

## 2024 Energy Law Conference

April 19, 2024

MCLE: 1.0 Hour

### Panel 4: Energy Law Legislative Update

Moderator: Gary Lucks

Speakers: Tim McRae

#### **Conference Reference Materials**

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A photograph of the Golden Gate Bridge in San Francisco, California, viewed from the water. The bridge's iconic red-orange towers and suspension cables are prominent against a clear blue sky. The water is a deep blue, and the surrounding hills are visible in the background.

# CLA Energy Conference Legislative Update

April 19, 2024

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# Gary Lucks JD, CPEA

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### 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

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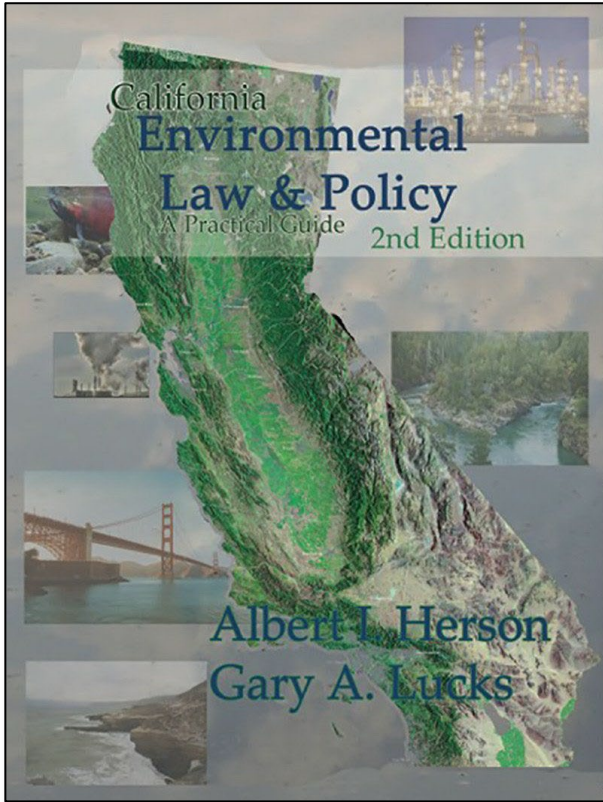


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## Environmental Law

# The 2022 Environmental Legislative Session: Ramping up Climate Ambitions



Written by Gary A. Lucks

### 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 injected 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 eclipsed 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 dystopian outcomes by 2100. The report projects temperature increases ranging from 5.6 to 8.8 °F, a dramatic two-thirds loss of Sierra Nevada snowpack and southern California's beaches, and a 77% 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 lynchpin 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

# 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



# 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

# SB 410: Powering Up California Act

## Energization Commitments for new customers/upgrading existing:

- Increasing demand for Electricity will require additional generation, distribution & transmission infrastructure
- CPUC must establish by 9/30/24 reasonable average & maximum target energization time periods to connect customers to the grid
- Electrical corporations must take remedial actions to achieve targets
- CPUC to establish procedure for customers to report energization



# AB 50: Timely Energization for Customers

- CPUC must identify criteria for timely service for electric customers requesting new service connections or upgraded service
  - “Electrical Corporations” must collaborate with local stakeholders & the CPUC
  - Electrical Corporations must report time-of-service data to the CPUC
    - Electrical Corporations that energized < 35% of customers exceeding 12 months in duration by 1/31/23, must submit a report to CEC by 12/1/24, demonstrating that the electrical corporation has energized 80% of customers with applications deemed complete as of January 31, 2023.
- Electrical Corporations must evaluate & update existing distribution planning processes
  - To improve the accuracy of projected demand and facilitate achievement of the goal of timely electric service,



