CALIFORNIA

Environmental Law Reporter

FEBRUARY 2020
VOLUME 2020 • ISSUE NO. 2

LexisNexis™
Matthew Bender®

The 2020 Environmental Legislative Update: Change of the Guard

By

*Gary A. Lucks**

* Mr. Gary Lucks JD, CPEA is a principal environmental attorney and scientist with Beyond Compliance Law. He is a Certified Professional Environmental Auditor (CPEA) with 35 years of experience in environmental, health, and safety law, legislative affairs, and sustainability strategy. He advises clients on maintaining business continuity, risk management, and license to operate while managing compliance risks.

Mr. Lucks wrote environmental policy briefing papers for Governor Newsom, Senator Feinstein, Senator Steinberg, and State Insurance Commissioner Dave Jones. He has published extensively on environmental law, legislation, and policy. He co-wrote a book entitled *California Environmental Law and Policy: A Practical Guide* and wrote the Environmental Auditing chapter in the treatise *California Environmental Law and Land Use* (Matthew Bender). He has been contributing to the *California Environmental Law Reporter* for the past 25 years.

He serves on the California Lawyers Association, Environmental Law Section's Executive Committee and the Environmental Legislation Committee for over two decades. He also served as an Advisor to the Bay Area Air Quality Management District, co-founded the Sustainable Earth Initiative, and has chaired the West Coast Institute of Internal Auditors.

Introduction

Notably absent from Governor Newsom's first State of the State address was a focus on environmental priorities, especially considering President Trump's unrelenting efforts to roll back environmental protections. Of particular note was Governor Newsom's veto of SB 1 (Atkins, Portantino, Stern), which would have enacted the California Environmental, Public Health, and Workers Defense Act of 2019. This bill was intended to push back against the Trump Administration's efforts to weaken environmental and labor protections. Authored by the Senate President Pro Tempore Toni Atkins, this bill was designed to codify the versions of the federal Clean Air Act, Clean Water Act, Endangered Species Act, and Fair Labor Standards Act, and their accompanying regulations prior to the inauguration of President Trump in January 2017.

continued on page 46

CONTENTS:

text continued from page 45

This bill was opposed by Central Valley farmers, water agencies, and Senator Dianne Feinstein. According to the San Francisco Chronicle, they claimed it "would undermine delicate deals that had been negotiated to deliver more water south of the Sacramento-San Joaquin River Delta while still protecting endangered fish species." In his veto message, Governor Newsom wrote: "I fully support the principles behind Senate Bill 1: to defeat efforts by the President and Congress to undermine vital federal protections. . .Senate Bill 1 does not , however, provide the state with any new authority to push back against the Trump Administration's environmental policies and it limits the state's ability to rely upon the best available science to protect our environment."

Compared to previous Democratic and Republican governors, Newsom's first term yielded relatively modest environmental policies as he transitioned into his new job. Nonetheless, the governor approved a bevy of new environmental quality, land use, and natural resource laws during the 2018-2019 legislative session. Capping the list were several exemptions to the California Environmental Quality Act (CEQA) designed to expedite housing approvals to address California's housing and homeless crisis. The legislative session was once again dominated by preparing for and responding to wildfire as well as a seminal new law recasting electric utility liability for wildfire damage. Other new laws tinkered with oil and gas leases and closure of idle and abandoned wells.

The Governor signed other policies boosting climate resiliency and regulating air emissions from heavy duty vehicles and hazardous waste transportation, while approving other legislation advancing chemical "right to know." Other noteworthy measures addressed recycling markets and infrastructure. The Legislature also approved laws expanding access to potable drinking water while maintaining a focus on recycled water and replenishing ground water reserves. Finally, the Legislature delivered several new laws protecting several animal species, including circus animals and horses.

Except for budget-related urgency laws that passed by a supermajority (which took effect on the date of its signing), the enacted laws became effective on January 1, 2020.

Climate Change

California and world governments face increasing headwinds in their objective to achieve steep greenhouse gas (GHG) reductions to forestall what an overwhelming majority of scientists predict could be a cataclysmic future. In the fall of 2019, world leaders failed to agree on the remaining rules to implement the 2015 Paris climate accord. According to the nonprofit Next 10, major policy breakthroughs and deep structural changes are necessary to reach meaningful GHG emissions reductions. This challenge is underscored by the Trump administration's recent repeal of Obama's Clean Power Plan and replacement with the scaled down Affordable Clean Energy rule.

Despite achieving the 2020 California climate reduction goals ahead of schedule, unless decisive action is taken, the California Green Innovation Index concludes it will take another 30 years to meet the more ambitious 2030 goals established by SB 32 [see Stats. 2016 SB 32 (Pavley)]. According to David Clegern of the ARB, "It is clear that achieving the state's ambitious goals will require continued legislative and funding support."

The California Legislature responded with several climate change laws against this backdrop. The first, AB 298, builds upon AB 398 [see Stats. 2017 AB 398 [E. Garcia]], which established a minimum number of compliance offsets providing "direct environmental benefits" within California. Approximately 75 percent of GHG

compliance offsets have been generated outside California and thus, do not meet this standard. Assembly member Garcia introduced AB 298 to help generate more in-state GHG compliance offsets by requiring the ARB's Compliance Offsets Protocol Task Force to consider developing additional offset protocols. This new law also invites the ARB to consider GHG offset protocols to enhance management or conservation of agricultural and natural lands and wetland restoration.

The Legislature delivered four new policies focused on boosting California's climate resiliency. AB 65 (Petrie-Norris) promotes green infrastructure as a cost-effective approach to address climate adaptation. When allocating funds from California Drought, Water, Parks, Climate, Coastal Protection, and Outdoor Access For All Act of 2018 (Proposition 68) this new law requires the California Coastal Conservancy to prioritize supporting "natural infrastructure projects" in coastal communities to manage the effects of climate change (e.g., addressing ocean acidification, sea level rise, or habitat restoration and protection). Proposition 68, approved by the California electorate in June 2018, authorizes $4 billion in revenue bonds to support drought, water, parks, climate, coastal protection and outdoor access.

SB 576 (Umberg) establishes the Climate Ready Program within the Coastal Conservancy which is empowered to implement coastal climate resiliency strategies to capture carbon (i.e., climate adaptation, infrastructure, and readiness program). The Coastal Conservancy is charged with recommending strategies to improve climate resiliency by apprising the Office of Planning and Research (OPR) of climate adaptation information for potential inclusion in the State clearinghouse. AB 285 (Friedman) is another new policy addressing climate resiliency. It requires the California Department of Transportation (DOT) to describe the anticipated impacts of advanced and emerging technologies to infrastructure, access, and transportation systems. This new law also requires California DOT to update the California Transportation Plan (CTP) to address its strategy to achieve "maximum feasible emissions reductions" of GHG emissions to fall 40 percent below 1990 levels by the end of 2030 and to meet state and national ambient air quality standards. Finally, AB 320 (Quirk, Mathis) responds to the risk of mosquito borne viruses like Zika and West Nile. This new law establishes the California Mosquito Surveillance and Research Program, to manage and disseminate data on mosquito borne virus and surveillance control and to coordinate with the state Department of Public Health (DPH).

Assembly member Aguiar-Curry introduced AB 1237 to increase the diversity of applicants seeking funds from the Greenhouse Gas Reduction Fund (GGRF). This law is designed to enhance transparency around the GGRF application process by requiring state agencies receiving GGRF funds to highlight on their internet websites guidelines governing the process for allocating funds. The guidelines

QUESTIONS ABOUT THIS PUBLICATION

For questions about missing issues, new publications, billing, or other customer service problems call our Customer service department at 1-800-833-9844.

For editorial questions contact Nancy Greening: by phone at (908) 673-3361, or by email to Nancy.H.Greening@lexisnexis.com. For all other questions call 1-800-833-9844.

must include, among other details, award application timelines, eligibility criteria, technical assistances, and agency staff contacts.

CEQA, Land Use, and Housing

As Californians struggle amid a severe, ongoing housing crisis, the Legislature, along with Silicon Valley and Kaiser Permanente, stepped in to help. Tech giants committed billions to fund affordable housing, including $2.5 billion from Apple, $1 billion each from Google and Facebook, and $200 million from Kaiser.

