricultural water plans addressing best practices for water uses.

In an effort to resurrect the health of the San Francisco Bay-Delta and to restore the dwindling populations of the endangered Delta Smelt, a federal judge significantly curtailed pumping water from the federal Central Valley Project and the California Water Project. SBX7 1 (Simitian) was enacted to address the root cause of these problems in an effort to restore the Sacramento-San Joaquin River Delta ecosystem and to ensure more reliable water supplies. This law establishes a seven-member Delta Stewardship Council to manage the Sacramento-San Joaquin River Delta.

SBX7 8 (Steinberg) provides a stronger accounting for water diversions and use in the Delta by requiring diverters

to complete a diversion and use statement and establishes penalties for illegal water diversions for failure to file a use statement, making material misstatements related to the statement, or for tampering with measuring devices. Finally, this law appropriates $546 million from Proposition 1E (Disaster Preparedness and Flood Prevention Bond Act of 2006) and Proposition 84 (Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006). This includes $250 million for regional water management grants and projects; $202 million for flood protection to reduce the risk of levee failures; $70 million for stormwater management grants; and $24 million for grants to local agencies to develop or implement Natural Community Conservation plans.

SBX7 2 (Cogdill) is a possible precursor to a peripheral canal. It calls for an $11 billion general obligation bond that would support upgrades to the State Water Project (SWP). The SWP was designed to support 16 million people—today it serves 38 million statewide. If approved by voters in November 2010, $455 million would be earmarked for drought relief projects, disadvantaged communities, small community wastewater treatment improvements and a safe drinking water fund; $1.4 billion would fund regional water supply, regional water management projects, and local water delivery projects; $2.25 billion would support Delta sustainability projects, levees, water quality improvement, infrastructure, and to help restore the ecosystem of the delta; $3 billion would pay for water storage projects, including dams; $1.7 billion would support watershed conservation for ecosystem and watershed protection and restoration projects in 21 watersheds including coastal protection, wildlife refuse enhancement, fuel treatment and forest restoration, fish passage improvement and dam removal; $1 billion would pay cleanup and protection of groundwater cleanup and underground aquifers; and $1.25 billion would underwrite water recycling, conservation water recycling, treatment and efficiency projects.

SBX7 6 (Steinberg) establishes a statewide groundwater monitoring program to be administered by eligible local agencies. Prior to this law, California was one of the last western states without a groundwater management program. This law is intended to ensure that groundwater basins and sub-basins are regularly and systematically monitored to make this information widely available. This data is expected to be particularly useful during drought conditions.

The Legislature served up a great number of laws during the regular session as well that: require more water-efficient plumbing, create funding mechanisms promoting water efficiency improvements, and remove barriers to requiring water meters. Other laws establish strategies to improve stormwater capture and quality. The Legislature also approved laws granting local control over salinity and obligating marine vessels to provide the State Lands

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Commission (SLC) with information on ballast water treatment.

Before approving the water reform package, the Governor signed SB 407 (Padilla) which calls for replacing less efficient plumbing fixtures in the hopes of reducing per capita water use by 35 percent. Specifically, this law requires property owners to replace all "non-water conserving plumbing fixtures," which includes toilets and urinals that use more than 1.6 gallons and 1.0 gallons of water per flush respectively along with showerheads with a flow capacity of more than 2.5 gallons of water per minute. Beginning in 2014, applicants seeking a building alteration or improvement to a single-or multi-family residential real property built before 1994 must replace noncompliant plumbing fixtures. It is necessary to upgrade the water fixtures in order to receive a certificate of final completion and occupancy or a final permit approval from the local building department. By 2017, all noncompliant plumbing fixtures must be replaced for any single-family residential real property regardless of whether the owner seeks a building alteration or improvement. Owners of multi-family and commercial real property must replace inefficient water fixtures beginning in 2019 subject to a specified formula for building improvements. By 2019, owners of rental property must upgrade plumbing fixtures by the time a tenant takes possession of the property. Finally, beginning January 1, 2017, those selling or transferring single- and multi-family residential and commercial real property must disclose in writing whether the real property includes noncompliant plumbing.

In February 2009, the State Water Resources Control Board (SWRCB) adopted a statewide policy to promote the use of recycled water. Because increased salt loads in the source water makes recycling more difficult, Assembly Bill (AB) 1366 (Feuer) was enacted to allow local community sewer systems and water recycling facilities to control salinity from residential self-generating water softeners. This authority is contingent on a regional board officially finding that controlling residential salinity in its jurisdiction will contribute to achieving water quality objectives.

The Water Recycling Act of 2006 [*see* Stats. 2006, Ch. 541, AB 371 (Goldberg)] required the Department of Water Resources (DWR) to develop regulations for water systems in buildings with piping for both potable and recycled (i.e., purple pipe) water. These standards must be submitted to the California Building Standards Commission which will ultimately establish a California version of the Uniform Plumbing Code. SB 283 (DeSaulnier) is an urgency law (effective October 11, 2009) that extends the date by which DWR must adopt these regulations to December 31, 2009. These rules will help California meet its target of using one million acre-feet of recycled water by 2010.

Last year the Legislature enacted a law [2008 Stats., Ch. 159, AB 811 (Levine)] that authorized local governments to float a bond to finance the up-front costs for home owners to purchase renewable energy-generating devices or to make energy efficiency improvements. The owner enjoys the return on investment through lower energy costs and repaying the loan over a long time horizon. AB 474 (Blumenfield) expands the program to include water efficiency improvements for use by residential, commercial, and agricultural property owners. These improvements could include, among others, permeable pavement, recycled water piping, drip irrigation, cisterns, synthetic turf, or other water conservation measures. The law additionally requires a seller to disclose and record in the county recorder's office the contractual assessment obligation which is attached to the real property.

The Legislature built on recent laws promoting urban water conservation and model water conservation ordinances to conserve water supply as the state's population increases and the water supply is threatened by climate change. AB 1061 (Lieu) requires that enforcement of recent water conservation laws must also apply to Common Interest Developments (CID) communities. This law makes void and unenforceable CID documents that interfere with water-efficient landscaping including provisions that prohibit use of low water using vegetation.

