



## California Legislative Update 2023 Recap & 2024 Outlook

CUPA Conference  
February 26, 2024  
Gary Lucks JD CPEA  
Bay Law Group LLP

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## Gary Lucks JD, CPEA

**Bay Law Group LLP**

Compliance Assurance & Counseling

- 39 Years Experience as EHS Attorney & Sustainability Advisor
- Certified Professional Environmental Auditor
- Author
- Adjunct Professor, Presidio Graduate School
- California Lawyer’s Assoc. Environmental Law Section
- Bay Area AQMD Advisory Council
- Institute of Internal Auditors (IIA)
- Sustainable Earth Initiative Cofounder

**Disclaimer:** This presentation is intended for informational purposes only. Content may not cover all relevant laws. Before acting on information contained in this presentation, the implications of the law should be independently evaluated considering the unique factual circumstances of the potentially affected facility, party, or entity.



510-290-5423

[gary@beyondcompliance.net](mailto:gary@beyondcompliance.net)

[www.beyondcompliance.net](http://www.beyondcompliance.net)



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**Gary Lucks JD, CPEA** is the principal environmental attorney with deep expertise in environmental, health, and safety (EHS) law, legislative affairs, and sustainability strategy. He has over 37 years of experience advising Fortune 500 clients in most industry sectors.

He is a licensed attorney, a scientist, and a Certified Professional Environmental Auditor (CPEA) who has completed or overseen close to 500 major EHS compliance audits across the country and overseas. He also specializes environmental compliance counseling, environmental auditing, environmental management systems (EMS), permitting, and training.

He wrote environmental policy briefing papers for Governor Newsom, Senator Feinstein, Senator Steinberg, State Insurance Commissioner Dave Jones, and Marin County Supervisor Charles McGlashan.

He serves on the California Lawyer’s Association Environmental Law Section’s Executive Committee leading environmental legislation, sustainability, and education committees. He also served as an Advisor to the Bay Area Air Quality Management District and co-founded the Sustainable Earth Initiative--a non-profit dedicated to helping public agencies improve environmental performance and advance sustainability initiatives.

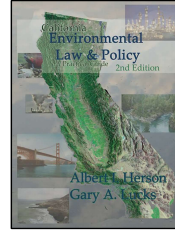
Mr. Lucks has published extensively on environmental law, legislation, and policy. He co-wrote a book on environmental law ([California Environmental Law and Policy: A Practical Guide](#) which is used in law schools, colleges, by practitioners, and which has been cited in legal opinions). He also wrote the Environmental Auditing Chapter in the [California Environmental Law and Land Use Practice](#). He has been a regular contributor to the *California Environmental Law Reporter*.

**REGISTRATIONS & CERTIFICATIONS**

- Certified Professional Environmental Auditor (CPEA), 2005
- California State Bar J.D., 1985
- California Environmental Assessor (REA I), 1993

**EDUCATION**

- University of the Pacific, McGeorge School of Law
- Tulane University (Cum Laude) B.S., Biology & Environmental Sciences



510-290-5423  
[glucks@baylawgroupllp.com](mailto:glucks@baylawgroupllp.com)

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## Former EPA Administrators & Alumni

- ❖ EPA budget (in real dollars) declined 45% from 2004
- ❖ Rebuilding Workforce & Budget
- ❖ Expand work force planning efforts
  - Reinvigorate demoralized EPA staff
  - Attempt to increase program and enforcement funding
- ❖ Environmental Protection Network (EPA alumni): plan to rebuild budget to 40-year average in “real dollars” or ~ to \$11.4 B (2019 dollars)
- ❖ Strengthen recruitment to overcome “hollowing out”
- ❖ **FY 2022 budget request** Reinvigorate demoralized EPA staff
  - Seeking \$2B increase to \$11.2B
  - Adding 1,000 FTEs

## Reality: The Trump Administration Is Reversing 100 Environmental Rules. Here's the Full List

	Completed	In progress	Total
Air pollution and emissions	19	8	27
Drilling and extraction	12	8	20
Infrastructure and planning	11	1	12
Animals	9	2	11
Toxic substances and safety	6	2	8
Water pollution	4	7	11
Other	5	6	11
All	66	34	100

<https://www.nytimes.com/interactive/2020/climate/trump-environment-rollbacks.html?smid=fb-nytimes&smtyp=cur>

## Stimulus & HFC Cuts

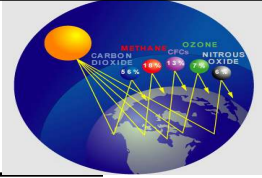
### Phases out HFCs:

- ❖ EPA authorized to cut product & use of HFCs by 85% over 15 years
- ❖ Expected to save as much as half degree Celsius of warming by end of 2100
- ❖ \$35 billion for renewable energy including tax credit extensions for solar, wind, and energy storage (\$4B), energy efficiency products, electric grid upgrades, sustainable transportation ( \$2.6B), carbon capture research (\$6B), \$1.7 B for low-income families to install renewable energy, nuclear (\$11B)
- ❖ Reauthorizes EPA program to cut diesel engine emissions
- ❖ DOE: Must prioritize funding research with 100% “clean, renewable, or zero-emission energy sources”

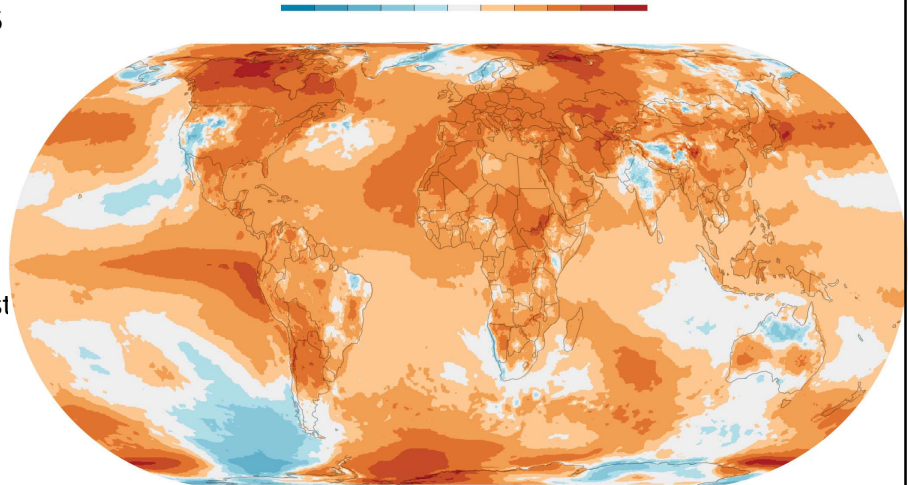
## Public Sentiment



# 2023: Warmest Year on Record



- ❖ World temperatures exceeded 1.5 degrees Celsius
  - 1.5-degree ceiling is Centerpiece of Paris Agreement
- ❖ Warmest in 1 > 125,000 years
- ❖ 2023: Warmest for Oceans
- ❖ Winter peak in Antarctic Ice lowest ever recorded
- ❖ CO2 levels reached 4 Million-Year highest level at 421 PPM in May 2022



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## Climate, Energy, & Environment Poll



- Majority of Americans believe climate change is causing harm
- 63% expect things to get worse in their lifetime
- 23% believe they will have to make major daily sacrifices due to climate change
  - 86% of Democrats expect harms from climate change in the U.S. to get worse during their lifetime
  - 37% of Republicans say the same.
- 74% say U.S. should join international efforts on climate change
- Majorities support specific policies to reduce impacts from climate change
  - (e.g., providing business tax credits for carbon capture & storage technologies).

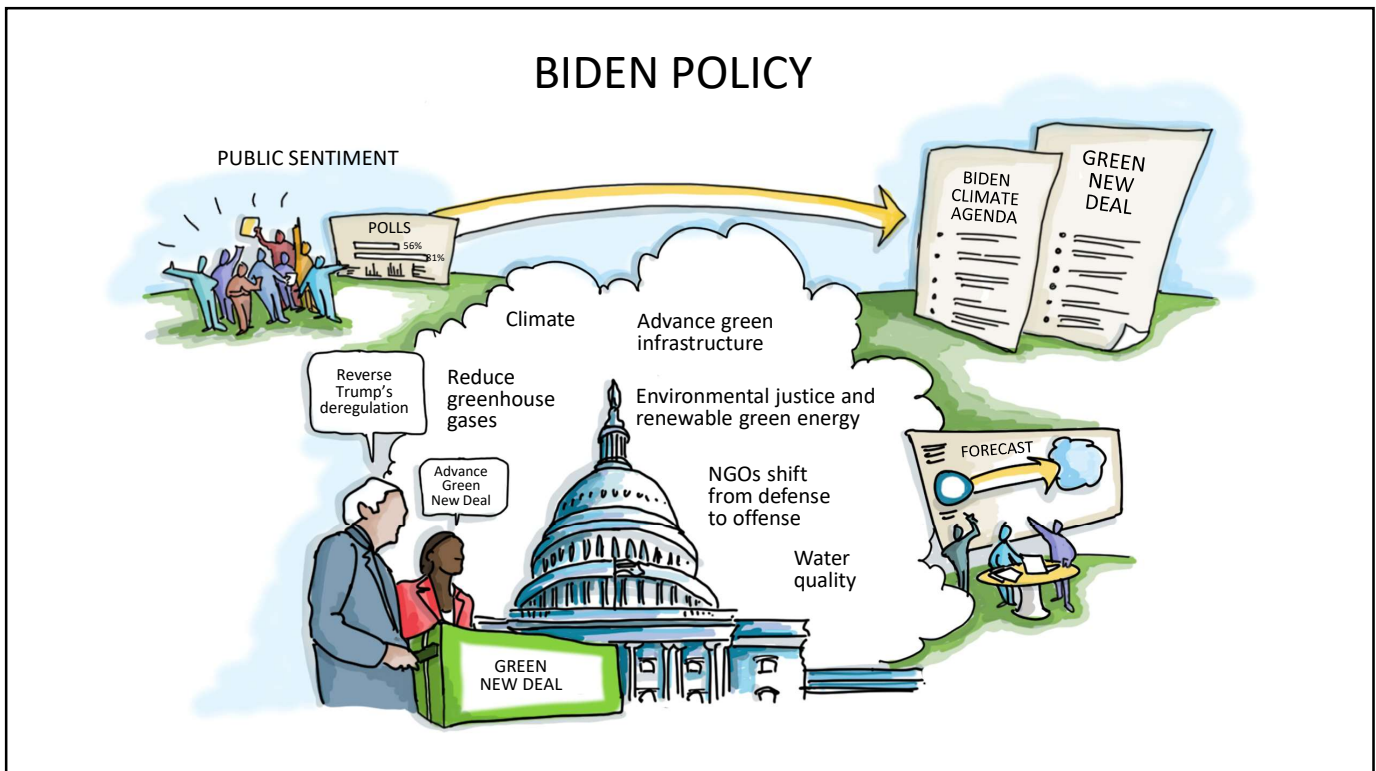
Source: Pew Research Center October 2023