The Legislature also weighed in with a bevy of new laws designed to expedite new housing approvals. Recent legislation designed to boost housing supplies has eased zoning restrictions in favor of accessory dwelling units (ADUs). AB 68 (Ting), AB 881 (Bloom), and SB 13 (Wieckowski) collectively remove barriers to ADU housing approvals. AB 68 preempts local ordinances from restricting, among other things, minimum lot size, lot coverage, floor area ratio, open space, and minimum lot size for ADUs. AB 881 also preempts local governments from establishing minimum square footage limits for ADUs. This new law also prohibits local agencies from establishing a maximum square footage requirement for ADUs less than 850 square feet and 1,000 square feet for ADUs with more than one bedroom. Finally, AB 881 preempts local agencies from establishing minimum or maximum size for ADUs. Local limits cannot be based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, and minimum lot size for ADUs with specified dimensions relating to square footage, height, and side and rear yard setbacks.

Prior to the enactment of AB 68, local permitting agencies were required to approve or deny an ADU application without undergoing CEQA review within 120 days of receiving a completed application. This new law allows local agencies to complete ADU permit approvals in no more than 60 days. In addition, it allows ministerial approval under CEQA for ADUs associated with existing single-family or multi-family dwellings located within mixed-use zones. This new law also requires a local agency to amend its ADU local ordinance in the event the Department of Housing and Community Development (DHCD) determines its local ordinance fails to comply with state law governing ADUs. If a local agency does not amend its ordinance to cure the deficiency, the agency must alert the DHCD of its failure. AB 881 and SB 13 also prohibit local agencies from imposing parking standards for ADUs located within a half mile walking distance of public transit.

Assembly members Quirk-Silva, Daly, and Kalra note that California has nearly 50 percent of the nation's unsheltered population largely due to the high cost of rental housing. The National Low-income Housing Coalition estimates that California is 1.5 million affordable housing units short to meet the demand for very low-income Californians. These authors acknowledge the need to provide an array of innovative short and long-term strategies to promote rapid construction of housing units in California. In 2017, Governor Brown signed AB 932 (Ting), which provides a CEQA exemption designed to expedite approval for homeless shelters and permanent supportive housing in Berkeley, Emeryville, Los Angeles, Oakland, San Diego, San Francisco, and Santa Clara County upon the municipality declaring a shelter crisis. That law suspends local building approval procedures governing housing, health, habitability, planning and zoning, or safety standards to the extent that strict adherence could "prevent, hinder, or delay the mitigation of the effects of the shelter crisis." AB 143 (Quirk-Silva, Daly, Kalra) extends this CEQA exemption to Orange and Alameda counties and the City of San Jose.

According to the bill analysis for SB 450 (Umberg), "...many families experiencing homelessness are already temporarily living in motels through motel voucher programs. ...While many of these motels are ideal sites for affordable housing, the CEQA process currently leads to costs ranging from $100,000 to $1,000,000 per project as well as potential administrative and litigation delays." Senator Umberg championed SB 450 to expedite motel conversions by expanding the supportive housing exemptions under CEQA to include building conversions to motels (i.e., interim motel housing projects).

Last year, the Legislature and governor approved AB 2172 [Stats. 2018, AB 2172 (Chiu)], which created a streamlined approval process for affordable housing developments that include a minimum percentage of supportive housing units that providing onsite supportive services. That law carved out a CEQA exemption for these projects by prohibiting discretionary review and requiring "supportive housing" approvals to be a "use by right" for housing zoned for multifamily and mixed uses. SB 744 (Caballero) is an expansive new law that creates an expedited CEQA review process for supportive housing developments that receive "No Place Like Home" (2016 Proposition 2) funding and do not qualify for land use approvals by right [see AB 2162 [Chiu]) 2018. The applicant is authorized to request the lead agency to prepare the project record of proceeding concurrently with the environmental review. Within two working days of a project approval, if the project is subject to CEQA, the lead agency must file a notice of the determination or a notice of exemption for those projects not subject to CEQA. This new law establishes timeframes governing when plaintiffs can challenge a lead agency's action alleging noncompliance with CEQA.

SB 744 modifies last year's AB 2172 and requires use by right approvals where developers provide the planning agency a plan to provide supportive services. The plan must require that 100 percent of the units (except the managers' units), within the development be earmarked for lower income households. These units must receive or expect to receive public funding to ensure affordability. This new law now allows a municipality to establish a policy to approve by right more than 50 supportive housing units that are not subject to CEQA. Local governments are authorized to require that these supportive housing developments meet specified design review standards and align with the Housing Accountability Act, and that it is not a project for purposes of CEQA. This new law also prohibits municipalities from establishing minimum parking requirements for supportive housing units located within a half mile of a public transit stop. In addition, this new law clarifies that supportive housing developments meeting use by right approval (i.e., pursuant to last year's AB 2162) qualify for density bonuses, concessions and incentives, and waiver of development standards.

The 2018 Camp Fire in Butte County was the deadliest and most destructive wildfire in California history. It leveled the town of Paradise, killed 85 people, destroyed 20,000 buildings, and displaced 50,000 people. AB 430 (Gallagher) aims to keep displaced residents in the area where they are employed, have family, and community connections. This new law intends to expedite residential and mixed-use housing approvals by allowing a ministerial CEQA exemption for the following eight cities: Biggs, Corning, Gridley, Live Oak, Orland, Oroville, Willows, and Yuba City. To enjoy this exemption, the projects must demonstrate alignment with zoning standards of the local general plan. While project approvals will be valid for three years, projects involving investment in affordable housing will be valid indefinitely. In a similar fashion, AB 1197 (Santiago) establishes an exemption from CEQA for emergency shelters and supportive housing projects in the City of Los Angeles.

AB 782 (Berman) establishes another CEQA exemption where public agencies transfer ownership interests in land to protect open space, habitat, or historical resources. According to Assembly member Berman, this new law is premised on the notion that "the mere acquisition of land, without adoption of a plan for its future use, would not and could not have an environmental impact."

Assembly member Friedman introduced another measure to expand the scope of a CEQA exemption promoting SMART growth. Prior to the enactment of AB 1560 (Friedman), the definition of a "transit priority area" excluded many major bus lines including areas well served by bus rapid transit, but not by rail. The prior definition included ". . . site[s] with existing rail transit stations, ferry terminals served by bus or rail, or major bus routes. However, this definition excluded "rapid bus transit station." AB 1560 expands the definition of a "major transit stop" to include a "bus rapid transit station, with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods." AB 1824 (Assembly Natural Resources Committee) provides another CEQA exemption for railroad grade crossing closures ordered by the California Public Utilities Commission (CPUC) to prevent a threat to public safety.

Assembly member Friedman introduced AB 1515 to address the uncertainty presented when CEQA environmental review documents for community plan updates are challenged in court. These legal actions have the potential to delay projects planned for community plan areas due to the uncertainty raised over the potential legal outcome. AB 1515 is designed to allay these fears by prohibiting courts from invalidating local approvals stemming from local agency efforts to remedy approval of updates to community plans. This protection is only available for development projects that were deemed complete or approved before the court stayed an action requiring the challenged Environmental Impact Report to be rescinded.

SB 99 (Nielsen) is intended to enhance emergency evacuations for residential communities located in fire hazard severity zones lacking basic safety precautions in their land use general plans. Specifically, this new law requires municipalities to update their general plan housing elements during its next revision. The update must identify residential developments in hazard areas that do not have at least two emergency evacuation routes captured in the General Plan safety element.

Wildfire

Extreme drought, low snowpack, and extreme high temperatures have contributed to increasing wildfire frequency and severity throughout California. As of 2017, Californians have experienced eleven of the twentieth most destructive wildfires in California history. Governor Newsom has prioritized wildfire protection with funds, policy and a preemptive state of emergency order in advance of the 2019 wildfire season to expedite forest management efforts. The Legislature complemented these efforts with another comprehensive legislative package addressing, among other policies, emergency communications, wildfire mitigation planning, clean air refuge venues, and property disclosures regarding fire hardening improvements.

SB 209 (Dodd) establishes the Wildfire Forecast and Threat Intelligence Integration Center to serve as the nerve

center for wildfire coordination "forecasting, weather information, and threat intelligence gathering, analysis, and dissemination and to coordinate wildfire threat intelligence and data sharing." The Center must include representatives from The Wildfire Forecast and Threat Intelligence Integration Center Office of Emergency Services (OES), Department of Forestry and Fire Protection (Cal FIRE), the Public Utilities Commission, the Military Department; the University of California, the California State University, the California Utilities Emergency Association, and the California's investor-owned utility companies.

Over one million Californians lost phone service during Pacific Gas and Electric's (PG&E) de-energization energy blackouts prompting the Legislature to advance several new laws addressing emergency response and communication. California's 911 system uses outdated "public safety answering points" analog technology that does not effectively accommodate wireless or voice over internet protocol devices. This results in delays in responding to emergencies because the technology does not reveal a caller's exact location. AB 956 (Diep) is designed to provide Californians time-critical emergency information regardless of whether one uses a landline or cellphone. Specifically, this new law authorizes public safety agencies to test all modes of 911 emergency telephone systems.