The California Urban Water Conservation Council (CUWCC) is charged with integrating water conservation best management practices (BMPs) into the planning and management of urban water agencies, public interest organizations, and private entities. Urban water suppliers must adopt urban water plans that include information on their water demand management measures. The CUWCC adopted a "Memorandum of Understanding [MOU] Regarding Urban Water Conservation in California," dated December 10, 2008. This MOU includes improvements to conservation BMPs that can be more flexibly adapted to fit local conditions. AB 1465 (Hill) revises the Urban Water Management Planning Act and states that urban water suppliers that are members of the CUWCC and comply with the MOU are in compliance with its water demand management measures requirement.

AB 975 (Fong) was enacted to influence water consumption, making it easier for the California Public Utilities Commission (PUC) to mandate installation of water meters. In 2004, the legislature enacted a law [see 2004 Stats., Ch. 884, AB 2572 (Kehoe)] that required all urban water suppliers to begin charging for water based on volume by 2025. In addition, the PUC was required to make specified findings before it could require a water

supplier or its customers to install water meters. These included finding that water meters will: (1) be cost effective, (2) result in a significant reduction in water consumption, and (3) not impose an unreasonable financial burden on customers. AB 975 repeals these limitations and requires water suppliers serving more than 500 service connections to ensure that meters are installed by January 1, 2025. In addition, water suppliers that have installed water meters must begin charging for consumption in 2015.

The Legislature passed two bills designed to innovate strategies to more effectively control stormwater. Stormwater management is primarily driven by the Clean Water Act objective of ensuring clean, uncontaminated water quality. Conserving stormwater for water supply is given much less attention than stormwater quality. SB 790 (Pavley) authorizes grants of up to $5 million to support projects designed to implement stormwater resource plans and other specified projects to contribute to the improvement of water quality at public beaches. Other projects could include restoration of coastal water quality and reduction of stormwater runoff. Applicants must submit to the regional water quality control board (RWQCB) a specified monitoring and reporting plan. The grants can support cities, counties, or special districts in developing watershed-based stormwater resource plans designed to not only achieve improved water quality, but to maximize water supply. These plans could, among other strategies, identify opportunities to augment local water supply through groundwater recharge or storage for beneficial reuse of stormwater as well as projects to reestablish natural water drainage treatment and infiltration systems. In addition, the plans could include opportunities to develop or enhance habitat and open space via stormwater management, including wetlands, riverside habitats, and parks.

SB 310 (Ducheny) is intended to encourage use of more effective methods to prevent stormwater pollution by piloting watershed-based programs. Specifically, this law authorizes cities, counties, and special districts that are subject to a National Pollutant Discharge Elimination System (NPDES) permit for a municipal separate storm sewer system to voluntarily develop a watershed improvement plan. The plan must demonstrate effective strategies to isolate stormwater from contaminants. The plan must include, among other things, a schedule governing which actions are to be taken; a description of how performance will be measured and monitored; and to the extent applicable, a description of regional BMPs to improve water quality. The BMPs could include stormwater detention, infiltration, natural treatment systems, water recycling, reuse, and supply augmentation. The proposed watershed improvement plan must be reviewed by the appropriate RWQCB for approval.

According to the SWRCB, about two-thirds of the water from the New River includes urban runoff, untreated and partially treated municipal and industrial wastes, and agricultural runoff. AB 1079 (Perez) establishes the New River Improvement Project (NRIP) and creates a technical advisory committee to develop and implement a strategic plan to implement the NRIP.

SB X3 27 (Negrete McLeod) is intended to facilitate California receiving its maximum share of water quality funding under the American Recovery and Reinvestment Act (ARRA) of 2009. It expands authorized uses for clean drinking water and wastewater funding from the federal government pursuant to the ARRA. The ARRA has a short timeframe for distribution of these funds before reverting back to the federal government. The ARRA establishes a goal of using at least 50 percent of the funds for activities that can be initiated no later than June 17, 2009. All water project funds must be encumbered by February 17, 2010, and all projects must begin no later than February 2010.

SB 614 (Simitian) extends the sunset date for the California Clean Coast Act from January 1, 2010 to January 1, 2014. This Act, which is still subject to US EPA approval, prohibits large passenger vessels and oceangoing ships from releasing sewage, sewage sludge and oily bilge water into state waters. Ballast water from commercial shipping contains non-indigenous species that also harms coastal waters. California law requires new ships under 5,000 metric tons that visit a California port to meet California's ballast water performance standards. These standards require most vessels to install ballast water treatment systems. In a related law, AB 248 (Bonnie Lowenthal) is designed to assist the State Lands Commission in collecting information about these treatment systems and their use by requiring vessels to submit to the SLC specified information relating to the vessel's ballast water treatment system.

Climate Change

Since enacting the Global Warming Solutions Act of 2006 (known as AB 32), the Legislature has taken a wait-and-see approach as the California Air Resources Board (ARB) develops a great number of implementing rules. The Legislature, nonetheless, produced laws adding a regulated GHG; expanded and revised transportation planning polices to reduce GHGs; expanded regional authority to regulate GHGs; and requiring increased transparency in ARB's rulemaking.

AB 32 establishes a regulatory strategy to, among other things, reduce GHGs to 1990 levels by 2020. SB 104 (Oropeza) expands the GHGs subject to regulation to now include nitrogen triflouride (NF3). Used in the manufacture

of consumer goods ranging from photovoltaic solar panels, LCD television screens, and microprocessors, NF3 is a particularly potent GHG. Its global warming potential is 17,000 times greater than carbon dioxide and persists in the atmosphere for 550 years.

With over 40 percent of GHGs coming from the transportation sector in California, the Sustainable Communities and Climate Protection Act of 2008 [2008 Stats., Ch. 728, SB 375 (Steinberg)] was enacted to reduce vehicle miles traveled (VMT). Among other things, this law requires the ARB to establish VMT reduction levels for cars and light-duty trucks by 2020 and 2035, respectively, for the state's 17 regional metropolitan planning organizations (MPOs). The MPOs are obligated to develop a Sustainable Communities Strategy designed to achieve these targets within their regional transportation plan (RTP).

SB 575 (Steinberg) is "clean up" legislation to the Sustainable Communities and Climate Protection Act. The original act required the MPOs to convene informational meetings before boards of supervisors and city councils addressing the Sustainable Communities Strategy. This new law repurposes these informational meetings to discuss the strategy with the local elected officials and to solicit their input for consideration. The original law also required local governments to revise the housing elements of their general plans pursuant to a specified schedule. The new law adjusts the schedule to better align it with the pre-established frequency for reviewing housing element reviews. In addition, SB 575 requires the Department of Transportation (Caltrans) to publish, on its website, schedules of the estimated RTP adoption dates and estimated and actual housing element due dates.

