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LAND USE AND ENVIRONMENTAL PLANNING

Gov. Code § 53094 does not authorize county boards of education to issue zoning exemptions for charter schools facilities (p. 108)

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THE 2016 ENVIRONMENTAL LEGISLATIVE RECAP: AN UNCONVENTIONAL ELECTION YEAR DEFENDING A LEGACY

By

Gary Lucks[*]

The Governor signed 930 new laws during the 2016 legislative session—up from 808 in 2015. This elevated level of productivity runs counter to most election years which typically yield fewer, less far-reaching policies compared to a typical ''off-year'' election. Approximately ten percent of these new laws pertain to environmental, land use and natural resources.

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This batch of legislation is noteworthy for its emphasis on serving disadvantaged communities. Senator Pro tempore Kevin de León used his influence to infuse many of these laws with environmental justice considerations. Several other new laws are aimed at managing California's housing shortage, reforming the operations of the California Public Utilities Commission (CPUC) A significant number laws addressed climate change including an extension of Global Warming Solutions Act of 2006 (known as AB 32 [Pavley], Stats. 2006) and a focus on short lived climate pollutants (SLCPs). Other notable legislation includes an increase in penalties for fraud involving air quality violations, protecting California's five major watersheds, water conservation policies, upgrading drinking water infrastructure, and a package of significant reforms in the wake of the Aliso Canyon natural gas release. Except for budget-related urgency bills that passed by a supermajority (both of which took effect upon approval), newly enacted laws became effective on January 1, 2017.

Climate Change

In the wake of the hottest year on record in 2016, the Legislature approved several substantive polices and funding bills to advance efforts to lower California's carbon emissions. Most noteworthy was the enactment of Senate Bill (SB) 32 (Pavley) which extended the sunset date of Assembly Bill (AB) 32 from 2020 to 2030. SB 32 (Pavley) codified Governor Brown's executive order (EO B-30-15) aimed at reducing greenhouse gas (GHG) emissions to 40% below 19990 levels by 2030. This more ambitious target is designed to ''achieve the maximum technologically feasible and cost-effective GHG emissions reductions authorized by [AB 32].''

The Legislature delivered finishing touches to earlier policies intended to curtail SLCPs. SLCPs, such as methane, tropospheric ozone, hydrofl rocarbons, and black carbon are particularly potent GHGs that are responsible for approximately 40% of global warming. SB 1383 (Lara) is premised on the notion that by reducing SLCP emissions, global warming could be halved in the next few decades. SB 1383 (Lara) codifies a strategy developed by ARB to reduce SLCPs which calls for reducing methane and hydrofluorocarbon gases by 40% and reducing anthropogenic black carbon by 50% by 2030 against 2013 levels. The bill analysis for SB 1383 suggests that these reductions can be accomplished by replacing older vintage fireplaces and wood stoves and adopting sustainable freight strategies; deploying manure management and dairy digesters; and diverting organic materials from landfills. This new law requires the State Energy Resources Conservation and Development Commission (CEC) to include within its 2017 Integrated Energy Policy Report, strategies to ''develop policies and incentives to significantly increase the sustainable production and use of renewable gas [such as biomethane and biogas.''

AB 197 (Eduardo Garcia) underscores the importance of considering ''social costs'' in rulemaking. It requires the Air Resources Board (ARB) to consider social costs of promulgating rules to reduce GHG emissions above-and-beyond the statewide GHG emissions limit and to protect those most impacted including those in disadvantaged communities. Specifically, the ARB must prioritize emission reduction rules that achieve direct emission reductions at large stationary sources of GHG emissions and direct emission reductions from mobile sources. This new law also establishes the Joint Legislative Committee on Climate Change Policies (JLCCCP) to recommend climate change polices to the Legislature.

The oceans serve as a carbon sink absorbing approximately one-third of worldwide CO_2 emissions. Elevated levels of carbon causes ocean acidification and reduced levels of dissolved carbonate ions that are incorporated into skeletons and shells of marine organisms. It also impacts aquatic ecosystems and coastal communities. Because these conditions can lower dissolved oxygen levels in the water (known as hypoxia), this poses a potential threat to California's fisheries and aquaculture industry.

The West Coast Ocean Acidification and Hypoxia Science Panel studied these impacts and issued a report

in 2016 concluding that seagrass beds and kelp sequester CO_2 from sea water ''at sufficiently rapid rates to significantly improve water quality for organisms sensitive to carbon chemistry changes.'' AB 2139 (Williams) empowers the Ocean Protection Council (OPC) to develop a task force to manage the challenges of ocean acidification and hypoxia, beginning January 1, 2018. SB 1363 (Monning) establishes the Ocean Acidification and Hypoxia Reduction Program to be administered by the Ocean Protection Council (OPC). The OPC is charged with mitigating ocean acidification and hypoxia by ''improving management, conservation, and protection of coastal waters and ocean ecosystems.'' The OPC must identify suitable locations capable of conserving and restoring aquatic habitats. The OPC must also provide monitoring and scientific data to ensure that strategies incorporate best available science to mitigate impacts.

The Legislature approved several new laws to adjust the funding formula for the Greenhouse Gas Reduction Fund (GGRF). The GGRF has generated over $4 billion from cap-and-trade auctions since 2012 which must be earmarked for reducing GHG emissions pursuant to a specified funding formula. Twenty-five percent was originally allocated to support disadvantaged communities (SB 535 (de León), Chapter 830 Statutes of 2012). SB 862 (Committee on Budget and Fiscal Review), Chapter 32, Statutes 2014 required the ARB to develop agency guidelines to administer the GGRF funds and to quantify and report GHG emissions reductions. SB 862 additionally appropriated 25% of the GGRF for high-speed rail, 20% for affordable housing and sustainable communities, 10% to the Transit and Intercity Rail Capital Program, and 5% for low-carbon transit operations. AB 1550 (Gomez) revises the formula for allocating GGRF funds to include an additional 10% for projects benefiting low-income households and communities.

The Office of Environmental Health Hazard Assessment developed CalEnviroScreen to identify regions in the state with higher concentrations of disadvantaged communities located within proximity to industrial areas and major roadways. These regions include the San Joaquin Valley, parts of Los Angeles and the Inland Empire, and large portions of the Coachella Valley and Mojave Desert. The Legislative Analyst's Office issued a 2016 report concluding that the Legislature's GGRF Investment Plan lacks essential information to prioritize spending to achieve GHG reduction goals. SB 1464 (De León) was enacted to guide the Legislature in making these expenditures to serve sustainable communities and to fund clean transportation, energy efficiency, clean energy, natural resources, and waste diversion. This new law requires the investment plan to, among other things, recommend metrics to measure progress and corresponding benefits.

AB 2722 (Burke) is premised on the notion that the impacts from climate change will fall more heavily upon disadvantaged communities and communities of color. This new law creates the Transformative Climate Communities Program in the Strategic Growth Council.

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This program is authorized to fund neighborhood-level transformative climate community plans. As Assemblymember Burke states, this program is intended to ensure that California is making ''comprehensive, cross-cutting, and transformative climate investments that achieve multiple GHG, public health, and economic benefits in our state's most vulnerable communities.'' These investments are designed to assist local government and communities to accelerate sustainability plans and the state's climate change goals.