SB 560 (McGuire) requires that electric utilities develop procedures to notify customers who may be impacted by the deenergizing electrical lines. Utilities must also notify public safety offices, critical first responders, health care facilities, and operators of telecommunications infrastructure potentially affected by a de-energization event. This new law also requires telecommunications providers to develop protocols to respond to Public Safety Power Shutoffs (PSPS) events and to designate a point of contact to coordinate a response. Mobile telephone service providers must communicate relevant situational communications capabilities to electrical corporations, local publicly owned electric utilities, electrical cooperatives, and appropriate public safety stakeholders for the affected area.

Because public agencies were not authorized to share mobile telephone numbers, they could not test emergency alert systems. AB 1079 (Santiago) allows access to unpublished telephone numbers of California residents without their consent to test state and local emergency alert systems. Wireless Real-Time Text (RTT) technology, which generates text conversations as the message is being typed, is not widely available. Assembly member Mullin, who is hearing impaired, authored AB 1168 to avail deaf Californians of 911 services. This new law requires each public safety answering point, by January 1, 2021 to deploy "text to 911 service" such as RTT.

De-energization blackouts impact critical care and medical baseline ratepayers who depend on electrically powered life support equipment. SB 167 (Dodd) answered by requiring electrical corporations to establish protocols to mitigate wildfire public safety impacts caused when they deenergize portions of the electrical distribution system. This new law is designed to help customers receiving medical baseline allowances by authorizing electrical corporations to deploy backup electrical resources or provide financial assistance for backup electrical resources for these customers.

The Federal Communications Commission requires immediate and mandatory reporting of significant electric service affecting nuclear power plants, air traffic control centers, and major military installations; however, several types of outages fall below the threshold for immediate reporting. This prompted Senator McGuire to introduce SB 670, which expands the time horizon governing when a 911 telecommunications service provider must notify the OES about a "community isolation outage." The notification obligation must now be made within 72 hours of discovering the outage instead of within 60 minutes.

According to Assembly member Levine, "data throttling" by internet service providers significantly decreases the speed of communications equipment, impeding the ability of emergency personnel during an emergency. AB 1699 (Levine) prohibits mobile internet service providers from "impairing or degrading" internet traffic of first response agencies during an emergency.

SB 247 (Dodd) is one of two laws addressing wildfire mitigation planning. This new law responds to PG&E's alleged mismanagement of its vegetation removal program by requiring the CPUC's Wildfire Safety Division to audit and validate that electric utilities are complying with the vegetation management provisions of their wildfire mitigation plans. In addition, due to the inherent danger associated with electrical line clearance, this new law requires only hiring qualified line clearance tree trimers to perform this work. These workers must be paid no less than a specified prevailing wage rate. SB 190 (Dodd) requires the Office of the State Fire Marshal (SFM) to develop a model defensible space program and to publish on its internet website a Wildland-Urban Interface Fire Safety Building Standards Compliance training for local building officials, builders, and fire service personnel. In addition, SFM must develop a list of products and construction assemblies meeting the wildland urban interface fire safety building standards.

No later than January 1, 2021, AB 38 (Wood) requires sellers of real property located in high or very fire hazard severity zones to disclose to buyers the fire hardening improvements made to their property as well as those

features that could make the structure vulnerable to flying embers. By July 1, 2025, the seller's notice must include the SFM's list of low-cost retrofit opportunities. Sellers must also share copies of final inspection reports to the buyer pursuant to Gov. Code § 51182. This new law additionally requires the California Natural Resources Agency to assess the regional capacity of counties located in very high fire hazard severity zone "to improve forest health, fire resilience, and safety." The OES must work with Cal FIRE to develop a comprehensive wildfire mitigation and assistance program. The program must "encourage cost-effective structure hardening and retrofitting to create fire-resistant homes, businesses, and public buildings." Finally, under this new law, the SFM, must identify building retrofits and structure hardening measures, while CAL FIRE must identify defensible space, vegetation management, and fuel modification activities, that are eligible for financial assistance under the Wildlife Mitigation and Assistance Program referenced above.

AB 836 (Wicks) responds to the respiratory harm impacting vulnerable populations from the recent wildfires by providing clean air venues to serve vulnerable populations. This new law creates the Wildfire Smoke Clean Air Centers for Vulnerable Populations Incentive Pilot program to help mitigate the adverse public health impacts from wildfires and other smoke events. This new law provides grant funding to retrofit ventilation systems to create a network of clean air centers.

AB 1432 addresses the situation where public water supplies fall short of the community need because the water is committed to fighting fires. AB 1432 (Dahle) authorizes public water suppliers to declare a water shortage emergency due to wildfire without first holding a public hearing. This law allows public water suppliers to focus on managing the emergency without the distraction of convening a quorum of its board.

SB 70 (Nielsen) addresses the tradeoffs between establishing underground electrical systems which reduce the risk of wildfires and the increased costs connected to construction, maintenance, and repair. SB 70 requires electrical corporations' wildfire mitigation plans to describe the rationale for considering undergrounding electrical distribution lines within its service territory posing the highest wildfire risk.

Energy and Energy Efficiency

The California Legislature served up a variety of policies promoting renewable energy, balancing the electricity load anticipated from electric vehicles, and significantly revising the liability standard for electric utilities.

For the past few legislative cycles, the California Legislature has wrestled with modifying the liability standard governing inverse condemnation. This debate came to a head during the last legislative session when PG&E was found liable for the 2018 Camp Fire that destroyed the town of Paradise in Butte County. AB 1054 (Holden, Burke, Mayes) emerged. This comprehensive new law incorporates several recommendations generated by the Governor's strike force report and the SB 901 [Stats. 2018, SB 901(Dodd)] CPUC recommendations. This new law establishes the California Wildfire Safety Advisory Board to advise the Wildfire Safety Division within the CPUC. This board is to be composed of seven members appointed by the Governor, Speaker of the Assembly, and Senate Committee on Rules serving staggered four-year terms. The Board is empowered to provide electric utility wildfire safety oversight for utility infrastructure for investor owned utilities (IOUs). AB 1054 also requires the CPUC and the Office of Energy Infrastructure Safety to cooperatively develop consistent approaches to electric infrastructure safety.

AB 1054 additionally establishes a new liability standard allowing IOUs to recover costs for catastrophic wildfire damages where the CPUC determines costs and expenses arising from a covered wildfire are "just and reasonable based on reasonable conduct by the electrical corporation." The IOU's conduct with respect to the ignition must be judged to have been reasonable and "consistent with actions that a reasonable utility would have undertaken in good faith under similar circumstances." The IOU must demonstrate, based on a "preponderance of the evidence, that its conduct was reasonable." If the electrical corporation has earned a "safety certification" from the CPUC for the time period in question, its conduct would be deemed to be "reasonable" unless there is "a serious doubt as to the reasonableness of the electrical corporation's conduct." AB 1054 also creates a Wildfire Fund to pay for eligible property claims linked to wildfires caused by utilities. This new law additionally permits electrical corporations to request the CPUC to authorize cost recovery stemming from catastrophic wildfires by issuing revenue bonds.

Last year's AB 2127 (Ting) codified Governor Brown's ambitious goal of five million electric vehicles (EVs) in California by 2030. The CEC warns that the accelerated EV deployment could generate significant electricity demand disproportionately by region. The CPUC believes that technology alone will not manage the load mismatch. SB 676 (Bradford) was enacted to balance the energy load to avoid the possibility of increasing demand for natural gas and need for electricity system upgrades. SB 676 is intended to create price signals to encourage EV owner behavior shifting the energy load to non-peak hours. This new law authorizes the CPUC to revise the EV-grid integration definition to include "both the use of technology

to modify load and ratemaking that supports charging in response to price signals."

The California Renewables Portfolio Standard (RPS) Program requires IOU sales to retail end-use customers to achieve specified renewable performance standards and ultimately deliver 60 percent renewable energy by December 31, 2030. Prior to SB 155 (Bradford), the CPUC was not authorized to enforce IOU compliance with the RPS until after the RPS compliance period. This new law lends transparency to the RPS process in order to avoid delayed enforcement actions. SB 155 requires the CPUC to annually monitor RPS compliance by reviewing load-serving entity annual RPS compliance reports and alerting them if they are at risk of falling short of their renewable procurement requirements for the current or future RPS compliance period.