Responding to the imperative of climate change impacts, Senator Liu crafted SB 391. This law adopts a holistic approach to integrating planning land use and transportation policies in California. Specifically, this law requires Caltrans to update the California Transportation Plan (CTP) by December 31, 2015, and every five years thereafter. The CTP must, among other things, describe how California will meet maximum feasible emissions reductions in order to attain a statewide reduction of GHG emissions to 1990 levels by 2020 and 80 percent below 1990 levels by 2050. The CTP must take into consideration the use of alternative fuels, new vehicle technology, tailpipe emissions reductions, expanding public transit, commuter rail, intercity rail, bicycling, and walking.

Sonoma County adopted a "Climate Action Plan," which establishes an aggressive goal of reducing GHG emissions to 25 percent below the 1990 level by 2015. AB 881 (Huffman) offers a regional strategy to meet this ambitious goal by creating the Sonoma County Regional Climate Protection Authority (Authority). The Authority is authorized to assist the Sonoma County Transportation Authority, the Sonoma County Water Agency and all nine cities in Sonoma County in meeting their GHG reduction goals. The Authority is empowered to develop, coordinate, and implement strategies to comply with state and federal mandates to reduce GHG emissions.

Finally, when ARB staff failed to provide information in support of proposed GHG rules, Assemblymember Mendoza introduced legislation to promote increased transparency and due process in the ARB rulemaking process. The ARB published data supporting its rationale for forthcoming regulations governing private fleets and on-road GHG reduction measures one day prior to the hearing for these proposed rules. This deprived stakeholders a meaningful opportunity to review the information before the hearing. AB 1085 (Mendoza) requires the ARB to publish technical and empirical data, including air emissions, public health and economic impacts before the end of the comment period for proposed ARB regulations.

Air Quality

Several transportation-related laws were enacted to fund and improve air quality. State Treasurer Bill Lockyer sponsored AB 798 (Nava) in an effort to increase statewide transportation capacity via new projects or improvements. This law allows state, regional, and local transportation agencies to sponsor transportation projects in partnership with a newly formed California Transportation Financing Authority (CTFA). Transportation agencies can optionally receive transportation funding via the issuance of revenue bonds by CTFA. Transportation agencies may request CTFA to issue bonds or they may request approval to issue bonds themselves which can be repaid via collection of tolls. Project sponsors of highway projects must demonstrate how transit service or alternative modes of transportation will be enhanced in the corridor.

SB 83 (Hancock) gives countywide transportation agencies authority to entertain a local ballot initiative to collect an annual $10 fee on motor vehicle registrations to fund programs to improve traffic congestion. If approved, a county could supplement the ongoing operations and maintenance of Intelligent Transportation Systems (ITS). ITS includes strategies to coordinate signal light timing and monitoring real-time traffic conditions at intersections and on freeways. According to the bill's sponsor, this law "creates an effective means of aligning the operation and maintenance costs of these systems with those who will benefit the most."

Last year, the California electorate approved Proposition 1A (the Safe Reliable High-Speed Passenger Train Bond Act or the "HSRA") which, among other things, required preparation of a single business plan to implement this public-private partnership venture by September 1, 2008. According to the Legislative Analyst's office, the initial business plan proposed was considered inadequate, lacking sufficient details. SB 783 (Ashburn) was enacted to remedy these deficiencies by requiring the High-Speed Rail Authority to adopt and submit this plan to the Legislature. The business plan must include, among other things, a forecast of the expected patronage and service levels, the expected schedule for completing environmental review and completing construction, and any impediments impacting completion of the system. The business plan must be presented to the Legislature by January 1, 2012, and every two years thereafter.

Proposition 1B (the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006) authorizes $1 billion in bond funding to the ARB to reduce air emissions from freight operations within priority trade corridors. Funding is available for cleaner shore-side power for cargo ships and to retrofit or replace heavy-duty trucks, locomotives, commercial harbor craft, cargo handling, and infrastructure for electrification of truck stops, and distribution centers. The Goods Movement Emission Reduction Program (GMERP) is a partnership between the ARB, local air districts, and ports with authority to reduce air emissions and health risk from moving freight along the priority trade corridors. Since the Great Recession of 2008/2009, some GMERP recipients are not honoring their contract commitments and are returning the GMERP funds to their respective air districts. AB 892 (Furutani) allows these unspent funds to be reallocated to local air districts that, prior to this law, were not allowed to use the funds for qualified projects. Also, these unspent funds can be now used by air districts, pursuant to Proposition 1B, for air quality improvement projects instead of returning the funds to the Legislature for re-appropriation.

AB 774 (Cook) allows community college districts to charge a fee to students and student employees to support transportation services. This law effectively removes an exemption that previously shielded low-income students from having to pay this fee.

In response to a fatal collision between a tractor trailer and a van transporting agricultural workers, the Legislature established the Agricultural Worker Transportation Program (AWTP) [Stats. 2006, Ch. 516, SB 1135 (Budget and Fiscal Review Committee)]. This law was intended "to provide safe, efficient, reliable and affordable transportation services, utilizing vans and buses, to agricultural workers commuting to/from worksites in rural areas statewide." SB 716 (Wolk) requires regional transportation planning agencies to consider funding farm worker vanpool programs as long as other transit needs have been met first.

SB 728 (Lowenthal) was enacted in response to the author's belief that few employers comply with the state parking cash-out program. The parking cash-out program applies to employers of 50 persons or more located in air districts that exceed healthful air quality limits and who provide parking subsidies to employees. These employers are required to offer employees an equivalent amount of money in lieu of a parking subsidy to promote transit and/or carpooling. SB 728 adds enforcement provisions to the parking cash-out program by authorizing the ARB to impose a civil penalty for a violation of the program. It also allows cities, counties, and air districts to establish rules to enforce compliance with this program.

SB 124 (Oropeza) promotes the ARB's strategy to reduce children's exposure to diesel particulate matter by raising the minimum penalty for violating commercial heavy-duty diesel engine idling and bus idling vehicle limits. Specifically, this law increases the minimum civil penalty from $100 to $300 for violations of the rules limiting school bus idling and idling near schools. It also adds criminal misdemeanor penalties for violations resulting in actual injuries.

