State Bar of California

ENVIRONMENTAL LAW SECTION UPDATE

RECENT JUDICIAL, LEGISLATIVE AND REGULATORY DEVELOPMENTS

JANUARY/FEBRUARY/MARCH 2014
VOL. XVII NO. 1

The *Environmental Law Section Update* is sponsored by the Environmental Law Section of the State Bar of California and reports on recent California case law of note, as well as significant legislative and regulatory developments. This edition of the *Update* reports on cases of significance, as well as legislative and regulatory developments from January, February, and March 2014. For legislative developments since that date, the status of a particular bill can be accessed at www.leginfo.ca.gov or through Capitol Track at http://ct2k2.capitoltrack.com/report.asp?rptid=U36304. The current legislative calendar is included at the end of the Update and can also be viewed online at: http://www.calbar.ca.gov/AboutUs/Legislation/SearchforLegislation/BillTrackingSectionsandCommittees.aspx.

***Please note that all case law, legislative and regulatory summaries included here are intended to provide the reader with an overview of the subject text; for those items of specific relevance to your practice, the reader is urged to review the subject text in its original and complete form.* In addition, this issue also includes selected recent Federal case law of note from the U.S. Supreme Court, Ninth Circuit Court of Appeals and Federal District Courts.**

Each edition of the *Environmental Law Section Update* is posted in the "Members Only Area" of the State Bar's Environmental Law Section website at http://www.calbar.ca.gov/enviro. Notice of the availability of the *Update* on the Environmental Law Section website is distributed by electronic mail to all State Bar Environmental Law Section members who have provided the Bar with an e-mail address. If you have not provided the Bar with your e-mail address, you can do so by setting up your *State Bar Member Profile*. When you set up your *Profile*, be sure to click on "Change my e-mail list preferences" and check the box for the Environmental Law Section's e-mail list. If you have already set up your *State Bar Profile*, but did not check the box for the Environmental Law Section's e-mail list, you can do so at any time by logging in and clicking on "Change my e-mail list preferences."

Any opinions expressed in the *Update* are those of the respective authors, and do not represent necessarily the opinions of the Environmental Law Section, or the State Bar of California. We appreciate your feedback on this publication and its relevance to your practice. Comments may be e-mailed to the Editor at cday-wilson@ci.eureka.ca.gov. I would like to thank Michael Haberkorn, David Levy, Whit Manley, Danielle Morone, Joseph D. Petta, John Epperson, Amanda MacGregor Pearson, and Amy E. Hoyt for their contributions to this issue of the Update.

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Developmental and Reproductive Toxicant (DART) Identification Committee. In January 2014, the Office of Environmental Health Hazard Assessment provided notice of a change made to the proposed regulations amending the required qualifications for appointment to the DART Identification Committee. See Cal. Reg. Notice Register 2014, Vol. No. 4-Z, p. 138.

Petitions Challenging Regional Water Quality Control Boards. In March 2014, the State Water Resources Board provided notice of its proposal to amend Sections 2050, 2050.5 and 2051 of Chapter 6 of Division 3 of Title 23 of the California Code of Regulations. Chapter 6 governs the procedures by which the Board may review a petition challenging an action or failure to act by a regional water quality control board. See Cal. Reg. Notice Register 2014, Vol. No. 11-Z, p. 470.

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No summaries this quarter.

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No updates this quarter.

Regulatory Updates

Truck and Bus Regulation. In March 2014, the California Air Resources Board (CARB) provided notice of a public hearing during which the Board considered the adoption of amendments to the "Regulation to Reduce Emissions of Diesel Particulate Matter, Oxides of Nitrogen and Other Criteria Pollutants from In-Use Heavy-Duty Diesel-Fueled Vehicles" (Cal. Code Regs., tit. 13, §2025). See Cal. Reg. Notice Register 2014, Vol. No. 10-Z, p. 411; see also Vol. No. 12-Z, p. 511.

Commercialization of New Alternative Diesel Fuels. In March 2014, CARB provided notice of its decision not to proceed with the proposed adoption of amendments to Title 13 of the California Code of Regulations relating to the commercialization of new alternative diesel fuels, as previously proposed in the rulemaking action originally noticed on October 25, 2013. See Cal. Reg. Notice Register 2014, Vol. No. 13-Z, p. 582. .

ATTORNEY'S FEES

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No summaries this quarter.

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No updates this quarter.

Regulatory Updates
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CEQA

Recent Court Rulings

Fifth District rules EIR for housing project did not provide sufficient detail or adequate mitigation regarding project's air quality impacts. *Sierra Club v. County of Fresno* (2014) 226 Cal.App.4th 704

Fresno County certified an EIR and approved the Friant Ranch project, a master-planned retirement community for "active adults" (age 55 and older) on a 942-acre site. A coalition of groups led by the Sierra Club sued. The trial court denied the petition. The Sierra Club appealed.