Beginning January 1, 2020, new homes must install solar panels. AB 178 (Dahle) offers an exemption for installing rooftop solar photovoltaic systems for homeowners rebuilding homes destroyed due to a disaster in which the Governor has declared a state of emergency. To qualify, the homeowner's income must be below the county's average median income, or they must not have had code upgrade insurance coverage.

AB 2313 [Stats. 2016, AB 2313 (Williams)] established a monetary incentive program to promote investment in biomethane projects to promote biomethane delivery to natural gas pipeline systems. SB 457 (Hueso) extends the sunset date by five additional years (December 31, 2026) to allow biomethane production projects planned and under-development to receive the incentives.

Prior to AB 1144 (Friedman), the CPUC allocated 85 percent of Self Generation Incentive Program (SGIP) funds to energy storage technologies. As communities experience more frequent de-energization events AB 1144 is intended to enhance local resiliency by allocating at least 10 percent of the 2020 Self Generation Incentive Program funds for distributed energy resources projects to address critical infrastructure in high fire threat districts.

Oil and Gas Production

In addition to pushing back against federal efforts to increase oil and gas leasing in California, the Governor signed legislation regulating oil spill contingency planning along with several measures addressing the risk of abandoned or idled oil and gas wells.

Assembly member Rivas introduced AB 936 to close a technical gap regarding planning and prevention of "nonfloating" oil (i.e., oil that sinks within the water column). Major recent spills have highlighted the need to mount an immediate response to nonfloating oils. This new law defines "nonfloating oil" pursuant to the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act. It requires the Office of Spill Prevention and Response to revise the California oil spill contingency plan no later than January 1, 2023, to address nonfloating oil and to revise criteria for requiring Oil Spill Response Organizations (OSROs) to be capable of providing equipment on the scene of an oil spill to address nonfloating oil spills. The oil spill contingency plan must also identify at least one OSRO-rated for nonfloating oil spill response.

The Trump Administration increased, by six-fold, the amount of federally owned land available in California for oil and gas leases from 2016 levels, while shortening the leasing process. Governor Brown pushed back by signing AB 1775 [Stats. 2018, AB 1775 (Muratsuchi)], which made it significantly more difficult to obtain new oil and gas leases within California waters. That law prohibited the State Lands Commission (SLC) or a local trustee from granting new leases to construct oil- and gas related infrastructure upon tidelands and submerged lands within California waters after January 1, 2018. AB 342 (Muratsuchi) provides further protection to federal lands in California by prohibiting California agencies from entering into new leases or other public land conveyances authorizing new construction of oil- and natural gas-related infrastructure on federally protected public lands. This new law additionally clarifies that the prohibition does not prevent operations that convey oil or natural gas from state lands or waters.

The Legislature advanced several bills to manage the financial exposure and environmental impacts from abandoned and idled oil and gas wells. [Stats. 2016, AB 2729 (Williams)], increased fees, revised idle well management plans, and required additional testing requirements for idle wells. Assembly member Limón authored AB 1057 to address the potential state liability for managing abandoned oil and gas wells. This new law is premised on the notion that indemnity bonds for operators do not cover the cost to plug and abandon wells as oil production in California declines. Based on conservative estimates, California taxpayers could be on the hook for up to $500 million per 10,000 oil wells. In addition to requiring well operators to provide more information to Division of Oil, Gas, and Geothermal Recovery (DOGGR), this new law permits DOGGR to require an additional security of up to $30 million to plug and abandon a well and decommission production facilities.

AB 585 (Limón) codifies what criteria govern SLC approvals of proposed oil and gas lease assignments, transfers, or subleases. Under this new law, present and future oil and gas leases or permit holders must record, with the county, assignments, transfers, subleases. This new law

also provides that oil and gas lease or permit holders are responsible and liable for plugging and abandoning wells and decommissioning production facilities and related infrastructure left on leased lands by the lessee. This responsibility applies to past, present, or future assignees, transferees, or sublessees as well. In addition, lessees, assignees, transferees, sublessees, or operators must submit to the SLC a notarized affidavit acknowledging liability connected to decommissioning production facilities and related infrastructure within six months of the lease termination or expiration. The decommissioning must occur within one year.

SB 551 (Jackson) requires, by July 1, 2022, oil and gas well operators to report to DOGGR their total liability associated with plugging and abandoning and decommissioning wells and their associated production facilities. This new law also requires DOGGR to conduct inspections of production facilities connected to long-term idle wells to ensure compliance with applicable statutory requirements governing oil and gas wells.

The Governor signed two bills addressing the health effects of natural gas emissions from wells. According to the bill analysis for AB 1328 (Holden), average methane emissions from unplugged wells are 5,000 times higher than plugged wells. AB 1328 (Holden) responds to a scarcity of information regarding GHG and air pollution emissions generated from wells during remediation activities. This new law is designed to provide DOGGR with information on the public health, air quality, and climate benefits from cleanup operations to help it prioritize which the idle and abandoned wells to be plugged first. AB 1328 also requires DOGGR to monitor fugitive emissions from plugged and abandoned wells and extends from 12 to 24 months the time frame to commence well abandonment. SB 463 (Stern) is the other new law addressing health effects from natural gas. This new law responds to the public health impacts generated from the massive gas leak from the Alison Canyon storage facility. According to Senator Stern, health effects continued after the leak was plugged. SB 463 is intended to improve awareness of public health exposures to gas leaks from storage wells by requiring a "more thorough disclosure of the chemicals present and used at gas storage facilities" to assist in assessing and responding to health risks. In addition to risk management plans already required for gas storage wells, this new law requires natural gas well operators to submit to the DOGGR a complete chemical inventory as well as the chemical composition of "well kill fluids" that will be used to respond to a reportable leak.

Air Quality

The Legislature passed and the Governor signed three new mobile source air quality laws. SB 210 (Leyva) responds to several new studies underscoring the health effects of particulate matter (PM) pollution, which contains dozens of toxic air contaminants as well as nitrogen oxides, which contribute to smog. A 2017 New England Journal of Medicine article concluded there is no safe level for long-term exposure to fine particulates (PM less than 2.5 micrometers in diameter). Other recent studies in the journals Environmental Epidemiology and JAMA Pediatrics draw a connection between PM and autism.

AB 210 builds on California's Smog Check Program, which prior to this law, exempted heavy-duty vehicles from emissions testing. According to Senator Leyva, "opacity tests are not enough to ensure that heavy-duty trucks are operating cleanly and efficiently." SB 210 requires the ARB to consult with the Bureau of Automotive Repair to develop a Heavy-Duty Vehicle Inspection and Maintenance Program (HDVIMP) for diesel-powered heavy-duty vehicles with a gross vehicle weight rating greater than 14,000 pounds. This new law additionally prohibits heavy-duty vehicles from operating in a manner that emits visible smoke. The HDVIMP must include procedures to ensure that out-of-state owners of heavy-duty vehicles comply with the performance standards before entering the state.

SB 44 (Skinner) is another mobile source strategy intended to tackle PM emissions from diesel-powered vehicles. According to the American Lung Association, California is home to seven of the country's 10 worst areas of PM pollution. SB 44 requires the ARB to update its 2016 mobile source strategy, which is designed to demonstrate "how California can simultaneously meet air quality standards, achieve GHG emission reduction targets, decrease health risk from transportation emissions, and reduce petroleum consumption over the next fifteen years." Prior to this new law, the strategy was primarily focused on increasing by over 50 percent plug-in hybrid electric vehicles and non-combustion zero-emission vehicles including battery-electric and hydrogen fuel cell electric vehicles. The revised mobile source strategy must be updated every five years and, by 2021, include a comprehensive strategy to deploy medium duty and heavy-duty vehicles focused on reducing emissions by 2030 and 2050.

SB 400 (Umberg) amends the "Clean Cars 4 All" program, which authorizes local and regional air quality management districts to offer up to $4,500 of "commuter bucks" to low-income Californians to replace their higher polluting motor vehicles. Recipients can spend their commuter bucks on more efficient vehicles, public transit, car sharing, or van pooling. This new law expands the eligibility of the Clean Cars 4 All financial resources to also be used for bike sharing and electric bicycles.

Hazardous Materials

The Legislature made adjustments to the Proposition 65 (the Safe Drinking and Toxic Enforcement Act of 1986) appeals process while establishing chemical disclosure for salon workers and more protections for chemical exposures to jewelry. Other new polices ban use of biocidal chemicals, modify the Lead-Acid Battery Recycling Act, and establish procedures governing properties contaminated with fentanyl.