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# The Green New Deal & Biden



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## The Green New Deal-- Non-binding Resolution

- ❖ **Renewable Energy:** Transition to 100% green, renewable energy & zero-emissions power by 2030 (no nuclear or natural gas) & building/upgrading to “smart” power grids
- ❖ **Green Transportation:** EV infrastructure, public transport (including high-speed rail)
- ❖ **Energy-efficient Buildings:** Upgrade all existing buildings to be energy-efficient
- ❖ **GHG Reduction:** Cuts carbon emissions to meet Paris Agreement’s most ambitious climate goal
- ❖ **Eliminate fossil fuels:** Reduce air quality pollution & GHG emissions “as much as technologically feasible”
- ❖ **Green Jobs:** Guarantee full employment generating up to 20 million new, living-wage jobs
- ❖ **Climate Resiliency**

## Biden Agenda vs. Green New Deal

GND	Biden	
Net-zero GHG Emissions by 2030	2035	Conservation focus on agriculture industry <ul style="list-style-type: none"> <li style="width: 50%;">• Emphasizes green infrastructure</li> <li style="width: 50%;">• EJ</li> <li style="width: 50%;">• Energy efficiency in buildings &amp; houses</li> <li style="width: 50%;">• Clean energy</li> <li style="width: 50%;">• Promoting production of EVs</li> <li style="width: 50%;">• Conservation in agriculture &amp; industry</li> </ul>
Abolish fracking?	Not abolishing fracking	Market forces: oil/gas companies are transitioning to renewables adding pressure to replace jobs with green jobs
Carbon Free Electricity	Yes \$2 trillion pledge	40% earmarked for legacy pollution & investments in disadvantaged communities
Building energy efficiency	Yes	
Green Transportation	Promoting EVs	Could see climate friendly policies in infrastructure & stimulus bills
Meet Paris Agreements limit to below 2C	Rejoined Paris Climate Agreement	

## Biden and Climate

- ❖ Returned to the Paris Climate Treaty
- ❖ New round of GHG commitments extending to 2030 by 11/21 (Glasgow, Scotland)
- ❖ Executive orders with “unprecedented reach” working toward net zero emissions no later than 2050
- ❖ **Dept of Health & Human Services:** New Office of Environmental Justice: To improve health in disadvantaged communities

## Biden EJ Focus

- ❖ **“Justice 40”:** 40% of federal funding to benefit underserved & overburdened communities:
  - Office of Environmental Justice in:
    - DOJ **AND**
    - Dept. of Health & Human Services
- ❖ **OECA EJ Focus:**
  - Increased inspections, early relief, protective remedies, increased engagement & enforcement
  - Issued several Emergency Orders under SDWA & Clean Air Act



## West Virginia v. EPA

- ❖ USSC: 6-3 ruling curtailed EPA's authority to regulate emissions from coal-fired power plants under the "Major Questions" doctrine:
  - EPA lacks explicit congressional authority to mandate require cleaner sources of electric power under CAA Section 111
  - Congress must issue "clear" statutory authority when granting an agency new power with vast political and economic consequences
- ❖ EPA air quality rulemaking underway to reduce criteria pollutants which will indirectly cut carbon
- ❖ Proposed rule to regulate methane from oil & gas operations
- ❖ Forthcoming Executive Orders

## Inflation Reduction Act: Climate Progress

- ❖ \$375 B (spent over 10 years) aimed at reducing carbon emissions by at least 40% by 2030 (2005 Baseline)
- ❖ Paris Compared: 50% - 52% by 2030 (2005 Baseline)
- ❖ Funding Allocation:
  - Renewables & Energy Efficiency
  - EVs
  - Carbon capture & Sequestration,
  - Agriculture
  - Land conversion
  - GHG Reduction Fund
  - EPA Climate & Air Pollution programs
- ❖ GHGs are "air pollutants" Amended Clean Air Act to explicitly define GHGs as an "air pollutant" shoring up EPA's GHG regulatory authority

## Build Back Better: \$1.2 Trillion Infrastructure Investment & Jobs Act

- ❖ \$1 B for 49 Superfund sites
- ❖ \$4.7 B: to cap and plug orphaned oil & gas wells
- ❖ **EV Infrastructure:** National network of 500K EV chargers
- ❖ \$7.4 B: Upgrading aging water infrastructure including lead pipe & paint action plan
- ❖ \$20 B: Office of Clean Energy Demonstrations: to scale up clean energy

## Sustainability EO

### Catalyzing Clean Energy Industries & Jobs:

- ❖ **Federal Footprint:** 300,000 buildings, 600,00 cars/trucks, \$650B in goods/services

### ❖ **EO Clean Power Objectives**

#### ❖ **Agencies:**

- Net-zero emissions for building portfolio by 2045 (50% cut by 2032)
- Net zero emissions from overall federal operations by 2050 (65% cut by 2030)

#### ❖ **EO Goals:**

- Federal agencies to achieve 100% carbon-free electricity by 2030
- Half must be locally supplied clean energy
- 100% ZEV acquisitions by 2035 (100% ZEV light-duty vehicles by 2027)

## Budgets to Consider Climate Change

- ❖ **Biden Purchasing directive:** Agencies to consider economic damage from climate change
- ❖ Involving federal purchases of vehicles, equipment, and goods
- ❖ Federal government is world's largest consumer (\$600 B/yearly)

## Air Quality

- ❖ New NAAQS for the annual Particulate Matter 2.5
- ❖ Lowers NAAQS to **9 micrograms** of fine PM per cubic meter of air down from **12 micrograms**.

## Forever Chemicals: PFAS Policies

- ❖ **RCRA:** Proposed Rule listing PFOA, PFOS, PFBS, and GenX as RCRA hazardous constituents for purposes of RCRA Corrective Action cleanup
- ❖ **Drinking water limits** (using emergency powers to establish)
  - Drinking water of ~110 M Americans may be contaminated by PFAS (per & polyfluoroalkyl substances)
  - PFAS found in over 20% of drinking water systems so far
  - Proposed rule to cover 6 PFAS chemicals
- ❖ **Superfund:**
  - Setting PFAS Superfund hazardous substances designation
  - All Appropriate Inquiry Defense: New ASTM standard E 157021 calls for addressing PFAS contamination
- ❖ **CWA:** List as a CWA toxic
- ❖ **TSCA (almost final):**
  - ❖ Businesses must notify EPA before using 329 PFAS chemicals.
  - ❖ EPA to perform review of health & safety information to determine if the new use may present an unreasonable risk to human health or the environment & possibly impose restrictions
  - ❖ Companies must investigate & report across its enterprise (upstream supply chains & downstream end-users)
- ❖ **TRI:** Biden rule eliminates Trump TRI reporting exemption for *de minimis* amounts of PFAS

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## CFATS

- ❖ **Securing Chemical Facilities from Terrorist Attacks Act of 2014 (“the CFATS Act of 2014”)**
- ❖ Expired July 2023 leaving only voluntary compliance
- ❖ **Interim final rule:** addressing security for high-risk chemical facilities in possession of specific quantities of specific chemicals of interest
- ❖ **Chemical Sector Coordinating Council** urging DHS to swiftly reauthorize in light continued cyber security risks

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## Eliminating NPL Cleanup Backlog

- ❖ Bipartisan Infrastructure law will fund:
  - 44 of “orphan” Superfund National Priorities Listed sites
  - 22 new sites
- ❖ **Inflation Reduction Act:** Reinstates the long-expired Superfund taxes on chemicals including oil

## Superfund ARARs

EPA clarified how Applicable or Relevant & Appropriate Standards (ARARs) should be developed:

- Tables should not be a laundry list of all regulations/statutes considered
- Only include those that are specific to the scope of the Response Action, its location & the environmental media it is addressing
- Identify & cite specific citations of the ARARs, refraining from citing an entire chapter or regulatory section
- Leave out parts of a rule that include administrative requirements
- Instead of including Executive Orders, include it under a Record of Decision protectiveness criterion (instead of as an ARAR)
- Leave out permits which are not typically promulgated & are “administrative”



## Soil Lead Clean up levels Lowered

- New EPA guidance lowers recommended clean up levels for lead-contaminated soils at Superfund sites and RECRA corrective action facilities
- Lowers screening level for pb in soil at residential properties from 550 ppm to 20 ppm
- For remedial actions, where other sources of pb exposure exist (e.g., lead in air & water), screening level is 100 ppm
- Expected to drive evaluation & cleanup at a significant number of residential properties

