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THE 2020 ENVIRONMENTAL LEGISLATIVE UPDATE: PANDEMIC PARALYSIS

By Gary A. Lucks*



Gary A. Lucks

I. INTRODUCTION

As Governor Newsom entered his second year at the helm, he was riding high with approval ratings north of 60% with ambitions to tackle the state's housing deficit and wildfire risk leveraging a bountiful budget surplus. Months later, eclipsed by the pandemic, he found himself facing a potential budget shortfall with

no bandwidth to proactively advance his environmental policy agenda. One year into the COVID-19 pandemic, Newsom's fortunes have dramatically worsened as he faces a recall election in November.

The California Legislature also struggled as they faced disagreement over the number of bills they would consider during a truncated legislative session, and whether to allow remote voting. Despite the Democratic juggernaut, the session concluded with a dearth of legislative output, falling far short of legislative aspirations with several high-profile bills failing amid heightened tensions and acrimony in the waning hours of the legislative session.

Recent legislative sessions were dominated by a defensive posture resisting the Trump administration's efforts to relax environmental policies and step back from enforcement. Nonetheless, Governor Newsom earned splashy headlines for signing several far-reaching executive orders aimed at addressing the climate crisis while also vetoing potentially landmark legislation that we can expect to see in the next legislative session.

Despite the low legislative output during the 2019-2020 legislative session, the Governor approved new laws targeting natural carbon sequestration, expanding renewable fuels, promoting affordable housing, and protecting tribal cultural resources. Other new laws were approved requiring disclosure of chemicals contained in cosmetics, personal and feminine care products, while relaxing hazardous waste manifesting requirements for retailers. Other noteworthy laws call for minimum recycled plastic content and new greenwashing standards for end-of-life claims on plastic products. Finally, the governor approved laws increasing penalties for oil

spills and revamping enforcement procedures for the Bay Conservation and Development Commission. Except for budget-related urgency laws that passed by a supermajority (which took effect on the date of signing), the enacted laws became effective on January 1, 2021.

II. 2019-20 BILLS

A. CLIMATE CHANGE

As the economy recovers and GHG emissions climb, Governor Newsom upped the ante to decarbonize California by signing a transformational executive order directed at eliminating fossil-fuel powered cars and trucks (including drayage trucks) by 2035 and replacing medium- and heavy-duty trucks with zero emission vehicles (ZEVs) by 2045 (N-79-20). The executive order additionally established a goal to "transition to 100 percent zero-emission off-road vehicles and equipment by 2035 where feasible." The California Air Resources Board previously established ZEV mandates of 1.5 million ZEVs by 2025 and 5 million ZEVs by 2030. The Governor garnered national attention by signing another executive order phasing out hydraulic fracking. Under this order, the state must no longer issue hydraulic fracking permits by January 2024 and end all fossil-fuel drilling in California by 2045.

Joining world leaders from China, United Kingdom, and Canada, Governor Newsom signed another executive order establishing a target to "conserve 30% of the California's land and coastal waters by 2030." (N-82-20) This order is designed to offset the loss of biodiversity caused by the changing climate and builds upon existing California efforts that already protect 22% of the land and 16% of marine areas.

The Governor signed only one bill of note intended to address California's carbon footprint. AB 3163 (Salas) is intended to expand the supply of renewable fuels by allowing other forms of biomethane to count toward biomethane procurement targets established by the California Public Utilities Commission (CPUC). This new law builds upon SB 1440 (see Stats. 2018 [Hueso]) which requires the CPUC, to establish biomethane procurement targets for the investor-owned utilities. Under the terms of this new law the definition of "biomethane" expands from methane produced from anaerobic decomposition of organic material (from landfills and wastewater

treatment plants) to include other sources to also include methane produced from an organic feedstock like dead trees, agricultural crop residues, vegetation removed for wildfire, yard and garden clippings, wood chips; nonrecyclable paper materials; livestock waste; and municipal sewage sludge or biosolids.