AB 96 (Ruskin) is an urgency measure (effective August 6, 2009) that makes available $8 million for grants and loans to support gas station operators in their obligation to upgrade their equipment to meet the Enhanced Vapor Recovery (EVR) regulations adopted by the ARB. In addition, this law modifies the eligibility requirements to obtain these grants and loans by eliminating the requirement for the grant applicant to have owned and operated the underground storage tank (UST) since January 1, 1997. Finally, this law extends the operative date of the Petroleum Underground Storage Tank Financing Act to 2016.

AB 1318 (Perez) and SB 827 (Wright) are controversial laws that preempted a CEQA lawsuit appeal. The lower court ruled against the South Coast Air Quality Management District's (SCAQMD) air quality emissions offset rules. These rules would allow offsets for new or modified projects for essential public services in exchange for mitigation fees. The Natural Resources Defense Council and other environmental justice groups initially challenged these rules for failing to analyze or mitigate the significant environmental effects of the rules under CEQA.

The plaintiffs prevailed in *NRDC, et al. v. SCAQMD* (Los Angeles Superior Court, 2007, No. BS 110792),

prompting an appeal by the SCAQMD. The Legislature intervened by enacting AB 1318 (Perez) and SB 827 (Wright) which circumvented the appeal. These laws exempt, until January 1, 2012, the SCAQMD from CEQA review for purposes of granting the offsets described above. It further grants the SCAQMD the authority to transfer emission offset credits from the district's priority reserve to eligible electrical generating facilities. As a result, this clears the way for granting air emissions offsets for a proposed 850-megawatt CPV Sentinel Energy Project, Riverside County.

Energy

Notwithstanding the preoccupation with the state budget, the Legislature directed considerable effort in fashioning energy policies that promote deployment of a Smart Grid and encourage widespread use of hybrid vehicles. The Legislature repealed provisions designed to stabilize the market during the energy crisis while producing creative strategies to encourage lowered energy consumption including programs to promote weatherization and energy conservation for low income ratepayers. Finally, other policies expanded the opportunity to sell surplus energy to the grid.

The Legislature recently approved a law [Stats. 2007, Ch. 533, AB 1103 (Saldana)] that provides a tool to assist building owners and managers in reducing energy consumption. The law requires utilities to provide energy usage data (i.e., ENERGY STAR Portfolio Manager benchmarking data) to assist building owners and managers in comparing the energy efficiency performance of buildings for lease or purchase. This allows prospective buyers, lessees, and lenders to make informed choices involving their property. That law required utilities to provide this information by January 1, 2010. The same author—Saldana—introduced AB 531which revises this deadline to one based on a schedule of compliance established by the State Energy Resources Conservation and Development Commission (otherwise known as the CEC).

Assemblymember Skinner authored another law designed to improve energy efficiency of buildings. AB 758 (Skinner) requires the CEC, by March 1, 2010, to develop and implement a comprehensive energy program to achieve greater energy savings in existing residential and nonresidential building stock. This program will be implemented by local publicly-owned electric utilities which could, among other things, include energy assessments, cost-effective energy efficiency improvements, financing options, public outreach, and education efforts. The CEC must periodically update the program and report on the status of the program in the Integrated Energy Policy Report. Additionally, this law requires the PUC, by March 1, 2010, to investigate the ability of electrical and gas utilities to provide energy efficiency financing options to their customers to implement the comprehensive program described above. The PUC must also report on the implementation of the program every three years.

San Diego Gas and Electric, Southern California Edison, and the Sacramento Municipal Utility District (SMUD) completed pilot programs to reduce residential energy use through comparative energy usage disclosure (CEUD) programs. These utilities tested a hypothesis theorizing that significant energy efficiency can result from peer pressure involving comparative energy use. For example, SMUD provided ratepayers with notices comparing their energy usage with ratepayers with similarly-sized homes. Ratepayers who received the notice reduced their energy by 2.4 percent per month compared to those homes that did not receive the notices. SB 488 (Pavley) was enacted to build on the initial success of these CEUD programs. This law requires local publicly-and investor-owned electric and gas utilities to provide their customers with information comparing their energy use with similar residences. Additionally, the utilities must report to the PUC and the CEC on the energy savings resulting from such programs on or before March 15, 2010. The PUC is then required to compile and evaluate the data and determine the net energy savings achieved and extrapolate the expected savings by expanding CEUD programs. The PUC must also report to the CEC and the Legislature on the results of its evaluation along with any actions it takes in response to the evaluation. The CEC must consider the information it receives from the CEUD programs in developing a statewide estimate of all potentially achievable cost-effective energy efficiency savings. This data must also be entertained when the CEC establishes targets for achieving statewide energy efficiency savings and demand reduction.

Under the ARRA, the CEC expects the state of California to receive approximately $282 million for energy related programs including energy efficiency and conservation grants to local governments. AB 262 (Bass) authorizes the CEC and the state's water agencies to make grants and enter into contracts to award federal energy efficiency and conservation funds. This law further appropriates $113,093,000 to the CEC to be expended in accordance with ARRA 2009.

The Legislature responded to the 2000–01 energy crisis with a number of emergency measures designed to manage the unfolding chaos. These responses were designed to establish order to the electricity market and shield residential rate payers from unprecedented rate increases. The Legislature initially authorized the California DWR to: (1) purchase electricity on behalf of

California's struggling utilities; (2) freeze residential electric rates; and (3) suspend the ratepayers' ability to receive electricity from a direct-access provider. SB 695 (Kehoe) is an urgency law, which took effect on October 11, 2009, that repeals these emergency actions. This law additionally requires electrical utilities, when administering the CARE (California Alternate Rates for Energy) energy efficiency and weatherization program, to target energy efficiency and solar programs to upper-tier and multi-family customers. The utilities must also develop programs targeting nonprofit affordable housing providers to promote weatherization and replacement of inefficient appliances. In addition, the PUC must ensure that low-income electricity and gas customers are given the opportunity to participate in efficiency programs by 2020.

A smart grid is a distribution system that enables information to flow to and from a customer meter. SB 17 (Padilla) authorizes the PUC to develop and implement a smart grid deployment plan by July 1, 2011. The plan is intended to improve overall efficiency, reliability, and cost-effectiveness of electrical system operations, planning, and maintenance. This law requires electrical corporations to develop and submit to the PUC a smart grid deployment plan by July 1, 2011.