# Permit Streamlining Bill Package

- Objective: To assist in accessing federal funds:
  - Infrastructure & Investment Jobs Act (IIJA)
  - Inflation Reduction Act (~ \$239 billion for energy & climate change projects)
  - CHIPS Act (Creating Helpful Incentives to Produce Semiconductors & Science Act (\$280 billion))
- Streamlining CEQA & CESA
- Incorporating labor standards
- Provisions to speed procurement process to reduce timeframes & cost.
- To maximize Federal Dollars, establishes a Green Bank Financing Program
- Infrastructure Strike Team to coordinate among California agencies to:
  - “facilitate coordinate and streamline project review and permitting processes”
  - by identifying priority infrastructure projects
  - supporting governmental coordination on review, permitting, & approvals
  - Creating working groups focused on specific project categories (e.g., transportation, energy, hydrogen, environmental remediation, broadband, water, & zero-emission vehicles). Executive Order N-8-23

# Expediting Infrastructure: CEQA & CESA

- **CEQA:** SB 149 expedite judicial review under CEQA approvals to advance energy, transportation, water, and semiconductor projects
- **CESA SB 147** authorizes DFW to permit the “take” of a “fully protected species” for solar, wind, specified transportation projects, and the maintenance, repair and improvement of water infrastructure projects where:
  - Impacts are minimized and fully mitigated
  - Permit applicant ensures adequate funding to implement & monitor mitigation measures
  - The issuance of the permit will not jeopardize the continued existence of the species
  - Ensuring that take is avoided to the maximum extent possible

# EV Permit Streamlining



# The License to Operate

## Critical Path to Energization:

- Building Permits
- Utility-issued electrical permit





# Application Deemed Approved

*AB 970*

❖ **Permit Application Deemed Approved:** After a permit application is deemed complete, AHJ has 20 business days to decide for stations with fewer than 26 chargers, or 40 business days to decide for stations with 26 or more chargers.

❖ Building official may either:

- ❖ (1) Administratively approve the application;
- ❖ (2) Find, based on substantial evidence, the EV station could have a specific, adverse impact on public health or safety and thus requires a use permit; OR
- ❖ (3) Deny the application, based on finding:
  - ❖ That the proposed project would have a specific, adverse impact on public health and safety;
  - ❖ That there is no feasible method to satisfactorily mitigate or avoid the adverse impact; and
  - ❖ Findings shall include the basis for the rejection of potentially feasible alternatives for preventing the adverse impact.

❖ Automatic approval if action not taken within 20 (or 40) business days of application being deemed complete. Decisions to require a use permit, or to deny the application, may be appealed.

❖ **NOTE:** AB 970 applies to smaller municipalities (< 200K population) beginning January 1, 2023





# Clearing Barriers to Offshore Wind: AB 525

- **AB 525** responds to barriers to developing & delivering offshore wind (OSW) power off the California coast
- Obligates CEC to evaluate constraints & develop strategies to clear them



# Incentivizing Energy Storage: AB 205

- **AB 205** (Trailer Bill) Funds for demand side grid support/Climate & Grid Funding:
  - 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.



# IOU Wildfire Liability: AB 1054

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



# Decarbonizing & Stepping Away from Natural Gas

- Berkeley adopted the first in the nation ban on natural gas infrastructure in 2019 prohibiting new natural gas appliance permits,
- The California Restaurant Association, or CRA challenge was successful:
  - The 9<sup>th</sup> Circuit appeals court held that “By completing prohibiting the installation of natural gas piping within newly constructed buildings,...Berkeley has waded into a domain preempted by Congress.”
- Oakland, San Francisco, Los Angeles and San Jose have similar ordinances

# Biomethane Financial Incentive

**AB 2313** established a monetary incentive program to promote investment in biomethane projects to promote biomethane delivery to natural gas pipeline systems.





# Capping CA Oil “Windfall Profits:” SBX1-2

- Responding to high oil prices:  
Exceeding \$1.3/gallon over the national average.
- SBX1-2 Empowers CEC to require oil companies to share operational information & pricing
- Authorized to fine those exceeding a specified price limit



# Oil & Gas Well Buffers

## SB 1137:

- **Background:**
  - ~ 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 & 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 & Gas Well Financial Security: AB 1057

- **Background:** Conservative estimates, California taxpayers could be on the hook for up to \$500 million per 10,000 oil wells.
- **Premise:** Operator Indemnity bonds do not cover the cost to plug & abandon wells as oil production in California declines.
- **AB 1057** authorizes CalGEM to require additional security (up \$30 million) to plug and abandon a well and decommission production facilities.



