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THE 2013 CALIFORNIA ENVIRONMENTAL LEGISLATIVE RECAP: A BREAK IN THE PERPETUAL GRIDLOCK

By

*Gary A. Lucks**

Suddenly there is a sea change of cooperation in Sacramento thanks to an improving economy and a more moderate Legislature. Of the 38 so called "job-killer" bills targeted by the business-friendly California Chamber of Commerce, all but one was defeated during the 2012-2013 legislative session. This new paradigm was driven by a significantly improved state budget picture along with several political reforms that resulted in a Legislature comprised of fewer deeply ideological law makers.

The improved financial situation stems from Propositions 25 (which in 2010 established a majority vote to pass the state budget) and Proposition 30 (which in 2012 temporarily raises revenues). These developments, along with an improving economy, made it easier to approve a budget while adding revenues to staff coffers and erasing the perennial deficits that plagued past legislative sessions. The budget surpluses, which are now projected into 2018, have lifted the mood in Sacramento and lowered tensions.

The revised primary structure is one of several political reforms that conspired to yield a more moderate legislative body that helped set the stage for more consensus and less acrimony. Now the primary requires

*Gary A. Lucks JD CPEA is a partner who leads the Environmental, Health, and Safety Performance and Assurance Practice of ERM West in northern California. He advises clients on multimedia environmental regulatory compliance, auditing, and sustainability. He is a certified professional environmental auditor and regular instructor at the University of California (U.C.) Berkeley and U.C. Davis Extension Program where he teaches courses on environmental law, legislation, auditing, compliance, and sustainability. He recently served as an advisor to the Bay Area Air Quality Management District and now serves on the Board of Directors of the California State Bar Environmental Law Section. He also chairs the West Coast Auditing Roundtable. Mr. Lucks has published numerous articles and newsletters addressing environmental legislation and policy. He is the coauthor of a book entitled: California Environmental Law and Policy: A Practical Guide.

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that the top-two vote getters face each other in the general election. This has the tendency to attract more moderate candidates that face off in the general election. In addition, redistricting, which is now led by citizen panels instead of legislators, results in districts that more closely reflects the electorate. Finally, modified term limits, allowing a legislator to serve up to a dozen years in either house, has resulted in more seasoned, and perhaps less ideologically driven law makers.

A significant portion of the more than 800 new laws enacted during the 2012-2013 legislative session are aimed at environmental, natural resources, land use, and sustainability policy. Much of the Legislature's attention was consumed by hydraulic fracturing, California Environmental Quality Act (CEQA) reform, renewable energy, hazardous materials management reforms, and new standards governing workers exposed to highly hazardous chemicals at chemical manufacturing and processing facilities.

The Governor vetoed closely watched legislation designed to ban plastic bags statewide and another bill permitting the Coastal Commission to directly fine landowners that violate the California Coastal Act. In addition, the vaunted CEQA reform came up short of expectations. Finally, there was a failed attempt to trim the $11.1 billion water bond scheduled for the November 2014 ballot to improve the chance at successful.

Climate Change

The Governor and Legislature are preoccupied with a third year of a severe state-wide drought with the lowest rain totals since records were kept over 150 years ago. A January 2014 Department of Water Resources (DWR) snow pack survey yielded only 20% of the annual moisture average, prompting the Governor to issue an emergency declaration allowing him to use his executive powers to direct water where it is most needed and ordering state agencies to throttle back on their water consumption and share water with each other. In his State of State address, the Governor posited that "We do not know how much our current problem derives from the build-up of heat-trapping gasses, but we can take this drought as a stark warning of things to come... This means more droughts and more extreme weather events, and in California, more forest fires and less snow pack."

Perhaps a harbinger of challenges ahead in a climate-constrained California, the drought has heightened interest in revising the current water $11 billion water bond scheduled for the 2014 mid-term elections. In its current form, pundits are pessimistic about its chances of passing and funding infrastructural water-delivery upgrades to the Sacramento-San Joaquin River Delta along with other water quality and supply projects.

Six years after the enactment of AB 32 (see Stats. 2006, AB 32 [Nuñez]), the California Air Resources Board (ARB) launched a cap-and-trade program which established a declining ceiling on the release of greenhouse gas (GHG) emissions. This first "capped" sector limits GHG emissions from large industrial facilities and electricity generators that annually emit over 25,000 million metric tons of CO2 equivalent GHGs. This creates a market where these businesses that need GHGs to

operate can purchase or sell GHG allowances and offsets. These California businesses can trade GHGs within California or within the Western Climate Initiative (WCI) which is a regional cap-and-trade program that includes several Canadian provinces and Mexican states.

Senator Lara introduced SB 726 to provide oversight of the WCI by bringing member countries, provinces, and states in line with California's governance policies. SB 726 (Lara) builds upon last year's budget trailer bill for resources—SB 1018 (see Stats. 2012, SB 1018 [Senate Budget and Fiscal Review Committee]), which established new oversight and transparency provisions governing the WCI, Inc. That law established a number of conditions that members of the WCI, Inc. were required to meet in order for the ARB and California to participate.

SB 726 establishes provisions governing public access to information, advance notice and an opportunity to review agendas prior to schedule meetings. In order to participate on the board of directors of the WCI Inc., members must ensure that all meetings are open to the public. In addition, members must make public records publicly available for inspection. Finally, WCI members must adopt bylaws to prohibit policymaking and limit their functions to technical and operational support of the GHG emissions reduction programs.

Pursuant to the Public Trust Doctrine, the Legislature granted authority to 80 local public trustees to manage public lands. These agencies have trust authority over commerce, navigation, and fisheries connected to tidelands and submerged lands. Some of these local trustees include the ports of Los Angeles, Long Beach, San Diego, San Francisco, Oakland, Richmond, Benicia, and Eureka. With some data suggesting that sea level could rise 55 inches in the next 100 years, a 100 year storm event could significantly impact coastal tidelands and submerged lands. This could place at risk close to a half million Californians and $100 billion in property by threatening coastal communities, roadways, storm water infrastructure, electric utility systems, and wetlands.

AB 691 (Muratsuchi) was enacted to help the local trustees avoid a breach of their fiduciary public trust duties by requiring them to evaluate the impacts of sea level rise impacting public trust lands and to identify mitigation measures to avoid impacts to these lands. Specifically, this law requires local trustees with annual gross public trust revenues exceeding $250,000 (between January 1, 2009, and January 1, 2014) to prepare and submit an assessment of how it proposes to manage sea level rise to the State Lands Commission (SLC). The SLC is then obligated to make the assessments publically available on its Internet Web site.

Air Quality

Only a few air quality laws made it through the legislative process into law. There were two new laws addressing formulas on how to allocate funds to advance air quality

improvement initiatives and one new law addressing toxic air contaminants. Another seeks to expand the number of high polluting cars replaced by cars with cleaner emissions. Finally, another law clarifies that car dealers are not required to replace brake pads that do not comply with a recent ban on brake pads containing copper.

The California Legislature enacted The Toxic Air Contaminant Program (see Stats. 1983, AB 1807 [Tanner]) three decades ago in order to regulate airborne toxic air contaminants (TACs). In the three decades since, the California Department of Pesticide Regulation (DPR) has listed only seven TAC pesticides (and one breakdown pesticide product) compared to the over 900 pesticides currently registered in California. Once a TAC is listed, the earlier law requires establishment of airborne toxic control measures to mitigate TACs deemed to pose a present or potential hazard to human health. AB 304 (Williams) was enacted in response to a perceived low rate of identifying pesticides for regulation as TACs. This new law requires that the Director of DPR, within two years, establish control measures for listed TACs.

Historically, the federal government provided California congestion mitigation funds pursuant to the federal Congestion Mitigation and Air Quality (CMAQ) improvement program. The CMAQ established a statutory distribution formula to support transportation projects to achieve and maintain national ambient air quality standards for ground level ozone and carbon monoxide. Typical projects included traffic signal control systems, incident management programs, and high occupancy vehicle lanes. Last year's federal transportation funding law—MAP (21: Moving Ahead for Progress in the 21st Century Act)—was approved without the usual formula directing California how to obligate federal funds. AB 466 (Quirk-Silva) directs the Department of Transportation (Caltrans) to adopt the prior funding formula to allocate approximately a half billion dollars to metropolitan planning organizations (MPOs) using a formula that into account local population and pollution conditions.