AB 920 (Huffman) modifies the net metering program, which requires electric utilities to purchase unused renewable energy generated by a utility customer. This law allows customers generating excess wind and solar energy to be paid annually for excess power generated. Prior to this law, generators who produced a net surplus of renewable energy did not receive a check reflecting the surplus. This law establishes that renewable energy credits purchased by the publicly owned and the investor-owned utilities (IOUs) may be counted towards the state's Renewable Portfolio Standard (RPS). Under the RPS, the state's IOUs must ensure that one-third of their electricity is generated from renewable sources of energy by 2020. AB 1351 (Blakeslee) is a cleanup law designed to remedy a drafting error involving AB 809 [Stats. 2007, Ch. 684, AB 809 (Blakeslee)]. That law allowed existing hydroelectric facilities to qualify for RPS credit if they made efficiency improvements and if the facility was certified by the SWRCB under the federal Clean Water Act. By requiring that the facility receive SWRCB certification, this effectively prohibited out-of-state hydroelectric facilities from counting efficiency improvements toward RPS credit for their imported energy. AB 1351 removes the specific reference to the SWRCB. As a result, out-of-state hydroelectric energy importers may receive certification from the appropriate state agency as long as that agency has authority to issue the certification pursuant to the federal Clean Water Act.

Another law modifies recent California law [Stats 2006, Ch. 731, AB 1969 (Yee) and its regulations] that mandates that IOUs purchase all renewable electricity generated from facilities up to 1.5 megawatts (MWs) in size. SB 32 (Negrete McLeod) doubles this feed-in-tariff (FIT) program by obligating IOUs to increase their purchase of the electrical output from generators up to three MWs. This law also deletes the requirement that the renewable energy facility be located on property owned or under the control of the customer. It also clarifies that these FIT purchases count toward the RPS obligations. These provisions also apply to publicly owned utilities (POUs) that service more than 75,000 customers. The PUC must also consider the cost of environmental compliance and the value of distributed generation when establishing the FIT. The program is capped at a ceiling of 750 MW statewide; once this limit is reached, the IOUs will not be obligated to purchase otherwise eligible renewable electricity.

Three laws are intended to promote renewable energy. AB 1031 (Blumenfield) allows a California "campus" (community college, University of California campus, and California State University campuses) to receive a financial credit for renewable electricity it exports back to the grid. The purpose of AB 1110 (Fuentes) is to reward utility customers that employ advanced electrical distributed generation (ADG) technologies (e.g., fuel cells). ADG technologies result in achieving higher carbon reductions and better efficiency ratings than conventional cogeneration facilities. This law extends reduced gas and electric charges to utility customers that purchase ADG technologies. SB 412 (Kehoe) extends the Self-Generation Incentive Program governing distributed energy sources through 2016 and authorizes the PUC to include all self-generation technologies it determines will support AB 32 goals. AB 1551 (Committee on Utilities and Commerce) clarifies how incentives payments must be issued for solar energy systems under the California Solar Initiative (CSI). Specifically, incentive payments for low-income residential housing must be offered to owner-occupied, deed-restricted single-family housing and to rental units. The deed restrictions pertain to owner-occupied units that are subject to an affordability covenant. AB 1551 also clarifies that projects financed by the California Alternative Energy and Advanced Transportation Financing Authority only apply to projects that generate energy under a power purchase agreement. Finally, this law extends the program's sunset date from January 1, 2010, to January 1, 2014, for net energy metering and expands eligibility of net energy metering to fuel cell customer-generators.

Another set of laws promote renewable energy by either providing financial assistance or permitting relief. AB 904 (Perez) expands the list of businesses eligible to participate

in the California Investment Incentive Program (CIIP). The CIIP authorizes cities and counties to reduce property taxes and offer property tax rebates to attract very large, high-tech manufacturing plants. Now businesses engaged in the manufacture of parts used by solar, wind, biomass, hydropower, or geothermal generation on or after July 1, 2010 may participate in the CIIP. AB 45 (Blakeslee) reenacts lapsed provisions of an earlier law [see stats. 2001 AB 1207 (Longville)] designed to expedite the land use permitting process for wind projects. The author states that in the Bay-Delta and the Tehachapi high desert area, the superior wind resources make small wind systems considerably more cost effective compared to photovoltaic solar systems. This law authorizes counties to adopt ordinances to install small wind energy systems (with a rated output of 50 kilowatts or less) outside an urbanized area. Those applications submitted after January 1, 2011, but before a county has adopted a "wind" ordinance are subject to specified conditions. These conditions include, among others, notice, tower height, setback, view protection, aesthetics, aviation, and design-safety requirements. Applicants' permit applications must be approved as a ministerial permit and thus may be eligible for an exemption under CEQA.

SB 626 (Kehoe) is an infrastructure law designed to promote widespread use of plug-in hybrid vehicles. Most plug-in hybrids include converted conventional hybrid vehicles that yield approximately 100 miles per gallon. SB 626 requires the PUC to lead an effort to develop strategies to overcome barriers to widespread use of plug-in hybrid vehicles by July 1, 2011. The PUC must consult with the CEC, the ARB, electrical utilities, and the motor vehicle industry in evaluating these hurdles and adopt rules that address, among others, the following issues: the impacts upon electrical infrastructure, the role and development of public charging infrastructure, the impact of plug-in hybrid and electric vehicles on grid stability, and technological advances that are needed. The PUC must also explore rules that can transcend barriers presented by the existing code and permit requirements along with legal impediments.

AB 162 (Ruskin) is intended to streamline the great number of data reports that POUs must submit to the CEC. This law consolidates specified reporting obligations and requires that certain data be reported annually instead of quarterly. Additionally, this law requires retail suppliers of electricity to disclose the sources of their energy supply (e.g., coal, natural gas, nuclear, wind, solar, etc.).

Solid Waste and Pollution Prevention

After years of attempts to consolidate the functions of the California Integrated Waste Management Board, Governor Schwarzenegger and the GOP finally succeeded. SB 63 (Strickland) abolishes the IWMB and transfers its functions to the newly created Department of Resources Recycling and Recovery (DRRR). The DRRR, now part of the Natural Resources Agency, administers AB 2020 (the California Beverage Container Recycling and Litter Reduction Act, otherwise known as the "Bottle Bill"). SB 63 also transfers the Office of Education and the Environment to the California Environmental Protection Agency. The Office of Education and the Environment is tasked with implementing a statewide environmental educational program which includes a unified education strategy for elementary and secondary schools.