The county's general plan designated the site "agriculture." The plan also included a policy to "maintain agriculturally designated areas for agricultural use." The Sierra Club argued this policy prohibited redesignating the project site for residential and commercial uses. The court rejected this argument, reasoning that once the county amended the general plan to change the land-use designation, the policy no longer applied to the project site.

The Sierra Club argued the EIR lacked sufficient detail about the amount and location of wastewater discharge from the project's treatment plant. Although the Sierra Club did not make this argument in the trial court, the court of appeal exercised its discretion to consider the argument. The record included statements by engineers opining that sufficient storage was available. The court conceded this evidence was "substantial," but went on to undertake a searching review of various statements in the EIR and its supporting appendices regarding the amount of wastewater the project would generate, and the size of the project's proposed storage pond. Based on this review, the court determined that the EIR included sufficient information regarding the amount and location of wastewater disposal.

The Sierra Club argued the EIR did not contain enough information regarding the project's air quality impacts. The EIR disclosed health impacts associated with unsafe levels of air pollutants, quantified the project's emissions, and concluded that the project would exceed the thresholds of significance set by the local air district, which in turn are based on standards necessary to protect public health. The court ruled this information was insufficient because although the EIR had *identified* the adverse health impacts that could result from elevated air pollution, the EIR did not sufficiently *analyze* this effect. For example, the EIR did not disclose whether project-related emissions would require people with respiratory difficulties to wear filtering devices when they go outdoors in the project area or air basin. Nor did the information provided in the EIR make it possible to know how many additional days the San Joaquin Valley basin would be in nonattainment due to the project. The court noted that answers to these examples were not necessarily required in a revised EIR; nevertheless, the EIR had to disclose the correlation between the project's emissions and human health.

The court also concluded that the county's mitigation measures to address air quality violated CEQA because the measures were unduly vague and unenforceable. For example, one mitigation measure provided that trees "shall be carefully selected and located" to shade buildings and reduce energy use. The measure violated CEQA because it did not identify who would select or locate the trees.

Other mitigation measures constituted impermissible deferral. Although the Sierra Club had not raised this argument in the trial court, the court decided to consider the issue because of its importance. The measures stated the county and the local air district could substitute different air pollution control measures found to be "equally effective or superior" to those set forth in the EIR, as better technology became available. The court found the potential for after-the-fact substitution rendered the measures unlawful. Several measures did not specific performance standards, so there was no way to determine whether a substitute measure would be "equally effective or superior." For example, one mitigation measure required nonresidential projects to have bike lockers, but did not identify the reduction in air pollution reduction that would be achieved by this measure. Similarly, although the EIR stated the mitigation measures would "substantially" reduce air quality impacts, the EIR did not provide an adequate explanation supporting this conclusion.

The Sierra Club argued the county had not responded in good faith to comments suggesting that the county consider off-site emission reduction programs, such as the air district's "Voluntary Emission Reduction Agreement" program. The county had responded to such comments by noting that such programs are voluntary and would be considered in connection with future project approvals. The court ruled this response was adequate.

First District Court of Appeal upholds use of Class 3 categorical exemption for installation of utility boxes. *San Francisco Beautiful v. City and County of San Francisco* (2014) 226 Cal.App.4th 1012

AT&T proposed to install 726 metal utility boxes housing telecommunications equipment on San Francisco sidewalks in order to expand its fiber-optic network. The city approved the project based on its conclusion that the project fell within the "Class 3" categorical exemption. Class 3 covers "construction and location of limited numbers of new, small facilities or structures" and "installation of small new equipment and facilities in small structures." (CEQA

Guidelines, § 15303.) San Francisco Beautify and other community groups sued. The trial court denied the petition. The petitioners appealed.

The petitioners argued the project was not exempt because it did not involve a "limited number" of small structures, and involved the construction and location of new structures, rather than the "installation" of equipment in existing small structures. The court disagreed, finding that exemption was not confined to the installation of equipment in *existing* small structures. Rather, the Class 3 exemption can apply even when new structures are installed or constructed. For this reason, the court did not need to reach the argument whether 726 boxes constituted a "limited number."