AB 8 (Perea) was enacted to continue financial support for several air quality programs scheduled to lapse in 2014 and 2015 and extends these programs until 2024. This urgency measure became effective on September 28, 2013—the date the Governor signed this bill into law. This new law is designed to expand the hydrogen-fueling station infrastructure in California by requiring the State Energy Resources Conservation and Development Commission (otherwise known as the CEC) to annually allocate $20 million until at least 100 publicly available hydrogen-fueling stations are operating in California. This new law additionally extends the expiration date for the Carl Moyer Memorial Air Quality Standards Attainment Program which provides incentives to retrofit or replace heavy-duty vehicles and equipment to reduce emissions of oxides of nitrogen. The Moyer program, which is funded via tire fees, was set to expire on 2015; this new law lowers the tire fee and extends the program until January 1, 2024.

This new law also extends the registration and license fees at current levels for the Alternative and Renewable Fuel and Vehicle Technology Program (ARFVTP) and extends the expiration date to 2024. The ARFVTP authorizes the CEC to fund innovative technologies, fuel, and vehicle types—such as electric vehicle charging station construction and deploying natural gas-powered vehicles. This new law also extends the expiration date for the Air Quality Improvement Program (AQIP) which provides financial incentives to promote technologies to reduce smog and diesel particulate emissions while also reducing GHGs. The AQIP projects include the Clean Vehicle Rebate Project (CVRP) and the Hybrid and Zero Emissions Truck and Bus Voucher Incentive Program. Finally, the Enhanced Fleet Modernization Program (EFMP) supplements California Bureau of Automotive Repair (BAR) vehicle retirement program which assists low-income consumers with funds to retire or replace their vehicles that fail smog checks.

SB 459 (Pavley) is a vehicle retirement law premised on data showing that 75 percent of mobile source pollution is caused by just 25 percent of the vehicle fleet. Senator Pavley states that the Enhanced Fleet Modernization Program (EFMP) "has not yet successfully attracted substantial consumer participation." SB 459 builds upon the existing vehicle retirement program and is designed to increase the number of high-polluting cars that are retired. According to the Senate Transportation and Housing Committee's bill analysis, this law requires the ARB, in consultation with the BAR to update the EFMP guidelines to make the program "more accessible, convenient, and financially feasible for low-income vehicle owners to replace their high-polluting vehicles with cleaner cars." SB 459 specifies a number of provisions for consideration in the new guidelines, including among others, allowing for larger replacement incentives.

AB 501 (Nazarian) was enacted to clarify that prior law (see Stats. 2010, SB 346 [Kehoe]), which bans copper content in brake pads), was intended to require car dealers to replace non-conforming brake pads from used vehicles they purchase.

Energy

The Legislature enacted a number of new laws promoting energy conservation, renewable energy,

energy reliability and affordability, and consumer rights. One new law extends the duration of energy affordability programs while another establishes a green energy pilot program allowing those without resources or suitable conditions for renewable energy to purchase the same. Another law extends consumer protections to gas customers. Several laws promote the expansion of renewable energy including expanded access to net energy metering, deployment of electric charging stations, updating the solar water heating certification process, and establishing favorable rates for electricity generated from fuel cells. Another new law requires the California Public Utilities Commission (PUC) to publish information describing ratepayer-funded energy efficiency programs. Finally, the Legislature approved a law requiring that the investor-owned utilities (IOUs) publish information on the frequency and duration of electrical service interruptions by geographic region.

SB73 (Committee on Budget and Fiscal Review) is an urgency law that was introduced to allocate funds generated from Proposition 39 (California Clean Energy Jobs Act) which was approved by the California electorate on November 6, 2012. This initiative closed a 'loop hole for corporate taxes generating $1 billion of additional funds annually. This law establishes a formula for investing the majority of Prop 39 funds in energy efficiency and clean energy projects for K-12 schools and community colleges. In addition it shifts funding to provide over half a billion dollars for grants supporting energy efficiency projects and to expand clean energy generation for eligible community-based and training workforce organizations that prepare disadvantaged youth or veterans for employment. It also appropriates $28 million to the CEC to fund an energy revolving loan program to provide loans for eligible energy projects and technical assistance to fund eligible projects for K-12 and community college districts.

AB 1422 (Committee on Jobs, Economic Development, and the Economy) alters the sales and use tax program (SUTE) funding formula to support energy efficiency and environmental programs. AB 1422 expands the types of projects eligible for funding or sales tax exclusion under the California Alternative Energy and Advanced Transportation Financing Authority Act. The Act authorizes California Alternative Energy and Advanced Transportation Financing Authority provide funding to develop and commercialize technologies that conserve energy, reduce air pollution, promote economic development and jobs for sustainable and renewable energy sources, energy efficiency, and advanced transportation projects. AB 1422 expands the projects eligible for funding to include "machinery and equipment . . . used for the design, manufacture, production, or assembly of advanced manufacturing, advanced transportation technologies, or alternative source products, components, or systems." This law clarifies that entity located outside California are also eligible for financial assistance if they commit to and demonstrate that they will open a manufacturing facility in California.

AB 217 (Bradford) establishes a solar rebate program for low-income single-family and multi-family affordable housing. This new law extends to December 31, 2021, existing solar programs which were scheduled to expire in 2016. These programs include the SASH (Single-family Affordable Solar Home) Program which provides higher incentives for low-income single family homeowners and the MASH (Multi-family Affordable Solar Housing) Program which provides higher incentives for low-income multifamily low-income residences. These programs are administered by the respective IOU serving the ratepayer.

According to the Senate Rules Committee bill analysis, over 70% of households and businesses are unable to avail themselves of solar energy to purchase 100 renewable energy. This is either because these energy users do not own their homes or facilities or they have roofs that are not suitable for generating solar energy. Nonetheless, these ratepayers contribute to supporting solar and renewable programs implemented under California's Renewable Portfolio Standard (RPS) which requires the IOUs to ensure that one-third of their electricity is generated from renewable sources of energy. SB 43 (Wolk) establishes a 600 Megawatt (MW) pilot renewable energy "green" tariff, shared renewable energy program. This green tariff program allows IOUs to voluntarily allow its ratepayers to purchase electricity from eligible renewable energy sources. The law also allocates 100 MWs of renewable electricity for siting small green energy projects in disadvantaged communities for residential customers and facilities. Finally, this law authorizes Community Choice Aggregators to offer a similar program.

AB 327 (Perea) requires electrical corporations with more than 100,000 service connections in California to increase the number of rate payers eligible to participate in the net energy metering (NEM) through July 1, 2017 or until the IOU reaches its NEM limit. This new law additionally offers more time for fuel cell electrical generation facilities to participate in the next NEM program so long as they commence operation before January 1, 2017 instead of January 1, 2015. This law additionally requires electrical corporations by July 1, 2015, to submit to the California PUC plans to identify optimal locations deploying distributed sources or electricity. Finally, this law replaces existing policy which prohibits the California PUC from establishing mandatory or default time-variant pricing without providing "bill" protection for senior

citizens or economically vulnerable consumers. Specifically, this new law allows residential customers to opt out of receiving time-variant pricing service and thus avoid additional charges connected with this service.

The Solar Water Heating and Efficiency Act of 2007 (see Stats. 2007, AB 1470 [Huffman]), as amended, created an incentive program to encourage installation of 200,000 solar water heating systems in California homes and businesses by 2017. This act required that the solar collectors be certified by the Solar Rating & Certification Corporation (SRCC). At the time this original law was enacted, the SRCC was the only solar system in existence. Since then, a number of accredited listing agencies have been established to certify solar collectors. AB 415 (Garcia) now requires that solar water heating systems or solar collectors must be certified by an accredited agency that meets standards adopted by an accredited standards developer approved by the California PUC. According to Assembly Floor bill analysis, this new law effectively eliminates this inadvertent monopoly and helps establish a more open, competitive market for certification services.

AB 719 (Roger Hernández) was introduced to incentivize utilities to retrofit street lights with energy lights by making utilities eligible for ratepayer-funded rebates to convert street lights to more energy efficiency technologies such as Light Emitting Diodes (LEDs). Specifically, AB 719 requires the California PUC, to require electrical corporations to submit, a tariff to fund energy efficiency improvements for street light poles it owns.

In an effort to promote electric vehicles in California, the ARB mandates that 22% of the major automakers annual California sales include specified electric vehicles and other zero or near-zero emissions vehicles by 2025. Governor Brown's 2012 executive order promotes the infrastructure to support zero emission vehicles (ZEVs). The order establishes a goal of 1.5 million ZEVs in California by 2025. A number of new laws were introduced to effectuate these policies. According to Senator Corbett, there are a number of barriers interfering with easy public access to electric vehicle (EV) charging stations. For example, in many cases EV charging stations require a subscription or membership in order to use the EV charging station. SB 454 (Corbett) is intended to facilitate access to EV charging stations by requiring EV charging stations to operate in a fashion similar to gas stations. SB 454 establishes the Electric Vehicle Charging Stations Open Access Act which prohibits EV charging station providers from requiring a subscription or membership as a condition of use. Additionally, this new law requires that the actual charges must be disclosed at the point of sale and it further requires EV charging stations to accept credit cards or mobile technology payment.