Each year, Californians generate approximately 40 million waste tires while about 30 million of these tires are diverted from landfills for reuse, retreading, and combustion.

The California Tire Recycling Act collects a fee on the sale of new tires. This fee supports the IWMB (now the DRRR) permitting and enforcement of waste tire facilities and hauler and recycling activities. SB 167 (Ducheny) expands the scope of the Act to fund the environmental and health threats of mismanaged tires both in California and across the border in Mexico. According to the bill's author, each year "sewage and trash-laden storm water dislodges and carries thousands of waste tires from Tijuana to California through the Tijuana River." Specifically, this new law requires the DRRR to expand its five-year plan to include projects within the California-Mexico border region. These projects must address education, infrastructure, mitigation, cleanup, prevention, reuse, and recycling to address the movement of used tires from California to Mexico that are eventually disposed of in California. In an effort to reduce illegal tire piles accumulating throughout the state, the Legislature enacted a law requiring people who haul tires to an approved waste facility to register with the DRRR. SB 230 (Cogdill) carves out an exemption for farmers who are victims of illegal tire dumping on their property. The law also requires that persons who haul used tires for agricultural purposes must carry a manifest from the generator.

Owners and operators of solid waste landfills are required to plan for and fund "post-closure maintenance financial assurance" for 30 years after closure for the purpose of managing the environmental risks from closed landfills. Common post-closure maintenance activities include leachate collection and treatment, groundwater monitoring, inspection and maintenance of the final landfill cover, and monitoring of landfill gases. The IWMB estimated that by 2021, the first landfill subject to these requirements will have exhausted its 30-year post-closure commitment; by 2050, the IWMB predicted the

combined risk to be over $600 million. AB 274 (Portantino) establishes a trust fund to manage potential future cleanup costs associated with leaking landfills. Landfill operators, who are legally obligated to provide for the maintenance and cleanup costs can opt into a voluntary program to collectively insure against this liability. The program will only take effect if 50 percent of the operators choose to participate in the program. The fee collected would provide a safety net to mitigate potential environmental impacts of post-closure solid waste landfills.

SB 627 (Calderon) builds on a law from last year [Stats. 2008, Ch. 731, AB 844 (Berryhill)] which attempted to remedy widespread metal theft ranging from brass couplings from fire hydrants to copper wire cut from utility lines. SB 627 responds to increasing theft of catalytic converters from cars, which are recycled for the valuable metals contained inside. In order to deter this behavior, SB 627 establishes requirements for buyers or sellers of used catalytic converters. This law imposes recordkeeping and identification requirements on recycling businesses (known as "core recyclers") that buy used catalytic converters, along with other vehicle parts. In addition, this law imposes payment restrictions on those purchasing catalytic converters. Finally, SB 627 imposes a misdemeanor penalty for those found guilty of false or fictitious statement regarding the information required under this law.

Hazardous Materials

According to the California Department of Fish and Game's (DFG) Division of Spill Prevention and Response, there are nearly three times as many inland spills as there are marine spills. Many of these spills are the result of poor maintenance of old equipment. AB 305 (Nava) authorizes imposition of a jail sentence for the knowing failure to report an oil spill or knowingly making a false or misleading report on an oil spill occurring in waters of the state.

The Legislature enacted two laws raising fees on petroleum products. SB 260 (Wiggins) raises the fee on motor oil (from $0.02 to $0.05 per gallon of motor oil) to fund the Petroleum Products Program. This program is designed to "ensure minimum quality standards for most automotive products" (gasoline, oxygenated blends, diesel fuel, motor oil, brake fluid, automatic transmission fluid, antifreeze/-coolants, and alternative engine fuels). According to the bill's author, the "program has been spending down reserves in the fund which are now almost depleted as a result of increasing program costs . . . the motor oil assessment cap has not been increased in 29 years. . . . Although the number of vehicles on the roads is increasing, the consumption of oil per vehicle is declining due to increased mileage between oil changes. Thus the consumption of oil has remained constant in recent years." SB 546 (Lowenthal) raises the fee paid by manufacturers of lubricating oil from $0.16 to $0.24 per gallon to support the California Oil Recycling Enhancement Act. These funds support alternatives to the illegal disposal of used oil including the payment of recycling incentives to industrial used oil generators, curbside collection programs, and certified use oil collection centers. This law additionally increases the incentives paid for recycling used oil; increases the testing requirements for used oil transporters; and requires a life cycle analysis of used oil. Finally, this law allows out-of-state used oil recycling facilities to receive recycling incentive payments so long as they certify that they meet federal law governing used oil (pursuant to 40 C.F.R. part 279).

Wheel weights are typically composed of a mixture of 95 percent lead and five percent antimony. When wheel weights fall from tire rims they can be drawn into stormwater systems or collected during street cleaning operations and end up in municipal landfills. SB 757 (Pavley) prohibits the manufacture, sale, or installation of wheel weights containing more than 0.1 percent lead by weight and establishes injunctive relief, civil, and administrative penalties for violation of this requirement.

The Legislature responded to a fiery crash of a fuel-filled tanker truck that destroyed a portion of the MacArthur Maze near the San Francisco Bay Bridge [2007 Stats., Ch. 514, AB 1612 (Nava)]. AB 1612 strengthened the inspection and licensing requirements for motor carriers transporting hazardous materials. Since then, the California Highway Patrol (CHP) issued regulations prohibiting a motor carrier from applying for a new original license to transport hazardous materials for three years after receiving an unsatisfactory inspection. AB 463 (Tran) adjusted the licensure provisions allowing the CHP to grant a license to a transporter that failed inspection as long as the reason for which the licensee failed has been corrected.

Approximately one million Californians inject medications at home or otherwise outside medical facilities. In 2006, California passed a law [Stats. 2006, Ch. 64, SB 1305 (Figueroa)] to manage the home-generated sharps waste. That law prohibited disposal of home-generated sharps waste into commercial and residential solid waste collection containers. It also requires that sharps be managed only at licensed household hazardous waste or medical waste facilities and transported only in approved sharps containers. SB 486 (Simitian) builds upon this law and requires pharmaceutical manufacturers that sell or distribute self-injected medications (e.g., hypodermic or pen needles) to, beginning July 1, 2010, develop a collection

and disposal plan. The plan must provide for safe collection and proper disposal; educate consumers about safe management and collection opportunities; and support efforts by retailers, pharmaceutical distributors, manufacturers, health care organizations, solid waste service providers through safe collection and proper disposal of waste devices. The plan must be annually updated, submitted to the DRRR, and posted on the company and DRRR websites.