The COVID-19 pandemic offered a temporary reprieve from advancing greenhouse gas emissions (GHG), notwithstanding the intense wildfires of 2020. According to the *San Francisco Chronicle*, as of mid-October, wildfires released more carbon dioxide than “every economic sector except transportation.” Nonetheless, carbon emissions from wildfires are an overblown concern as they are not net carbon emissions; the carbon released from trees and other vegetation is different from emissions from fossil fuels that were buried millions of years ago.

B. CEQA, LAND USE, AND HOUSING

The Legislature began the session with ambitions to move the needle to ease the path for permitting new housing units and ended with a mixture of successes and stalled initiatives. AB 2345 (Gonzalez) builds upon the success of San Diego which, by increasing the maximum allowable density for developers who build affordable housing to boost market rate housing. This approach resulted in significantly more affordable and market-rate housing where developers more liberally utilized the Density Bonus program. (AB 2345 Assembly Floor Analysis)

Assembly member Wicks pushed two new laws intended to incentivize new housing. AB 725 (Wicks) is aimed at revamping the California Density Bonus Law by incentivizing developers to build more mixed-income housing developments. Beginning January 1, 2022, this new law requires incorporated cities to establish more zoning designations for medium-density housing. AB 1851 (Wicks) offers an innovative strategy to boost housing. This new law allows communities of faith to convert parking spaces that are used only a few times per week to build affordable housing on their parking lots. Prior to this new law, religious institutions and places of worship encountered resistance from local permitting authorities who insisted that they maintain specified parking levels in line with local ordinance provisions. AB 1851 facilitates affordable housing development by reducing parking mandates on faith-based land for conversion to affordable housing. Under this new law, local agencies are prohibited from requiring replacement of parking spaces that will be lost to affordable housing for up to 50% of existing parking spaces.

According to the U.S. Department of Housing and Urban Development, as of 2019 California’s homeless

population represents 27% of the national share. AB 2553 (Ting) is an urgency law aimed at alleviating homelessness by expanding the Shelter Crisis Act by permitting local governments discretion to expedite construction of shelters linked to services. This new law additionally permits municipalities to expand the definition of “homeless shelter” to include safe parking sites owned or leased, thus offering homeless individuals a temporary living situation as a bridge to more permanent housing.

SB 288 (Wiener) is designed to expedite transportation approvals by codifying as statutes many existing regulatory categorical exemptions to California Environmental Quality Act (CEQA) compliance for specified transit-related transportation projects. CEQA statutory exemptions, unlike categorical exemptions, cannot be defeated based on specified exclusions to the exemptions. This new law provides statutory exemptions until 2023 for transit-related projects which include, among others, electric vehicle charging projects, pedestrian and bicycle facilities projects, and projects designed to reduce minimum parking requirements, new bus rapid transit projects, bus, or light rail service. This new law additionally extends to 2030 an existing CEQA exemption that was scheduled to sunset on January 1, 2021, which covers bicycle parking and storage, and signal timing to improve street and highway intersection operations, among other transportation projects.

SB 974 (Hurtado) is one of many new laws enacted in the past several years to bring potable water to the over one million Californians in low-income communities who face water outages and lack of potable drinking water due to failed infrastructure (e.g., water distribution systems). This new law establishes a CEQA exemption for small drinking water systems serving disadvantaged communities. The exemption extends to water system projects that: improve water quality, water supply, or water reliability; promote water conservation; or provide safe drinking water service.