AB 1092 (Levine) is another law designed to promote EV infrastructure. Assembly member Levine introduced this new law to assist local government in adopting CALGreen building standards which provide a minimum number of parking spaces dedicated to EV charging stations. This new law requires the California Building Standards Commission (CBSC) to adopt the voluntary standards governing the installation of EV charging stations for parking spaces in multifamily dwellings and nonresidential developments. These CALGreen standards must be published in the next triennial edition of the California Building Standards Code which will effectively make these standards mandatory.

AB 270 (Bradford) is designed to promote public accountability of moneys spent on behalf of the ratepayers for energy efficiency programs. The Legislative Analyst's Office issued a report in 2012 entitled "Energy Efficiency and Alternative Energy Programs" which determined that "There is no public database showing where energy efficiency improvements are occurring, how much was spent to acquire the improvements, or the results of those improvements. According to Assembly member Bradford, lack of public information prevents assessment of which programs are working well, need improvement, should be discontinued, or are duplicative with other programs." Assembly member Bradford introduced AB 270 to promote collaboration, accountability, and transparency in support of energy efficiency. Specifically, this law requires the California PUC to require the IOUs to establish, by June 1, 2014, an Internet Web site that displays information describing ratepayer-funded energy efficiency programs.

AB 796 (Muratsuchi) is an urgency measure that establishes favorable rates to facilities that generate electricity using "advanced electrical distributed generation technology" which includes fuel cell technology. These facilities must come on line before January 1, 2016 instead of January 1, 2014. The California PUC recently issued a report concluding that electric-only fuel cells (as compared to gas-powered fuel cells and conventionally power run on natural gas, are the only non-renewable technology that produces a net reduction of GHG emissions. This new law is premised on this finding and requires gas corporations to pay favorable rates for electric-only fuel cells that generate on-site electric. Essentially, this law levels the playing field for cogeneration generators using advanced electrical distributed generation technology by offering them the same rates that Merchant power plants enjoy.

AB 66 (Muratsuchi) is an attempt to combat frequent power outages by gathering information about outage trends by locale. This new law is designed to improve

reliability of the electricity system infrastructure by obligating the California PUC to require electrical corporations to provide in their annual reports data on the frequency and duration of electrical service interruptions by geographic region. This new law requires electrical corporations to post the annual reports on their Internet Web site. Additionally this new law requires the California PUC to adopt cost-effective mitigation measures to address reliability deficiencies involving repeated deficiencies in the same locale.

AB 1257 (Bocanegra) is one of two new laws addressing natural gas. AB 1257 seeks to proactively manage the environmental, health, and economic benefits and risks connected to natural gas use in California. This new law requires the CEC to quadrennially identify strategies to maximize the benefits that accrue from natural gas. SB 656 (Wright) responds to a number of consumer complaints against Core Transport Agents (CTAs) that provide natural gas through public utility (such as Pacific Gas & Electric or PG&E) distribution lines. Of the 20 CTAs within PG&E's service territory, it received 1,200 customer complaints regarding CTA service for a twelve month period beginning in May 2012. SB 656 responds to the jurisdictional inability of IOU's to investigate these complaints on behalf of the customers. This new law allows gas customers to resolve their complaints with the California PUC or the judicial system. It also requires the California PUC to publish alerts involving natural gas service providers that offer services in an "unauthorized or fraudulent manner." Finally, it requires the California PUC's Division and Office of Ratepayer Advocates to publish informational guides to assist customers to evaluate other natural gas service options.

Water Quality

The 2012-2013 legislative session began during the second year of a state-wide drought spawning a number of new laws addressing water conservation and supply. The hydraulic fracturing bill captured the most attention among the water quality laws enacted this year. Other policies streamline the transfer of water rights and abbreviate the process governing dredging leases for submerged and tidelands. Another water quality law regulates copper-based antifouling paint used on recreational vessels.

The Legislature also approved a collection of laws aimed at funding drinking water for disadvantaged communities while another modifies the process for approving in-home water treatment devices. Finally, another new law modifies the process governing removal of unauthorized structures built in or on levees or other areas of the flood control system.

Facing the driest 12 month period since records have been kept and the third straight year of drought, the Legislature passed a few measures designed to conserve water. SB 322 (Hueso) is another in a series of laws enacted in recent years to effectuate the statewide goal of recycling 1,000,000 acre-feet of water annually by 2010. SB 322 requires, by December 31, 2016, that the Department of Public Health (DPH) to consult with the State Water Resources Control Board (SWRCB), to evaluate the feasibility of developing uniform water recycling governing direct potable reuse.

AB 803 (Gomez) is another water conservation law which enacts the Water Recycling Act of 2013. This new law authorizes the use of hose bibs to deliver recycled water at cemeteries. Prior to this law, cemetery operators were required to install a parallel potable water distribution system for visitors to fill flower vases or otherwise inefficiently use potable water for landscaping. This new law permits disinfected tertiary treated recycled water to cemetery hose bibs subject to displaying visible signage and labeling indicating that the recycled water must not be used for drinking. This new law also clarifies Regional Water Quality Control Board (RWQCB) authority to allow "advanced treated purified water" at the juncture where treated waste water leaves the treatment plant and before it comingles with raw waters in a conveyance facility

Finally, this law promotes the use of recycled water establishing uniform spill reporting standards for recycled water. According to Assembly member Gomez, this new law aligns existing law and reduces unnecessary paperwork resulting from inconsistent reporting standards for incidental run-off from recycled water projects. Specifically this law provides that notification governing incidental run-off is inapplicable to unauthorized discharges of effluent of treated sewage meeting recycled water standards.

Prior to AB 426 (Salas), California law limited water rights decrees issued before 1981 allowing pre-1981 water rights to be transferred only by petitioning a court for adjudication. Post-1981 water rights have enjoyed a less cumbersome SWRCB process. AB 426 (Salas) was enacted to promote water transfers by allowing holders of older (pre-1981) water rights to engage in transfers via a streamlined administrative process. SB 426 harmonizes the process for pre-1981 water transfers for statutorily adjudicated water rights adjudicated prior to and after 1981. Specifically, AB 426 allows the SWRCB to approve water transfers involving water rights determined through a statutory adjudication.

Thanks to technological advances in horizontal drilling and hydraulic fracturing, the oil and gas industry is

enjoying a boon in shale gas and oil production. This process involves pumping millions of gallons of water, chemicals, and sand into underground formations in order to fracture the rock to release oil and gas. The University of Southern California reports that "California [may have the] largest deep-shale [oil] reserves in the world. . . in the San Joaquin Basin" while a 2008 Society of Petroleum Engineers paper posits significant potential for hydraulic fracturing in many Northern California gas reservoirs. These developments present great potential; however, there have been a number of water quality and air quality concerns raised by hydraulic fracturing in Wyoming, Texas, Colorado, West Virginia, and Pennsylvania.

SB 4 (Pavley) was introduced to tackle the thorny issues presented by hydraulic fracturing (or "fracking"). This legislation began with support from a number of environmental groups; however, as amendments eroded the stringency of the environmental requirements, support from the environmental community diminished. SB 4 is a high profile law that expands the regulatory requirements governing hydraulic fracturing and the fracking fluids. Shy of banning fracking altogether, this new law could be the most comprehensive state regulatory program addressing this activity in the country. The Governor provided, in his signing statement, that SB 4 "needs some clarifying amendments and I will work with the author in making those changes next year."

This new law requires the Natural Resources Agency, by January 1, 2015, to independently complete a scientific study evaluating the hazards and risks posed by well stimulation treatments (which includes hydraulic fracturing and acid well stimulation which uses powerful acids to extract oil from rocks). By this same date, The California Department of Oil Gas and Geothermal Resources (DOGGR), in consultation with California's state environmental agencies, must adopt regulations governing well stimulation treatments. The forthcoming regulations must establish requirements for fully disclosing the composition and disposition of well stimulation fluids and requiring well operators to perform baseline and follow up water testing pursuant to a request from a nearby property owner. In addition, these regulations must determine threshold values for acid matrix stimulation treatments.

This new law permits DOGGR to allow all well stimulation treatment activities while the new rules are being developed subject to several conditions. First, owners and operators of wells must certify that they are in compliance with the disclosure and notification requirements established by SB 4. In addition, they must provide to DOGGR, on or before March 1, 2015, a complete well history incorporating the disclosure information. Finally, DOGGR must publish, by July 1, 2015, an environmental impact report (EIR) evaluating any potential environmental impacts of well stimulation in the state.