The petitioners argued that, even if the Class 3 exemption applied, the city was still required to prepare an EIR based on the exceptions to categorical exemptions set forth in CEQA Guidelines section 15300.2, subdivisions (b), (c). Subdivision (c) provides that a project does not qualify for an exemption if the project may have significant environmental effects due to "unusual circumstances." Here, the petitioners pointed to no evidence of unusual circumstances relating to placement of the new utility structures in an urbanized area. Nor did the petitioners demonstrate that the project would have significant environmental effects; the opinions of residents that the boxes were ugly and would add to visual clutter were not enough. The court acknowledged that the appropriate standard of review for the "unusual circumstances" exception is pending before the Supreme Court (*Berkeley Hillside Preservation v. City of Berkeley* (S201116, rev. granted May 23, 2012). The court explained, however, that its decision would be the same under either standard of review ("substantial evidence" or "fair argument") and, therefore, the Supreme Court's forthcoming decision in *Berkeley Hillside* would not affect its analysis.

The court also rejected the applicability of the cumulative impacts exception under subdivision (b), explaining that the city did not have to consider the cumulative impact of all similar equipment to be installed throughout the city because the CEQA Guidelines instead limit this exception to successive projects of the same type in the same place. For the purposes of the utility boxes, the "same place" meant the individual locations where the boxes would be placed.

Finally, the court determined that the city had not improperly relied on mitigation measures in concluding the project was categorically exempt from CEQA. Although the city was required to review the utility cabinets to evaluate their potential to impede travel, inconvenience property owners, or otherwise disturb use of the right-of-way, that review is required by a Public Works Order, which is generally applicable to excavation permits for surface-mounted facilities. According to the court, review under this order did not constitute mitigation because an agency may rely on generally applicable regulations to conclude an environmental impact will not be significant, such that no mitigation is required.

Third District Court of Appeal uphold agency's decision to rely on categorical exemption for proposed rodeo. *Citizens for Environmental Responsibility v. State of California ex rel. 14th District Agricultural Ass'n* (2014) 224 Cal.App.4th 1542

In 2011, the 14th District Agricultural Association approved a rodeo on the Santa Cruz County Fairground. The district relied on the Class 23 categorical exemption for normal operations of existing facilities for public gatherings. The "citizens" sued. The trial court denied

the petition. On appeal, the citizens argued that the Class 23 exemption did not apply because (1) the rodeo project impermissibly included mitigation measures in its determination that the project was exempt, and (2) the "unusual circumstances" exception to the exemption applied.

The Class 23 exemption covers "normal operations of existing facilities for public gatherings for which the facilities were designed, where there is a past history of the facility being used for the same or similar kind of purpose." In this case, the fairground had hosted dozens of livestock and equestrian events for decades, so the rodeo fell comfortably within the exemption. Nor was the exemption impermissibly premised on proposed mitigation measures. The alleged mitigation measures, which dealt with manure disposal, had been in place years before the rodeo proposal, and in 2010 had been formalized in a manure management plan. Thus, the plan was not a new measure proposed for or necessitated by the rodeo project; rather, the plan was part of the ongoing "normal operations" of the fairground.

With respect to the "unusual circumstances" exception under CEQA Guidelines section 15300.2, subdivision (c), the court identified a two-part test. First, the court determines whether the project presents unusual circumstances. If there are unusual circumstances, then the court determines whether there is a reasonable possibility of a significant effect on the environment due to the unusual circumstances. In this case, the court found that the rodeo did not represent a change in the operation of the fairground, as the project was no different in nature and scope from previous fairground events. Because the court found no unusual circumstances, there was no need to reach the second issue concerning whether there was a reasonable possibility of a significant effect on the environment due to such circumstances.

Third District Court of Appeal strikes down city's approval of shopping center expansion due to inadequate urban decay mitigation, insufficient analysis of energy impacts, and unsupported findings on alternative. *California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173

Petrovich Development Company proposed to develop a 234-acre regional shopping center knows as "Gateway II" on land next to the existing "Gateway" project. The city prepared and certified a program EIR, and approved a down-sized version of the Gateway II project encompassing 61.3 acres. California Clean Energy Committee sued under CEQA and the Planning and Zoning Law. The trial court denied the petition. CCEC appealed.

In the unpublished portion of the opinion, the court of appeal affirmed the trial court's denial of CCEC's Planning and Zoning Law claims. With respect to CEQA, the court reversed.

First, the court held the mitigation measures adopted by the city to address "urban decay" elsewhere in the city were inadequate. The adopted measures required the developer (1) to apply for a master conditional use permit subject to future evaluation and potential further environmental review and indicating a list of specific project uses that would not compete with downtown, (2) to submit a market study and urban decay analysis for review and approval by the city's Community Development Department showing either that adequate retail demand exists or require additional mitigation or an alternate use, (3) to contribute funds toward the development of a "Retail Strategic Plan" to be prepared by the city, (4) to contribute funds toward the city's preparation of a plan to implement the city's Downtown Specific Plan, and (5) to coordinate with the owner of an existing, struggling mall to study potential viable alternative land uses for the site. The EIR concluded that, even with this mitigation, the Gateway II project's urban decay

impacts were significant and unavoidable, in part because at the time of approval there was no way to know what specific uses and stores would be proposed at Gateway II.