Prior to AB 1123 (Reyes), private enforcers or defendants involved in Proposition 65 matters were not required to notify the Attorney General when an appeal was filed. Attorney General Xavier Becerra sponsored AB 1123 to alert the Attorney General of Proposition 65 appeals to allow the Attorney General to apprise the court of the statewide interests that the case may present. Parties in any Proposition 65 proceeding with the Supreme Court, Court of Appeal, or the appellate division of the Superior Court, must first serve a copy of the appellate petition and/or brief to the Attorney General before being accepted in the higher courts. Parties who fail to comply must be offered a reasonable opportunity to cure the failure before being sanctioned by the court.

AB 647 (Kalra) provides salon workers access to information on potential health hazards posed by cosmetic products they handle. Beginning July 1, 2020, manufacturers must post safety data sheets (SDS) on the internet and translate them into Spanish, Vietnamese, Chinese, Korean and potentially other languages. Prior to AB 647, manufacturers and importers of cosmetic and disinfectant products were not required to post SDSs online. Assembly member Kalra supported this legislation because "employees may request safety data sheets from their employer, but they can be difficult to obtain from the manufacturer. Additionally, many workers are characterized as 'independent contractors' and therefore do not have the same rights under occupational safety and health law as 'employees' to demand safety data sheets from the employer."

AB 1429 (Chen) provides regulatory relief for California businesses that are exempt from meeting the federal Emergency Planning and Community Right-to-Know Act (EPCRA)'s "Tier II" reporting program but exceed California thresholds. This new law allows these businesses that handle smaller quantities of hazardous materials to submit hazardous materials business plans to the California Environmental Reporting System (CERS) triennially instead of annually.

SB 317 (Caballero) bans the sale and distribution of 14 biocidal chemicals (including among others formalin, benzene, toluene, xylene, ethylene glycol, 1,1,1-trichloroethane, trichloroethylene, and perchloroethylene) that disrupt the "bacterial ecosystem" in septic tanks. This poses the threat of pathogens escaping into the septic drain field impacting groundwater quality. SB 317 additionally requires RV parks to publicize the ban.

SB 647 (Mitchell) represents a tune up to the California's metal-containing jewelry law. This new law leverages the scientific understanding of the long-term health risks of lead and cadmium exposure—two chemicals commonly found in jewelry. SB 647 expands the definition of "children" from six years of age and younger to "younger than 15 years of age." It significantly lowers regulated levels of lead allowed in adult jewelry, beginning June 1, 2020. For example, the new level for electroplated metal is 0.05 percent of lead by weight instead of 6 percent. Finally, this new law requires manufacturer and supplier certifications to include dates and locations of where the jewelry was tested.

AB 142 (C. Garcia) amends the Lead-Acid Battery Recycling Act to increase the fee paid by manufacturers for lead-acid batteries to help fund the cleanup of the former Exide lead smelting site and the prospect of remediating dozens more contaminated lead smelter sites. This urgency measure eliminates the sunset date for the Act and raises the manufacturer battery fee from $1 to $2. This new law requires the Department of Toxic Substances Control (DTSC) to create the Lead-Acid Battery Recycling Facility Investigation and Cleanup Program to identify sites eligible to receive the Lead-Acid Battery Cleanup Fund. Out-of-state lead-acid battery manufacturers, who are exempt from the fee, may pay the fee on behalf of an importer to cover hazardous waste liability.

AB 1596 (ESTM) amends the Methamphetamine Contaminated Property Cleanup Act, which establishes procedures to safely decontaminate properties contaminated with methamphetamine before they are rented or sold. This new law expands the coverage of the Act to include properties contaminated with fentanyl. AB 1596 was prompted by the risk first responders and law enforcement personnel face when exposed to fentanyl. Even a small amount can cause significant health impacts including respiratory depression, or death. This new law renames the act to be the Methamphetamine or Fentanyl Contaminated Property Cleanup Act. It establishes interim cleanup standards governing cleanup of fentanyl labs and requires local health officers to notify property owners and renters of the fentanyl contamination.

Hazardous Waste

The Legislature focused attention this session on transportation of hazardous waste, the management of household hazardous waste, and attempted to adjust the methodology

for determining whether a hazardous waste exhibits the characteristic of toxicity.

AB 1597 (Assembly Committee on Environmental Safety and Toxic Materials) aligns the California hazardous waste manifesting system with the federal Hazardous Waste Electronic Manifest Establishment Act. The latter Act established a national electronic manifest system governing the electronic transmission of the uniform hazardous waste manifest. AB 1597 brings California into compliance with the federal manifest system which became effective on June 30, 2018. AB 1597 requires hazardous waste generators, transporters and treatment, storage, and disposal facility operators to follow the federal "e-manifest" requirements. SB 552 (Archuleta) indefinitely reauthorizes the provisions of SB 456 [Stats. 2011, SB 456 (Huff)] which were set to sunset. SB 552 authorizes hazardous waste transporters to use a consolidated manifest in door-to-door household hazardous waste collection.

SB 726 (Caballero) aims to promote the reuse of household hazardous waste by leveraging new technologies that identify which household waste product can be reused such as deck sealers and paint thinners. This new law authorizes public agency contractors to conduct a materials exchange program at household hazardous waste collection facilities for reusable household hazardous products and materials. These facilities must make these materials available to recipients which now includes commercial entities. The recipient must follow material labels and use appropriate personal protection. This new law additionally redefines "reusable household hazardous product or material" as a household hazardous material received at a household hazardous waste collection facility. Commercial recipients of household hazardous waste must certify under penalty of perjury that they have a known market for any materials received and that they intend to distribute the material for its originally intended purpose. Finally, this new law authorizes permanent household hazardous waste collection facilities, subject to compliance with applicable DOT shipping requirements, to transport the household hazardous waste and materials.

The Governor vetoed AB 733 (Quirk) which was intended to provide a more humane alternative to the acute aquatic toxicity test. This "minnow test" currently requires exposing minnows to potentially lethal doses of chemicals to determine whether the chemical is a toxic hazardous waste. This bill would have required the Department of Toxic Substances Control (DTSC) to explore alternatives to the acute aquatic toxicity test in lieu of live vertebrate fish.

According to Assembly member Maienschein, AB 181 clarifies that federal agencies are exempt from paying at least 25 percent of the hazardous waste facility permit fee to DTSC. Prior to AB 181, DTSC required the military "to pay full reasonable service charges for their hazardous waste facility permit applications [along with] all reasonable service charges associated with a permit renewal application, and all other charges approved by a specific appropriation or federal law."

In *People v. ConAgra Grocery Products Co., (*2017*),*the court of appeal concluded that a defendant can test lead paint and attempt "to hold a fellow defendant liable for a greater share of responsibility by proving "that the hazardous condition is the 'owners fault' or that the condition is not hazardous." AB 206 (Chiu) establishes limited immunity from contribution or recovery from costs connected with participating in a lead paint abatement program. This new law adds clarity to the court's cryptic reference to the "owner's" fault encouraging property owner participation in the lead paint abatement program by alleviating their fear of liability for participation.

Environmental Justice

AB 1628 (R. Rivas) recasts the definition of "environmental justice" for several agencies and purposes. First, in its role as the state coordinating agency for environmental justice programs, the OPR coordinates its efforts and shares information pertaining to environmental justice programs with federal agencies. AB 1628 adjusts the definition of "environmental justice" to also include "the meaningful involvement of people of all races, cultures, incomes, and national origins with respect to those same actions." The revised definition provides that "environmental justice" includes, among other things, "the availability of a healthy environment for all people." This new law also revises the definition of "environmental justice" pursuant to the California Coastal Act of 1976 as described above. Finally, this new law revises the definition of "environmental justice" under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 to also include the "meaningful involvement of people of all races, cultures, incomes, and national origins, with respect to those same actions, to ensure a healthy environment for all people such that the effects of pollution are not disproportionately borne by any particular populations or communities."

AB 285 (Friedman) is another law addressing environmental justice. This new law requires that the California Transportation Plan to consider environmental justice considerations for moving people and freight.

Solid Waste and Recycling

China's "National Sword" recycling policy stands in the way of California's ambitious goal of diverting at

least 75 percent of nonhazardous, solid waste from landfills by 2020. China's policy impedes importation of recycled plastic and mixed paper. This has contributed to closure of 250 consumer redemption center grocery stores throughout California. AB 54 (Ting) is an urgency law that provides temporary relief from the requirements of the California Beverage Container Recycling and Litter Reduction Act (AB 2020) until March 1, 2020. Specifically, this new law exempts from the beverage container redemption requirements dealers who served closed recycling centers between August 1, 2019, and September 1, 2019. This new law also extends by two years (until January 1, 2022) recycling pilot project programs.