SB 4 also requires companies to obtain permits from DOGGR before engaging in hydraulic fracturing activities. These permits last one year and must include, among other things, "the time period during which the treatment is planned to occur; a water management plan [addressing] the water quantity, source, and [intended disposal practice]; specific information related to the chemicals used in the treatment; the planned location of the treatment on the well bore; the estimated length, height, and direction of the induced fractures; the location of existing wells. . . that may be impacted; a ground water monitoring plan; and the estimated amount of treatment-generated waste material and an identified disposal method for the waste materials."

In addition, the operator of an oil and gas well must provide DOGGR advance notice to nearby property owners prior to fracking. The operator must also provide a copy of the approved well stimulation permit and other relevant information to all tenants of the surface property including surface property owners located within a 1,500 foot radius of the wellhead or within 500 feet from the horizontal projection of all subsurface portions of the designated well to the surface. Well operators must notify DOGGR at least 72 hours' in advance of well stimulation treatments.

Proximate property owners who receive a well stimulation treatment notice may request, at the expense of the well operator, water quality sampling and testing data from a qualified contractor designated by the RWQCB. Within 60 days after ceasing well stimulation treatments, the operator of the well must post on the Internet well stimulation fluid composition and disposition information.

Vendors of well stimulation chemicals may claim trade secret protections for the chemical composition of additives. Nonetheless, the vendor is obligated to disclose trade secret information to DOGGR and the vendor must publicly disclose where trade secret information has been withheld and must provide substitute information. DOGGR must notify the vendor if it receives a request to release trade secret information and provide the vendor at least 60 days to begin judicial action to defend against release of information.

This new law also requires that the SWRCB, on or before July 1, 2015, develop model groundwater monitoring criteria. These parameters must be implemented either on a well-by-well basis for a well subject to well stimulation treatment, or on a regional scale. The SWRCB

or the appropriate RWQCB must, on or before January 1, 2016, commence implementation of the regional groundwater monitoring programs.

California law historically has required DOGGR to require operators of oil and gas well operators to procure indemnity bonds when they drill, redrill, or deepen or otherwise permanently alter a well casing on submerged lands and under ocean waters. SB 665 (Wolk) increases the minimum bond coverage levels required for well operations for the first time since 1998. Coverage for wells less than 10,000 feet and those over 10,000 feet deep are now $25,000 and $40,000 respectively. Additionally, a $400,000 blanket indemnity bond is now required for those operating 20 wells or more at any one time. A $200,000 bond is now required for oil and gas wells for operators with 50 or fewer wells. It also increased the blanket indemnity bond amount for wells to $2 million from $1 million for idle wells regardless of the number of wells the operator drilled. Additionally, the law increases the amount of the blanket indemnity bond to $1 million required for one or more wells located on submerged lands under ocean waters. Finally the law increased to $100,000, the indemnity bond for class II commercial wastewater disposal wells.

AB 727 (Stone) seeks to abbreviate the process governing dredging leases for granted submerged and tidelands. Specifically, this law provides that a lease for dredging on granted public trust lands is no longer required for maintenance dredging as long as the following conditions are met. The lease must be consistent with proper management of granted lands, the dredged material must not be sold or used for a private benefit, and the dredged material must be disposed of at an approved onshore or offshore disposal site. This law requires that the local trustee of tide and submerged public trust lands seeking to dredge for maintenance purposes to provide a written notice to the SLC at least 120 days before dredging.

AB 425 (Atkins) responds to the fact that 84 bodies of water in California are impaired for copper pursuant to the Clean Water Act (Section 303(d) of the federal Clean Water Act). Copper is considered to be highly toxic to aquatic organisms. Copper is released into the marine environment from the antifouling coating used on marine vessels along with hull cleaning. This new law requires the DPR, no later than February 1, 2014, to determine the rate at which copper-based antifouling paint leaches from recreational vessels. DPR must then issue recommendations on how to mitigate those coatings registered as a pesticide.

SB 753 (Steinberg) is ''clean up'' legislation that includes provisions that were inadvertently left out of SB 1278 (Wolk) Chapter 553, Statutes 2012 and AB 1965 (Pan) from 2012 Chapter 554 Statutes 2012 that were designed to assist local agencies in complying with the 2007 package of flood legislation (AB 5 and SB 5) addressing flood hazard planning and land use planning for local government in the Sacramento-San Joaquin Valley. AB 1259 (Olsen) clarifies the authority of the Central Valley Flood Protection Board (Board) with respect to levees, embankments and canals of the Sacramento and San Joaquin Rivers. This law modifies the hearing procedure addressing unauthorized structures built in or on levees or other areas of the flood control system. This law furthers implements the State Plan of Flood Control by, among other things, authorizing an administrative process authorizing the Board to order removal, modification, or abatement of encroachments involving unauthorized or nonconforming structures or activities impacting the safe operation of the flood control system. This new law prohibits Central Valley cities and counties from approving development agreements and tentative maps to construct within a flood hazard zone unless they find the property meets urban level of flood protection standards.

The federal Safe Drinking Water State Revolving Fund (SDWSRF) provides grants to states to underwrite low interest loans to support capital projects to improve drinking water quality at Public Water Systems (PWS). AB 118 (Committee on Environmental Safety and Toxic Materials) is intended to speed the process for issuing funds to small water system serving severely disadvantaged communities. This new law authorizes the California Department of Public Health (DPH) to increase funding levels for PWS projects. It additionally eliminates the $20 million limit per project and authorizes PWS grants in lieu of loans for severely disadvantaged communities and permits loans to fund the full cost of a project.

AB 115 (Perea) is another law introduced to assist disadvantaged communities. This law leverages resources to fund regional public drinking water systems. According to the author, prior to this law, there were no ''effective mechanisms'' to ''allow two or more communities to apply together for funding'' to fund projects to remove groundwater contaminants which supply a number of small, rural, and low-income communities in California. AB 115 (Perea) expands eligibility for planning grants allowing an applicant to apply for grants to serve disadvantaged or severely disadvantaged communities as long as at least one of the communities served will meet safe drinking water standards. AB 21 (Alejo) also seeks to support disadvantaged communities by speeding up SDWSRF drinking water funding for these communities. This new law establishes the Safe Drinking Water Small Community Emergency Grant Fund and authorizes the DPH levy charges water project loans to provide continuous grant funding for emergency drinking water

projects serving disadvantaged and severely disadvantaged communities.

AB 119 (Committee on Environmental Safety and Toxic Materials) seeks to promote the use of in-home water treatment devices such as pour-through pitchers and faucet-mounted, carbon-filters, and water softeners. Prior to AB 119, DPH required that these point-of-use water treatment devices be independently certified before being sold in retail in California. According to one of the law's sponsors, the new law eliminates duplication of testing that is already performed by third party accrediting entities. This new law also revises the process governing DPH approval of health and safety claims governing in-home water treatment devices and requires the manufacturer to provide to independent DPH third party certification confirming the effectiveness of the water treatment device, including information on the specific contaminant claimed to be controlled by the device.

In 2010, SB 51 (see Stats. 2010, SB 51 [Ducheny]) eliminated the Salton Sea Restoration Council. AB 71 (V. Manuel Pérez) was introduced to ensure ensuring that local stakeholders have a voice in restoration decision making by requiring the Natural Resources Agency to serve as the lead agency governing Salton Sea restoration efforts.

Land Use

The Legislature finally resolved a long-term dispute between California and Nevada concerning land uses ringing Lake Tahoe. Other new laws addressed governance and funding of the High-Speed Rail Authority (HSRA) as well as funding transit projects and affordable housing. The Legislature tinkered with the agencies that comprise the Strategic Growth Council; extended authority for local agency formation commissions (LAFCOs) and kept alive previously approved tentative maps; and established procedures for commercial and industrial common interest developments (CIDs). Finally, a new law adjusts the statute of limitations to challenge certain land use decisions.

Several new laws weighed in on the land use approval process. AB 116 (Bocanegra) is an urgency law that aids the beleaguered housing industry as it attempts its recovery. This new law extends by 24-months tentative map or vesting tentative maps that were approved on or after January 1, 2000 and have not yet expired. This new law establishes a process governing the extension of maps approved before January 1, 2000. In addition, extensions must also be granted for tentative map, vesting tentative map, or parcel map approvals on or before December 31, 1999. This new law modifies the Permit Streamlining Act and provides that an extended tentative map is subject to a three-year period instead of a five-year period following recordation of the final map or parcel map for a subdivision.