# Oil & Gas Well Compliance & End-of-Life

## SB 551:

- **Oil & gas well operators Reporting:** Must report to CalGEM: Total liability associated with plugging & abandoning & decommissioning wells & their associated production facilities.
- **CalGEM Inspections:** to conduct inspections of production facilities connected to long-term idle wells to ensure compliance with applicable statutory requirements governing oil & gas wells.



# Oil & Gas Enforcement & Cleanup

**AB 1167:** To fund orphan well cleanup, well owners & operators to file a bond in the amount to cover costs to plug, abandon, and restore the site

**AB 631:**

- Increases civil & other penalties for violations of the state's governing oil & gas statutes & regulations
- Strengthens CalGEM authority to seek injunctive relief, cease & desist specified activities



# ENVIRONMENTAL LAW

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**Tim McRae**

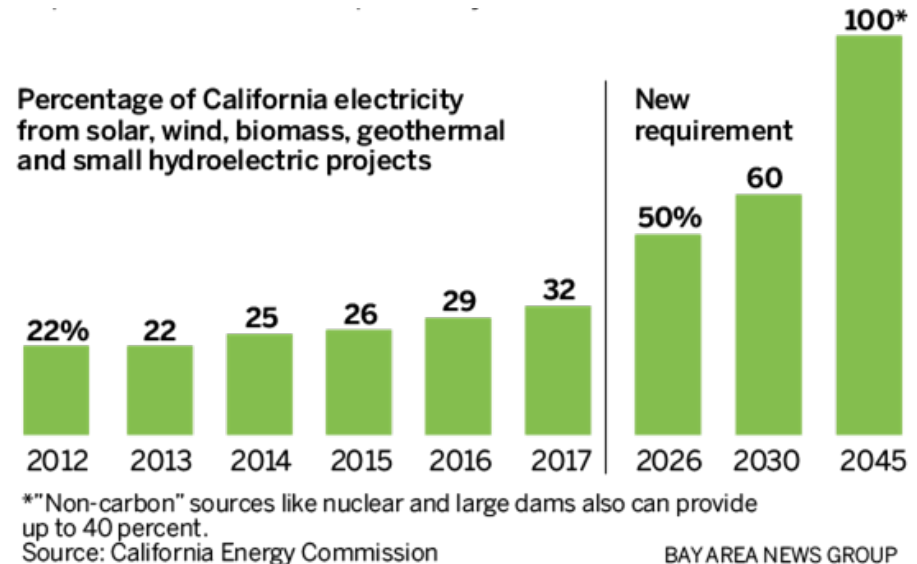
SVP for Sustainable Growth, Silicon Valley Leadership Group



# Statewide Zero Carbon and Renewable Goals

## 2018 - SB 100 (De Leon)

- 100% Zero carbon generation of Energy by 2045
- Builds on RPS goals set in prior legislation
  - 25% renewables by 2016
  - 33% by 2020
  - 40% by 2024
- Accelerated goals to made it 50% renewables by 2026 and 60% by 2030