AB 1583 (Eggman) deletes the "chasing arrows" triangle on plastic products and requires the Department of Resources Reduction and Recycling (CalRecycle) to convene a Statewide Commission on Recycling Markets and Curbside Recycling to, among other things, develop strategies to achieve waste reduction goals and to promote public messaging to encourage "proper recycling and to minimize contamination in curbside recycling programs." AB 1583 also enacts the California Recycling Market Development Act and reauthorizes two existing laws designed to expand recycling markets and in California. AB 1583 extends the sunset dates for the Recycling Market Development Zone Program (i.e., a low interest revolving loan program) and the California Alternative Energy and Advanced Transportation Financing Authority advanced manufacturing program.

The Integrated Waste Management Act (IWMA) requires local governments to divert solid waste from landfills by reducing waste at the source (source reduction or reuse), by recycling, composting, and implementing environmentally safe "transformation" and land disposal. Local governments implement the 50 percent diversion target of the IWMA by developing and implementing source reduction and recycling elements (SRREs) that establish, among other things, the waste management hierarchy described above. Although duel stream recycling collection systems (i.e., where waste streams collected for recycling are separated) can increase recycling and minimize contamination, they are more expensive to manage than conventional single stream systems. When evaluating whether a local jurisdiction made a good faith effort to implement its SRRE or its "household hazardous waste element," AB 815 (Aguiar-Curry) requires the Cal Recycle to consider whether a local jurisdiction adopted a dual stream recycling program.

AB 827 (McCarty) is premised on the notion that environmental education is essential for California to meet its ambitious recycling goals. This new law requires commercial waste generators (who are required to generate four cubic yards or more of commercial solid waste or eight cubic yards of organic waste weekly) to provide recycling and organic bin access to customers, by July 1, 2020 to collect materials purchased on the premises. The bins must be clearly marked with educational signage "indicating what is appropriate to place in the commercial solid waste recycling receptacle in accordance with state law and the local jurisdiction's solid waste ordinances and practices." Full-service restaurants are exempt from the provisions of this law.

Keenly aware of the impact of plastics on the world's oceans, the California Legislature was engaged in crafting policies to phase out or eliminate plastic containers. According to the bill analysis for AB 1162 (Kalra), approximately 1,000 plastic bottles are discarded annually from each hotel room. The California Hotel and Lodging Association supported AB 1162 (Kalra) which, beginning January 1, 2023, prohibits "lodging establishments" with more than 50 rooms from providing small plastic personal care bottles (e.g., containing shampoo, hair conditioner and bath soap). This prohibition applies to small lodging establishments (with 50 rooms or less) beginning January 1, 2024. The Attorney General or a district attorney, county counsel, or city attorney are authorized to impose a civil penalty of $500 for a first violation and $2,000 for a second. This new law preempts local governments from regulating personal care products in plastic bottles at lodging establishments.

Facing opposition from the plastics industry and petroleum industry, the Legislature failed to deliver to the Governor's desk AB 1080 (Gonzalez, Calderon, Friedman, Ting) and SB 54 (Allen, Skinner, Stern, Wiener). Arguing they were "job killer" bills, a group calling themselves "Californians for Recycling and the Environment" succeeded in stopping the advance of these bills which would have capped by 75 percent (by 2030), the amount of packaging and single-use food ware, like cups, straws and utensils ending up in California landfills. Recology responded by spearheading a statewide ballot initiative for November 2020 that would require, among other limits, that plastic packaging and single-use plastic food containers be recyclable or compostable by 2030.

Two other bills focused on "cleaning up" the Used Mattress Recovery and Recycling Act and the carpet recycling law. According to Assembly members Garcia and Bigelow, AB 187 responds to governance gaps identified by the California State Auditor's review of the Used Mattress Recovery and Recycling Act [see Stats. 2013, SB 254 (Hancock)]. The audit found that CalRecycle has not provided sufficient oversight and found several gaps regarding the effectiveness of the program. The audit recommends that CalRecycle "establish goals for the

mattress program to increase customer convenience, encourage source reduction, reduce illegal dumping." According to Assembly member Chu, AB 729 (Chu) builds upon AB 1158 (2017), which established performance targets and authorizes CalRecycle to establish carpet recycling goals. Under this new law, carpet stewardship organizations must develop interim carpet recycling contingency plans. These plans would govern those instances where a plan is disapproved, revoked and where a carpet stewardship plan expires before a new carpet stewardship plan has been approved. Responding to the auditor's finding that CalRecycle failed to issue penalties in 74 percent of its inspections, this new law also raises the administrative penalties from $1,000 per day to $5,000 per day.

Water Quality and Water Supply

The Legislature approved several new laws expanding access to potable drinking water including policies designed to remove barriers to consolidating drinking water infrastructure for small, disadvantaged communities. Other measures pertain to monitoring Polyfluroalkyl substances (PFAS), strengthening storm water compliance, promoting use of nonpotable recycled water, and adjusting the Sustainable Groundwater Management Act (SGMA).

Flint Michigan is not the only region experiencing violations of water quality standards. Over 300 California water systems serving an estimated 500,000 people are violating water quality standards. SB 200 (Monning, Bloom, E. Garcia) establishes the Safe and Affordable Drinking Water Fund that transfers five percent of the Greenhouse Gas Reduction Fund (GGRF) to support "adequate and affordable supply of safe drinking water." This new law requires the State Water Resources Control Board (SWRCB), by January 1, 2021, to identify sources of drinking water that are at high risk of exceeding the California Safe Drinking Water Act and publicizing a map of these aquifers. This new law eliminates a prior provision that required the SWRCB to not issue a permit for a public water system (PWS) serving more than one PWS if it was "reasonably foreseeable that the proposed new PWS could not provide "affordable, safe drinking water in the reasonably foreseeable future." SB 200 also builds upon last year's AB 2501 [Stats. 2018, AB 2501 (Chu)] which focused on promoting access to potable drinking water for small disadvantaged communities. SB 200 additionally is designed to remove additional barriers to consolidation efforts by revising the definition of a disadvantaged community to include areas with "a median household income of less than 80 percent of the statewide annual median household income level."

Many small, disadvantaged communities do not have the technical, managerial, or financial resources to operate public drinking water systems. AB 508 (Chu) is a clean-up measure addressing gaps in SB 88 [Stats. 2015, SB 88 (Budget and Fiscal Review Committee)] and AB 2501 [Stats. 2018, AB 2501 (Chu)], which authorized the SWRCB to consolidate or extend water systems to disadvantaged communities. Under this new law, the SWRCB strengthens transparency and efficiency provisions of the consolidation or extension process by empowering it to extend service to disadvantaged communities that are "substantially reliant on domestic wells that consistently fail to provide an adequate supply of safe drinking water." Among other things, this new law requires the SWRCB to consider the number of dwelling units served by domestic wells in the service area who have provided or are likely to approve an extension of service. In addition, consolidations may not occur until residential domestic well owners served solely by a domestic well unit provides written consent to consolidate or extend water service. AB 74 (Ting) is an urgency budget bill that, among other things, earmarks $100 million from the GGRF to fund grants, loans, contracts, or services to help water systems provide safe and affordable drinking water.

According to Assembly members Gloria and Gray, the SWRCB does not recognize drinking water treatment experience of military veterans at a time when large numbers of water operators are projected to retire. AB 1588 (Gloria, Gray) was introduced to allow military drinking water treatment experience to count towards state and industry drinking water treatment and distribution operator certification.

PFAS are a class of nearly 5,000 chemicals with a wide variety of industrial uses ranging from waterproofing clothing, non-stick cookware, and fire-retardant foams. Currently unregulated, PFAS have been linked to cancer and endocrine disruption. AB 756 (C. Garcia) authorizes the SWRCB to order PWSs to monitor for PFAS. Where a water sources exceeds a PFAS response level, the PWS must remove that water source from service and notify the public accordingly.

The Legislature approved other water quality policies designed to boost storm water quality compliance and addressing the risk of algal blooms. The California Coastkeeper Alliance estimates that approximately 6,000 industrial facilities in Los Angeles County are out of compliance with an industrial stormwater general permit (IGP). SB 205 (Hertzberg) requires businesses to demonstrate stormwater compliance when seeking a new or renewed business license with a city or county. The applicant must, under penalty of perjury, include the business' Standard Industrial Classification Code. AB 834 (Quirk) responds to the disparate efforts monitoring, researching, and responding to harmful algal blooms in the state. This new law creates the Freshwater and Estuarine Harmful

Algal Bloom Program, which is intended to formalize and coordinate efforts to research, monitor and respond to toxic algal blooms. Under this program, the SWRCB is authorized to mobilize an emergency response if it determines there is a harmful algal bloom and contract with vendors bypassing the competitive bidding process pursuant to the State Civil Service Act.