SB 752 (Roth) clarifies that the Davis-Stirling Common Interest Development Act is limited to residential CIDs and is inapplicable to commercial and industrial CIDs. SB 752 additionally establishes a new, separate Commercial and Industrial Common Interest Development Act for commercial and industrial CIDs. SB 341 is another law by Senator DeSaulnier which is designed to ease the transition from the erstwhile redevelopment agencies (see AB 26X (Blumenfield, Chapter 5 of the First Extraordinary Session 2011)). This new law is aimed at streamlining administrative requirements for the successor agencies. The Community Redevelopment Law (CRL) allowed local governments to fund low and moderate income housing through the CRL. This new law permits the successor agency to the redevelopment program to transfer funds among themselves in support of affordable units located within transit priority projects, permanent supportive housing, farmworker housing, or special needs housing.

SB 630 (Pavley) was introduced to resolve Nevada's a long simmering displeasure with the Tahoe Regional Planning Agency (TRPA) which is a bi-state compact governing how California and Nevada manage land uses of Lake Tahoe. The Nevada legislature introduced legislation that would have caused it to withdraw from the compact if California changed did not restructure its voting TRPA procedures governing regional planning and project approvals. The Nevada legislation was introduced as leverage to affect a pro-development voting framework.

California's SB 630 responded by amending the TRPA Compact to clarify that the party challenging the TRPA regional plan or a TRPA approval now has the burden of proof. In addition, this new law directs TRPA to include economic considerations in the Lake Tahoe Basin plan. This law additionally includes a California gubernatorial commitment to cooperate with Nevada in seeking Congressional ratification amending the Compact. This new law also creates a funding mechanism to fund a bi-state science-based advisory council empowered to identify strategies to achieve environmental thresholds established in the Compact. The fund will be supported from rental income from Lake Tahoe surface use.

The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (CKH) establishes procedures governing the LAFCO. The LAFCO determines city incorporations along with annexations and city and special district consolidations and reorganizations. The CKH

additionally includes streamlined provisions including the waiver of protest hearings challenging annexations of unincorporated islands. Assembly member Loguef introduced AB 743 to extend the CKH which would have expired on January 1, 2014.

AB 325 (Alejo) responds to *Urban Habitat Program v. City of Pleasanton* (164 Cal. App. 4th 1561 (2008)) involving time limits governing when a party can initiate a challenge to city or county decisions involving affordable housing. This new law adjusts the statute of limitation time frames to mount challenges depending on the type of land use decision issued. Specifically, this new law addresses challenges to housing elements or amendments thereto brought "in support of or to encourage or facilitate the development of housing that would increase the community's supply of [affordable] housing." This new law authorizes a petitioner challenging a housing element decision supporting a deficiency notice within nine months of the decision if the decision is found to be in substantial compliance with the law.

The HSRA is authorized to develop and operate a high-speed rail system connecting San Francisco to the Los Angeles basin by 2029. AB 481 (Lowenthal) is a measure designed to assist the HSRA in its efforts to plan for and manage property access for the high-speed rail project. This new law is modeled after Caltran's governance structure for managing the sale of excess land, property leasing, rental, and management. It authorizes the HSRA to manage property by empowering it to negotiate with landowners for access; to exchange properties between adjoining landowners for impact mitigation; to sell excess property project; and to lease property. This new law also establishes authority to acquire or disposal of properties connected to the right-of-way.

AB 528 (Lowenthal) is another rail-related law. This new law tinkers with content of the State Rail Plan and the business plan in order to meet new requirements proposed by federal Passenger Rail Investment and Improvement Act of 2008. This federal law requires states to develop rail plans as a prerequisite for federal rail capital grants. This new law designates the Caltrans with the responsibility to prepare the rail plan.

According to Senator Hill, SB 557 is intended to establish safe guards governing preexisting agreements between the HSRA and MOU signatory entities. In particular, it restricts funds from being transferred from the San Francisco Peninsula Corridor two-track blended system to other segments of the HSRA. This restriction is intended to preserve the planned approach of blending the HSRA with the existing commuter rail system and prevent expansion beyond this blended system.

SB 142 (DeSaulnier) seeks to promote transit projects. It authorizes transit districts and municipal operators of transit, commuter rail, or intercity rail services to levy assessments on real property to support transit projects. The assessments can be used to fund acquisition, construction, development, joint development, operation, maintenance, or repair eligible transit projects.

AB 1319 (Eggman) expands the membership of the Strategic Growth Council which, among other things, coordinates California agency efforts to improve air, water quality, and public health and transportation. The Council also protects natural resources and agricultural lands, and promotes SMART growth and revitalizing community and urban centers while assisting with planning of sustainable communities and meeting AB 32 goals. Prior to the enactment of AB 1319, the Council membership included the Director of State Planning and Research, the Secretary of the Natural Resources Agency, the Secretary for Environmental Protection, the Secretary of Business, Transportation and Housing, the Secretary of California Health and Human Services, and one public member appointed by the Governor. AB 1319 adds the Secretary of Food and Agriculture to the Strategic Growth Council. This new law additionally enacts other provisions to reflect the changes in law made by the Governor's Reorganization Plan No. 2 of 2012. This includes reworking and organizing executive officers and agencies including the establishment of the Transportation Agency headed by a secretary.

Tanks

SB 763 (Fuller) extends the sunset date from January 1, 2016 to January 1, 2022 for the Replacing, Removing, and Upgrading Tanks (RUST) Program. The RUST program issues loans and grants to replace, remove, and upgrade underground storage tanks for small businesses. This new law adjusts the interest rate on RUST loans and lowers to 25% the maximum share of RUST grants that can be awarded. Prior to this law, the SWRCB limited RUST loans only to applicants who could not secure a loan from a private institution, the California Pollution Control Financing Authority, or any other governmental board. This new law removes this limitation. Prior law also authorized the SWRCB to establish a priority system when the number of grant requests exceeded available funds. The new law removes an eligibility requirement for applicants who used to include demonstrated financial hardship or the impact on the local community.

Prior law required that a claimant seeking reimbursement from the UST Cleanup Fund be in compliance with the Underground Storage of Hazardous Substances statutory permit requirements. AB 120 (Committee on

Environmental Safety and Toxic Materials) conditionally allows school districts to seek RUST funds without demonstrating compliance with the UST regulatory requirements. The superintendent of the school district must certify that petroleum was not delivered on or after January 1, 2003. Alternatively, the superintendent must certify that the tank was removed prior to January 1, 2003.

Hazardous Materials

The Legislature tackled significant reforms governing hazardous materials management and also approved a law requiring that contractors engaged in highly hazardous work at chemical manufacturing and processing facilities have minimum skills demonstrate enhanced safety training. They also instituted additional reforms to Proposition 65 to deter frivolous law suits. Finally, the Legislature approved a law requiring the State Fire Marshal (SFM) to identify safer alternatives to flame retardants used in furnishings and insulation.

According to the California Association of Environmental Health Administrators, SB 483 (Jackson) is "intended to correct and revise redundant provisions [governing] the hazardous materials management regulatory program." The new law revises and recasts requirements governing area and business plans. It codifies the obligation of a business owner, operator, or designated representative to annually review and certify the accuracy, completeness, and currency of the data supplied to the statewide California Environmental Reporting System (CERS) data base. It also codifies a provision making the site plan submission mandatory. It also codifies a requirement for submitting training and response plans and requires submission of training documentation. This new law also increases the minimum reporting threshold for storing compressed inert gases from 500 to 1000 cub feet in order to remote, unstaffed facilities. New businesses must submit a hazardous materials business plan (HMBP) within 30 days instead of the next reporting period of next March 1st) of the next year. The new law also clarifies that the 55 gallon storage threshold applies to liquids and the 500 pound storage threshold applies to solids.

SB 483 also cascaded a number of new terms throughout the California Health and Safety Code sections governing HMBPs. The term "business" is replaced with "person" or "stationary source" and changes the term "administering agency" to "unified program agency"; replaces the term Cal EMA with Office of Emergency Services (Office); and defines "substantial change" to the HMBP amendment requirements. This new law also updates fire code section citations (e.g., changing Uniform Fire Code to California Fire Code).

This new law declares that business and area plan provisions conform to Governor's Reorganization Plan No. 2 which became effective July 1, 2013. Finally, the new law added the option for the UPA to make a completed RMP available for public review via newspaper *or* UPA's internet web site (see Health & Safety Code § 25535.2).

Senator Hancock introduced SB 54 in the wake of the dramatic fire that occurred at the Chevron Richmond Refinery in the summer of 2012. SB 54 responded by establishing minimum skills and safety training for contractors working at chemical manufacturing and processing facilities, including refineries. This new law is designed to reduce risks to public health and safety by requiring refineries and other facilities to use a qualified workforce instead of unskilled, low-wage workers. This new law requires owners or operators of stationary sources engaged in petrochemical activities to ensure that its contractors and subcontractors use skilled and trained workforces to perform on-site work on these high-hazard jobs. In addition, these workers must be paid a prevailing wage to discourage the use of less qualified workers.