SB 859 (Committee on Budget and Fiscal Review) is an urgency law requiring GGRF grants for forest projects to reduce GHG emissions and improve forest health. Grant awards must prioritize projects promoting long-term forest management objectives. Dairy awardees must mitigate environmental impacts such as toxic air containments, groundwater and surface water impacts, truck traffic, and odor. In addition, retail sellers of electricity must purchase 125 megawatts of power from biomass facilities fueled from forest materials removed from high fire hazard zones. The Natural Resources Agency (Resources Agency) must award grants to local governments and nonprofit agencies to develop ''greening'' projects (e.g., park expansions) with a minimum of 75% of the funds to be awarded to disadvantaged communities. This new law additionally requires DFG develop a Healthy Soils Program to encourage farming management practices that promote healthy soils that sequester carbon. This program will include among other inducements, loans, grants, research, and technical assistance, or educational materials and outreach. This new law directs the Department of Food and Agriculture (DFG) to develop methods to quantify GHG emissions reduction from farms. Finally, this new law requires the ARB to develop a GHG emissions inventory for natural and working lands as well as a method to measure GHG reductions from forest sequestration.

Over one-third of solid wastes entering landfills consists of organic wastes including food waste, green waste, landscape and pruning waste, wood waste, and food-soiled paper waste that is mixed in with food waste. SB 970 (Leyva) was introduced to realize GHG reductions from recycling organic wastes in lieu of landfilling. This new law allows the Department of Resources, Recycling, and Recovery (CalRecycle) to award larger grants for ''large-scale regional organics composting and anaerobic digestion projects using GGRF which will advance the use of methane, thus displacing other fossil fuels.''

SB 824 (Beall) adjusts the Low Carbon Transit Operations Program offering transit agencies the freedom to loan or transfer funds among themselves. According to the Santa Clara Valley Transportation Authority ''this flexibility will help ensure that an agency that is not ready to move forward with a project in a particular year can loan its share to another agency which has insufficient funds to advance an eligible project.''

The Governor approved two new laws aimed at improving coordination of data to promote informed decision making on climate change policy. California consumes prodigious amounts of electricity moving water from its source to the tap. The CEC anticipates that drought conditions will cause the energy intensity of water to rise due to increased groundwater pumping, water treatment, and water recycling. SB 1425 (Pavley) is aimed at closing data gaps to gain a clearer understanding of the amount of electricity consumed by California's water and wastewater utilities. This new law is designed to assist water suppliers, treaters, distributors, and end users in making informed decisions about electricity choices with respect to water usage. This new law requires the Cal/EPA to administer a voluntary emissions registry to capture ''projects that reduce carbon intensity of California's water system.'' The registry will serve water agencies and consumers in making informed decisions regarding carbon emissions connected to this water-energy nexus.

AB 2800 (Quirk) is another data-oriented law intended to promote informed decision making. The American Society of Civil Engineers issued a report (i.e., Adapting Infrastructure and Civil Engineering Practice to a Changing Climate) that concluded that ''engineers should engage in cooperative research involving scientists from across many disciplines to gain an adequate, probabilistic understanding of the magnitudes of future extremes and their consequences. Doing so will improve the relevance of modeling and observations for use in the planning, design, operation, maintenance, and renewal of the built and natural environment.'' AB 2800 responds by codifying Executive Order B-30-15. This executive order requires state agencies to account for current and future impacts of climate change when making infrastructure decisions. This new law additionally requires the Resources Agency, by July 1, 2017, to create the Climate-Safe Infrastructure Working Group charged with incorporating projected climate change impacts into state infrastructure engineering.

AB 1110 (Ting) allows a publicly owned utility to carryover excess GHG credits from previous years. This new law also requires the CEC, by January 1, 2018, to develop guidelines to disclose GHG emissions intensity for retail electricity suppliers. By December 31, 2020, retail suppliers must report the GHG emissions intensity associated with retail sales from a December 31, 2018 baseline.

AJR 43 (Williams) urges the United States Congress to enact a tax on carbon-based fossil fuels. Revenues would be returned to middle- and low-income Americans.

Air Quality

AB 1685 (Gomez) responds to news reports spotlighting Volkswagen's fraudulent efforts to manufacture ''defeat devices'' ''designed to bypass...vehicle emissions control systems.'' This practice allowed non-compliant cars to circumvent emissions performance tests. AB 1685 was enacted to align civil penalties for mobile source violations with U.S. Environmental Protection Agency (U.S. EPA) penalties which were substantially higher than California penalties. This new law increases state civil penalties from $500 to $37,500 to serve as a deterrent to fraud and indexes penalties to rise with infl tion. AB 1685 additionally extends penalties to out-of-state distributors who advertise vehicles over the Internet for sale in California.

Two new laws address high speed rail in California. The California High Speed Rail Authority (HSRA) is responsible for developing and implementing an intercity high-speed rail system. AB 1813 (Frazier) adds two ex-officio members to the HSRA Board of Directors. Each board member serves in an ex-officio capacity as a non-voting member. AB 2620 (Dababneh) authorizes the California Transportation Commission (CTC) to fund passenger rail projects by shifting bond funds from the Clean Air and Transportation Improvement Act of 1990 (Proposition 116). The Clean Air and Transportation Improvement Act authorized $1.99 billion in general obligation bonds for specific projects, purposes, and geographic jurisdictions, primarily for passenger rail capital projects.

Water Supply

After five years of severe drought, the skies opened up and blanketed the Sierra Nevada mountains with a surfeit of snow pack that has replenished the state's reservoirs. Several new laws were approved to build on water conservation policies of the past few years along with new laws designed to enhance watersheds, improve data management, strengthen landscaping efficiency standards, and promote retail water conservation.

California's complex water system, which includes dams, reservoirs, canals, pumps, and pipes that deliver water throughout the state, relies on a suite of financing options that fund necessary infrastructure costs. The infrastructure comprising California's water system is supplied by five upstream watersheds. AB 2480 (Bloom) is premised on the notion that conditions prevailing in the upstream watershed effect the downstream quality and quantity of water conveyed via California's water system pipes. This new law establishes a statewide policy to support these watersheds as ''integral components of California's water infrastructure.'' The AB 2480 bill analysis states that ''enhancing the conditions of the watersheds would increase water quality by reducing sediment and lowering temperatures, and can also increase water quantity by as much as 5% to 20% depending on conditions.'' This new law specifically places funding for the maintenance and repair of source watersheds on an equal footing with funding for safer infrastructure. The former includes funding for projects such as forest ecosystem restoration and conservation activities.

AB 1755 (Dodd) aims to bring together disparate sets of water data ranging from urban use to environmental use at local, state and federal agencies. This incomplete data indirectly handicaps effective policy making for water supply, use and efficiency. This new law is designed to improve the data tools for fashioning water policy innovation establishing the Open and Transparent Water Data Act. This Act requires the Department of Water Resources (DWR), to establish and maintain, by August 1, 2020, integrated water data and ecological data. The new law will integrate data from local, state, and federal agencies along with information on completed water transfers and exchanges.