In 2018, the SWRCB established an ambitious goal to recycle 2.5 million acre-feet per year of water by 2030. According to WateReuse, the uniform statewide criteria for nonpotable recycled water contained in Title 22 of the California Code or Regulations "greatly expand nonpotable recycled water uses in California, a manner that continues to protect public health." AB 1180 (Friedman) is intended to further expand the availability of non-potable recycled water. By January 1, 2023, this new law requires the SWRCB to update Title 22 regulations. It also requires that the new backflow protection and cross-connection requirements handbook include provisions for using a changeover device allowing building owners with dual plumbing systems to switch back and forth between potable and non-potable water. This device allows other sources of potable water to flow in the event the recycled water service is interrupted.

AB 658 (Arambula, E. Garcia) is one of two new laws aimed at preserving California's groundwater supply. This new law is designed to encourage groundwater recharge by requiring the SWRCB to establish a temporary five-year permit and a temporary five-year change order allowing groundwater sustainability agencies, pursuant to SGMA, to divert surface water to underground storage for beneficial use during high-flow events.

SB 307 (Roth) is designed to prevent groundwater removal from the Mojave Desert unless the SLC finds that that removal of water will not adversely affect the natural or cultural resources of those desert lands. SB 307 was prompted by actions by the newly appointed Secretary to the Interior Department–David Bernhardt to advance the Cadiz water mining project. Secretary Bernhardt is a former lobbyist and shareholder for the Cadiz, Inc. project which would pump 16 billion gallons of water annually from an aquifer beneath the Mojave Trails National Monument, for sale to southern California water districts. SB 307 pushes the pause button for transferring groundwater from the aquifer unless or until the SLC evaluates the potential impacts on the desert aquifer and determines that the water transfer will not adversely affect the natural or cultural resources of the desert lands.

As a result of natural disasters and the most recent and worst drought in California history, many private wells have dried up. SB 513 (Hurtado) was enacted to serve those families dependent on private well water. This new law authorizes the SWRCB to provide interim relief by awarding grants and/or loans to eligible applicants to support these households.

SB 519 (Bradford) expands the authority of the SWRCB to fund water quality cleanup efforts. Prior to this new law, the SWRCB was not authorized, pursuant to SB 445 [Stats. 2014, SB 445 (Hill)], to issue funds to allow water replenishment districts to receive cleanup funds to remediate contaminated surface water and/or groundwater. These funds can now be issued to reimburse water replenishment districts as well as the DTSC for the reasonable and necessary costs to identify the source of surface or groundwater contamination.

SB 134 (Hertzberg) is a cleanup bill that emerged as a compromise between water users and environmentalists who disagreed about the original compromise on 2018 legislation [SB 606 (Hertzberg) and AB 1668 (Friedman)] regarding retail water use and loss. This new law clarifies that the SWRCB will not enforce against a water supplier who fails to meet its urban water performance objective if water loss is causing the exceedance.

SB 779 (Senate Natural Resources and Water Committee) is an omnibus law that modifies the SWRCB's authority to grant changes to water rights permit holders who seek to change the point of diversion, place of use, or purpose of use to appropriate water. This new law essentially streamlines the water appropriation permitting process authorizing applicants, permittees, or licensees to apply for minor changes to applications, permits, or licenses without filing of petition for change. The SWRCB may grant the request if the change does not have the potential to adversely affect the water supply of other authorized water users or instream beneficial uses (e.g., by not enlarging authorized rate of diversions).

SB 19 (Dodd) responds to data showing that only 54 percent of Californian's 3,600 stream gages are working and measuring the hydrologic characteristics of rivers and streams. These gages provide useful information on water supply and water quality (e.g., turbidity and electrical conductivity). SB 19 requires the SWRCB and the Department of Water Resources to develop a plan to modernize and reactivate stream gages.

Natural Resources

AB 912 (Muratsuchi) responds to the controversial federal Vessel Incidental Discharge Act (VIDA) recently enacted by the Trump administration. According to Assembly member Muratsuchi, this new law was introduced ". . . to address . . . federal preemption of California's [ballast water discharge] standards." AB 912 requires the SLC to require vessels operating in California that carry ballast water to

implement federal ballast water standards. This new law also shifts the implementation date of California's Marine Invasive Species Act, which regulates ballast water discharge performance standards, because there is no technology currently available to meet the performance standard to prevent invasive species from entering California waters. Accordingly, this new law requires that the SLC's forthcoming rules must provide that that ballast water discharges must have zero detectable living organisms by 2040. By delaying the time by which vessels must meet ballast water performance standards, SLC's legislative support letter provides that the SLC "could then assess vessel compliance to those [federal] standards, hold non-compliance vessels accountable for violations, and collect valuable data on the real-world operation of ballast water management systems." In addition, this new law expands the authority of the SLC to gather information on ballast water samples by authorizing sampling ballast water, sediment, and biofouling from arriving vessels.

AB 2534 (Stats. 2018 AB 2534 [Limón]) addressed a widely criticized settlement between California agencies and the Hollister Ranch Owners' Association (HROA) which granted limited public access to a portion of the Hollister Ranch beaches in Santa Barbara County. Governor Brown vetoed this bill which would have authorized funding to acquire and manage beach access to implement the 1982 Coastal Access Program. In Governor Brown's veto message, the governor stated: "While well intentioned, this bill relies on the implementation of a coastal access program adopted in 1982…and [it] is now outdated. Before raising any money, as envisioned in this bill, the relevant state agencies should be required to work together to craft a sensible and fiscally responsible plan. "AB 1680 (Limon) attempts to cure Governor Brown's concerns by requiring the California Coastal Commission to replace the 1982 coastal access program for Hollister Ranch. In addition, this new law provides that any private person or entity that "impedes, delays, or obstructs" public access is in violation of the Coastal Act.

There are two new climate change laws impacting California's coastal resources. As discussed in more detail above, AB 65 (Petrie-Norris) prioritizes green infrastructure in coastal communities to manage the effects of climate change by leveraging Proposition 68 funds. SB 576 (Umberg) authorizes the California Coastal Conservancy to implement coastal climate resiliency strategies pursuant to the Climate Ready Program and to notify the OPR of climate adaptation information.

The Legislature generated a lot of heavy lifting with respect to trophy hunting, fur trapping, importing species, circus animals, and preventing slaughtering of horses. AB 1254 (Kamlager-Dove) suspends until January 1, 2025, trophy hunting of bobcats. According to the bill analysis, "These iconic creatures deserve protection for future generations to appreciate their beauty and contribution to the ecological health of the planet." AB 1260 (Maienschein) adds to the import trade prohibition the following dead animals and animal parts: iguana, skink, caiman, hippopotamus, and Teju, Ring, or Nile lizards. According to the bill sponsor, AB 1260 (Maienschein) is designed to deter demand for these species before it starts.

AB 44 (Friedman) is a first in the nation law banning the manufacture and sale of fur products unless the products are used for religious, tribal, cultural, or spiritual purposes. According to the Humane Society, this new law "…underscores the point that today's consumers simply don't want wild animals to suffer extreme pain and fear for the sake of fashion." AB 273 (Gonzalez) prohibits trapping fur-bearing mammal or nongame mammal for recreational purposes or sale. However, trapping is permitted to, among other purposes, control invasive species, protect human and animal health, and crops.

Despite approval of Proposition 6 (1998), which prohibits slaughtering of horses to sell horse meat for human consumption in California, horses are still slaughtered for human consumption outside of California. Assembly member Gloria introduced AB 128 to strengthen protections for wild and domestic horse populations in California requiring that they be treated humanely. Under this new law, before an equine can be sold at an auction, the operator of the auction yard must determine whether the animal has an implanted microchip or has been tattooed or branded with an identifying mark. Auction operators must also post on their internet websites any identifying information from microchips, tattoos, or a branding for at least 24 hours. The operator must maintain records of sales and post notices at auctions providing that "sale of horses in California for slaughter for human consumption is a felony." Buyers of horses at auction must sign a sworn statement, under penalty of perjury, agreeing not to slaughter and sell horses or horsemeat for human consumption. Other provisions require written bills-of-sale for purchases, consignments, sales, or when someone accepts the donation of an animal auction. Finally, this new law establishes an additional civil penalty of $1,000 for the first offense and $2,000 for the second and each subsequent offense of the law.