Owners or operators of petroleum facilities subject to the Risk Management Plan (governed by Section 112 R of the Clean Air Act) must ensure that their contractors and subcontractors only use skilled and trained workers involving the building and construction trades. This applies to construction, alteration, demolition, installation, repair, or maintenance work regulated stationary sources. Oil and gas extractions operations are exempt from these requirements.

In addition, this law requires the California Department of Industrial Relations to, by January 1, 2016, approve an in-class advanced safety training curriculum for skilled workers at high hazard facilities. This new law requires that journeypersons complete at least 20 hours of this advanced safety training or have graduated from an apprenticeship program. Alternatively, they must possess, at a minimum, the experience expected from a graduate from an apprenticeship program. Finally, at least 30% of a contractor journeymen must have graduated from a state-approved apprenticeship program by January 1, 2014, 45% on January 1, 2015, and to 60% on January 1, 2016.

Assembly member Gatto introduced AB 227 to curtail frivolous legal actions lodged pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65). This new law targets alleged violations by retail businesses failing to visibly post public warnings at bars, restaurants and coffee shops where the failure is an "honest oversight." AB 227 (Gatto) is an urgency law that

modifies the enforcement provisions of Proposition 65. This new law prohibits private citizen from recovering damages for such alleged failures when the violation is corrected and a $500 penalty is paid within 14 days after receiving notice and correction notice is served to the petitioner. This relief is limited to a one-time violation arising from the same exposure at the same location.

AB 127 (Skinner) responds to data finding that chemical flame retardants which are found in home furnishings are linked to carcinogenic health risks to firefighters. In 2009, the San Francisco Fire Department participated in a peer-reviewed study, which found firefighters with elevated levels of flame retardants (i.e., polybrominated biphenyl ethers or PBDEs). AB 127 requires the SFM to consult with the Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation to review flammability standards for building insulation materials and evaluate potential substitutes for chemical flame retardants. The SFM must then offer potential candidate alternatives to the Building Standards Commission (BSC) by July 1, 2015.

Hazardous Waste

According to Assembly member V. Manuel Pérez, "Low-income communities are disproportionately home to the state's hazardous disposal facilities." There are currently 118 Department of Toxic Substances Control (DTSC) permitted hazardous waste facilities in California. These facilities include: 44 storage sites, 43 treatment facilities, 3 disposal sites, and 28 post-closure sites. AB 1329 (V. Manuel Pérez) is an environmental justice law that requires the DTSC that prioritizes enforcement in communities as identified by the California Environmental Protection Agency "as being the most impacted environmental justice communities." This new law also imposes a conditional prohibition on transporting hazardous waste to domestic facilities on tribal lands outside California.

AB 324 (Bloom) extends the sunset date on a law that prohibits the manufacturer or sale of glass beads containing arsenic and lead used with blasting equipment from January 1, 2015, to January 1, 2020. This new law authorizes DTSC also permits DTSC to inspect facilities where glass beads are manufactured and stored by obtaining consent or issuing inspection warrant. In addition, this law revises the process to determine the allowed amount of arsenic or lead that can be contained in glass beads.

Solid Waste

A few years ago, the Legislature approved a law (see Stats. 2011, AB 341 [Chesbro]) that established a statewide goal to source reduce, reduce, recycle, or compost at least 75% of solid waste by 2020. This year, the Legislature produced several other laws designed to further this goal including a product stewardship program for used mattresses; state procurement standards for Rubberized Asphalt Concrete (RAC), an extended producer program promoting the renovation of used mattresses; an alternative management option for landfilling wastes; and clarified the authority to regulate solid waste landfill activities.

AB 513 (Frazier) was introduced to increase the state's use of RAC for paving roads. RAC is a blend of ground-up recycled tires and asphalt which is used with conventional aggregate materials. RAC offers many benefits ranging from its longer life-span, noise reduction (compared to conventional asphalt and concrete roads), and its use of large amounts of used tires. This new law establishes the Rubberized Asphalt Concrete Market Development Act which expands and codifies Department of Resources Recycling and Recovery's (CalRecycle) RAC grant program for state and local government agencies. This new law establishes a grant formula for crumb rubber used and allows for unlimited grants to local entities. AB 221 (Quirk-Silva) is another law dealing with material reuse for roadways. This new law was introduced to promote use of returned plastic concrete. This new law expands the definition of "recycled concrete" for purposes of sale to Caltrans or the Department of General Services to include it as one of its specifications in the California Green Building Standards Code.

The Integrated Waste Management Act approaches its 25th birthday, cities and counties in California have achieved stellar rates of solid waste diversion is close to 66 per cent since 1990. The Act established a hierarchy of strategies to manage waste diversion and encourages source reduction, recycling and, composting and discourages "transformation" (which is limited to incineration, pyrolysis, distillation, or specified biological conversion; it does not include composting, gasification, or biomass conversion), and landfilling. "Conversion technologies" embraces the processing of solid waste through chemical, biological, or other "non-combustion" thermal technologies to generate energy or produce renewable fuels. AB 1126 (Gordon) was introduced to address the dearth of landfill capacity in the state and the challenges of siting and permitting new disposal sites for municipal solid waste. This new law addresses the need for alternative management options by breaking down regulatory barriers and establishing a "clear permitting pathway" with standards governing facilities that convert "engineered municipal solid waste" (EMSW) to energy.

The law defines "EMSW conversion," as the conversion of solid waste that creates "beneficial and effective in that it replaces or supplants the use of fossil fuels" and the solid waste to be converted. The residual ash and other products of conversion must not be considered hazardous waste. The conversion must meet specified moisture, combustion characteristics, and yield no more than 5,000 British Thermal Units per pound after conversion. In addition, it must meet specified efficiency standards. Finally, the EMSW must not convert more than 500 tons per day of EMS and must comply with specified solid waste handling requirements. Prior to conversion, chlorinated plastics and materials must be removed from the EMSW. This new law specifically excludes from the definition of "transformation" EMSW conversion and specifies that tires and biomass processed by this method are not considered "disposal" under the Integrated Waste Management Act. County siting element must also describe those regions within its jurisdiction to be used for EMSW conversion and limits approval of the siting element only to the city in which the conversion facility is located.

AB 1398 (Committee on Natural Resources) is an Omnibus law that responds to occasional confusion arising with the jurisdiction of solid waste local enforcement agencies (LEAs) which are certified by CalRecycle to implement and enforce the Integrated Waste Management Act. LEAs are typically comprised of a local environmental health department. Under the oversight of Cal Recycle, LEAs are authorized to inspect and permit solid waste facilities. AB 1398 clarifies that an LEA remain independent from the local governing body when implementing and enforcing state law. This law additionally provides clean-up language to a recent recycling program enacted by AB 341 (Chesbro), Chapter 476, Statutes of 2011. This new law codifies the definition of "commercial solid waste" and clarifies that "commercial solid waste" for commercial recycling broadly includes solid waste generated from stores, offices or other commercial or public sources, including multifamily dwellings of five or more units.

In 2008, the Legislature responded to widespread metal theft by enacting SB 691 (Calderon, Chapter 730, Statutes of 2008), AB 844 (Berryhill, Chapter 731, Statutes of 2008) and SB 447 (Maldonado, Chapter 732, Statutes of 2008) which established a number of restrictions on purchases of metal designed in order to reduce sales of stolen metal. Notwithstanding this law, local police have been reluctant to enforce the metal theft provisions. SB 485 (Calderon) is also premised on deterring metal dealers from accepting unlawfully obtained material. This new law requires junk dealers and recyclers to provide to the Department of Food and Agriculture (CDFA) additional information concerning metal transactions. When buying nonferrous material, this new law requires junk dealers and recyclers to collect identification (e.g., a valid driver's license) a clear photograph or video of the seller, a clear photograph or video of the material being purchase, and a thumbprint of the seller. Dealers must maintain written records of sales and purchases for at least two years.