SB 610 (Costa), 2001 and SB 221 (Kuehl) 2001 were designed ''to strengthen the process pursuant to which local agencies determine the adequacy of existing and planned future water supplies to meet existing and planned future demands on those water supplies.'' These ''show me the water'' bills have helped local agencies make informed decisions by requiring a water supply assessment (WSA) as a condition of project approval under the California Environmental Quality Act (CEQA). The WSA must describe availability of water to support the water demand anticipated for the proposed project for a 20-year time horizon. Photovoltaic and wind generation projects (with a water demand of up to 75 acre-feet annually) have enjoyed exemption from the WSA requirements. AB 2561 (Irwin) is an urgency law extending this exemption from January 1, 2017, to January 1, 2018. SB 1262 (Pavley) is another water supply law designed to include WSA provisions that were inadvertently left out of the Sustainable Groundwater Management Act (SGMA). This new law specifies that a groundwater sustainability plan may be used by a public water system (PWS) to show that it has sufficient groundwater for residential developments of 500 units or more. This new law also provides that hauled water may not be considered a source of water pursuant to a WSA.

Three new laws address water conservation and efficiency including SB 7 (Wolk) which is premised on a study sponsored by the U.S. EPA and the National Apartment Association concluding that sub metering can lower water consumption by 15%. By providing individual

tenants a price signal connecting with their water use, tenants are incentivized to conserve. Senator Wolk states that ''for 80% of California's apartment renters, or 12.5 million Californians, there is no correlation between water usage and cost'' because most apartments are master-metered with the landlord paying the aggregate water bill. This new law is designed to encourage efficient water consumption by requiring landlords to install individual water meters (i.e., sub meters) on all new multifamily residential units or mixed commercial and multifamily units beginning January 1, 2018.

SB 814 (Hill) requires urban retail water suppliers to establish strategies to identify and discourage excessive water use during a state declared drought emergency. This could include establishing a rate structure such as block tiers, water budgets or rate surcharges for excessive water use. The new law provides that a violation of the excessive water use rules will result in penalties ranging from an infraction or administrative civil penalty to a misdemeanor. Fully metered jurisdictions are exempt.

The Water Conservation in Landscaping Act, requires the DWR to update the ''model water-efficient landscape ordinance'' which, among other things, enhances water efficiency standards for landscapes by addressing onsite storm water capture, and by limiting turf landscapes. AB 2515 (Weber) requires DWR to triennially update this model ordinance. AB 1928 (Campos) extends from January 1, 2010, to January 1, 2019, the deadline for the CEC to adopt regulations governing irrigation performance standards and labeling. This new law also prohibits the sale of new irrigation equipment or moisture sensors, unless the manufacturer meets the performance standards and labeling standards.

Drinking Water

The lead contamination tragedy in Flint Michigan shined a light on the California Safe Drinking Water Act (SDWA). Thousands of Flint residents were exposed to dangerous levels of lead from eroding pipes from the antiquated water conveyance system. This prompted a serious examination of the California SDWA. SB 1398 (Leyva) is one of several new laws addressing water quality infrastructure and drinking water operator requirements. Neither the state or federal SDWA requires a PWS to ''report locations of lead service pipes.'' According to Senator Leyva, ''While lead pipes may be less common in California, it is vital that we know where these pipes are and eliminate them.'' This new law is intended to ''reduce public health risks and the costs of corrosion control treatment from lead in public water system pipes.'' SB 1398 requires a PWS to compile an inventory of known lead service lines in use in its distribution system and to identify areas that may have lead service lines in use in its distribution system by July 1, 2018. PWS must additionally implement a plan to completely remove and replace tainted pipes. By July 1, 2020 PWSs must determine whether their service lines contain lead and provide to the State Water Resources Control Board (SWRCB) a timeline to replace them.

AB 2890 (Committee on Environmental Safety and Toxic Materials) provides that an operator's license can be suspended or revoked based on willful or negligent acts. This new law adjusts penalties for submitting false or misleading information on applications or examinations. This new law also imposes misdemeanor and civil liability penalties for operating a water treatment plant or water distribution system without a valid certificate for the appropriate grade. This new law eliminates the water treatment operator-in-training category and establishes reciprocity with other states for issuing water treatment operator certificates and water distribution operator certificates.

According to Assembly member Gordon, advanced water purification technology can save billions of gallons of water that would otherwise flow, unutilized to the ocean. Although the State Water Resources Control Board (SWRCB) has not approved advanced purification for recycled water, AB 2022 (Gordon) is designed to advance the public acceptance of this technology. This new law is premised on the success of the world's largest advanced water purification system that converts wastewater to drinking water. The Orange County Groundwater Replenishment System produces approximately 100 million gallons a day of highly-purified potable water from treated wastewater. Even though advanced purified water meets drinking water standards, it suffers from adverse public acceptance. This new law responds by authorizing bottling water from advanced purified technology for educational purposes.

According to the SWRCB, there are no technologies available to affordably treat common sources of drinking water contamination, such as arsenic and nitrates, especially those serving small, disadvantaged communities. In addition, many small disadvantaged communities do not have the technical, managerial, or financial capability to operate complex drinking water systems. Disadvantaged communities often lack the rate base to fund operation and maintenance costs as well. Thus, these communities may be effectively prohibited from accessing capital improvement funds that require the community to demonstrate ability to fund such costs.

Several new laws were approved to support PWSs serving disadvantaged communities with inadequate or unaffordable water drinking water. SB 1263 (Wieckowski)

responds to a SWRCB report that estimates there were 472 non-compliant drinking water systems serving more than 275,000 people in 2014. According to the SWRCB, SB 1263 will yield financial savings for under-performing or failing small PWSs and improve private well reliability. The law recognizes that small water systems face steep challenges maintaining water quality due to their smaller base of rate payers to support this infrastructure. SB 1263 requires the SWRCB to deny a permit for a new water system where it can be served by an existing PWS. Applicants must, among other things, identify other PWSs within three miles of the proposed new system and assess their ability to connect to those PWSs. The SWRCB may deny the issuance of a new PWS permit if it determines the connection would be infeasible or if the new PWS would be unsustainable. This new law additionally prohibits local governments from issuing building permits for new residential developments where the water is not supplied from the ''tap.'' It otherwise prohibits the issuance of a building permit where the water is supplied by bottled water, vending machine, a retail water facility, or transported by a water hauler.

SB 552 (Wolk) is another new law regulating PWS consolidation which authorizes the SWRCB to order PWS consolidation of small water systems serving disadvantaged communities under specified circumstances. Senator Wolk states that SB 552 ''authorizes the SWRCB to require PWSs that serve disadvantaged communities and that consistently fail to provide an adequate and affordable source of safe drinking water, to obtain administrative and managerial services from a third-party administrator, selected by the [SWRCB].'' This new law authorizes SWRCB to hire third party administrative and managerial expertise for these ''designated PWS'' to provide technical, managerial, and financial expertise. SB 1112 (Cannella) is an urgency law that authorizes the CPUC to void a merger of a PWS with a smaller PWS (with less than 2,000 service connections) unless it receives CPUC approval before committing valued at $5,000,000 or less.