## Rising Sea Level Impacting Superfund sites

**UC Berkeley Study:** With sea levels rising 3.2 feet by 2050 could impact:

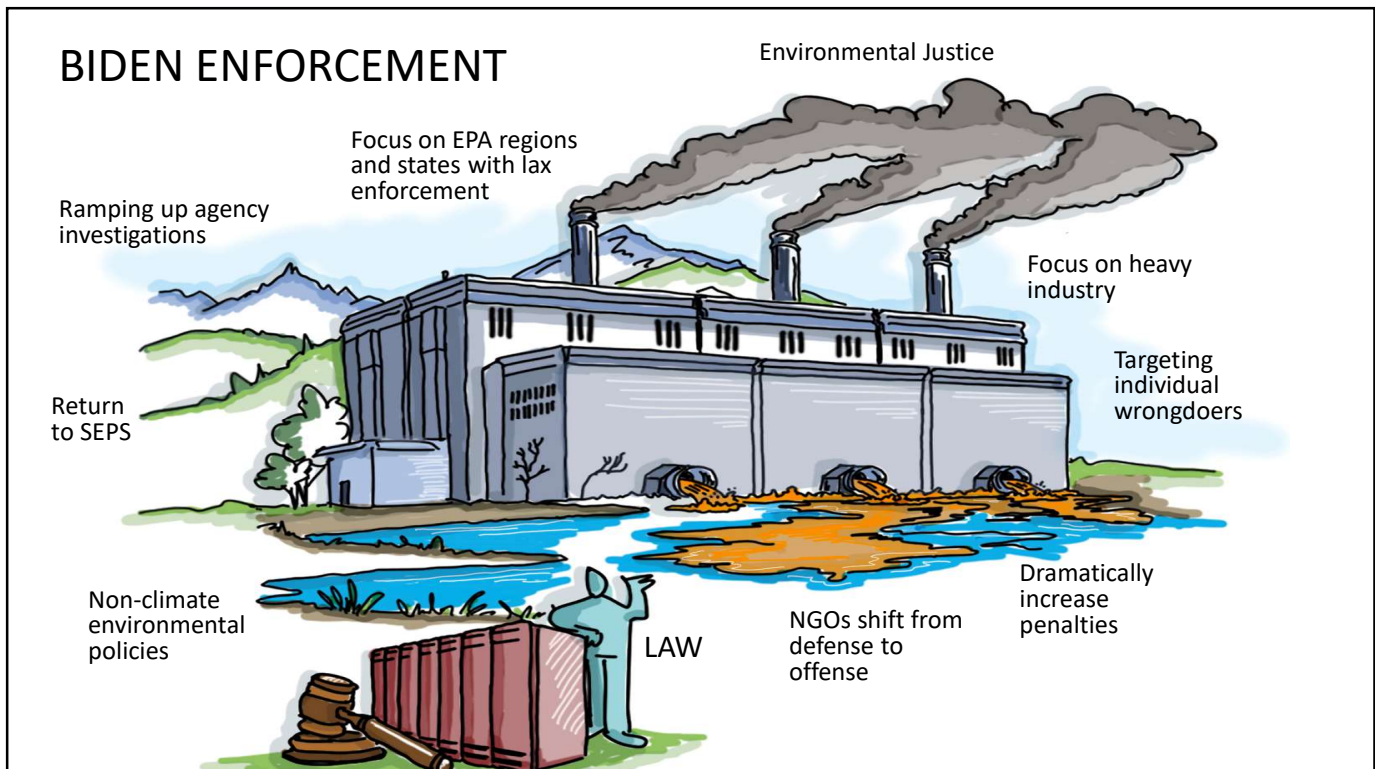
- > 5,200 Bay Area hazardous waste sites
- 326 Superfund sites across the US

# Personnel is Policy

- ❖ **White House Office of Climate Policy:** John Podesta replaced Gina McCarthy in coordinating domestic policy
- ❖ **International Climate Envoy:** John Kerry
- ❖ **Dept. of Energy:** Jennifer Granholm
- ❖ **DOT:** Pete Buttigieg focusing on green infrastructure
- ❖ **EPA:** Michael Regan
- ❖ **CEQ:** Brenda Mallory: Experienced former environmental lawyer who spent 15 years at EPA
- ❖ **Dept. of Interior:** Deb Haaland expected to curtail oil & gas leasing on federal lands

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## Environmental Civil Penalties Rise Significantly

- ❖ **Federal Civil Penalties Inflation Adjustment Improvement Act of 2015**
- ❖ **EPA Civil Penalties rose with inflation in 2020**
- ❖ **3.2% COLA on top of 2020 Increases (2023)**

### Per day / Per violation Penalties:

- RCRA: \$121,275
- Clean Air Act: \$121,275
- Clean Water Act: \$66,712
- EPCRA: \$69,733
- CERCLA: \$69,733
- SDWA: \$69,733
- TSCA: \$48,512
- FIFRA: \$24,255

## Scaling up Enforcement

- ❖ Returning to Ruckelhaus “fishbowl memo” that EPA serves as a “gorilla in the closet” to compel civil & criminal compliance through stringent oversight of state programs
- ❖ Rescinded DOJ EO banning SEPs in enforcement settlements
- ❖ Shift from National Compliance Initiatives to Enforcement focus
- ❖ Increased focus on states considered to be lax on enforcement
- ❖ Increased focus on heavy industry
- ❖ Reversing centralized enforcement, returning delegated authority to regions
- ❖ FY 18 – 21 EPA enforcement fell by half from historic levels
- ❖ After decade of budget cuts/reducing 905 enforcement positions, 300 FTEs being hired
- ❖ Office of Enforcement & Compliance Ramping Up Enforcement Priorities:
  - Climate change
  - EJ

## OECA Enforcement for 2023

- ❖ Significant increase in on-site inspections, new criminal investigations, civil settlements & cleanup enforcement
- ❖ Record level of enforcement in EJ communities  
(60% more than since before pandemic)
- ❖ 77% increase in criminal investigations
- ❖ 57% increase (from prior year) in collective fines/penalties & restitution

## DOJ Prosecution Focus

### DOJ Environment Natural Resources Division prioritizing:

- ❖ **Corporate Environmental Crimes including:**
  - Violations of environmental laws and fraud, conspiracy and obstruction of justice
  - “Due care” throughout the supply chain.” If supplies originate from a criminally tainted source, [DOJ] ‘ will consider the criminal responsibility of all parts of that supply chain.’
- ❖ **“Sector-wide” civil enforcement:** If all or most of an entire sector is out-of-compliance, DOJ will focus on individual facilities in that sector
- ❖ **Critical Enforcement nexus:** Focusing on climate and violations of GHG rules and cases protecting carbon sinks (e.g., illegal logging) and protecting renewable energy programs from fraud
- ❖ **EJ:** Increased inspections, early relief for communities near non-compliant facilities, & increased engagement with EJ communities.

## New DOJ Self-Disclosure Policy for Corporate Crimes

- ❖ US Attorney's Office set out new standards defining whether a voluntary self-disclosure of criminal misconduct
- ❖ Company considered to have made a voluntary disclosure if it becomes aware of misconduct and then publicly reports it to DOJ in a timely fashion and prior to an imminent threat of disclosure of government information
- ❖ **Benefit:** May be exempt from criminal penalty or fined below 50% of the fine range if:
  1. Misconduct poses grave threat to national security, public health or environment
  2. It is deeply pervasive throughout the company
  3. It involved the current executive management of the company

## Individual Liability for Corporate Wrongdoing

### Focus on prosecuting Corporate fraud & other misconduct as deterrence

#### Yates Memo Guidance:

- Corporate Cooperation Credit: corporations must provide all relevant facts to DOJ regarding individual responsible for misconduct
- Investigations: focus on individual from inception of investigation
- DOJ will not release culpable individuals for liability when resolving corporate matter
- DOJ attorneys should not resolve corporate matter without clear plan to resolve related individual cases
- Civil attorneys should consistently focus on individuals AND the company regardless of individual's ability to pay



# California Environmental Regulatory Developments & Enforcement



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## California's Preoccupied by Climate, Drought & Wildfire

- ❖ **~60% of Californians:** Housing, homelessness, & economic conditions are top 3 most important issues
  - ❖ 70%: lack of affordable housing is the cause
  - ❖ Majorities across parties favor policies to help homeless community members
- ❖ **Governor Newsom: 52% approval**
- ❖ **Legislature:** < 50% approval
- ❖ **Biden:** 53% approval
- ❖ **US Congress:** 20% approval
- ❖ **Wrong Direction:** a Majority belief

*Public Policy Institute of CA Poll (12/23)*

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## California's Preoccupied by Climate, Drought & Wildfire

- ❖ **~90% of likely CA Voters:** Environment is important
- ❖ **Governor Sentiments:**
  - **45% of likely CA Voters:** Environment is Very Important in voting for Governor
  - **59% of likely CA Voters** approve of Newsom's handling the environment
- ❖ **Top 2 issues:**
  - #1: Water supply & Drought: 68%
  - #2: Wildfires & Climate
- ❖ **Climate & Drought:** 77% say climate change has contributed to current drought
- ❖ **Climate change effects are here:** 69%:
  - 80%: climate change is very or somewhat serious threat to future economy & quality of life
- ❖ **Oceans/Beaches:** 58% oceans and beaches are very important to California's future economy & quality of life

*Public Policy Institute of CA Poll (7/22)*

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## 2023 CALIFORNIA ENVIRONMENTAL SCORECARD