The Los Angeles Times reported that less than 10% of the materials comprising discarded mattresses are used as feed stocks for other products. (Marc Lifsher, "California weighs mattress recycling fee," Los Angeles Times, March 28, 2013). SB 254 (Hancock) is a product stewardship law based on the mattress recycling success pioneered by the Oakland Saint Vincent De Paul which established the first commercially viable mattress recycling business in the world where they remanufacture mattresses and box springs. SB 254 establishes the Used Mattress Recovery and Recycling Act which is designed to replicate and expand this program. This new Act requires mattress manufacturers and retailers to develop a mattress stewardships program in an effort to recover and recycle used mattresses and reduce illegal dumping of wastes. It mimics the recently established California Carpet Stewardship Program and authorizes the Cal Recycle to certify mattress recycling organization. CalRecycle is required to develop, implement, and administer mattress recycling program and establish a "mattress recycling charge" to be included in the purchase price of a mattress. Cal Recycle must also establish a state mattress recycling baseline level and recycling goal. By January 1, 2015, mattress manufacturers, retailers, and renovators must register with the mattress recycling organization. Manufacturers, retailers, and renovators are prohibited from selling or importing mattresses in California after January 1, 2016 unless they are in compliance with the Used Mattress Recovery and Recycling Act. By July 1, 2014, retailers must offer consumers the option of collecting their used mattresses at no additional cost or be given the opportunity to drop off of the used mattress at no cost.

Sustainability

CalGreen established green building standards which are now included as a separate part of Title 24 (Part 11). These CalGreen standards address planning and design; energy efficiency; water efficiency and conservation; material conservation and resource efficiency; and, environmental quality. Assembly member Dickinson states that because CalGreen is now a separate part within Title 24, architects, builders, and building inspectors may be unaware of the green building provisions. AB

341 (Dickinson) is intended alleviate this confusion by establishing process to transition the green building voluntary measures into mandatory requirements. This new law requires the California Building Standards Commission (BSC) to integrate CalGreen into the appropriate parts of Title 24 of the California Code of Regulations. This new law also requires that the BSC propose green building standards as part of the next triennial update of the California Building Standards Code reference. Alternatively, the BSC may reprint the green building standards in other relevant portions of the California Building Standards Code.

California Environmental Quality Act

In 2011, AB 900 (The Jobs and Economic Improvement Through Environmental Leadership Act of 2011) established a de novo appeal of an "Environmental Leadership Development Project" directly to the Court of Appeal and required a decision within 175 days. This streamlined appeal process was intended to abbreviate litigation and streamline the development process. The Planning and Conservation League successfully challenged the constitutionality of this process in *Conservation League v. State of California, Alameda Sup. Ct*. (Case No. RG1262904) concluding that it is "inconsistent with the constitutional mandates where writs of mandate can be brought" under Article VI, Section 10 of the California Constitution.

SB 743 (Steinberg) repeals the provisions in AB 900 concerning de novo jurisdiction with the Court of Appeal. This new law requires the Judicial Council to adopt a rule of court establishing a schedule for resolving challenges to an EIR. This rule must be adopted by July 1, 2014 and must ensure that lawsuits and appeals contesting a public agency's EIR certification and project approval must be resolved within 270 days. SB 743 repeals AB 900 on January 1, 2017. This new law maintains this judicial review procedure unless the lead agency fails to certify an EIR for an environmental leadership project on or before January 1, 2016.

This law also replaces the Level of Service (LOS) standard for analyzing transportation impacts for projects in transit priority areas as well as residential, mixed-use residential, and employment centers. This metric has been commonly used to measure traffic flow and transportation efficiency. This change was in response to critiques of LOS where some planners believe it has led to the widening of intersections in an effort to move traffic faster while neglecting transit and other modes of transportation. The law requires the Office of Planning and Research to revise the CEQA Guidelines and develop significance criteria for evaluating transportation impacts in transit priority areas that promote the "... reduction of GHG emissions, the development of multimodal transportation networks, and a diversity of land uses."

This new law strikes down the holding in *San Franciscans Upholding the Downtown Plan v. City and County of San Francisco*, 102 Cal. App. 4th 656 (2002), where the court ruled a project's failure to provide on-site parking should be evaluated and mitigated under CEQA. Because this holding is at odds with SMART Growth and infill policies, this new law provides that the parking impacts are not to be significant environmental effects for residential, mixed-use residential, or employment center projects on infill sites within a transit priority area. Similarly, this new law provides that aesthetic visual impacts of a residential, mixed-use residential, or employment center projects on infill sites within a transit priority areas (e.g., parking impacts) are not to be considered significant environmental impacts.

AB 417 (Frazier) carves out an exemption to CEQA for the following: bicycle transportation plan, an urbanized area for restriping of streets and highways, bicycle parking and storage, signal timing, and related signage.

Clean Up

Assembly member Lowenthal introduced AB 811 because California does not maintain statewide data on excavation incidents. According to the author's office, "There are thousands of dig-in incidents that happen every year, we just don't learn about them." This new law builds on current law for those intending to dig, drill, or bore below the ground to provide notice to the regional notification center. Existing law is designed to alert the owner or operator of underground facilities in the area so they can property damage caused by excavation. AB 811 (Lowenthal) requires regional excavation notification centers develop and post on their Internet Web sites an annual report summarizing, near misses, violations and downtime in excavation.

AB 3193 (Polanco), Chapter 1113, Statutes of 1990 (Polanco Redevelopment Act), established a process governing brown field cleanup for redevelopment agencies. The Act immunized local agencies from liability connected to cleanup undertaking for redevelopment projects involving cleanup plans approved by DTSC or a regional water quality control board. AB 440 responds to the belief of the Legislative Counsel, California Environmental Protection Agency (Cal EPA) and private developers that Polanco Act powers do not clearly apply extend to PDA local government and housing authority successors since the dissolution of the redevelopment agencies pursuant to (AB 26 X1 (Blumenfield), Chapter 5, Statutes of 2011-12 First Extraordinary

Session). AB 440 (Gatto) was introduced to remedy the uncertainty surrounding the authority to clean up brownfields by redevelopment successor agencies.

This new law is intended replicate the provisions of the PDA which applies for local agencies. Specifically, this new law authorizes "local agencies" (counties, cities, or a housing authorities) to investigate and clean up releases or spills within their jurisdiction and reestablishes immunity from liability to local agencies and parties entering into an agreements to develop the property including future property owners. This new law additionally authorizes the local agency to recover cleanup costs from the responsible party.

Natural Resources

The Legislature engaged in a lot of heavy lifting to produce several new laws managing forestry practices, endangered and invasive species, state parks, and mining. Two new laws were approved to conserve timberlands through sustained yield practices and selective harvesting to reduce fire fuel. Other new laws manage invasive species plants and aquatic organisms while another modifies the process for adding or removing threatened or endangered species the accidental take of listed species "in the course of otherwise lawful and routine agricultural activities." Another new law establishes a protocol for considering non-lethal options for removing or taking the mountain lions. The Legislature approved other policies involving hunting with non-lead ammunition and clarifying when hunting birds and ducks does not violate the hunting limit when processing into food. Other laws establish alternate conditions for selling raw materials from mining activity. Finally, other laws implement structural changes to the Governor's recent reorganization plan.

AB 744 (Dahle) 2013 is one of two forestry laws enacted into law this session. This new law creates the Forest Fire Prevention Pilot Project Exemption which allows selective harvesting of trees in order to reduce fuel in the Sierra Nevada Region, including Modoc, Siskiyou, and Trinity counties. This law amends the Z'berg-Nejedly Forest Practice Act of 1973 by permitting harvesting without a timber harvest plan of trees up to 24 inches in stump diameter. The harvest activity must ensure that the residual "stocking that is consistent with maximum sustained production of high-quality timber products."

AB 904 (Chesbro) is the other forestry law. It was introduced to conserve timberlands by placing forest lands into a sustained yield and uneven-aged management regime. The law is premised on keeping ranches and other non-industrial forest properties economically viable to minimize the subdividing the land for housing, golf courses or vineyards. Since 1989, landowners holding fewer than 2,500 acres of forest have been able to enjoy the more relaxed requirements of a Nonindustrial Timber Management Plan (NTMP). The NTMP establishes uneven aged management and sustained yield forest management practices that help avoid long-term costs and obligations borne by industrial timber companies. Unlike timber harvest plans that last for seven years, NTMPs live on in perpetuity. This new law establishes the Working Forest Management Plan (WFMP) program which allows larger nonindustrial timberland owners to participate in the WFMP. Now, non-industrial landowners with less than 15,000 acres of timberlands can participate in this program. Working forest landowners who file a notice that the working forest harvest notice conforms the WFMP, may begin timber operations immediately if the supported by a written declaration by a registered professional forester.

AB 594 (Committee on Water, Parks, and Wildlife) is "clean up" legislation to recent laws enacted last year (see Stats. 2012, AB 1589 [Huffman]) addressing state park management. This new law modifies the process the Department of Parks and Recreation (DPR) must follow in the event of budget reductions. Instead of closing, partially closing, and reducing services, DPR must implement efficiencies and increasing revenue collection or reduce services before closure. This new law additionally requires the State Parks and Recreation Commission to hold a public hearings on any proposed park unit closures on or after July 1, 2014.