Water Quality

Storm water infrastructure often treats storm water as a nuisance to be disposed of rather than a natural resource. The bill analysis for AB 2594 (Gordon) estimates that storm water capture could produce 630,000 acre-feet of new water in California and could provide 30% to 45% of Los Angeles water needs. The Storm water Resources Planning Act (SB 985 [Pavley], Chapter 555 Statutes. 2014) authorizes public entities to develop storm water resource plans that prioritize projects to capture storm water and dry weather runoff capture. AB 2594 is intended to collect usable storm water that would otherwise flow to the ocean. It clarifies that public entities may capture urban storm water that has not yet entered offsite drainage and is limited to only those uses that ''augment water supplies and supports existing water rights.'' In other words, capturing storm water, public entities must not curtail water rights adjudication or other legally mandated water management plan or create a new groundwater pumping right.

SB 1260 (Allen) is another water law addressing storm water. It requires the SWRCB to create an online resource center to assist municipalities in their efforts to meet storm water requirements under the municipal separate storm sewer system (MS4) requirements. The center could, among other things, include links to scientific storm water studies and water quality mitigation measures addressing watershed management.

Three new laws address water quality administrative appeals and enforcement. AB 2446 (Gordon) was introduced by the SWRCB to address dischargers who exploit ''ambiguities'' in the administrative review process by attempting to delay SWRCB or regional water quality control board (RWQCB) hearings. This new law responds to aggrieved parties who are unsatisfied with a board decision and who seek injunctions to stay administrative hearings or judicial review to overturn a RWQCB or SWRCB decision. Under this new law, these parties are prevented from challenging the agency decision or order until the SWRCB or the RWQCB acts. These new provisions do not apply to petitions for writ of mandate. This new law also modifies the judicial review process and replaces the prior evidentiary standard which required courts to consider ''all relevant evidence that, in the court's judgment.'' Under the revised evidentiary standard, the court must ''exercise its independent judgment on the evidence presented.''

Prior to AB 1842 (Levine), prosecutors were not authorized to impose a pollution surcharge penalty for water quality violations in civil cases. Without this authority, prosecutors were limited and unable to pursue enforcement where they did not expect to meet the elevated burden of proof for an alleged criminal violation. This new law expands the authority to impose a surcharge in civil cases of up to $10 per gallon or pound of material improperly discharged into state waters. This new law requires the penalty to be offset by every gallon or pound of the illegally discharged material that the responsible party recovers. This new law also establishes a minimum penalty of up to $2000 on criminal violations and $25,000 for civil violations.

AB 2756 (Thurmond) modifies the civil penalty and appeal process governing the Division of Oil, Gas, and

Geothermal Resources (DOGGR). This new law requires the Supervisor of DOGGR to consider specified factors that will enhance the penalty—such as economic benefit accruing to the violator. At the supervisor's discretion, a separate violation accrues for each day a violation continues. This new law additionally differentiates between a ''major'' violation and a ''minor'' violation. ''Major'' violations are subject to a fine of between $2,500 and $25,000 per violation; ''minor'' violations are subject to a fine of no more than $2,500 per violation. This new law additionally allows DOGGR to allow operators to implement supplemental environmental projects in lieu of up to 50% of a civil penalty.

AB 2729 (Williams) attempts to address the 20,000 (and growing) oil and gas wells in California that have been idle for over five years. These wells are at risk of releasing methane, uranium, lead, iron, selenium, sulfates, and radon into freshwater aquifers. To reduce the number of these wells, AB 2729 significantly increases the fees and bond requirements governing idle wells. This new law also provides clarification on the steps required to plug and decommission and abandon a well.

The Sustainable Groundwater Management Act (SGMA) Act authorizes groundwater sustainability agencies (GSAs) to develop targets and strategies to achieve ground water sustainability. AB 2874 (Beth Gaines) is designed to ensure that fees imposed by GSAs are regulated by the CPUC. This new law regulates GSAs that are not investor-owned utilities (IOUs) and are designed to protect consumers. This new law requires a GSA to notify the CPUC before imposing or increasing a fee pursuant to the SGMA.

Hazardous Materials

On October 23, 2015, the largest natural gas storage field in the western United States experienced a significant uncontrolled natural gas release. According to the bill analysis for SB 380 (Pavley), an estimated 100,000 metric tons of methane were released from the California Gas Company (SoCalGas) Aliso Canyon storage facility. The carbon footprint was equivalent to the emissions from 200,000 cars annually. This event caused the evacuation of over 8,000 households.

The Legislature approved several new laws designed to manage the release and prevent future natural gas leaks. SB 380 codifies portions of the Governor's January 6, 2016 Proclamation of a State of Emergency which, among other things, ordered several state agencies to ''stop the leak, protect public safety, ensure accountability and strengthen oversight of natural gas storage facilities.'' This new law also extends the Governor's moratorium prohibiting SoCalGas from injecting gas into the Aliso Canyon facility until DOGGR completes a safety review and DOGGR performs testing determining the amount of gas necessary for safe storage. This new law also requires DOGGR to, among other things, approve maximum reservoir pressure limits before recommencing operations. In addition, new wells may no longer produce gas through the space in between the tubing and the well casing. Instead, new wells must produce gas through the interior metal tubing. Operators must also periodically inspect plugged and abandoned wells.

SB 887 (Pavley) is premised on the notion that ''California lacks a plan to quickly and efficiently address a massive natural gas leak. . . . [Among other things], this new law provides for the establishment of a] framework in place to respond quickly and efficiently.'' This new law requires the ARB to develop a natural gas storage facility monitoring program to identify leaks. The program must include continuous monitoring of ambient concentrations of natural gas. Operators of natural gas storage facilities must submit individual monitoring plans and associated monitoring data to the ARB. Gas storage wells must also implement a mechanical integrity testing program by January 1, 2018 that, among other duties, includes leak testing, inspecting wall thickness, and pressure testing.

This new law further requires DOGGR to promulgate regulations establishing standards governing design, construction, and maintenance of gas storage to manage the potential risk of a single point of failure. This new law also requires that operators of gas storage facilities develop and submit risk management plans, corrosion monitoring and evaluation plans, leak prevention and response programs, and preventive maintenance programs. They must also administer comprehensive trainings for gas storage wells and employee mentoring programs. Well operators must also develop a protocol to notify the public in the event of a large, uncontrollable gas leak. SB 887 also requires DOGGR to develop regulations governing reportable gas leaks from gas storage wells. The newly promulgated emergency regulations governing underground gas storage projects must remain in effect until January 1, 2019. DOGGR is also charged with developing and conducting annual, unannounced random inspections of gas storage wells.

SB 888 (Allen) establishes the Gas Storage Facility Leak Mitigation Account which is funded by penalties assessed against SoCal Gas in amounts that offset the impact on the climate from the GHG emissions generated from the Aliso Canyon facility.