GOVERNOR

**Gavin Newsom (D)**

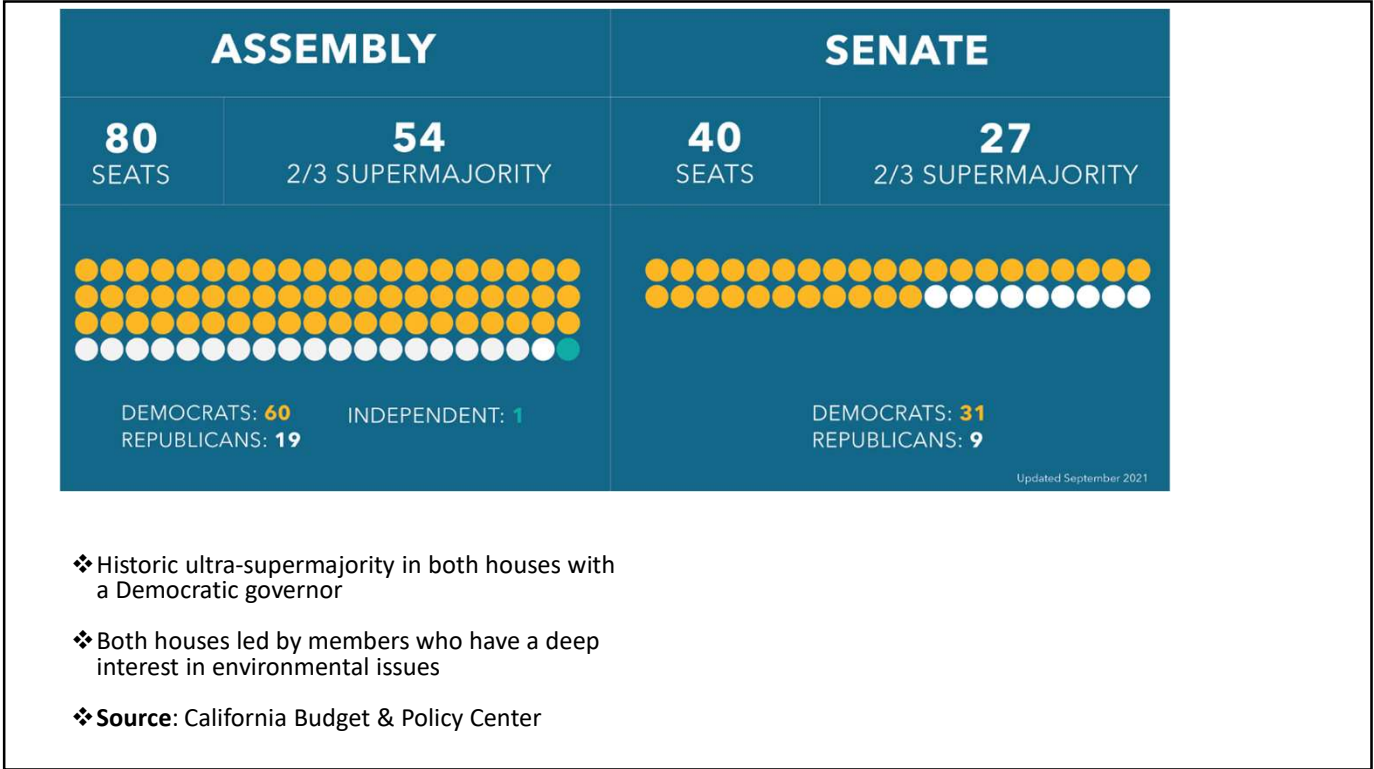


Position: **Governor since 2019**

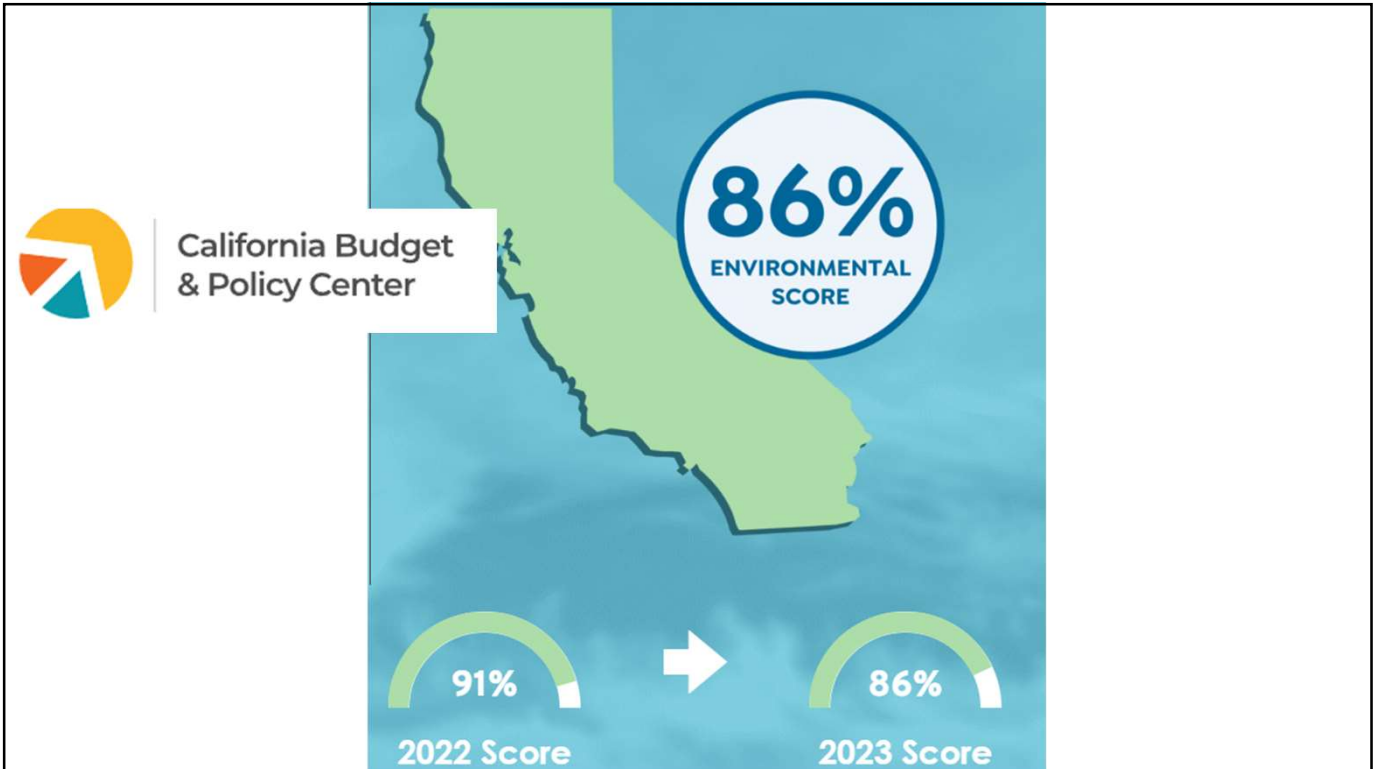
<https://www.gov.ca.gov/>

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California Budget & Policy Center

### 2023 By the Numbers

**100%**

**20**

Legislators received a perfect 100% score

*Down from 29 in 2022*

**52%**

of legislators accept oil money (62/120)

*Down from 63% in 2022!*

**8%**

Average Republican score

*100% of 26 Republicans take oil money*

**84%**

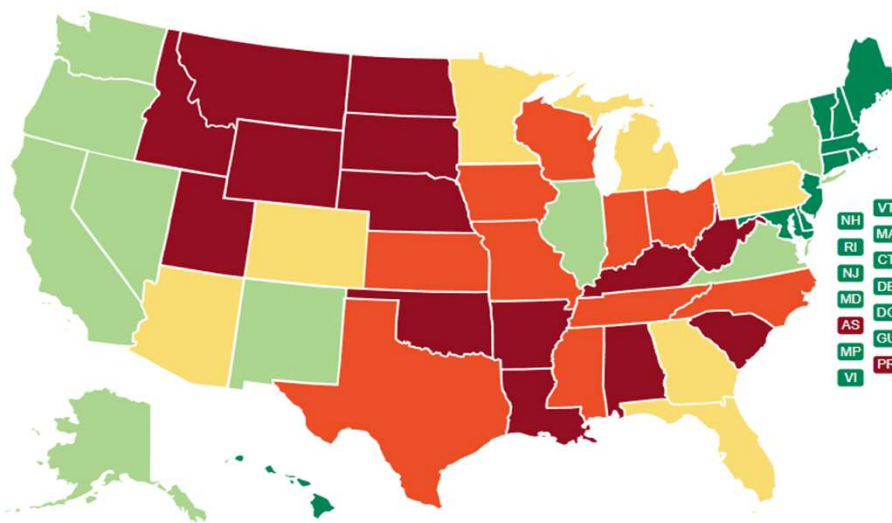
Average Democrat score

*38% of the 94 Democrats take oil money*

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### NATIONAL ENVIRONMENTAL SCORECARD

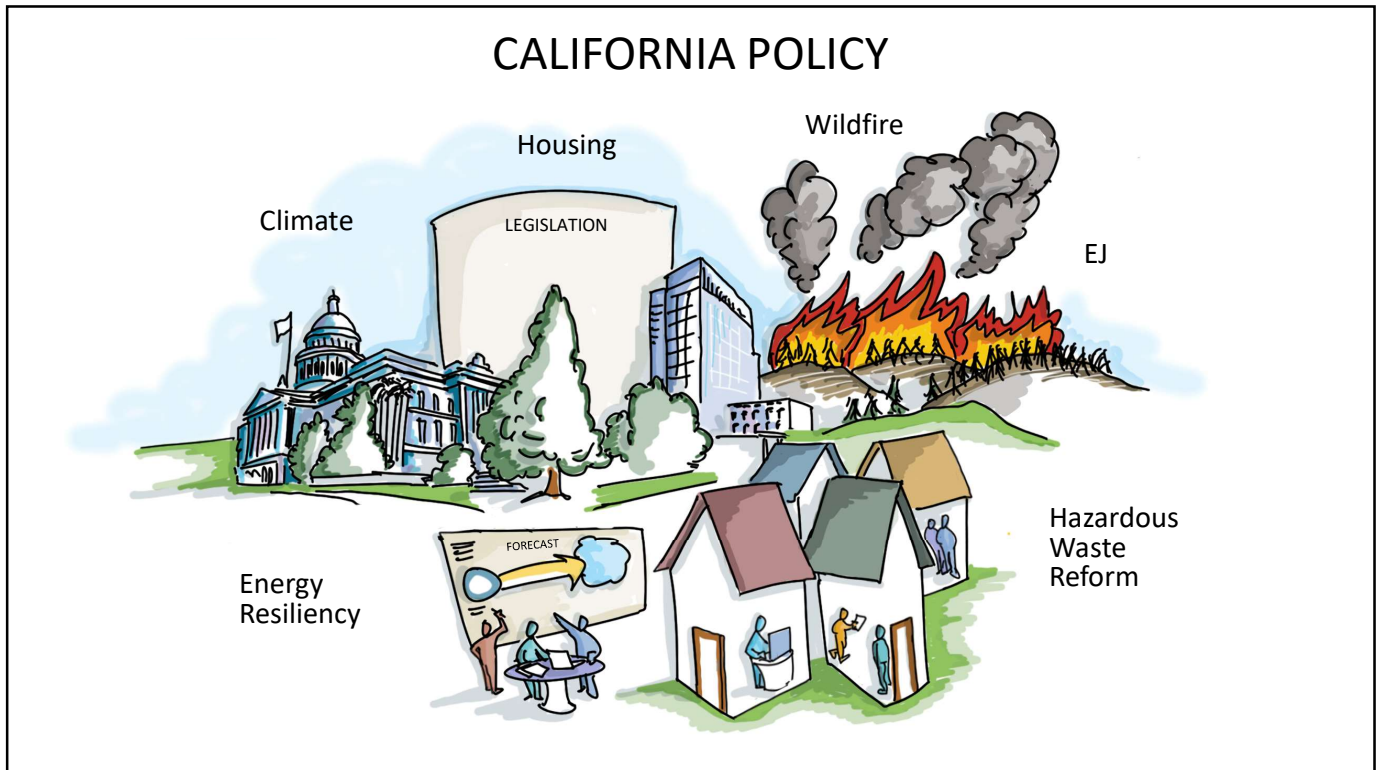
2022 National Environmental Scorecard: U.S. House