AB 763 (Buchanan) is one of two laws regulating invasive species. AB 763 was enacted to streamline the process governing the management of invasive species. Prior to this law it was necessary to obtain legislative authority for newly identified invasive plant species. Instead, this law authorizes the Division of Boating and Waterways (DBW), when it identifies a potentially invasive aquatic species in the Delta, to notify the California Department of Fish and Wildlife (DFW). This new law requires the DFW to perform a risk assessment to determine whether the species is invasive and represents a threat to the environment, economy or human health. If so, the DBW would be authorized, with DFW's concurrence, to implement feasible measures to control the invasive plant species.

The Marine Invasive Species Act was enacted several years ago to prevent invasive species from entering California waters. The Act regulates marine vessels carrying or capable of carrying ballast water into California's coastal waters. The law established ballast water performance standards for those vessels with ballast water capacity of

1,500 to 5,000 metric tons. SB 814 (Committee on Natural Resources and Water) delays implementation of these ballast water performance standards.

Since last year's Governor's Reorganization Plan No. 2 (GRP2, as required by Gov. Code § 12081), the DBW was eliminated as a stand-alone department and is now a division of Department of Parks and Recreations. AB 763 (discussed above) also designates the DBW in the DPR as the state lead agency for cooperating with other state, local, and federal agencies in managing invasive aquatic plants in the Sacramento-San Joaquin Delta, its tributaries, and the Suisun Marsh.

AB 1317 (Frazier) is another law that codifies structural agency modifications established by the Governor's Reorganization Plan. This urgency law accordingly reallocates some duties of the abolished Business, Transportation and Housing Agency and its secretary to the newly created Transportation Agency and its Secretary of Transportation. It additionally reallocates some duties to the newly created Department of Business Oversight and its commissioner. SB 96 (Committee on Budget and Fiscal Review) is an urgency measure that makes agency changes. It moves the ocean programs including the Ocean Protection Council and houses them with the Natural Resources Agency. This law moves the Education and the Environment Initiative from the California Environmental Protection Agency to CalRecycle. This new law also creates a more stringent certification process for the Beverage Container Recycling Program along with formal training and technical assistance programs addressing technology tools. Finally, this new law prohibits recycling centers from redeeming beverage containers that did not pay the California Redemption Value.

This law also establishes an alternate process for agency review of a petition to add or remove a threatened or endangered species to the list of endangered species. Finally, this new law extends to January 1, 2017, the California Endangered Species Act (CESA) provision providing a recovery strategy pilot program for coho salmon.

SB 749 (Wolk) adopts procedural changes to the CESA which include extending the expiration date authorizing accidental take of listed species "in the course of otherwise lawful and routine agricultural activities." This new law additionally provides that, when agricultural lands are being idled to effectuate water for transfers, "landowners are to be encouraged to cultivate or retain nonirrigated cover crops or natural vegetation to provide waterfowl, upland game bird, and other wildlife habitat."

Prior to SB 132 (Hill) Proposition 117, the California Wildlife Protection Act of 1990, established that California's mountain lions are a "specially protected species." It prohibits hunting them while permitting their taking when the Department of Fish and Wildlife perceives that a mountain lion poses an imminent threat to public health or safety. SB 132 was introduced in response to a recent shooting by game wardens of two sibling mountain lion cubs in a Half Moon Bay where it was later found the cubs were only four months of age and starving and accordingly they did not pose an imminent threat to public safety.

This new law is intended to promote the use of nonlethal methods to manage conflicts between mountain lions and humans whenever feasible. This new law clarifies what is meant by "imminent threat," and specifies when lethal action is appropriate. It additionally authorizes the DFW to coordinate with nongovernmental organizations for the purpose of rehabilitating and relocating lions where appropriate. The new law establishes a procedure governing mountain lion incidents calls that newly formed Response Guidance Teams (RGT) must follow while considering non-lethal options for removing or taking the mountain lions. This law further authorizes the DFW to partner with other qualified entities to implement the nonlethal procedures (include capturing, pursuing, anesthetizing, marking, transporting, hazing, relocating, providing veterinary care to and rehabilitating mountain lions, among other actions.

AB 711 (Rendon) expands the Ridley-Tree Condor Preservation Act (see Stats. 2007, AB 821 [Nava]) which recently prohibited the use of lead ammunition for hunting big game and coyotes located within the habitat of the California condor. This new law responds to scientific studies that document adverse impacts of lead on bald eagles, golden eagles, turkey vultures, red-tailed hawks and ravens and others wildlife. Specifically, this new law mandates using nonlead ammunition for the taking of wildlife (including game mammals, game birds, nongame birds, and nongame mammals) in California no later than July 1, 2019.

SB 392 (Berryhill) requires that the Fish and Game Commission, by January 1, 2015, to develop policies clarifying when a hunting birds and ducks does not violate the hunting limit when processing into food. This new law shifts a violation of rules governing the possession, transportation, and importation of game birds from a misdemeanor to an infraction. SB 197 (Evans) extends the law governing commercial salmon fishing licenses which was set to expire on January 1, 2014 and extends it to January 1, 2019.

Prior to SB 447 (Lara) surface mine operators could sell raw materials to the state and local agencies if they appeared on the "AB 3098 list." This required mine operators to have, among other things, an approved reclamation

plan and financial assurance agreement pursuant to the Surface Mining and Reclamation Act of 1975 (SMARA). This new law conditionally allows surface mining operators who are out of compliance with its reclamation plan, to continue to sell mining products to the government. The mining operator must stipulate to an order to comply with an order from lead agency order and/or the Department of Conservation (DOC).

AB 754 (Muratsuchi) establishes the Protect Our Coast and Oceans Fund check-off which appears on the personal income tax form which will support eligible programs that receive grant funding through the California Coastal Commission Whale Tail Grants Program. It will also fund the California Coastal Commission in issuing grants to manage or enhance coastal resources and promote coastal and marine educational activities for underserved communities.

Looking Ahead

Enjoying the first budget surplus in several years, the Governor and the Democratically-controlled Legislature remain at odds over spending priorities. The Democrats want to use the surplus to restore cuts to health care and the social safety net. While the fiscally prudent Governor is committed to using the $4.2 billion projected surplus to reduce California's "wall of debt" and pay for a $1.6 million rainy day reserve. Governor Brown does, however, support increasing spending by 8.5 per cent and earmarking $300 million from the state's cap-and-trade program on the high-speed rail program.

On his first day in office in 1975, Governor Brown declared the state's challenges lay in energy, environment, solar energy, and the economy (SF Chronicle, Sept. 29, 2013). His idealistic, nontraditional outlook earned him the nick name "Governor Moonbeam." Decades later, many of his visionary ideas have become part of the mainstream and are more accepted by the public. Today, according to a recent Field Poll, the Governor enjoys a 58 percent approval of his performance—far above the 40 percent approval for the Legislature's job performance (San Francisco Chronicle, Dec. 6, 2013).

As the Governor and Legislature face off over the budget, the business-friendly Governor will be likely even more motivated to hold the line on spending as he positions himself for his upcoming reelection bid. Should the popular Governor return to office, we can expect him to reprise the visionary energy and environmental policies he pursued during his inaugural term. Much has changed since the mid-seventies now that the green-leaning, moderate Democrats hold super majorities in both houses. As a result, we can expect stronger alignment between the Governor and Legislature on his vision for California. Perhaps this will allow the Governor to fulfill his earlier vision of an environmentally sustainable California that enjoys a robust economy fueled by renewable energy.

THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

Cases

Mitigation Measures for Highway Project In Old Redwood Grove Inadequate

Lotus v. Department of Transportation
No. A137315, 1st App. Dist., Div. 3
2014 Cal. App. LEXIS 97
January 30, 2014 (cert. for part. pub.)

An EIR for the realignment of Highway 101 as through Richardson Grove State Park did not adequately consider the impact on root systems of old growth redwoods.

Facts and Procedure. Plaintiffs appealed from a judgment denying their petition for a writ of mandate and injunctive relief challenging the sufficiency of an EIR approved by Caltrans in connection with highway construction to adjust the alignment of the approximately one-mile stretch of United States Route 101 that passes through Richardson Grove State Park. The park is home to redwood trees 300 feet tall and thousands of years old, of particular importance because of the high quality of the old growth redwood trees. The park "is the first stand of old growth redwoods that travelers on US Route 101 pass through while on their northbound trek from San Francisco to Eureka and the Oregon Coast" and the "massive old growth trees located immediately adjacent to the highway draw the full visual attention of all visitors who travel through this section of US Route 101."

Route 101 narrows to a two-lane road in the park, and curves tightly between the trees. The curves of the roadway and inadequate shoulder widths do not meet