Senator Hancock ''states that coal transport spreads the damages caused by coal dust and contributes to the likelihood that residents in adjacent communities will suffer

from illnesses linked to pollution, such as cancer, heart disease, and asthma.'' SB 1279 (Hancock) is one of two new laws promoting public safety regarding movement of chemicals and fuels. This new law specifically prohibits the CTC from funding new bulk coal terminal projects at ports. Terminals that receive grants from the CTC must annually demonstrate that the funds are not ''used to handle, store, or transport coal in bulk.'' AJR 42 (Dodd) is another law intended to manage the risk of transporting chemicals. This new law urges the United States Department of Transportation, Department of Energy, and the Office of Management and Budget ''to expedite the rulemaking and implementation processes for federal safety regulations governing the transport by rail of flammable and combustible liquids, including crude oil.'' This resolution also urges the President and the Congress of the United States to pass HR 1804 and HR 1679. These federal bills are intended to improve public safety regarding transport of flammable and combustible liquids by rail. HR 1804 would, among other provisions ''establish a maximum volatility standard for crude oil, prohibit the use of certain outdated rail tank cars, require comprehensive oil spill response planning and studies, and increase fines for violating volatility and hazmat transport standards...'' HR 1679 ''would reduce the volatility of oil transported by rail.''

Hazardous Waste

In 2015, the Department of Toxic Substances Control (DTSC) created a Retail Waste Work Group (RWWG) comprised of retailers, district attorneys, certified unified program agency representatives, the Department of Public Health, DTSC, among other representative groups. The RWWG sought to identify and address hazardous waste regulations in need of clarification. SB 423 (Bates) was introduced to build upon this effort and clarify confusion around whether and to what extent the California Medical Waste Management Act (MWMA) or the California Hazardous Waste Control Act (HWCA) governs returned pharmaceuticals, health care products, and surplus household consumer products. Senator Bates states that there is ambiguity as to whether discarded or recycled medical products are governed by the MWMA or the HWCA. Thus, retailers contend that they choose to conservatively manage risk by disposing medical goods as hazardous waste or medical waste. They argue that efforts to clarify their obligations could ultimately result in more donated medical products.

SB 423 seeks to gather information to better understand the hazardous waste management practices of retailers to inform potential policy recommendations. Consensus minded regulations will help manufacturers, distributors, suppliers, vendors, retailors, and reverse logistics facilities. This new law requires the DTSC to formalize the RWWG with the mission of identifying regulatory clarification regarding consumer products along with recommendations to reduce waste. DTSC must identify a wide array of stakeholder members in line with those comprised the earlier group. The RWWG must issue a report reflecting its findings to the California Legislature by June 1, 2017.

SB 1229 (Jackson) is another drug-related law designed to offer relief to pharmacies that are reluctant to accept returned drugs fearing liability from personal injury and wrongful death allegations. New federal DEA regulations implementing the Secure and Responsible Drug Disposal Act allow pharmacies to collect unused or unwanted controlled substances. SB 1229 (Jackson) was introduced to address the reticence of pharmacies to install drug take-back receptacles. This new law provides a qualified immunity for liability from personal injury and wrongful death, provided the collector implements health and safety procedures addressing proper disposal of the home-generated pharmaceutical waste. Collectors must comply with specified notification, employee monitoring, inspection, signage and ensure the drug take-back bins are secure.

The Electronic Waste Recycling Act of 2003 established a program to incentivize the reuse and recycling of electronic waste including spent Cathode Ray Tubes (CRT) devices and CRTs. Liquid crystal display (LCD) and light-emitting diode technology for televisions and monitor screens have largely replaced demand for CRTs, resulting in stockpiles of scrap CRT glass. Prior to AB 1419 (Eggman), California law limited CRT glass recycling to CRT glass manufacturers or primary or secondary lead smelters, which limited the potential for CRT recycling. This new law is intended to address the dearth of CRT recycling opportunities by identifying end uses for CRTs which would otherwise be considered toxic hazardous wastes. Recycled CRT glass can be used as feedstocks for tiles, fiberglass, radiation shielding glass, decorative glass, bricks, cast concrete, blasting media, and construction block. This new law clarifies that CRT glass recycled into the uses listed above are exempt from DTSC material export requirements.

AB 2153 (Cristina Garcia) was enacted in response to the hullabaloo surrounding the extensive contamination caused by the Exide Technologies battery recycling facility in Vernon, California. According the DTSC, the Exide cleanup could become one of the largest cleanup sites in the United States. This new law creates the Lead-Acid Battery Recycling Act of 2016 with the objective of funding cleanup of lead contamination resulting from lead acid battery production. This new law establishes a

consumer fee on lead-acid batteries to be collected at the point-of-sale and requires lead-acid battery manufacturers to pay a fee for batteries sold in California.

SB 1325 (De León) restores DTSC's authority to require a post-closure plan for owners or operators of a hazardous waste treatment, storage, and Disposal facilities (TSDFs) via an enforcement order, an enforceable agreement, or a post-closure permit. DTSC must adopt regulations to implement these requirements no later than January 1, 2018.

Clean Up

The California Land Reuse and Revitalization Act of 2004 (CLRRA) immunizes "innocent landowners," "buyers," or "contiguous property owners" from liability for damages and common law liability from chemical releases or threatened releases to the environment. Under the CLRRA, parties must evaluate and cleanup brownfields and agree to DTSC and/or SWRCB oversight, and to remediate the site in accordance with specified cleanup standards. With an estimated 90,000 brownfields yet to be remediated, SB 820 (Hertzberg) extends by ten years the sunset date for the CLRRA, which was set to expire January 1, 2017.

The Legislative Analyst's Office forecasts insufficient funds to pay for California's orphan site cleanup. AB 2891 (Committee on Environmental Safety and Toxic Materials) codifies a strategy recommended by the Legislative Analyst's Office which replaces a statutory formula to fund federal Superfund and state-only orphan share cleanup activities. This new law requires DTSC to annually forecast its cleanup funding needs with an annual appropriation from the state budget.

According to Senator Hill, approximately 3,500 natural gas pipeline strikes occur annually as a result of excavators failing to access California's 8-1-1 service. This service is designed to identify the location of pipelines prior to excavation activities. SB 661 (Hill) enacts the Dig Safe Act of 2016 which requires excavators to contact the appropriate regional notification center before engaging in excavation activities. This law further requires excavators to contact the notification center regardless of whether s/he knows of the presence of subsurface installations.

Solid Waste

AB 2812 (Gordon) represents another strategy to achieve California's legislative mandate of achieving its 75% solid waste recycling goal by 2020. This new law addresses the solid waste generated by state workers and requires California agencies to provide and maintain recycling receptacles in state buildings and large state facilities.

AB 2530 (Gordon) is one of two new laws addressing reporting obligations with respect to recycled plastic. AB 2530 addresses the fact that most recycled plastic is shipped overseas instead of being recycled in California. This new law is intended to educate consumers about the source of plastic used for the beverage containers they purchase. Under this law, manufacturers must annually report to CalRecycle the amount of virgin plastic and post-consumer recycled plastic used in the plastic containers they sell pursuant to the Bottle Bill (i.e., the Beverage Container Recycling and Litter Abatement Act of 1986 AB 2020 Chapter 1290 (Margolin) 1986). CalRecycle must publish this information on the agency's Internet Website.