19 House Scorecard Votes  
House Average: 52%  
**2022**

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### Only Selected Topics Today

- Climate Change
- Air Quality
- Hazardous Waste
- Hazardous Materials
- Green Chemistry
- Water Quality
- Sustainability
- Health & Safety
- Enforcement
- Forecast



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## 2023 California Legislative Session Themes:

### ❖ Key Drivers:

- Budget Deficit,
- Gasoline Prices,
- Newsom Ambition,
- Federal Funding

### ❖ Leadership Changes:

- New Senate Pro Tem Elect McGuire
- New Speaker of the Assembly R. Rivas

### ❖ Key Energy/Enviro Themes:

- Climate Change,
- Water Rights,
- Oil and Gas,
- Offshore Wind,
- Energy Procurement

Source: Kip Lipper, Senate Pro Tem Policy Lead  
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## Decarbonizing California

### ❖ Reduce GHG emissions:

- \$40% below 1990 levels by 2030
- \$80% below 1990 levels by 2050

### ❖ Carbon neutral by 2035 (Now 2045)

- ❖ 60% Renewable energy by 2030
- ❖ 100% Renewable energy by 2045
- ❖ 1.5 million ZEVs by 2025, 5 million ZEVs by 2030
- ❖ 100% EV by 2035
- ❖ 50% of all trucks sold must be EV by 2035
- ❖ Half petroleum use by 2030
- ❖ 100% electric appliances by 2030/2035

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## Newsom Executive Orders

- ❖ Phasing out hydraulic fracking
  - ❖ CA must:
    - Stop issuing hydraulic fracking permits by 2024
    - End all fossil-fuel drilling by 2045
    - Pending SB 467 would ban offshore oil drilling
- ❖ Conserving 30% of land & coastal water by 2030: To offset loss of biodiversity
- ❖ Storing Storm Flood Water: Making it easier for water suppliers and farmers to divert water, temporarily suspending regulations including CEQA reviews allowing users to diver without water rights permits.

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## Budget Windfall

- ❖ Historic one-time \$54 billion budget investment in climate:
  - Sea Level Rise
  - Wildfire Mitigation
  - Extreme Heat
  - Drought
- ❖ \$3.25 Billion in EV charging infrastructure and vehicle/school bus purchasing incentives
- ❖ \$970 million for solar & energy storage investments
- ❖ \$1.4 billion for natural & working lands carbon investments

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## Climate Solutions Revolution

### ❖ Newsom's \$22.5 B Budget (over 5 years) addressing Climate:

- Lithium Capital of the World in "Lithium Valley"
- Zero-emission vehicles & clean transportation & energy
- Establish an equitable "global model" for the world:
- Training community health workers in "climate health", "health-resilience planning" & health/disease monitoring and air quality monitoring
- Climate resilience (forest & wildfire, "nature-based" solutions for extreme heat, coastal resilience & community resilience).

❖ 2024/25 Budget: Governor proposes a \$10M cut to Climate programs

## Newsom's 5 Pillars [2022]

I. Advance Clean Electricity Targets: SB 120 (failed passage)

II. Protecting communities from impacts of the oil wells: SB1137

III. Advancing natural and engineered technologies to remove carbon:

- SB 905
- SB 1314
- AB 1757

IV. Codifying statewide 2045 carbon neutrality goal: AB 1279

V. Accelerate 2030 GHG Emission Reduction Goals: AB 2133 Would have Increased California's GHG emission reduction target from 40% below 1990 level to 55% below that level.

## Climate Change

### “Climate Accountability Package”

- **SB 253 (Wiener) - Climate Corporate Accountability Act:** Public/Private corporations with annual revenues above \$1B doing business in CA must publicly report total annual GHG emissions:
  - Scope 1: Direct emissions (2026)
  - Scope 2: Indirect emissions (2026)
  - Scope 3: Supply chain emissions (2027)
  - **SEC compared:** Only covers public companies
- **SB 261 (Stern) - Climate-related Financial Risk Act:** companies doing business in CA with gross annual revenues > \$500 M (except insurance firms) must report climate-related financial risks around the world

## Constitutional Challenges to Climate Disclosure Laws

CA Chamber/others seeking injunction contending these laws arguing:

- “Unconstitutionally compel speech” violating 1<sup>st</sup> Amendment
- Seek regulating outside CA jurisdiction contrary to CAA with exclusive federal jurisdiction
- Violate Interstate Commerce

## Climate Change: Voluntary carbon offsets

- ❖ AB 1305 (Gabriel) - Buyer and seller information: Companies marketing or selling voluntary carbon offsets within CA must disclose on its website details of the carbon offset projects including:
  - The specific protocol used to estimate emission reductions or removal benefits
  - Location of the offset project site
  - Project timeline
  - Date when the project started or will start
  - Dates and quantities “when a specified quantity of emission reductions or removals started or will start or was modified or reversed.
  - Whether offsets are from carbon removal or avoided emission or the breakdown of each category
  - The durability period
  - Whether there is an independent expert or third-party validation or verification of the project attributes.

## Other Carbon Legislation

- ❖ AB 43: Embodied carbon trading system
- ❖ SB 306: Extreme heat action plan
- ❖ AB 585: California Council on Science and Technology study
- ❖ SJR-2: Fossil Fuel Non-Proliferation Treaty



## Climate/Grid Funding

- ❖ AB 205 (Trailer Bill) Funds for demand side grid support:
  - Financial incentives for energy storage projects (at least 8 hours continuous discharge to grid)
  - CEC consolidated, expedited Opt In permitting for clean energy & storage projects
    - Overrides other state & local permitting
    - Except Coastal Commission & BCDC permits
    - Must meet Environmental Leadership criteria
  - Strategic reserve and opt in permitting.
- ❖ AB 178 (Budget Bill) - funding for strategic reserve & long duration storage
- ❖ AB 179 (Budget Bill) - funding for industrial grid support & decarb
- ❖ AB 180 (budget Bill) - funding for strategic reserve & electricity back up assets

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## Promoting Carbon Capture, Removal, Utilization & Sequestration

**SB 905** requires ARB to develop/implement regulatory framework to streamline safe deployment of Carbon Capture, Removal, Utilization & Sequestration technologies.

- Prohibits injecting concentrated CO<sub>2</sub> fluid produced by a CO<sub>2</sub> project for enhanced oil recovery in SDWA Class II well
- State Geologist to monitor seismic activity or leakage from a CO<sub>2</sub> to help ensure public health & environmental safety
- ARB to monitor & mitigate air emissions from CO<sub>2</sub> project

**SB 1314:** Prohibits injecting concentrated CO<sub>2</sub> fluid from a CO<sub>2</sub> capture or CO<sub>2</sub> capture & sequestration project from use as an injection fluid for enhanced oil recovery

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## 2045 Carbon Neutrality Target

### CA Climate Crisis Act

- AB 1279 codifies Governor's EO setting new ambitious goal of 85% GHG emissions reduction by 2045 (1990 baseline), which would be one of the most ambitious reduction-specific goals in the world.
- ARB's scoping plan strategies must remove, capture, & store carbon

## 2022 Scoping Plan

### Focus on achieving Carbon Neutrality by 2045 (as per AB 1279)

- Expected to reduce demand for liquid petroleum fuels by 94%, & reduce GHG by 89 from oil/gas extraction by 2045
- **Carbon Sequestration strategies:**
  - Carbon Capture
  - Natural & Working Lands
  - CO2 Removal (Direct Air Capture)
- **Key Sectors:**
  - Transportation Sustainability
  - Clean Electricity Grid
  - Sustainable Manufacturing & Buildings
  - CO2 Removal
  - Short-lived Climate Pollutants
  - Natural & Working Lands

## 2022 Scoping Plan: Transportation Targets

- Reduce VMT per capital 25% below 2019 levels by 2030 & 30% by 2045
- All new medium & heavy-duty truck sales must be ZEV b 2040
- 20% aviation fuel means must be met by electricity or hydrogen by 2045
- Most ocean-going vessels must use shore power by 2027 (25% must use hydrogen fuel cell technology by 2045)
- All cargo handling port equipment must be zero-emission by 2037
- All drayage trucks must be zero emission by 2035
- 10%% passenger & locomotive sales must be zero emission by 2030

## Scoping Plan 2022

- ❖ New residential buildings must have electric appliances by 2026 & commercial buildings by 2029
- ❖ Must retire all combined heat and power facilities by 2040

## Oil & Gas Well Buffers

**SB 1137:** ~ 5.5 million Californians live within one mile of oil & gas wells

- Over 2 million Californians living within 3,200 ft. of an existing oil well
- Mandates 3,200-ft. health & safety buffer zone between new & reworked oil and gas wells and sensitive land uses (i.e., schools, childcare centers, community resource centers, residential homes and live-in housing, and hospitals).
- Oil & gas facility operators in protection zones must implement strict air & water pollution controls & develop response plans

## Oil and Gas Legislation

- ❖ Orphan well cleanup liability and bonding – AB 1167
- ❖ Oil and gas enforcement and penalties – AB 631
- ❖ “Industrial override” loophole – SB 704

## Specific Climate Targets

- ❖ **ZEVs:** 100% ZEVs by 2030/2035
- ❖ **Appliances:** 100% electric appliances by 2030/2035

• **Source:** Achieving Carbon Neutrality in CA PATHWAYS Scenarios Developed for the CA ARB

## Natural & Working Lands Climate Smart Strategy

- ❖ **AB 2278 Land Conservation Target:** Establishes priorities for the implementation of the 30x30 conservation goal established in Executive Order N-82-20 and requires an annual report to the Legislature on progress made toward achieving this goal.
- ❖ **AB 1757** Requires ARB, with NRA, CalEPA, and CDFA, to determine an ambitious range of targets for natural carbon sequestration, & for nature-based climate solutions, that reduce GHGs for 2030, 2038, and 2045 to support state goals to achieve carbon neutrality & foster climate adaptation and resilience.
- ❖ **SB 27** addresses concerns about negative emission technologies (NETs) that arguably prolong the use of polluting technologies
  - SB 27 establishes Carbon Sequestration & Resilience and Project Registry:
    - To maintain list of eligible but unfunded projects, which then may be funded to mitigate GHG emissions
    - Maximizes carbon capture in soil, grasslands, farmland, wetlands, forests
    - Prohibits registry projects from offsetting emission reduction obligations or being involved in market-based compliance mechanisms,
    - Requires ARB to add carbon sequestration targets to the state's climate change scoping plan.