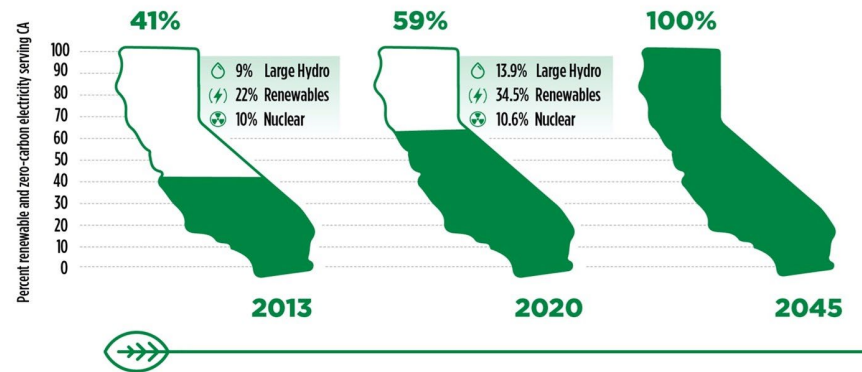


# Statewide Zero Carbon and Renewable Goals

## 2022 - SB 1020 (Laird)

- Interim targets of **90%** zero carbon generation of electricity by **2035**
- **95%** zero carbon generation of electricity by **2040**
- Provides a ramp to SB 100's 2045 target
- Also requires all state agencies to purchase **100%** zero carbon electricity to serve their own needs by **2030**

## Progress to 100% Clean Electricity



*California has already exceeded 2018's RPS goals*

# Diablo Canyon Power Plant extension

## 2022's SB 846 (Dodd):

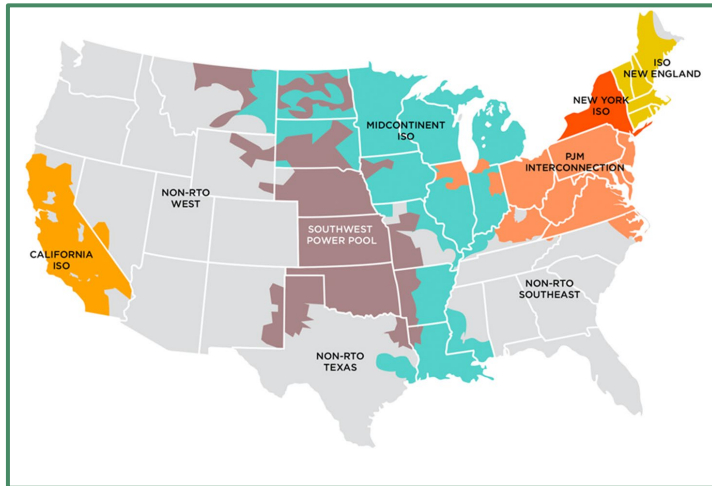
- Extended Diablo Canyon Power Plant by 5 years pending federal approval
- Feds subsequently approved
- 8% of CA electrical generation

No one wanted to repeat blackouts - one of which almost happened days after the bill passed

**Reliability remains California's #1 energy concern**



# Western Regional Transmission Organization



**2023 proposed AB 538 (Holden)** - never made it beyond its first house due to labor opposition

Later has become Western Pathways Initiative - stakeholder negotiations

Not legislation (yet) this year but California government and business and labor and public interest groups discussing now

Would be biggest deal in California energy since 2018's SB 100 if it comes to fruition



# CEQA Streamlining for Energy Infrastructure Projects

**2023 - Governor's SB 149 (Caballero)** - part of infrastructure package streamlining CEQA for particular energy, water and transportation projects passed

2023 Efforts to streamline CPUC processes to site transmission

- SB 420 (Becker) - Vetoed
- SB 619 (Padilla) - Vetoed
- AB 914 (Friedman) - Held in Appropriations

Latest bill in saga - AB 3238 (Garcia) - implements a settlement agreement among utilities and environmental groups - currently moving through legislative process - SVLG supports



# Labor v Rooftop Solar Saga



**2021** - AB 1139 (Gonzalez) - labor effort to put thumb on scale of NEM proceeding (failed)

## 2022

- AB 2143 (Carrillo) - characterized rooftop solar projects as “public works project” and make them pay prevailing wage (passed)
- AB 205 (Trailer bill) - direction to CPUC to consider a fixed charge - solar folks didn’t catch it in time

## 2024

- AB 1999 (Irwin) to limit the fixed charge
- AB 2619 (Connolly) tilts favor way on solar side (ballot measure possibility),
- AB 3260 (Essayli) Republican showing support - all in favor of solar customers - all uphill climb

Just to point out this fight has gone on for years - there was an aspect of the Diablo Canyon bill that needed clarification that impacted rooftop solar in 2022

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