AB 168 (Aguiar-Curry) is designed to protect and avoid the destruction and desecration of tribal sacred sites by closing a gap in SB 35 (Stats. 2017 [Wiener]). That seminal law, while significant, does not address protection of tribal cultural resources (TCRs), but is designed instead to expedite new housing approvals. The new bill, AB 168, is intended to close the gap by advancing efforts to establish a pre-consultation process with California Native American tribes before a developer submits a housing permit application pursuant to SB 35 (which applications are considered ministerial under CEQA due to permit streamlining standards). Developers must submit a notice of intent to submit a streamlined application which prompts local governments to formally notify California Native American tribes that are traditionally and culturally affiliated with the area of the proposed

development. The tribes are invited to engage in a scoping process to identify potential TCR impacts from the proposed development. If after the initial scoping consultation, the proposed project is expected to substantially change, local governments must notify the tribes and engage in another scoping effort if requested by the tribe.

The most significant regulatory development involving environmental disclosure laws involved significant changes to federal regulations for implementing the National Environmental Policy Act (NEPA), 42 U.S.C. sections 4331 et seq. New federal guidance was intended to establish separate tests to determine if a federal action is “major” and subject to environmental review and whether it has a “significant environmental impact.”³ The NEPA “environmental effect” definition would no longer require lead agencies to explicitly consider “indirect” and “cumulative” effects, standards generally aimed at limiting consideration of climate change impacts.⁴ However, within weeks of taking office, the Biden Administration issued an executive order signaling intent to reconsider the Trump NEPA regulations, and revoking the Trump NEPA guidance related to climate change.⁵

Moving in a similar direction, developers and the California Chamber of Commerce unsuccessfully implored the Legislature to overhaul CEQA to expedite reviews of housing projects. Although the CEQA bills described below failed, we may well see their return in one form or another during the 2020-2021 legislative session:

- AB 3279 (Friedman) was one of several bills introduced to address California’s housing shortage and help the over 40% of California households that spend more than 30% of their household income on housing. This new law would have expedited the CEQA litigation process by requiring courts to schedule a case management conference within 30 days of filing a complaint or petition pursuant to CEQA, and would have authorized public agencies to deny the request of a plaintiff or petitioner to prepare the record of proceedings if the public agency or real party in interest would be required to bear the costs of preparation and certification of the record without the ability to recover those costs from the plaintiff or petitioner.
- AB 2323 (Friedman and Chiu) would have added a CEQA exemption for agricultural employee housing, affordable housing projects, and housing projects located on infill sites within a state conservancy.
- SB 902 (Wiener), the “Yes in My Backyard” (YIMBY) bill, was designed to address the dearth

of medium density housing near jobs and transit. This bill would have permitted local governments to rezone to increase housing density to a maximum of ten homes per parcel and avoid a CEQA review of the ordinance amendment.

C. HAZARDOUS MATERIALS

The Legislature tackled a policy directing disclosure of the underlying ingredients in cosmetics, personal care products, and feminine care products while taking its first steps to begin regulating per- and polyfluoroalkyl substances (PFAS). The federal Food and Drug Administration (FDA) does not require disclosure of ingredients in fragrances or flavors in personal care (e.g., shampoos, conditioners, hair styling products, anti-perspirants, lotions, and shaving products) and beauty products. Similarly, there is no requirement to disclose chemicals used to flavor other products (e.g., lip gloss and chap sticks). The following bills are intended to increase disclosure:

- SB 312 (Leyva) is a chemical disclosure law requiring cosmetic manufacturers who sell their products in California to disclose ingredients contained in cosmetics appearing fragrance and flavor ingredients to the Division of Environmental and Occupational Disease Control.
- AB 2762 (Muratsuchi) is designed to close the gap by regulating carcinogens, reproductive toxicants, and endocrine disruptors that are contained in cosmetic products. Neither the federal FDA nor the California Department of Public Health require premarket safety testing of cosmetic products. Beginning January 1, 2025, this new law responds by banning chemical ingredients from cosmetic products that are also banned under the European Union’s (EU) Annex II of regulation No 1223/2009.
- AB 1989 (Cristina Garcia) addresses to a dearth of publicly available information regarding the chemical ingredients contained in feminine care products. Prior to this law, manufacturers of menstrual products claiming trade secret protection were not required to disclose the underlying chemicals. According to Assemblymember Cristina Garcia, menstrual products contain phthalates, bisphenols, parabens, and PFAS, which all have been found to be harmful to human health. Beginning on January 1, 2023, the Menstrual Products Right to Know Act of 2020 will require menstrual products packaging to conspicuously label all ingredients in the product.