## Air Quality Legislation



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## Electric Vehicles & Infrastructure

**AB 970:** Sets permit approval time frames & reduces the number of required parking spaces to accommodate the EV charging stations

**AB 1236:** Local government must administratively approve an applications for EV charging stations via building permit or similar nondiscretionary permit

Review is limited to the building official's review of whether it meets all health and safety requirements

**SB 1291** Establishes expedited local agency approval of hydrogen fueling incorporating identical approach as AB 1236 for EV permitting



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## ARB's Advanced Clean Truck Rule:

- ❖ **Beginning 2024**, Automakers must sell a minimum number of zero-emission big rigs, delivery vans, and large pickups weighing more than 8,500 lbs.)
- ❖ **By 2035**, most new trucks in California will be zero emission



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## Hazardous Waste Developments



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## Generator Improvement Rule State Delegation

### AB 698:

- ❖ Updates terms within the California Hazardous Waste Control Law to conform to recent changes in federal hazardous waste regulation promulgated by the EPA under GIR.
- ❖ Replaces the terms “CESQG” with “very small quantity generator” / “VSQG”
- ❖ Recasts provisions regarding the amount of hazardous waste and which hazardous wastes are included in, or excluded from, that calculation.
- ❖ **Labeling:**
  - “Episodic Hazardous Waste”
  - Indicate hazards (i.e., ignitable, corrosive, reactive, or toxic)
  - Date: Episodic event began
  - Accumulation: Up to 60 days
  - Manifest required for off-site shipments Records:
  - Beginning & ending dates of episodic event
  - Description of episodic event
  - Types and quantities of HW generated during event
  - Description of fate of HW managed
  - Name of transporter
  - EPA approval letter (as appropriate)

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## Generator Improvement Rule Monthly Thresholds

### Large Quantity Generators

- > or = 1,000 kg/mo. of non-acute HW
- >=1 kg/mo. of acute HW
- >= 100 kg clean-up residues of acute HW

### Small Quantity Generators

- 100 to 1,000 kg/mo. of non-acute HW
- < or =1 kg/mo. acute HW
- < or = 100 kg/mo. clean-up residues of acute HW
- Note: Accumulation of 6,000 kg at any one time requires a one-year storage permit

### Very Small Quantity Generators

- < or = 100 kg/mo. non-acute HW (Recognized as SQG under CA law)
- < or =1 kg/mo. acute HW
- < or = 100 kg/mo. clean-up residues of acute HW

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## TSDF Permit Clarifications

- ❖ TSDF permits, including a standardized permits, must be for a fixed term,
  - Not to exceed 10 years
  - Regardless of the type of hazardous waste facility.
- ❖ Provides for the extension of an existing hazardous waste facilities permit or standardized permit if owner or operator of the hazardous waste facility submits renewal Part A & Part B application before expiration the application is deemed complete.
- ❖ Deemed extended until DTSC approves the renewal application and a new permit is effective or the department denies the permit renewal application and all parties have exhausted all applicable rights of appeal.
- ❖ TSDF permits expiring before 1/1/ 2025, seeking to renew the permit to submit a Part A and Part B application to DTSC at least 180 days before the end of the permit's fixed term.

## TSDF Permit Clarifications

- ❖ Within 90 days of receiving TSDF application (including a standardized permit), DTSC must provide a timeline with process milestones
- ❖ If DTSC fails to make a timely decision,, it must issue a public report with an explanation & a proposed schedule for issuing permit decision
- ❖ DTSC prohibited from issuing permit unless TSDF owner or operator establishes and maintains financial assurances for the costs of corrective action, closure, and post-closure
- ❖ DTSC must request cost estimate from TSDF owner or operator for corrective actions involving releases and require entering into a schedule of compliance for assurances of financial responsibility for completing the corrective action.

## Environmental Enforcement

- ❖ AB 508 extends to 5 years the maximum allowable period of probation for specified environmental crimes when they are committed by an entity with more than 10 employees
- ❖ Proponents of this bill argue that because many environmental crimes are classified as misdemeanors, the reduced period of probation is insufficient to hold corporate wrongdoers accountable.

## Treated Waste Wood

- ❖ AB 332 permanently authorizes TWW to be managed under alternative management standards instead of managed as hazardous waste.
- ❖ Variances granted by DTSC before AB 332 are inoperative
- ❖ **Storage of TWW in “normal course of business”:** off ground (on blocks, concrete surfaces, or containers):
  - Store up to 90 days (block and tarp)
  - Store up to 180 days (containment pad)
  - Store up to 1 year (container and storage building)
- ❖ Cover during inclement weather
- ❖ Accumulate away from public access
- ❖ Do not burn
- ❖ Segregate from other wastes

## Revised the Mercury Thermostat Collection

### **AB 707 requires thermostat manufacturers to:**

- Fully fund program costs to collect, transport, & recycle mercury thermostats including education and outreach campaign
- Develop & implement a convenient, cost-effective, and efficient program for the collection, transportation, recycling, & disposal of out-of-service mercury-added thermostats.
- Collection locations must be convenient & accessible statewide, including in rural, disadvantaged, & low-income communities.

## Consolidated Manifesting Retail Hazardous Waste

- ❖ **AB 2920** Retail hazardous waste eligible for consolidated manifesting for California-only HW (i.e., unsold consumer products in its original retail sales packaging that is determined by the retailer to be a hazardous waste).
- ❖ **Original list:** household bleach/cleaning products, light bulbs, pool chemicals, laundry detergent, cat litter, potting soil, and fertilizers, used oil, brake fluid, antifreeze, "paint-related" wastes, and drycleaning solvents.
- ❖ Waste streams no longer have to individually listed on the manifest and in its own container, saving extra vehicle
- ❖ **\*\***Under consolidated manifesting procedures, the generator is exempt from filling out a hazardous waste manifest, and instead the transporter completes both the generator and transporter section of the manifest.

## Hazardous Materials Developments



## HMBP HazMat Tweaks AB 1716

- ❖ AB 1716 exempts from HMBP liquid or gaseous fuel in fuel tanks on vehicles or motorized equipment if the tank is integral to the operation of the vehicle or motorized equipment.
- ❖ Clarifies a CUPA's authority to withhold, suspend or revoke a permit
- ❖ Clarifies that certain elements of HMBP not required to be reported by the CUPA if those elements do not exist
- ❖ CUPA to consult with Depart. of Food and Agriculture or County Agricultural Commissioner where reasonable likelihood that a pesticide by a farm or nursery poses accident risk
- ❖ Adds additional chemicals to HMBP exemption for hazardous materials stored on site: "liquid or gaseous fuel in fuel tanks on vehicles or motorized equipment, if the fuel tank is integral to the operation of the vehicle or motorized equipment, & treated wood and treated wood waste, as specified.
- ❖ Requires some of the elements of HMBP to be included on the site map only if they are present on the site.
- ❖ Recasts definition of "emergency tank system," to mean an "underground storage tank system that stores diesel fuel or kerosene solely for use by one or more stationary emergency devices, & adds to the emergency devices already covered certain fire suppression systems and steam generation pressure tanks.

## HMBP HazMat Tweaks AB 1716

- ❖ Revises the definition of an "aerosol can" to mean nonrefillable receptacle containing a gas compressed, liquefied, or dissolved under pressure, the sole purpose of which is to expel a liquid, paste, or powder & fitted with a self-closing release device allowing the contents to be ejected by the gas.
- ❖ Requires containers accumulating or transporting universal waste aerosol cans or the contents removed from a universal waste aerosol can or processing device to be protected from sources of heat.
- ❖ Requires universal waste aerosol cans showing evidence of leakage must be packaged in a separate closed container or overpacked with absorbents, or immediately punctured & drained.
- ❖ Requires the written operating procedure detailing the safe processing of universal waste aerosol cans:
  - Must be maintained onsite at all times
  - Handler must maintain a copy of the manufacturer's specifications instructions for the device used to puncture and drain the aerosol cans
  - The procedure must include protocols to minimize, mitigate, prevent, control & clean up any unauthorized release
  - Procedure must require handler to recycle the empty punctured aerosol cans as specified.

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## Green Chemistry/ Chemical Bans/ Toxics

- ❖ Food safety – AB 418
- ❖ Cosmetics safety – AB 496
- ❖ Baby food safety – AB 899
- ❖ Fiberglass and flame retardants – AB 1059
- ❖ Pesticides:
  - AB 363 (Bauer-Kahan) – neonics
  - AB 652 (Lee) – Environmental Justice Advisory Committee at Department of Pesticide Regulation
  - AB 1322 (Friedman) – diphacinone (rodenticides)

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## Green Chemistry & Tires

- ❖ Tires are listed as a “priority product” under the Safer Consumer Products Green Chemistry Program.
- ❖ 6PPD (N-(1,3-dimethylbutyl)-N-phenyl-p-phenylenediamine) helps prevent tires from degrading/cracking) reacts with ozone in the air forming 6PPD-quinone that kills coho salmon (killing at least half of coho in laboratory studies)
- ❖ Manufacturers would need to replace the chemical or provide an alternative.

## Battery Recycling

### **SB 1215 & AB 2440:**

- ❖ Responds to an estimated 75-92% of lithium-ion batteries are disposed of improperly.
- ❖ Adds battery-embedded products to the Electric Waste Recycling Act
- ❖ CalRecycle, in collaboration with DTSC, to establish more than one covered electronic waste recycling fee for covered battery-embedded products based on categories of those products.

