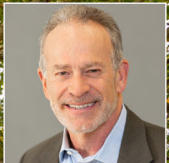





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GARY LUCKS
PARTNER



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.

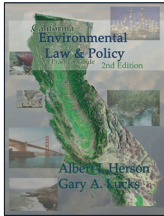

Mr. Lucks has published extensively on environmental law, legislation, and policy. He co-wrote a book on environmental law ([California Environmental Law and Policy: A Practical Guide](#) which is used in law schools, colleges, by practitioners, and which has been cited in legal opinions). He also wrote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

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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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Democratic Dominance

- Historic ultra-supermajority in both houses with a Democratic governor
- Both houses led by members who have a deep interest in environmental issues



GOVERNOR

Gavin Newsom



Party: Democrat
Years in office: 3

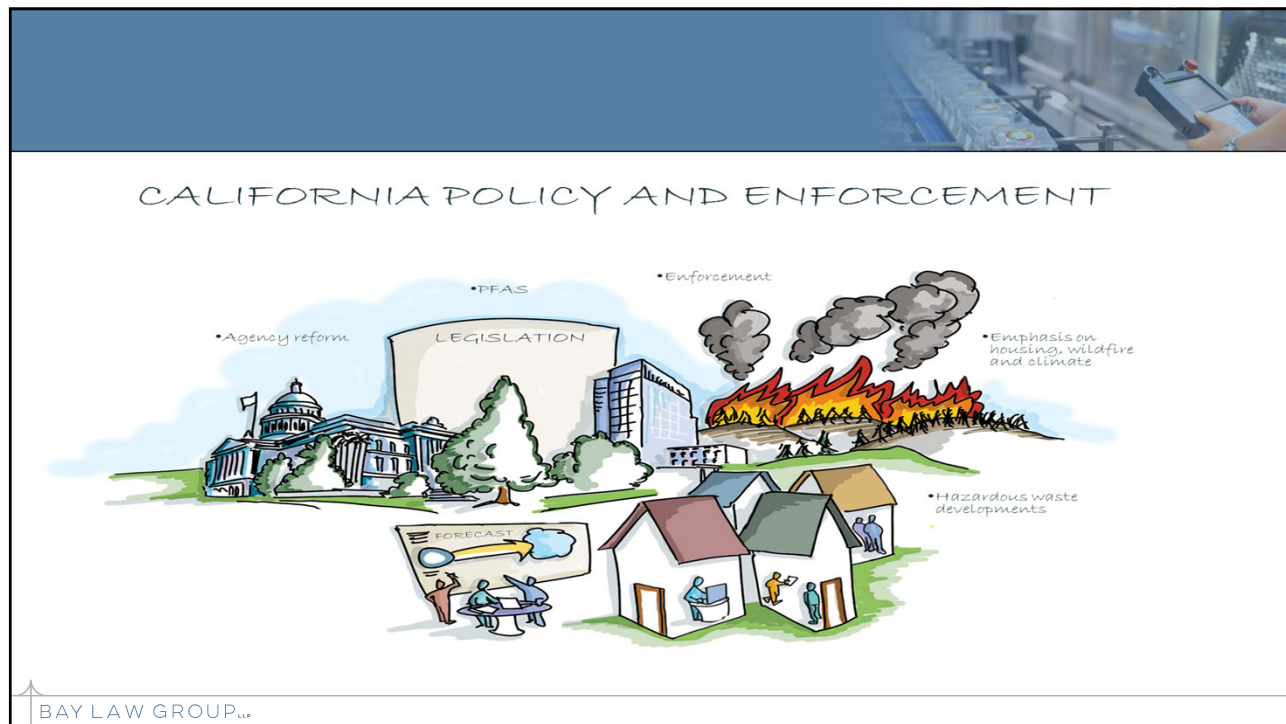
2021 Score: 82%

85%
Lifetime Score

Past Scores

87%
2020


85%
2019



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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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Decarbonizing California A Nation State

- Reduce GHG emissions:
 - §40% below 1990 levels by 2030
 - §80% below 1990 levels by 2050
- Carbon neutral by 2035 (modified from 2045)
- 60% Renewable energy by 2030
- 100% Renewable energy by 2045
- 1.5 million ZEVs by 2025, 5 million ZEVs by 2030
- Half petroleum use by 2030
- 100% electric appliances by 2030/2035
- 50% of all trucks sold must be EV by 2035

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

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
 - It also has the language for 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**

Newsom's 5 Pillars

- I. Advance Clean Electricity Targets: SB 120 (failed passage)
- II. Protecting communities from impacts of the oil wells: SB 1137
- 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.

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 CO₂ fluid produced by a CO₂ project for enhanced oil recovery in SDWA Class II well
- State Geologist to monitor seismic activity or leakage from a CO₂ to help ensure public health & environmental safety
- ARB to monitor & mitigate air emissions from CO₂ project

SB 1314: Prohibits injecting concentrated CO₂ fluid from a CO₂ capture or CO₂ 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

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2022 Scoping Plan

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

- ARB to vote 12/15/22
- 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

Oil & Gas Well Buffers

SB 1137

- Senator Gonzalez: ~ 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

Sea Level Rise Mitigation & Adaptation Act

- Sea level projected to rise 7 feet by 2100
- ~ 2/3s of the state's residents live in coastal counties
- LAO further states that waiting too long to initiate adaption efforts likely will cost the state and its economy new billions of dollars.
- SB 1: First comprehensive sea level rise program to prepare for sea level rise:
 - **Assess & mitigate sea level rise:** Directs the California Coastal Commission to take into account sea level rise in coastal planning, development, & mitigation efforts
 - Assist local governments and communities in response

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.