- PFAS are a ubiquitous class of synthetic chemicals known to bioaccumulate in human tissues that are considered probable. PFAs are widely used in food packaging, nonstick and heat-resistant applications as well as in fire-fighting foams. Beginning in 2022, with an exception for oil refineries, SB 1044 (Allen) bans the manufacture, sale, distribution, and use of class B firefighting foam containing PFAS chemicals and obligates manufacturers to provide a written notice indicating the presence of PFAS in the protective equipment. Under the terms of the new law, persons using class B firefighting foam containing PFAS chemicals must report to the State Fire Marshal releases to the environment. The Attorney General, city attorneys, county counsel, and district attorneys are authorized to impose civil penalties of up to \$5,000 for a first violation and \$10,000 for each subsequent violation.

D. HAZARDOUS WASTE

AB 995 (Cristina Garcia, et al.) attempted to reform the state's troubled and dysfunctional hazardous waste agency by seeking structural reform including more transparency and accountability for the Department of Toxic Substances Control (DTSC). This bill would have established the Board of Environmental Safety within California Environmental Protection Agency to guide the agency, including reviewing DTSC's programs; proposing regulatory and policy changes; and serving as an appellate body for hazardous waste facility permit decisions. The Board would have included an ombudsperson function to entertain complaints and suggestions to enhance DTSC performance. This bill would also have required permit renewal applications be submitted at least two years before the permit expired and have deemed permits to be extended while the agency entertained a timely renewal application. Finally, this bill would have increased fees that would have raised an additionally \$22 million annually to address structural deficits and enhance the agency's fiscal stability.

In his veto message, the Governor stated that AB 995 "... falls short of the goals we have previously set for needed changes to better protect public health and safety. Without necessary funding, DTSC will be unable to deliver on the promise of this legislation - cleaning up too many abandoned sites adversely impacting the health of low-income communities across our state and better protecting Californians from dangerous chemicals going forward. . . . To accomplish comprehensive change and make progress on the more than 150,000 brownfield sites where no responsible party exists, we will need comprehensive fiscal reform to support adequate revenues."

AB 2920 (Oberholte) addresses an inefficiency identified by California retailers that discard retail products exhibiting hazardous waste characteristics. The retailers were required to individually manifest the hazardous waste in separate containers for each shipment and were not permitted to consolidate similar retail hazardous wastes collected by other retailers. AB 2920 addresses this issue by allowing unsold retail hazardous wastes in its original sales packaging to be combined by several retailers and included on a single "milk run" manifest. This new law also expands the original list of non-RCRA (Resource, Conservation and Recovery Act) "California only" hazardous waste items that can be collected in a consolidated "milk run" collection. Prior to this new law, hazardous waste milk run collections were limited to collecting to, among other hazardous wastes, used oil, brake fluid, anti-freeze, "paint-related" wastes, and dry-cleaning solvents.

E. SOLID WASTE AND RECYCLING

According to an Ellen MacArthur Foundation report, the amount of plastics contaminating the world's oceans will exceed the weight of the ocean's fish by 2050. Lobbyists from the plastics and petroleum industries, for a second year in a row, defeated AB 1080 (Gonzalez, Calderon, Friedman, Ting) and SB 54 (Allen, Skinner, Stern, Wiener). The California Circular Economy and Plastic Pollution Reduction Act—would have would have capped, by 75 percent (by 2032), the amount of packaging and single-use food ware (e.g., cups, straws, and utensils) ending up in California landfills through source reduction, recycling, or composting. The authors of these bills remain undeterred and are pressing forward with the same policy initiative in the current legislative session.