## PFAS Prohibitions

### **AB 652**

- ❖ Prohibits the sale or distribution any juvenile products containing PFAS, on or after July 1, 2023
- ❖ Manufacturers must use the least toxic alternative when replacing PFAS chemicals in a juvenile product

### **AB 1200**

- ❖ Prohibits selling food packaging containing PFAS beginning 1/1/23
- ❖ Cookware manufacturers must label product if it contains an intentionally added chemical on specified lists (1/1/24)
- ❖ Manufacturers must use the least toxic alternative when replacing PFAS chemicals for cookware

## Ban on Fire Fighting Foams with PFAS

**SB 1044** bans firefighting foam from containing per- and polyfluoroalkyl substances (PFAS)

## California Safe Cosmetics Act

- ❖ SB 312 closes “loopholes” that allow chemicals in personal care and cosmetics products to be categorized as “fragrance”
- ❖ Fragrance chemicals can be found in more than 95% of shampoos, conditioners, hair styling products, antiperspirants and shaving products as well as fine fragrances, body spray and lotions, and 1/3 of the fragrance chemicals currently in use have been linked to negative health impacts ranging from allergic reactions to reproductive harm and increased risk of breast cancer.
- ❖ Cosmetic manufacturers, by January 1, 2022, must disclose product information to DPH re cosmetic products containing a fragrance ingredient or flavor ingredient
- ❖ Agencies must post on database associated health hazards.

## Cosmetic Chemical Ban

- ❖ **AB 496 follows** EU's Annex II of regulation No 1223/2009, which bans 1,600 carcinogens & endocrine disrupter chemicals
- ❖ Beginning January 1, 2027, bans manufacture, sale, delivery cosmetic products containing any of the 26 intentionally added ingredients (specified in the bill)

## Cosmetics Product Safety

**Prior Law:** FDA and CA DPH did not require premarket safety testing, review, or approval of cosmetic products.

- **AB 2762** bans a list of specified ingredients from cosmetics products consistent with the European Union's (EU) Annex II of regulation No 1223/2009 including carcinogens, reproductive toxicants, and endocrine disruptors
- Prohibits, beginning January 1, 2025, the manufacture, sale, delivery, holding, or offering for sale in commerce of any cosmetic product containing specified intentionally added ingredients.

## Labeling Sodium Nitrite

- ❖ AB 1210 responds to the chemicals increasing use of sodium nitrite in suicides. AB 1210 prohibits sale of sodium nitrite at a purity level that exceeds 10% unless clearly labeled as fatal if ingested and to also include the statement that "the recommended treatment for ingestion of sodium nitrite is intravenous mythylene blue."
- ❖ Identify sodium nitrite ingestion & antidote administration are time sensitive.

## Chemical Releases

**AB 480** authorizes UPAs & CUPAs to respond to HW releases if “reasonably determines poses an imminent and substantial endangerment to public health”

- ❖ **Prior:** CUPAs needed to persuade a local district attorney to go to court to seek an injunction against the offending business, even while the dangerous conditions persist.
- ❖ **Note:** Recent incidents involved releases of hexavalent chrome in Paramount and Long Beach, a large fire and magnesium release in Maywood and releases from a chemical facility in Richmond
- ❖ Clarifies that “unregulated” facilities must report a release “upon discovery of an actual release resulting in an emergency response”

## Ignitable Metals Disclosure

**AB 1689:** Combustible metals or alloys must be listed on a HMBP  
**Premised on Metal Recycling facility:**

- Fire fighters sprayed water aggravating fire
- Unaware of the presence of magnesium & caused an explosion
- Authorizes DTSC to compel electronic submissions

## EPCRA TRI Reporting

- Per- and polyfluoroalkyl substances (PFAS) added to Toxic Release Inventory under the Emergency Planning & Community Right to Know Act
- Includes 172 PFAS chemicals
- Facilities that manufacture, process or use 100 lbs. or more of PFAs chemicals must report by 7/1/21 for all of 2020 activity

40 CFR 372.29

## Emergency Response Plan Lithium-ion Battery Systems

- ❖ SB 38 responded to 3 recent safety incidents involving lithium-ion battery energy systems involving a battery short circuiting, a battery fire, and a overheating at separately owned battery energy storage facilities located at the Moss Landing.
- ❖ SB 38 intended to improve communication and notification to the surrounding community. Specifically, owners and operators
- ❖ Requires battery energy storage facilities to implement an emergency response plan and emergency action plan that covers the premises of the battery energy storage facility.
- ❖ Must submit the plan to the county &, if applicable, the city where the facility is located.

## CalARP/CUPA Risk Management Plan

### AB 1716:

- ❖ Authorizes CUPA to make a preliminary determination if a significant likelihood that use of a regulated substance may pose a regulated substances accident risk, thus requiring an RMP
- ❖ Where CUPA there is a significant likelihood accidental risk & reclassifies a covered process to a higher program level, facility must comply higher level program requirements within 12 months of reclassification.
- ❖ Where CUPA determines no significant likelihood of a regulated substances accident risk, CUPA can exempt facility from certain requirements.
- ❖ Requires facility to submit RMP to CUPA before the date on which the regulated substance is first present in a process above a listed threshold quantity.

## Increases CalARP Penalties

**AB 3138** increases civil or administrative liability for violations of the California Accidental Release Prevention program (CalARP) violations

- ❖ From \$2,000 to \$5,000 for each day in which the violation occurs
- ❖ Not more than \$25,000 for each day in which the violation occurs involving knowing violation after reasonable notice of the violation.



## Pipeline & Hazardous Materials Safety Rules

- ❖ Changes to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations, and vessel stowage requirements
- ❖ Amends Hazardous Materials Table (Section 172.1010)
- ❖ Classification system for articles containing hazardous materials without a proper shipping name.
- ❖ Regulates hazardous materials residues present in articles
- ❖ Lithium battery shipping requirements Corrosive mixture packing requirements

## California Hazardous Substances/Cleanup



## UST Cleanup Extended

- ❖ AB 1115 postpones the repeal of the Barry Keene Underground Storage Tank Cleanup Trust Fund Act of 1989 to January 1, 2036, instead of 2026.
- ❖ Existing Law authorizes the SWRCB to fund up to \$1,000,000 to remediate an unauthorized release from an underground storage tank and for the cleanup and oversight of unauthorized releases at abandoned tank sites.
- ❖ AB 115 authorizes claimants missing copies of the required permits, to demonstrate compliance by certifying that the required permits had been obtained and by providing other relevant documents (e.g., approved permit applications, payment records for permit fees, and inspection reports).

## Sea-Level Rise & Site Cleanup

- ❖ DTSC draft guidance assessing vulnerabilities of contaminated site to sea level
- ❖ Recommends approaches to evaluate climate resilience for remedy selections
- ❖ Requires Vulnerability Assessments for each stage of remediation process to evaluate resilience of the remedy
- ❖ Phased construction of remedies must include 30 years of protection against sea level rise.
- ❖ Could require an Adaption Plan

## Remediation Oversight AB 304

- ❖ Strengthens oversight of cleanups overseen by local health officers helping ensure they have the necessary expertise, knowledge, & resources to carry out remediation responsibilities to protect public health.
- ❖ Requires local health officers to conduct a public notification process & provide documents outlining the remedial action & certification of cleanup goals to the responsible party and to the public via GeoTracker.
- ❖ Setting certain requirements for local health officers overseeing contaminated site cleanup including electronic reporting, public notification, & written notice to DTSC & SWRCB detailing technical resources available for the cleanup.

## Expansive Statute of Limitation Rulings Superfund

- 
- ❖ Cost recovery actions under Section 107 not time barred by 6-year statute of limitations
  - ❖ Reset allowed for distinct remediation projects addressing problems different than those in initial cleanup plan
  - ❖ **Ct. of Appeals:** *MPM Silicones v Union Carbide 2020 & Arconic, Inc. v APC Investment Co.*

## Guam v US

### Unanimous SCOTUS:

- ❖ Broadly interprets CERCLA: To trigger a contribution claim under CERCLA, a settlement must by its terms resolve CERCLA liability (not CWA or RCRA liability).
- ❖ Settlements under non-CERCLA laws do not trigger contribution
- ❖ Holding: Parties potentially liable for contribution costs under CERCLA because the statute of limitations had not run

## California Solid Waste Developments



## Extended Producer Responsibility

### SB 54

- ❖ The Plastic Pollution Prevention and Packaging Producer Responsibility Act Major EPR program for single use plastics with extended producer responsibility model step by significantly reducing California’s reliance on single-use packaging and products.
- ❖ Covers certain single-use packaging & plastic single-use food service ware & requires producers, through a producer responsibility organization, to:
  - Source reduce plastic covered material,
  - Ensure covered material sold, offered for sale, distributed, or imported after January 1, 2032, is recyclable or compostable,
  - Ensure that plastic covered material offered for sale, distributed, or imported in or into the state meets specified recycling rates.

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## Solid Waste & Recycling

### SB 343

- ❖ Tightens the requirements around the permissible use of the “chasing arrows” recycling symbol and when claims regarding recyclability
- ❖ CalRecycle must publish the types and forms of recyclable products and packaging
- ❖ Greenwashing: Adds symbols & language associated with recycling, which are often associated with being eco-friendly, to the list of labels that are specifically regulated

**AB 881** reclassifies the export of mixed plastic waste as disposal, while allowing truly recyclable plastic to continue to be counted towards our recycling goals.