Under current law, CalRecycle issues payments of up to $150/ton to California-based manufacturers and processors that recycle and utilize post-consumer plastic beverage containers. AB 1005 (Gordon) extends the sunset date for this program to 2018.

AB 1103 (Dodd) is intended to provide transparency to the amount of organic waste collected by self-haulers. Under this new law, self-haulers join exporters, brokers, and transporters of recyclables or compost and must submit to CalRecycle information on the types and quantities of compostable materials disposed of, sold, or transferred to other composting facilities. This new law will assist CalRecycle in gaining a more complete picture of the amount of organic waste that is diverted from California landfills.

California Environmental Quality Act

SB 734 (Galgiani) extends for two years the deadline for the Governor to certify a project as an "environmental leadership development projects" which are entitled to streamlined judicial review. The new law extends the date by which a lead agency must approve a project certified by the Governor. AB 900 (Buchanan) Chapter 386, Statutes 2011, the "Jobs and Economic Improvement Through Environmental Leadership Act of 2011," authorized the Governor to certify for streamlined judicial review, certain large-scale projects that would result in (1) a minimum investment of $100 million in California upon completion, (2) the creation of high-wage, highly skilled jobs that pay prevailing wages, and (3) no net additional emissions of GHGs. The act provided that if a lead agency failed to approve a project by January 1, 2017, the Governor's certification expired and would no longer be valid. SB 734 extends this deadline by two years, to January 1, 2019. SB 734 further extends the act's requirement that a lead agency prepare the record of proceedings for the certified project concurrent with the preparation of the environmental documents.

To optimize the use of internet-based document repositories, SB 122 (Jackson) allows for concurrent preparation of the CEQA record of proceedings, upon request of the project applicant and with the lead agency's consent. When this procedure is utilized, all documents and other materials that comprise the record of proceedings will be posted on a website maintained by the lead agency. The lead agency must make available within five days of receipt any comment received electronically. All costs associated with this procedure will be paid by the project applicant. With respect to Office of Planning and Research, this new law requires the agency to establish and maintain a publicly-available internet database of all CEQA documents submitted to the State Clearinghouse (including environmental impact reports (EIRs), negative declarations, and notices of exemption, preparation, and determination).

Permitting

The Office of Permit Assistance (OPA) was eliminated in 2003 due to budget constraints. AB 2605 (Nazarian) reestablishes the Permit Assistance Program within the Governor's Office of Business and Economic Development (GO-Biz) to provide comprehensive permit, regulatory, and compliance assistance to businesses. This resurrected law also establishes the DTSC as the lead office to assist with streamlined permitting of off-site hazardous waste TSDFs pursuant to AB 2948 (Tanner), chapter 1504 Statutes 1986. GO-Biz must also offer assistance in resolving conflicts between applicants and permitting and regulatory agencies. Finally, this office must collaborate with federal, state, regional, and local agencies to share best practices to improve permitting processes.

Assembly member Ting introduced AB 2180 to address ''a severe lack of new housing construction, both market rate and affordable.'' Prior to AB 2180 (Ting), the Permit Streamlining Act (PSA) required a lead agency to approve or disapprove a residential or mixed use development project within 180 days of the EIR being certified. This new law is intended to expedite permit approval for the construction of private affordable housing. It amends the PSA to shorten the time-period to within 120 days from the EIR certification for residential development projects including mixed use development (where residential units are more than 50% of the total square footage). This new law also reduces the approval process for ''responsible'' agencies under CEQA from 180 days to within 90 days for all types of housing developments (from lead agency approval or the date of a completed application whichever time-frame is longer). The timing adjustment for responsible agencies does not apply to California Coastal Commission approvals.

Land Use

This year, the California Legislature tacked the state's housing shortage by, among approving several strategies including tinkering with accessory dwellings and adjusting the state's density bonus law. Other new laws addressed local General Plans and Local Agency Formation Commissions (LAFCOs).

The Legislature approved a number of new laws designed to encourage housing, especially for now income families. AB 2584 (Daly) is intended to promote housing development by allowing housing organizations to help enforce the Act's provisions. This new law authorizes a ''housing organization'' to bring an action pursuant to the Housing Accountability Act that challenges the disapproval of a housing development by a local government. A ''housing organization'' is defined as ''a trade or industry group whose local members are primarily engaged in the construction or management of housing units or a nonprofit organization whose mission includes providing or advocating for increased access to housing for low-income households and have filed written or oral comments with the local agency prior to action on the project.''

The Legislature approved three new laws regulating ''accessory dwelling units'' (ADUs). SB 1069 (Wieckowski) and AB 2299 (Bloom) amend the Planning and Zoning Law to redefine ADUs and remove local barriers to the development of ADUs to promote affordable housing. These new laws define an ADU as a unit located in a residential neighborhood that may be attached or detached from the primary unit and that may be rented, but cannot be sold separately from the primary unit. Local ordinances addressing ADUs must provide for ministerial approvals on an expedited basis. The ordinances must also designate areas where ADUs are permitted; define setback, height, and maximum square foot requirements; and provide reasonable parking requirements (or, in certain transit-oriented areas, eliminate such requirements). If a local government does not adopt an ADU ordinance, it must, nonetheless, follow similar guidelines when reviewing an ADU application.

AB 2406 (Thurmond) allows local governments to adopt ordinances permitting ''junior ADUs'' in single-family dwelling units. Unlike standard ADUs, which may be attached or detached from the primary unit, junior ADUs are required to be constructed completely within the primary residential unit, must include an efficiency kitchen and an existing bedroom, and must have access to the primary unit, in addition to a separate entrance. This new law also requires that the local ordinance require owner occupancy of either the primary dwelling unit or the junior ADU. It also prohibits the

sale of a junior ADU separate from the primary unit, and prohibits requiring additional parking as a condition for granting a permit.

AB 2501 (Bloom) is one of four new laws that modifies the density bonus law. This new law is designed to streamline and expand awarding of density bonuses. Among other things, this new law requires that local governments provide a list of all documents required to apply for a density bonus and adopt reasonable procedures and timelines for the processing these applications. In addition, this new law makes it more difficult for local governments to reject an application for a density bonus. Previously, the law required the local government to grant the density bonus unless it made findings that it was not required to provide sufficient affordable units. Now, density bonuses must be approved where the incentive results in actual cost reductions to provide for affordable housing. This new law also expands the definition of a "housing development" eligible for density bonuses to include mixed-use developments.

AB 1934 (Santiago) provides that development bonuses, previously restricted to housing developers, may be extended to commercial developers who partner with a housing developer to contribute affordable housing through a joint project or two separate projects. The development bonus may include any incentive mutually agreed upon by the developer and the local jurisdiction, including changes in land use requirements. This program will sunset in 2022. AB 2442 (Holden) extends the granting of density bonuses to developers who construct housing developments with at least 10% of the units allocated to transitional foster youth, disabled veterans, or homeless persons. This new law requires that the units be subject to a recorded 55-year affordability restriction and be offered at the same affordability level as very low-income units.