SB 313 (Hueso) reacts to national polls reflecting the treatment of circus animals. This new law prohibits sponsoring, conducting or operating a circus that uses animals, except domesticated dogs, cats, or horses. In his signing statement, Governor Newsom stated that "we are making a statement to the world that beautiful wild animals like bears and tigers have no place on trapeze wires or jumping through flames."

AB 762 (Quirk) was enacted to alert recreational and subsistence fishermen of health risks associated with fish and shellfish consumption. Under this new law, local health officers must conspicuously post fish and shellfish consumption advisories "at public access points to waterbodies where contaminated fish and shellfish may be caught and where recreational or subsistence fishing is known to occur."

SB 395 (Archuleta) was introduced to clarify that roadkill can be taken for human consumption. This new law allows an exemption from the requirements that that those in possession of a game animal must have a hunting license to possess a game animal. This new law empowers the Fish and Game Commission to create a pilot wildlife salvage permit program authorizing the roadkill of deer, elk, pronghorn antelope, or wild pig to be taken for human consumption. SB 262 (McGuire) extends the by ten years commercial sea cucumber fishing. SB 785 (Senate Natural Resources and Water Committee), among other things, extends, until January 1, 2030, California Department of Fish and Wildlife's (DFW) authorization to regulate the spread of invasive dreissenid mussels in California waters.

According to a 2017 Ducks Unlimited report, California's rice lands serve as habitat for 230 wildlife species ranging from shorebirds and wading birds to endangered Giant Garter Snakes. AB 256 (Aquiar-Curry) responds to feedback regarding the newly established California Winter Rice Habitat Incentive Program (WRHIP) pursuant to AB 2348 [Stats. 2018 (Aguiar-Curry)]. The WRHIP was enacted to support critical wetland habitat for waterfowl along the Pacific Flyway in California. AB 256 offers growers the ability to contract directly with the DFW in addition to contracts between the landowner and the DFW. According to the AB 256 bill analysis, "Approximately half of the acres farmed to rice in the Sacramento Valley are leased to growers, and many of the landowners are unfamiliar with the requirements of growing rice and the management options that can make conditions more favorable for wildlife." This new law allows participating growers the flexibility to rotate crops in order to achieve weed control efficiency and reduce herbicides. AB 256 expands the acreage subject to the law to make the WRHIP more attractive for growers. This new law is intended to achieve this by adjusting the definition of "productive agricultural rice lands that are winter-flooded." Finally, AB 256 allows the DFW to contractually defray some costs connected to winter flooding of agricultural rice lands that serve waterfowl.

The United States Department of the Interior issued a 2017 opinion (M-37050) limiting the prohibition on "incidental take" under the federal Migratory Bird Treaty Act (MBTA). This USFWS position to no longer enforce "incidental take" prompted several conservation groups and the California Attorney General to sue the U.S. Department of the Interior challenging the Trump Administration's interpretation of the MBTA. The California Attorney General and DFW issued a legal advisory confirming that the California Fish and Game Code protects native migratory birds from unlawful "take," including "incidental take." AB 454 (Kalra) amplifies this position by confirming that it is "unlawful to take or possess any migratory nongame bird, or any part of a migratory nongame bird, as designated in the Migratory Bird Treaty Act (MBTA)."

The California Endangered Species Act (CESA) prohibits harm or take of endangered or threatened species without a permit. The accidental take exception, which is limited to routine and ongoing agricultural activities, was set to expire on January 1, 2020. Like the incidental take exception, Safe Harbor Agreements (SHA) also allows incidental take where it benefits the species and contributes to its recovery (i.e., farming and ranching). Senator Dodd introduced SB 62 to address the risk to farmers and ranchers holding SHA agreements that could dissolve in the absence of a valid accidental take under CESA. SB 62 (Dodd) extends the expiration of the CESA accidental take provisions to January 1, 2024 (two more years), thus, incentivizing farmers and ranchers to manage their lands in a line with practices that offer a net benefit to the protected species. This new law also requires landowners availing themselves of accidental take protections to report the accidental take to the DFW within ten days.

SB 85 (Committee on Budget and Fiscal Review) is an Omnibus public resources trailer bill in 2019-20 that among other funding measures, extends $30 million annual support for the Habitat Conservation Fund to 2030.

AB 1160 (Dahle) extends the duration of a sustained yield plan (SYP) pursuant to the Z'berg-Nejedly Forest Practice Act of 1973. SYPs are supplemental strategies to the timber harvest plan (THP) process that address the sustained timber production. Under this new law, SYPs are now valid for no more than 20 years instead of 10.

Parks, State Lands, and Land Conservation

For more than 30 years, cigarette butts have been the most common type of trash found during coastal cleanup events. The non-profit Ocean Conservancy, which sponsors the International Ocean Cleanup event, reports that during the group's 2018 coastal cleanup, more than 2.4 million butts were collected worldwide, topping food wrappers and plastic beverage bottles. SB 8 (Glazer) addresses this toxic pollution by prohibiting smoking and disposal of smoking-related waste in state parks and on state coastal beaches. In addition to traditional cigarettes,

cigars, and pipes, the ban extends to electronic smoking devices that create an aerosol or vapor.

SB 442 (Dodd) promotes "bioprospecting"—"the process of discovery and commercialization of information or products created from genetic or biochemical resources which includes advances in DNA fingerprinting, disease diagnostics, and forensic analysis." This new law authorizes institutions and individuals to engage in nondestructive scientific research within state parks and to commercialize the investigation results. Prior to AB 442, it was illegal to commercially exploit resources in California state parks. This new law establishes a framework to commercialize discoveries at the state park system. Prospectors seeking to commercialize their investigation results must enter into a benefit sharing agreement with Department of Parks and Recreation.

Environmental Education and the California Conservation Corps

According to Assembly member Carillo, inmate hand crews with experience cutting fire lines face challenges leveraging these skills in employment after being released from prison. AB 1668 (Carillo) creates the Education and Employment Reentry Program within the California Conservation Corps (CCC) and authorizes the CCC director to enroll formerly incarcerated individuals. AB 278 (McCarty) allows the CCC to consider parolees for service at the CCC and authorizes school districts and county offices of education operating community conservation corps to do the same.

Looking Ahead

Governor Newsom's first year in office was light on environmental ambition as he was preoccupied with California's housing, homeless, and wildfire crises. As he enters his second year, he is blessed with unified control of the Legislature and every state constitutional office along with another flush budget. Thanks to this good fortune, partisan gridlock has given way to a more harmonious mood in Sacramento offering an opportunity to invite Republicans to join in bipartisan solutions.

Governor Newsom's proposed $222 billion state budget establishes several environmental, housing, and wildfire funding priorities as well as $20 million for California's first major new state park in decades. The proposed budget directs $6.8 billion for housing along with $1.4 billion for preventive care and housing support services for California's homeless. Another $1 billion plus is earmarked to manage wildfires. Finally, with a projected surplus of $5.6 billion, the Governor proposes to set aside another $1.5 billion to the state's rainy-day fund.

As the general election cycle gets underway, we could see the new governor increasingly resist the Trump administration's efforts to dismantle the nation's environmental laws. President Trump and Governor Newsom could not be further apart on their environmental philosophies as they occupy diametrically opposed ideological corners. By taking on the Trump administration, Newsom would stake his claim among other California governors leading the vanguard on environmental policy.

THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

Cases

General Plan Internally Consistent And Valid Local Legislation

Citizens for Positive Growth & Preservation v. City of Sacramento
No. C086345, 3d App. Dist.
2019 Cal. App. LEXIS 1274
November 26, 2019, cert. for pub. December 18, 2019

After the city approved and adopted the 2035 General Plan and certified the environmental impact report (EIR), plaintiff filed a petition for writ of mandate and injunctive relief and a complaint for declaratory relief (petition) and seeking to set aside the city's approval of the General Plan and its certification of EIR for the plan. The trial court denied the petition and upheld the 2035 General Plan. The court of appeals held that the General Plan was internally consistent and was valid local legislation because introductory language about future determinations of a project's consistency did not cause policies within the general plan to be inconsistent with one another, nor was there any conflict with state requirements. Further, challenge to the EIR's traffic analysis was moot because automobile delay was not a significant impact under Pub. Res. Code §§ 21060.5, 21068, 21099, after 14 Cal. Code Reg. § 15064.3, went into effect.

Facts and Procedure. Defendant City of Sacramento adopted its 2030 General Plan in March 2009. In October 2012, the city initiated a five-year technical update to the 2030 General Plan, culminating in the city's 2035 General Plan. The key changes included updating the planning