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## Solid Waste & Composting

### **AB 1201**

- ❖ Updates California's environmental advertising laws regarding independent, third-party certification of compliance with degradability requirements
- ❖ Prohibits products with PFAS ("forever chemicals") from being labeled as compostable.
- ❖ CalRecycle must develop labeling requirements for compostable products to ensure that they are readily identifiable by both consumers and composting facilities

## Plastic Bottle Minimum Recycled Content

- ❖ AB 793 sets a minimum recycled content standard for plastic bottles in California.
- ❖ Requires producers of plastic beverage containers to incorporate postconsumer recycled content
- ❖ Requires the total number of plastic beverage containers to contain, on average, no less than 50% postconsumer recycled plastic content per year on and after January 1, 2030



# Solid Waste Management

AB 1857 (C. Garcia): Incineration ≠ recycling (for local jurisdiction diversion requirements)

# Water Quality/Supply Developments



## Water

- ❖ Water rights – SB 389
- ❖ Sustainable Groundwater Management Act/ groundwater adjudication – AB 779
- ❖ Groundwater recharge – SB 659
- ❖ Water shutoff protections – SB 3
- ❖ Water conservation – AB 1572
- ❖ Flood control/ levee upgrades – AB 876

## Treaty Protecting Ocean's Biodiversity

- ❖ Governs the international water, past the 200-mile jurisdiction of countries establishing marine protections
- ❖ Subject to ratification by 190 countries

## Water Efficiency

### SB 1157 (Hertzberg)

- **Prior Law:** 52.5 gallons per capital daily (GPCD) by 2025 & 50 GPCD by 2030
- Current median water use of 48 GPCD is well below the 2020 standard in statute.
- Changes the standards for indoor residential water use beginning 2025 to:
  - 47 gallons per capita daily beginning 2030 to 42 GPCD

## Increases penalties for oil spills

- ❖ **AB 3214** responds to the largest oil spill California in over 25 years doubles maximum and minimum criminal penalties for companies that knowingly spill oil into state waters.
- ❖ Plains All American Pipeline was convicted of one felony and eight misdemeanors for failing to maintain the pipeline along with mishandling the response to the spill.
- ❖ Paid a ~\$3 million

## Storm Water

- ❖ **SB 273** authorizes municipal wastewater agencies to enter into voluntary agreements with entities responsible for stormwater management to acquire, construct, expand, operate, maintain, & provide facilities to manage stormwater and dry weather runoff
- ❖ **Prior law:** Obtained through piecemeal legislation, only a handful of municipal wastewater agencies are granted the explicit authority to capture and treat stormwater under existing law

## Lead-Free Piping

- ❖ Expands on (AB 1953 2006) that banned the sale & use of any pipe, pipe or plumbing fitting, or fixture intended to convey or dispense water for human consumption through drinking or cooking that is not "lead free."
- ❖ **"Lead free" does not mean lead free:** California's "lead free" plumbing statute reduced the allowable amount of lead in plumbing fixtures, but still allows for lead, which can, & does, leach into the water.
- ❖ AB 100 requires endpoint plumbing device (e.g., faucets, fixtures, & water fountains) to meet a performance standard to comply with the requirement to be "lead free."
- ❖ Prevents sale in California of endpoint devices that leach more than one  $\mu\text{g}/\text{L}$  of lead.

## “Waters of the United States” Sackett v EPA



### USSCt Adopted Rapanos

- ❖ **Wetlands:** Wetlands must be adjacent to traditionally navigable water AND have a continuous surface connection with that water
- ❖ **Streams:** While not addressed, ephemeral streams & other water bodies that are not relatively permanent also not be jurisdictional
- ❖ **Upshot:**
  - USSCT struck down 2023 WOTUS rule
  - Limits CWA authority to wetlands and streams that are isolated, ephemeral or not obviously connected to a navigable lake or stream.
- ❖ **Biden responsive Rule:**
  - Eliminates “significant nexus” test & excludes “adjacent” wetlands & “interstate waters” from jurisdiction

## Wildlife Connectivity AB 2344

- ❖ 20K deer vehicle collisions annually
- ❖ Establishes the Transportation Wildlife Connectivity Remediation Program at Caltrans
- ❖ Requires Caltrans to identify areas with high rates of wildlife-vehicle collisions & implement priority projects that improve connectivity with passage features like overpasses, underpasses and directional fencing.

# Housing

- ❖ SB 423 --SB 35 “By Right” Sunset Extension
- ❖ SB 4
- ❖ ACA 1

# Housing Legislation: YIMBY vs. NIMBY

## Recent YIMBY legislation past few years

- |            |           |
|------------|-----------|
| ▪ AB 2973: | ▪ AB 3194 |
| ▪ AB 2132: | ▪ AB 1771 |
| ▪ AB 2923  | ▪ AB 2753 |
| ▪ AB 2132  | ▪ AB 2372 |
| ▪ SB 850   | ▪ SB 828  |
| ▪ SB 167   |           |



## YIMBY

### **Middle Class Housing Act of 2022**

- ❖ Permits housing development projects located within Office or Retail zones
- ❖ Must comply with density, public notice, comment, hearing, or other procedures, site location and size, & be consistent with sustainable community strategy or alternative plans, prevailing wage, and a skilled and trained workforce.

## Affordable Housing & High Road Jobs Act of 2022

**AB 2011:** Creates ministerial, streamlined approval process for 100% affordable housing projects & mixed income housing projects along commercial corridors

- Except in specified environmentally-sensitive areas
- Imposes specified labor standards including requirements that contractors pay prevailing wages

## SCOTUS Outlook

- 6-3 conservative majority
- May try narrowing legal standing for petitioners challenging environmental rules & policies
- *Juliana v. US* could be a test case
- Narrowing the Chevron Doctrine:
  - ❖ Grants agencies discretion interpreting ambiguous statutes and keeps judicial policy making at bay
  - ❖ Courts defer to EPA “reasonable” interpretation of ambiguous statutory text
  - ❖ *Laper Bright Enterprises v Raimondo & Relentless v Dept of Commerce*:
    - Challenge to Marine Fisheries Services rule requiring domestic vessels to pay salaries of federal monitors
    - Lower Court: Upheld as reasonable reading of an unclear law

## *Rikki Held v. State of Montana* Youth Lawsuit

- ❖ Greenhouse gas & fossil fuel project impacts violate Montana’s constitutional right to a “clean & healthful environment”
- ❖ Youth plaintiffs found to have standing to sue seeking declaratory judgment
- ❖ Montana now must consider climate change when rendering decisions on fossil fuel projects
- ❖ Same issues are central to pending *Juliana v. United States* (9<sup>th</sup> Circuit)
- ❖ Other states with ~ constitutional guarantee with ~ lawsuits: Hawaii, Virginia, Utah



## Looking forward...



## 2024 Prognostications

- ❖ New Legislative Leadership
- ❖ Climate Bond
- ❖ Water Rights Reform Revisited
- ❖ Transmission Streamlining/Agency Staff Ups in Budget
- ❖ Offshore Wind Saga Continues
- ❖ (Less focus on Bills, more on Implementation/Oversight)

**Source:** Kip Lipper, Senate Pro tem policy lead

## Budge Deficit Driving Policy

- ❖ Budget crisis will greatly constrain what the legislature passes
- ❖ Rainy day fund is intact
- ❖ Biggest hit so far is climate and energy and environmental programs for outyear funding.
- ❖ Focus on legislative oversight of Newsom to protect progress OR This year: focus on implementation and focusing resources
- ❖ If programs are not working well, move that money for programs that are worthy
- ❖ Natural resources bond to backfill proposed Newsom cuts
- ❖ SB 638 and AB 867 Climate Resiliency and flood protection
- ❖ May expand regulatory fees like AB 8 (reauthorized specified fees) like in 2003 and 2004 i.e., fee based funding for programs

## Bonta Lawsuit Against Oil Over Climate Deception

- ❖ AG/Cities suing Exxon, Mobil, Shell, Chevron, BP, & ConocoPhillips
- ❖ Argument: Since the 1950s, they know fossil fuel burning would warm the earth but downplayed & denied
- ❖ Objective:
  - Create a nuisance abatement fund to mitigate & impacts
  - Injunctive relief preventing false/misleading statements

Gary Lucks JD CPEA

Bay Law Group LLP



510-290-5423

[glucks@baylawgroupllp.com](mailto:glucks@baylawgroupllp.com)



Environmental Law

### The 2022 Environmental Legislative Session: Ramping up Climate Ambitions

**INTRODUCTION**

Although Governor Newsom signed fewer environmental bills than typical in an off-cycle election year, the 2022 legislative session produced an unusually high number of far-reaching climate policies. At the beginning of the session, a Senate Climate Working Group was formed to advance efforts to tackle the climate crisis by developing a comprehensive legislative climate package designed to achieve substantial greenhouse gas (GHG) emission reductions by 2030.

In a highly unusual move, Governor Newsom inserted himself into the legislative process in the waning days of the summer session, informing the Legislature he intended to actively advance ambitious climate policy. He delivered a five-pillar plan laying out a road map to achieve a clean energy future by 1) facilitating the state's 2030 GHG emission reduction goal; 2) codifying a 2045 carbon neutrality goal; 3) establishing interim clean electricity milestones; 4) creating a streamlined carbon capture, utilization, and storage (CCUS) permitting program; and 5) protecting the public from the health and safety impacts of fossil fuel wells. With the exception of AB 2133 (Quirk), which would have advanced the 2030 climate goal, these pillars were signed into law.

This bounty of climate bills, without other environmental policy proposals in 2022. Other legislative highlights include enactment of the watershed Plastic Pollution Prevention and Packaging

Producer Responsibility Act aimed at dramatic reductions in single-use plastics and a new law requiring the Department of Toxic Substances Control (DTSC) to reevaluate its controversial method of determining whether a waste is a "toxic" hazardous waste. The Governor also signed legislation designed to speed up regulation of hazardous chemicals in consumer products under the moribund Green Chemistry program. The Legislature also served up two major programs aimed at expanding housing stock with the Middle-Class Housing Act of 2022 and the Affordable Housing and High Road Jobs Act of 2022. Finally, the Legislature delivered new laws aimed at increasing the pace and scale of prescribed burning to prevent wildfires while promoting wildlife connectivity to prevent wildlife-vehicle collisions.

Except for budget-related urgency laws that were passed by a supermajority which took effect on the date of their signing, the enacted laws became effective on January 1, 2023.

**CLIMATE CHANGE, ADAPTATION & RESILIENCY**

California's fourth Climate Change Assessment issued a dire warning forecasting adverse outcomes by 2100. The report projects temperature increases ranging from 3.6 to 8.8 °C, a dramatic two-thirds loss of Sierra Nevada snowpack and southern California's beaches, and a 78% increase in the average acreage burned by wildfires should we fail to significantly reduce GHG emissions in the coming decades. Reaching net zero GHG emissions is the linchpin for achieving the state's climate goals and will be necessary to keep the global average temperature below 1.5 °C preindustrial levels.

SPRING/SUMMER 2023

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