AB 2556 (Nazarian) creates a rebuttable presumption that when a proposed development replaces affordable housing, the units to be replaced must be occupied by lower-income residents in the same proportion as other developments in the jurisdiction. This new law clarifies current law that requires developers to replace all existing affordable housing units located at the site of the proposed development to qualify for a density bonus.

Several new laws modify general plan requirements including SB 1000 (Leyva) which requires general plans to address environmental justice, either in a separate general plan element or by incorporating environmental justice goals, policies, and objectives into other elements. This new law requires cities and counties to identify "disadvantaged communities" within their jurisdiction. This includes areas identified by Cal/EPA pursuant to Health and Safety Code section 39711 and low-income areas that are disproportionately affected by environmental pollution and other hazards that can lead to negative health effects, exposure, or environmental degradation. The general plan must then identify objectives and policies that will reduce health risks in disadvantaged communities, promote civil engagement in the public decision making process, and prioritize improvements and programs that address the needs of disadvantaged communities. SB 1000 also modifies requirements related to updating the safety element of general plans.

AB 2685 (Lopez) requires local planning agency staff to collect and compile public comments regarding any proposed general plan housing element, and provide those comments to each member of the local legislative body prior to adoption of the housing element. AB 2208 (Santiago) amends the definition of "land suitable for residential development" that may be identified in a general plan housing element. The definition now includes the airspace above publicly-owned sites. The amendment allows a city or county to use the airspace above such sites to demonstrate how it plans to accommodate its share of regional housing needs. This new law also requires the Department of Housing and Community Development to provide guidance to local governments on how to survey, detail, and account for sites listed as "land suitable for residential development."

AB 2032 (Linder) makes several changes to the statutes governing a city's disincorporation process. Under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, Local Agency Formation Commissions (LAFCOs) are responsible for reviewing and approving changes to jurisdictional boundaries, incorporations of new cities, formations of special districts, and mergers and dissolutions. This new law requires additional information concerning long-term liabilities, financial assets, and unpaid or uncollected assessments. This information is intended provide analysis supporting a proposal for dissolution.

AB 2542 (Gatto) precludes the CTC from approving a capacity-increasing project or a major street or highway lane realignment project until the California Department of Transportation or a regional transportation planning agency submitting the project for approval has demonstrated that reversible lanes were considered as part of the project. Assembly member Gatto states that the purpose of AB 2542 is to decrease traffic congestion and reduce the need for road expansions by encouraging the use of reversible lanes, which allow for reversal of the direction of a lane to accommodate heavy traffic moving in the opposite direction.

Health & Safety

AB 2362 (Chu) requires a common-interest development association, or its authorized agent, to notify adjacent owners and tenants of pesticides to be applied to a common area or separate interest. If broadcast applications are made, or total-release foggers or aerosol sprays are used, written notice must be given to owners and tenants who are potentially impacted. This new law prescribes the contents and means of providing the required advance written notice.

Proponents of SB 1167 (Mendoza) argued that the outdoor heat illness prevention rule was insufficient to protect workers. This new law requires the Division of Occupational Safety and Health to promulgate, by January 1, 2019, an indoor standard that minimizes heat-related illness and injury. This standard must, among other factors, be based on environmental temperatures and work activity levels.

SB 62 (Hill) is designed to address "unprecedented failures of utility infrastructure over the past five years that threaten the safety of Californians." Senator Hill states that this new law promotes safety transparency and clarifies that the CPUC is responsible for managing safety in lieu of delegating that function to the Safety Advocate. This new law creates a Division of Safety Advocates within the CPUC which is dedicated to safety. According to Senator Hill, this new law is intended to "exclusively prioritize[e] and advocate[e] for the protection and safety of Californians as a party to CPUC proceedings."

Energy

Because energy policy is intimately connected to air quality and climate change impacts, the Legislature continues to direct their attention to demand response, renewable energy, energy storage systems, and energy efficiency.

AB 2454 (Williams) aims to bring demand response resources into the wholesale electricity market. According to Assemblymember Williams, demand response helps manage system reliability by reducing peak demand. This new law assists with transmission reliability by modifying electrical corporation procurement requirements. Electrical corporations must include in their procurement plans a commitment to energy efficiency, renewable energy, energy storage, and demand reduction resources that are cost effective, reliable, and feasible. Under this new law, the CPUC may not approve new or repowered gas-fired generation projects unless the electrical corporation demonstrates compliance with this procurement provision.

Recipients of energy efficiency rebates are required to certify they are meeting applicable permitting requirements for installing heating, ventilation, and air conditioning systems (HVAC). Contractors performing installations must be also licensed to perform the work. According to the CEC and the CPUC, as of 2008, less than10 percent of HVAC installations obtained pre-installation local building permits. Up to 50 percent of new central air conditioning systems were not installed properly and did not receive a final inspection to ensure performance. According to the author, this "represents a huge lost opportunity for energy savings." SB 1414 (Wolk) attempts to remedy this by requiring those seeking energy efficiency rebates to demonstrate they received a final inspection for performance, proof that the permit for a project was closed, and certification that the project complies with energy efficiency standards (i.e., Title 24 of the California Building code). This new law additionally requires the CEC to develop regulations and a specified plan promoting compliance with Title 24 for central air conditioning and heat pumps installations.

California continues to lead the way in efforts to expand renewable energy and storage. AB 2868 (Gatto) requires the CPUC to direct the state's three largest IOUs to accelerate widespread deployment of distributed energy storage systems. Under this new law, the CPUC is authorized to approve programs and investments in distributed energy storage systems and those storage systems serving the public sector and low-income customers.

The Renewable Energy Self-Generation Bill Credit Transfer allows local governments to receive a bill credit of up to five megawatt (MW) of renewable electricity generated from another government facility. AB 1773 (Obernolte) expands the scope of this provision and extends it to joint powers agencies (JPAs) so long as the JPA is in the same county and served by the same electrical corporation as the JPA generating the credits.

AB 1637 (Low) extends the net energy metering program for fuel cells (NEMFC) through 2022. This new law additionally raises the individual net energy project cap for fuel cells from one MW to five MW and adjusts the statewide collective cap. In addition, NEMFC participants seeking eligibility are subject to a more stringent GHG emissions standard that replaces the Self-Generation Incentive Program standard.

Several new laws promote the use of biomass to generate energy. AB 1923 (Wood) is designed to ease the path for converting dead and decaying trees for conversion to renewable energy. Assembly member Wood states that the current three MW restriction for interconnection to electric utilities indirectly impedes the access of small biomass companies to the renewable energy market.

He asserts that three MW generators are more expensive than five MW generators. This new law addresses the situation by permitting five MW generators a but limits generation to no more than three MW for bioenergy.

Biomethane is generated from biomass wastes (e.g., forest wood waste, agriculture and food processing wastes, organic urban waste, waste and emissions from water treatment facilities, landfill gas) that can be used to generate renewable electricity. AB 2313 (Williams) seeks to promote biomethane projects by increasing ratepayer-funded incentives to $3 million from $1.5 million (excluding dairy biomethane projects). The incentive limit expands to $5 million funding for dairy cluster biomethane projects. This new law additionally authorizes incentive payments to fund deployment of gathering lines to transport biogas to a centralized processing facility.