With the collapse of the overseas market for plastics, there is an urgent need to manage the 12 billion plastic bottles sold annually in California of which over three billion find their way into landfills. This challenge is underscored by the dramatically reduced overseas market for California's recycled exports. AB 793 (Ting) is designed to create markets by requires manufacturers to meet a minimum postconsumer recycled content for plastic of 50% by 2030. This new law preempts local governments from approving ordinances with less stringent minimum recycled plastic content standards for plastic beverage containers.

AB 2287 (Eggman) responds to allegations that plastic manufacturers use misleading end-of-life claims about their products such as "compostable," "home compostable," or "soil biodegradable" for plastics even though these products do not readily degrade for hundreds of years. Assembly member Eggman states that this semantic confusion encourages littering and contaminates compost and recycling streams.

AB 2287 replaces the prohibition for selling “marine degradable” plastics and authorizes the Director of Resources Recycling and Recovery (CalRecycle) to adopt the European Committee for Standardization’s standard specification for biodegradable mulch film plastic or an equivalent or more stringent standard. Commercial agricultural mulch film meeting the European Committee standard and the American Society for Testing and Materials (ASTM) may be labeled “soil biodegradable.”

F. WATER QUALITY AND WATER SUPPLY

The Governor signed two new laws strengthening environmental enforcement. In 2015 a pipeline carrying heavy crude oil ruptured caused a spill of approximately 140,000 gallons of the coast of Santa Barbara. Known as the “Refugio Oil Spill.” This resulted in significant damage to the coastal ecosystem and economy causing the death of marine mammals, harming sensitive avian habitat while hurting tourism. The Superior Court ordered the pipeline company to pay the maximum penalty pursuant to the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act (Act) for failing to provide timely notice of the oil release. Assembly member Limón introduced AB 3214 to provide a stronger deterrent to help prevent future spills noting that the maximum fines articulated in the Act had not been increased in over thirty years. AB 3214 doubles the criminal maximum and minimum penalties for knowingly engaging in or causing oil discharges to waters of the state or knowingly failing to begin cleanup, abatement, or removal of spilled oil.

AB 2809 (Mullin) responds to allegations of overzealous prosecution by the Bay Conservation and Development Commission (BCDC) for minor violations of the Suisun Marsh Preservation Act of 1977 and adopts several recommendations that grew out of a 2018 California State Auditor investigation of the BCDC’s enforcement program. The investigation found, among other things, that BCDC inconsistently imposed fines. This new law requires, by the end of the 2020–21 fiscal year, that the BCDC develop a managerial review procedure to oversee staff decisions in enforcement cases.

III. LOOKING AHEAD: 2020-21 BILLS

As we pivot from preoccupation with the pandemic, Democrats enjoy strengthened, veto-proof super majorities in both houses (62 Democrats and 18 Republicans in the Assembly and 31 Senate seats) which could improve their chances of delivering on their environmental agenda. The influence of Republican lawmakers has been relegated to the background with the battle lines shifting to internecine conflicts between the progressive and moderate wings of the Democratic majority.

As the 2020-2021 legislative session began, the chaos and turmoil of the prior session gave way to

consensus on the ground rules of legislating in a pandemic with an agreement on a manageable legislative workload of 1,500 bills. Pre-pandemic legislative sessions were dominated by a defensive posture focused on counterbalancing the Trump Administration’s environmental policy and enforcement retreat. With President Biden in the White House, we can expect the legislative focus to return to a more proactive agenda that includes many holdover bills that failed to move forward during the last session. As discussed in more detail below, the Legislature is focused on reforming DTSC, addressing the housing crisis, advancing efforts to further decarbonize, bring down indirect sources of air pollution, and achieving beneficial uses for all of California’s state waters.

A. HAZARDOUS WASTE, HAZARDOUS MATERIALS AND CLEAN UP

AB 1 (Cristina Garcia) would reprise efforts to reform DTSC to enable the agency to achieve its core mission by adopting the elements of AB 995 (discussed above). We can also expect movement on AB 733 (2019) which was intended to provide a more humane method of testing samples for the hazardous waste characteristic of toxicity in lieu of using the aquatic fish bioassay.