AB 856 (Caballero) was enacted to provide oversight to businesses selling organic fertilizer. Prior to AB 856, a manufacturer was found to have spiked its organically labeled product with a non-organic, synthetic substance. This incident lead to the finding that the California Department of Food and Agriculture (CDFA) lacked sufficient oversight authority to police organic fertilizers displaying organic labels. With input from many stakeholders, including organic and conventional trade groups, the CDFA developed a strategic plan for its Fertilizer Materials Inspection Program. AB 856 implements many of the recommendations that grew out of the strategic plan and authorizes CDFA to expand its inspection program. The inspection program allows for CDFA to collect a fee on organic products to support the program. The law additionally establishes a misdemeanor penalty for adulterating or misbranding any fertilizing material resulting in inconsistency with the organic label.

Clean Up and Brownfields

In 2004, the California Legislature enacted the California Land Reuse and Revitalization Act (CLRR). That law established qualified immunity for response costs to innocent land owners, bona fide purchasers, and contiguous property owners who were not responsible for causing or contributing to a chemical release. Parties seeking this protection must make "all appropriate inquiries into the previous ownership and uses of the site and exercise appropriate care" regarding the release or threatened release of hazardous substances in question. SB 143 (Cedillo) reauthorizes the provisions of this immunity until January 1, 2017, instead of January 1, 2010.

AB 1188 (Ruskin) is an urgency law (effective October 14, 2009) responding to the fact that the Underground Storage Tank Cleanup Fund is overspent by $80 million. According to the bill's sponsor, this has caused hardship to the businesses that have already performed work to clean up leaking USTs. This law provides the funds to reimburse these companies and reinvigorate the program by temporarily increasing the petroleum storage fee by $0.006 per gallon of petroleum stored between January 1, 2010, and December 31, 2011.

Responding to the absence of standards governing the clean-up of methamphetamine and other chemicals used in the formulation process, the Legislature enacted two laws in 2005 that addressed interim cleanup and long-term cleanup standards [Stats. 2005, Ch. 587, SB 536 (Bowen) and Ch. 570, AB 1078 (Keene and Liu)]. As a result of the methamphetamine manufacturing process, chemicals such as ether (starting fluid), toluene (paint thinner) and sulfuric acid can contaminate carpeting, wallboard, ceiling tile, fabric furniture, and draperies. In the absence of national health-based clean-up standards for methamphetamine, California developed a standard that is codified in AB 1489 (Smyth). This health-based standard was pioneered by the Department of Toxic Substances Control and the Office of Environmental Health Hazard Assessment (OEHHA). The OEHHA established the externally peer reviewed methamphetamine cleanup standard for surface contamination to be 1.5 g/100 cm2.

CEQA and Environmental Review

With ABX3 81 (Hall), the Legislature once again intervened and short-circuited a pending CEQA lawsuit challenging the adequacy of an environmental review. This law exempts from environmental review and land use planning standards involving a proposed football stadium project to be sited in the City of Industry. The project was initially conceived as a mixed use project involving industrial, office, and commercial uses. The city certified the environmental impact report (EIR) for this project in 2004. In 2008, the developer substantially modified the project to include a football stadium and related facilities with capacity for 80,000 people and parking for 25,000 vehicles. Instead of scrapping the EIR, the city chose to rely upon the originally certified EIR and prepared a "supplemental EIR"—an environmental analysis that includes minor changes to a project not discussed in the original EIR. This led to a CEQA lawsuit by the City of Walnut challenging the choice of a supplemental EIR instead of a new EIR. The lawsuit also alleged inadequate environmental review pertaining to noise, traffic, air quality, and light effects. Assemblymember Hall and the City of Industry persuaded the Legislature to approve a project-specific CEQA exemption, arguing that the construction activities would provide jobs during tough economic times.

Following a similar trend of special interest CEQA exemptions, SB 605 (Ashburn) approved expanding a CEQA exemption for a biogas pipeline located in Fresno, Kern, Kings, or Tulare counties. The exemption applies to biogas generated from anaerobic digestion of dairy animal waste and meets natural gas specifications adopted by the ARB. In addition, as more fully described above under the air quality section, the Legislature carved out controversial CEQA exceptions involving air emissions offsets in the SCAQMD.

Mercury used to extract gold ore has contaminated California river watersheds since the Gold Rush, resulting in significant mercury contamination in the San Francisco Bay Estuary. The Bay-Estuary is designated as an impaired water body for mercury and is not expected to meet water quality objectives for mercury for at least 70 years. Millions of pounds of mercury remaining in these upstream waterways are released during gold mining. The mercury is exposed and discharged downstream via suction dredges that remove gravel from these riverbeds. SB 670 (Wiggins) is an urgency law (effective August 6, 2009) that imposes a temporary moratorium on granting new suction dredging permits for in-stream mining until the DFG completes environmental review under CEQA.

Land Use

Responding to the economic slowdown in the construction industry, AB 333 (Fuentes) preserves previously granted land use approvals issued to developers. Specifically, this law extends for two years tentative maps issued to developers. The California Land Conservation Act (popularly known as the Williamson Act) is designed to encourage agricultural land owners to keep their land in agricultural use or open space. These land owners receive a significant tax break for signing contracts with a city or county restricting the land use for ten years. When a landowner chooses to cancel the contract prior to its expiration, he loses the tax benefit and must pay a cancellation fee equal to 12.5 percent of the unrestricted fair market value of the property. SB 671 (Runner) modifies the Williamson Act to reimburse county assessors for determining the fair market value for agricultural land that the owner converts to non-agricultural uses. This new law provides that the county assessors must be reimbursed for the costs associated with arriving at the fair market value supporting the cancellation valuations. This law requires the landowner to pay a deposit to cover these appraisal costs.

Sustainability

AB 210 (Hayashi) clarifies that local governments have authority to adopt green building standards if they find that amending the standards is reasonably necessary because of local climatic, geological, or topographical conditions.