SB 840 (Committee on Budget and Fiscal Review) is an urgency law that prioritizes specified bioenergy projects to connect to the electricity grid over other renewable projects. This law additionally reauthorizes the Green Tariff Shared Renewables Program indefinitely. The Green Tariff requires participating utilities to allow ratepayers to use green electrons generated by offsite electrical generation facilities.

SB 859 (Committee on Budget and Fiscal Review) is an urgency law requiring electrical corporations, by December 1, 2016, to collectively procure, 125 megawatts of cumulative rated electrical generating capacity from bioenergy projects including specified amounts of forest feedstock.

IOUs are required to develop a long-term procurement plan providing 10-year electrical forecasts. AB 1937 (Gomez) modifies the content of these plans requiring IOU's refl procurement of alternative sources of power in lieu of natural-gas-fired generation resources in communities ''that suffer from cumulative pollution burdens.'' In addition, the IOUs must ''undertake all feasible efforts'' to identify ''renewable energy, energy storage, energy efficiency, and demand reduction resources that are cost-effective, reliable, and feasible.''

The Legislature continued its efforts to reform governance of the CPUC. Unlike most California agencies, the CPUC has been exempt from the Administrative Procedures Act (APA). SB 512 (Hill) adds transparency by applying the APA Code of Ethics to CPUC adjudication proceedings. This new law additionally clarifies that intervenors who advocate for utility ratepayers are entitled to compensation for their costs of participation if they make a substantial contribution in a proceeding, even if no settlement is reached. Prior to this law, in matters resulting in a settlement, intervenors were ineligible for compensation because they were not considered to have made a substantial contribution. This new law also allows intervenors compensation for communities, like the City of San Bruno, that have suffered a catastrophic loss stemming from utility infrastructure failure.

In 2014, Pacific Gas and Electric Company (PG&E) said that it believes it ''violated CPUC rules governing ex parte communications'' where its executives allegedly attempted to influence assignment of the administrative law judge overseeing the San Bruno proceeding. SB 215 (Leno) establishes a series of regulatory operational and procedural reforms governing ex parte CPUC communications along with grounds for disqualifying commissioners to a proceeding. It also requires CPUC decisions to be based on the evidence in the record and specifically prohibits ex parte communications from being included in the record of the proceedings. Finally, the CPUC can impose a civil penalty for violating ex parte communication requirements.

AB 2861 (Ting) was introduced to speed up the dispute resolution process between power generators and the utilities managing the electricity distribution grid. A typical interconnection dispute arises when utilities that manage the grid refuse to allow generators to connect to it. The CPUC indicates that interconnect power applicants rarely avail themselves of the standard dispute resolution process (i.e., Section K of Rule 21) due to the time and cost involved. This new law authorizes the CPUC to establish an expedited dispute resolution process that resolves disputes within 60 days.

According to Senator Hill, the CPUC's rules designed to address fires related to utility poles are prescriptive (e.g., clearances between power lines and trees) and result in delays due to the time involved in assessing proposed individual measures. This new law establishes risk-based, safety rules designed to focus on identifying hazards, setting goals, and providing utilities flexibility in achieving performance goals. This new law, among other things, requires electric utilities to assess the risk of catastrophic wildfire posed by electric lines and equipment. In the event of an identified risk, they must annually submit wildfire mitigation plans subject to review and comment by the CPUC. The mitigation plans must include mitigation measures designed to address the risks.

AB 2168 (Williams) addresses a 2014 State Audit which found the CPUC ''lacked adequate oversight over balancing accounts and did not always comply with legal audit requirements.'' This new law enacts the Public Utilities Commission Audit Compliance Act of 2016 which, among other things, requires the CPUC to post on its Internet Web site the results of inspections and audit reports.

SB 968 (Monning) was enacted in light of the recent closure of the San Onofre Nuclear Generating Station and uncertainty surrounding whether the Diablo Canyon Power Plant will receive permits to operate into the future. This new law explores the regional economic impacts without the nuclear plant.

Natural Resources

AB 2616 (Burke) amends the California Coastal Act to address environmental justice. This new law requires that one of the members of the Coastal Commission appointed by the Governor reside in, and work directly with, communities that are ''disproportionately burdened by, and vulnerable to, high levels of pollution and issues of environmental justice.'' It also authorizes an agency considering issuance of a coastal development permit (CDP), and the Coastal Commission when considering a CDP appeal, to consider environmental justice and the ''equitable distribution of environmental benefits throughout the state.''

AB 1958 (Wood) amends the Z'berg-Nejedly Forest Practice Act to create an exemption from the requirement for a timber harvest plan for removing trees to restore and conserve California black or Oregon white oak woodlands and associated grasslands. This new law requires that the Board of Forestry and the Department of Fire Protection adopt regulations implementing the exemption by January 1, 2018.

AB 1142 (Gray) amends the Surface Mining and Reclamation Act of 1975 and modifies the information that must be included in reclamation plans for surface mining operations including reclamation maps.

SB 209 (Pavley) reflects changes to the Surface Mining and Reclamation Act generated from a stakeholder process convened by Governor Brown. This new law, among other things, formalizes a new Division of Mines and Reclamation and establishes more flexible inspections at county-owned borrow pits.

Looking Ahead

In the fall of 2016 when Governor Brown set about the task of signing this year's batch of legislation, he could not have anticipated the political sea change awaiting California in 2017. With the surprise election of Donald Trump, the gloves are off as California digs in to protect its environmental policies ranging from climate change and wetlands to endangered species. Governor Brown and the Legislature are pivoting from years of sustained legislative offense to vigorously pushing back on defense.

Shortly after Donald Trump was elected, Assembly Speaker Anthony Rendon proclaimed that ''California does not need healing, [it] need[s] to fi t.'' The Legislature responded by hiring former Attorney General Eric Holder to advise it on how to resist the new Administration's promised efforts to weaken California's environmental regulatory framework. Governor Brown joined the California Legislature in a united effort to fight back by nominating Congressman Xavier Becerra to serve as California's Attorney General. Together, they have drawn a green boundary line to resist the Trump Administration. They will be likely joined by well-financed and highly motivated non-governmental organizations who are expected to launch a barrage of citizen's suits to fill the anticipated federal enforcement gap.

With the federal Endangered Species Act and the federal Clean Power Plan on the chopping block, the California Legislature is well positioned to enact urgency legislation to bolster California environmental policies. With Democrats holding supermajorities in both houses, the Republican minority could be stymied in their efforts to defeat the Democrat's environmental policies. Whether the Democrats can maintain a sustained response depends on whether independent, moderate Democrats hold the green line.

THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

Cases

Review Granted: Ordinance Regulating Establishment and Location of Medical Marijuana Consumer Cooperatives Did Not Constitute ''Project'' Within Meaning of CEQA

Union of Medical Marijuana Patients, Inc. v. California Coastal Commission San Diego
No. S238563, Cal. S. Ct.
2017 Cal. LEXIS 255
January 11, 2017

The California Supreme Court has granted review in *Union of Medical Marijuana Patients, Inc. v. California*