Other legislation advances measures to provide transparency on cleanup costs and timelines for remediation projects. AB 870 (Gonzalez) would require DTSC to provide to responsible parties associated with a corrective action cleanup effort, a cost estimate to complete the response or corrective action. The estimate costs would be deemed a claim and lien on the real property owned by the responsible party. To help ensure that response action is performed at an acceptable pace, AB 1024 (Santiago) would require DTSC to establish performance milestones for response actions under the Carpenter-Presley-Tanner Hazardous Substance Account Act.

AB 652 (Friedman) is a product safety bill that would ban manufacturers from selling juvenile products (e.g., mattresses and cribs) that have PFAS. Similarly, AB 1200 (Ting) would ban the sale of food packaging (e.g., fast food wrappers) with PFAS (fast food wrapper) as these chemicals can leach into food. Finally, AB 332 (Environmental Safety and Toxic Materials Committee) would reauthorize the recently lapsed law that governed alternative management standards governing treated waste wood.

B. CLIMATE CHANGE AND FOSSIL FUELS

AB 1395 (McCarty) would codify former Governor Brown’s executive order declaring state policy to achieve carbon neutrality no later than 2045 while prioritizing the use of nature-based solutions to accomplish this goal. SB 260 (Weiner) would enact the Climate Corporate Accountability Act which would require businesses with annual revenues of \$1 billion doing business in California

to annually report their Scope 1, 2, and 3 GHG emissions and to develop strategies to reduce those emissions.

The Legislature is largely aligned with the Governor's recent executive order policy of keeping fossil fuels in the ground. SB 467 (Weiner) would prohibit issuance of new or renewed permits authorizing hydraulic fracturing and related oil and gas productions from 2022 to 2026. This bill would additionally require establishment buffer zone setbacks for new oil and gas wells to protect sensitive receptors.

The Legislature introduced several bills leveraging natural and working lands to sequester carbon from the atmosphere. In its next update of the GHG scoping plan, AB 284 (Rivas) would require the California Air Resources Board (ARB) to ensure that Department of Natural Resources identifies interim milestone performance on its efforts to sequester carbon. SB 27 (Skinner) would direct the Natural Resources Agency to establish a framework strategy while requiring the ARB to incorporate natural sequestration goals to set carbon removal targets. In addition, the Office of Planning and Research would be required to create a registry for carbon removal and sequestration projects. Finally, SB 322 (Laird) would establish the California Conservation Ranching Incentive Program requiring the Department of Conservation (DOC) to protect and restore habitat to conserve grassland birds, soil health, and biodiversity. The DOC would be authorized to contract with owners and lessees of rangelands, grazing lands, or grasslands by partnering with private ranchers to focus on management plans.

Two other initiatives would tinker with government structure and planning to reach toward carbon reduction goals. AB 11 (Ward) would create up to a dozen regional climate change authorities to coordinate climate adaptation and mitigation activities in their regions. SB 32 (Cortese) would require local governments to amend their general plans, climate action, GHG reduction plans, and building standards to identify goals and strategies to decarbonize new buildings.

C. AIR QUALITY

The Legislature introduced two bills to manage the air quality impacts from indirect sources. Designed to promote reduced air emissions from transportation, AB 426 (Bauer-Kahan) would authorize air districts to collect information on indirect and area wide sources of air pollution to calculate the health impacts from toxic air emissions. AB 1547 (Reyes) is designed to protect neighbors from the indirect air quality impacts from warehouses by requiring local governments to identify and mitigate potential environmental impacts from warehouse development projects.

D. DRINKING WATER AND WATER QUALITY

AB 377 (Rivas) would amplify the impaired water program by requiring the state and regional water quality control boards to evaluate impaired state surface waters to ensure that California waters are swimmable, fishable, and drinkable by 2050. Additionally, the agencies would be required to prioritize enforcement violations causing or contributing to an exceedance of a water quality standards.