Natural Resources

Three laws were approved to advance the preservation of open space in the Golden State. AB 1464 (Smyth) enacts the California Bicycle Routes of National, State, or Regional Significance Act to promote cycling tourism in California. This law authorizes Caltrans to establish a process for identifying and promoting bicycle routes of national, state, or regional significance. AB 94 (Evans) reauthorizes a provision under the Natural Heritage Preservation Tax Credit Act that allows for awarding tax credits to preserve land, restore habitats, and protect water supplies. This financial tool provides a significant tax credit for the purchase of eligible open space. AB 521 (De La Torre) increases the chances for local governments to lease utility-owned property for parks and open space. This law requires the PUC to consider additional benefits when evaluating lease proposals in order to encourage the use of utility-owned property for public parks. Prior to this law, the PUC was required to determine whether the lease of utility-owned property for a commercial use would produce an appropriate financial return to ratepayers. This law requires the PUC to evaluate non-economic factors in considering leases for public parks.

AB 1066 (Mendoza) provides landowners flexibility in managing timber harvests by extending the effective period of a timber harvesting plan (THP) from three years to five years. By extending the time frame, this law allows landowners to better respond to price swings for lumber and other wood products. In addition, the law relaxes the conditions governing amendments to THPs allowing up to four additional one-year extensions.

The Legislature approved three laws refining the circumstances governing the incidental take of a species listed under the California Endangered Species Act (CESA). SB 481 (Cox) was prompted by the recent bird strike of a US Airways flight in New York that forced a dramatic water landing in the Hudson River. The law's author points out that the Sacramento airport ranks sixth in the number of bird strikes in the United States. This law provides protection to wildlife personnel who are engaged in efforts to keep runways free of birds. Specifically, this law provides airport personnel can take birds as long as it is in compliance with a federal depredation permit for public safety purposes as long as the taking (1) occurs on lands owned or leased by the airport and (2) does not occur on lands that are reserved for habitat mitigation or conservation purposes of the species being taken. Further there can be no taking of a fully protected, candidate, threatened, or endangered species. SB 448 (Pavley) enacts the California State Safe Harbor Agreement Program Act, which authorizes the DFG to enter into a "safe harbor agreement" with a landowner to protect threatened or endangered species under the CESA. This allows for the "taking" of a species that is incidental to an otherwise lawful activity pursuant to a voluntary agreement between a landowner and the DFG to promote conservation of a protected species.

Other laws further regulate activities involving wildlife not subject to CESA. SB 286 (Aanestad) allows the DFG to issue an organization-based permit for the scientific

collection of plants and animals; this could include a California certified small business or an aquarium accredited by the Association of Zoos and Aquariums. Prior to this law, DFG had authority to issue only individual permits to each person working under an organization on a specific project. SB 609 (Hollingsworth) provides that beginning on January 1, 2015, the importation and sale of alligator and crocodile products in California will be prohibited. This law further clarifies that these products may not be sold if they came from an endangered species or if the sale would violate a federal law or international treaty. AB 1217 (Monning) is a measure designed to assist California fisheries in obtaining certification under the United Nations sustainable seafood standards. The law requires the Ocean Protection Council (OPC) to develop and implement a voluntary sustainable seafood promotion program. The program prohibits seafood produced via aquaculture or fish farming from being certified until national or international sustainability standards have been established.

Looking Ahead

California's ability to solve the looming challenges of the day is hampered by a hyper-partisan environment and a broken budget process. The state shares the distinction, along with Rhode Island and Arkansas, of requiring a super-majority to approve its annual budget. Notwithstanding the Democrats' large majorities in both houses, their margins still remain shy of the two-thirds threshold to pass a state budget. Although demographic trends suggest that the Democrats may reach a super-majority in both houses within the next decade, California already faces a soaring $20 billion projected shortfall for next year. Reaching consensus and overcoming the partisan log jam will only be more challenging as the lame duck Governor enters his final year in office.

It is therefore unlikely that the Governor will be able to lead with a bipartisan environmental agenda during the upcoming election year. For California to maintain its position as a policy trendsetter and creatively manage its many challenges, we may have to wait until a new Governor is inaugurated in 2011. Meanwhile, passing a budget on time and tackling the policies necessary for California to move forward could hinge on the much talked about "nuclear" option—a Constitutional Convention—to produce budgetary reforms. This longer-term strategy also will require an almost insurmountable super-majority of the Legislature to place the issue on the ballot. In the short term, unless Democrats can find a few moderate Republicans to join them, California could remain a nation-state on its knees.

COMMON LAW AND ENVIRONMENTAL PROTECTION

Cases

Action Seeking Damages for Groundwater Contamination Barred by Statute of Limitations for Permanent Nuisance

McCoy v. Gustafson
No. H030724, 6th App. Dist.
180 Cal. App. 4th 56, 2009 Cal. App. LEXIS 2004
December 15, 2009

Plaintiffs' property was contaminated by fuel oil leaking from an adjacent laundry. One of the plaintiffs wrote a letter to the owners of the laundry complaining about seepage of oil on their property in 1986. Plaintiffs brought an action in 2002 for damages from the contamination against current and former owners of the laundry. The court of appeal affirmed the trial court's summary adjudication that plaintiff's claims for negligence, permanent nuisance, and permanent trespass were time-barred, based primarily on the 1986 letter. Because plaintiffs failed to establish that the contamination was reasonably abatable, the nuisance was permanent, and the three-year statute of limitations for injury to real property applied.

Facts and Procedure. Edward and Margaret McCoy owned residential property downhill from the Grove Laundry in Pacific Grove. The laundry was constructed in 1914. The Blackwell family acquired the laundry in 1956 and operated it until they sold the property in January 1988. Until 1980, the laundry used boilers fueled by fuel oils such as bunker oil to heat the water used for cleaning. The basement of the laundry was unpaved soil. Fuel oils released in the basement area of the laundry migrated into the groundwater, through the foundation wall, and onto plaintiffs' downhill property.

In January 1988, Gustafson bought the laundry property, on which there were two buildings, from the Blackwells. He sold the property to DiMaggio 11 months later. On February 13, 1991, the Health Department contacted DiMaggio about studying the contamination on his property. DiMaggio discovered there was contaminated soil from a sump. DiMaggio sued Gustafson, and Gustafson sued the Blackwells for not disclosing the soil contamination. One outcome of the litigation was that Gustafson took