Climate, Adaptation & Resiliency

- **SB 852 (Dodd):** Allows cities & counties to create climate resilience districts and provides these new districts various financing powers
- **AB 2278 (Katra):** establishes priorities for implementation of 30x30, among other things

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



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



Smog Check for Heavy-duty Diesel Trucks

Smog check program for heavy-duty diesel trucks

- Beginning in 2023:
- Biannual emissions testing
- Registration blocked upon failure
 - Quarterly testing for trucks with on-board diagnostic systems
 - Out-of-state trucks required certificates demonstrating compliance.

Electrification of Off-road Engines

- **AB 1346:** Requires zero emissions for small off-road engines (SORE)
- **What's covered:** Spark-ignition engines rated at or below 19 kilowatts. Engines in this category are used in lawn and garden equipment as well as other outdoor power equipment and specialty vehicles.
- **Schedule:**
 - Small off-road engines Lawn & other outdoor equipment (2024)
 - New portable generators & specified commercial pressure washers (by 2028)
 - Remote emissions monitoring devices to be used to ID high-emitting vehicles subject to follow-up compliance testing

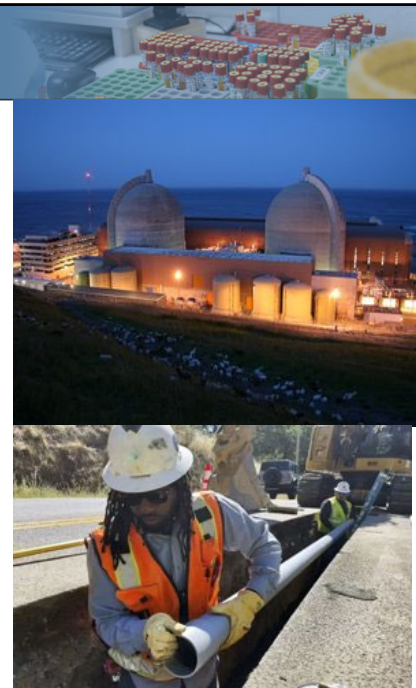


Energy Reliability & Safety

SB 846

- Extends Diablo Power Plant Operation beyond 2024 for up to 2030
- Expedited permitting to facilitate relicensing

- SB 884 (McGuire) Expedited utility distribution infrastructure undergrounding program



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.



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Solid Waste Management

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



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Coastal

- **AB 2160:**
 - Authorizes fee waivers for coastal development permits by a city or county to facility qualifying projects for public access & habitat restoration
 - Does not force local governments to provide relief, but authorizes an applicant to instead seek a CDP permit from the commission who may grant a fee waiver.
- **AB 1832:** prohibits leases for the extraction or removal of hard minerals from state tidelands and waters

Water Efficiency

SB 1157 (Hertzberg)

- **Prior Law:** 52.5 gallons/capita 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

Wildfire Management

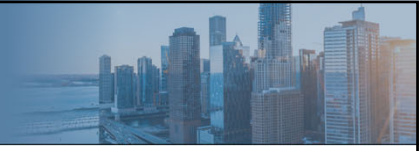
- **SB 896 (Dodd):** Incentivizes and improves defensible space assessments, among other things
- **SB 926 (Dodd):** Establishes the Prescribed Fire Liability Pilot Program to increase the pace and scale of prescribed fires
- **SB 522 (V. Fong):** Extends the sunset of the Forest Fire Prevention time harvest plan exemption

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.

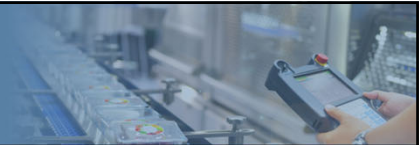
Housing Legislation: YIMBY vs. NIMBY



Recent **YIMBY** legislation past few years

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

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 and High Road Jobs Act of 2022

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

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

Enforcement

- Environmental Civil Penalties Rise Significantly
Federal Civil Penalties Inflation Adjustment Improvement Act of 2015

- **EPA Civil Penalties rose with inflation in 2020**

- **Per day / Per violation Penalties:**

- RCRA: \$102,638
- Clean Air Act: \$102,638
- Clean Water Act: \$56,460
- EPCRA: \$59,017
- CERCLA: \$59,017
- SDWA: \$50,018
- FIFRA: \$20,528

BCDC Enforcement

- AB 2809 mandates actions by the San Francisco Bay Conservation and Development Commission (BCDC) re enforcement, penalties, & implementation of the Suisun Marsh Preservation Act.
- BCDC must create & implement a procedure to:
 - Provide managerial review of staff decisions in enforcement cases
 - Timelines for resolving enforcement cases,
 - Penalty matrix for assessing fines and civil penalties,
 - Method for assessing civil penalties in cases involving multiple violations

Forecast

- The EFFECTS of climate continue to be front and center: drought, wildfires, extreme heat, sea level rise
- Legislature will have new, even larger “super-majorities” & environmental legislators looking for major bills
- Newsom future aspirations always create intrigue
- Fate of Ballot Propositions like Proposition 30 hang in the balance
- Newsom Presidential aspirations always in play
- Legislative Leadership always an open question
- Many new members coming into legislative branch in 2023

Questions?

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