Two other bills shine a light on water treatment and distribution systems. AB 622 (Friedman) is designed to address the passthrough of microplastics from wastewater treatment plants. This bill reprises a recent effort to require new washing machines sold in California to contain a microfiber filtration system. AB 100 (Holden) revisits California's lead-free water distribution program and would require endpoint plumbing fixtures to meet specified performance standard to be considered "lead free."

E. SOLID WASTE/PLASTICS POLLUTION

SB 343 (Allen) is intended to enhance consumer awareness of which materials are in fact capable of being recycled and recycles CalRecycle to publish a list of material types that are recyclable. AB 881 (Cristina Garcia) would establish standards governing mixed plastic waste destined for recycling overseas.

F. CEQA, HOUSING, LAND USE, AND WILDFIRE

Continuing the several year effort to recalibrate the relationship between local land use approvals and overarching state control to vastly increase California's housing stock, SB 9 (Atkins) would streamline the process for converting a home to a duplex. This bill would allow local agencies to ministerially approve a parcel map addressing this type of subdivision. AB 115 (Aguilar-Curry) reprises a prior bill that would permit commercially zoned parcels to be residentially zoned where at least 20% of the units are earmarked as affordable. Lastly, SB 10 (McGuire) would authorize local governments to zone parcels for up to ten units of residential density per parcel where the property is in a transit-rich area, a jobs-rich area, or is an urban infill project.

Responding to last year's record-breaking wildfires that burned over four million acres, the Legislature introduced AB 1295 (Muratsuchi) and SB 55 (Allen). These bills would prohibit local governments from entering into residential development agreements in high fire risk hazard zones. SB 45 (Portantino) would establish a \$5.6 billion general obligation bond—the Wildfire Prevention, Safe Drinking Water, Drought Preparation, and Flood Protection Bond Act of 2022 that would, among other things, finance wildfire prevention, safe drinking water, drought preparation, and flood protection.

As the 2021 legislative session advances and the worst impacts of the COVID-19 pandemic fade, lawmakers are tackling backlogged legislation from last session with fewer than normal allocated bills for each legislator. Only the most consequential policy bills are likely receive the governor's signature.

With an unprecedented \$75.7 billion budget surplus, the governor has room to maneuver in fending off the recall effort. This will allow him to strengthen his defense by appeasing various interest groups while paving the way for enactment of fiscal legislation on housing, wildfire management, DTSC reform, EV subsidies, and green infrastructure.

of Greenhouse Gas Emissions, 84 Fed. Reg. 30097 (June 26, 2019).

3. See, e.g., 2020 NEPA Regulations, *supra*, at 43444.
4. Council on Environmental Quality, *National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions*, 86 Fed. Reg. 10252 (Feb. 19, 2021) (citing Executive Order 13990 (Jan. 20, 2021)).

ENDNOTES

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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 was a contributing author to the *California Environmental Law Reporter* for over 25 years.

He serves on the California Lawyers Association, Environmental Law Section's Executive Committee and has also served on the Environmental Legislation Committee for 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.

1. J.D. Morris, *California Wildfires Emitted a Huge Amount of Carbon Dioxide this year. How Much of a Problem is That?* S.F. CHRON. (Dec. 4, 2020).
2. See Council on Environmental Quality, *Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act*; Final Rule, 40 C.F.R. Parts 1500-1508, 85 Fed. Reg. 43304-43376 (July 16, 2020) ("2020 NEPA Regulations"); Council on Environmental Quality, *Draft National Environmental Policy Act Guidance on Consideration*

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- to provide high quality educational programs, legislative analysis and recommendations, and publications related to environmental issues
- to serve Section members, the legal community, and the California public at large
- to foster diversity in Section membership
- to provide meaningful opportunities for members wishing to participate in Section activities

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