The court upheld the first mitigation measure because it served to ensure the primary retail uses at the center would be regional, rather than competing with downtown. The court accepted the city's representation that it "merely found that this measure would help, albeit not enough to avoid the significant urban decay impact identified by the EIR." The court found, however, that the measure was inadequate, standing alone, to mitigate the potential adverse impacts of the development.

The balance of the measures was deficient. The second measure impermissibly ceded the city's responsibility for studying an environmental impact to the developer. The court rejected CCEC's claim that the city council erred by delegating the responsibility to implement the measure to the community development department, finding that delegation of responsibility for a monitoring program is appropriate under CEQA. Nevertheless, the market study measure was inadequate because it did not commit the city to any specific mitigation action or impose any performance standards for determining whether further measures were needed. The third and fourth measures were similarly inadequate because they did not commit the city to any feasible or enforceable mitigation measures to ameliorate the adverse effects of the project on urban decay elsewhere in Woodland. Although there was nothing wrong with paying fees, the record did not explain how the plans prepared using those funds would address the project's urban decay impacts. The fifth measure required the city to take no action other than to coordinate with the current owner of the existing, struggling shopping mall to study alternative uses of the mall. The court found that, although the EIR was a programmatic EIR, tiering of environmental review and deferring environmental analysis and mitigation measures to later phases would be appropriate only where the impacts or mitigation measures are specific to those later phases. Here, because the EIR studied and attempted to mitigate the urban decay effects from the project as a whole, the city could not put off corrective action to a future date.

The court held the city failed to comply with CEQA when it rejected the "mixed-use" alternative as infeasible. The Draft EIR concluded that the alternative was infeasible due to economic considerations; however, the city council's findings rejected the alternative as environmentally inferior to the project. The court found the city had adopted a rationale for rejecting the alternative that was unsupported by the EIR analysis.

Finally, the court found the city's treatment of energy impacts was inadequate. The EIR's discussion of energy did not address the information called for by Appendix F of the CEQA Guidelines. The EIR did not quantify energy use associated with transportation or construction, or evaluate the availability of renewable energy. Although other chapters touched on energy-related issues (air quality, transportation, GHG), that was no substitute for an energy analysis. While the EIR did require the project to comply with the state building code and green building standards, the court found such standards alone would not address construction and operational energy use.

First District Court of Appeal strikes down Caltrans EIR for project to widen US 101 through redwood grove in Humboldt County. *Lotus v. Dept. of Transportation* (2014) 223 Cal.App.4th 645

Caltrans proposed to widen segments of US 101 through Richardson Grove State Park because the narrow, windy road did not meet current design standards and hindered large trucks from getting access to Humboldt County. Caltrans prepared an EIR describing the proposed activities as "minor road adjustments including realignments, curve corrections, and shoulder widening" and "culvert improvements and repaving the roadway." The project's impacts included tree removal and potential damage to tree roots caused by excavation and fill. The EIR found that only six redwoods – none of them old growth redwoods – would be removed. Cut-and-fill activities would not require removing other trees, but would affect their root zones. The EIR described project design features that would lessen these impacts. These features included restorative planting and invasive plant removal. The analysis concluded the project would not result in significant environmental impacts with the implementation of these "special construction techniques." Caltrans approved the project. Petitioners sued. The trial court denied the petition. Petitioners appealed.

The court of appeal found that the EIR contained sufficient information to determine the number of trees that would be removed, and the extent to which root zones would be disturbed during construction or covered by impermeable surfaces. The EIR did not, however, identify or apply a clear standard to determine whether the impacts to the trees' root zones would be significant. Caltrans compounded this omission by incorporating mitigation measures into the project description and characterizing them as "part of the project." "By compressing the analysis of impacts and mitigation measures into a single issue," the court stated, "the EIR disregards the requirements of CEQA." This approach short-circuited the analysis of whether additional mitigation measures were required or would be more effective. "Simply stating that there will be no significant impacts because the project incorporates 'special construction techniques' is not adequate or permissible." Comments from the California Department of Parks and Recreation pointed out this problem, but Caltrans did not revise the Final EIR to address this concern. This "structural deficiency" was not harmless because it precluded informed public participation and decision-making. The court ordered Caltrans to correct the deficiencies in the EIR and to recirculate the document if the agency found it necessary under CEQA standards.

The Second District Court of Appeal reversed a trial court ruling and held that an EIR prepared by the California Department of Fish & Wildlife ("Department") for the Newhall Ranch Resource Management and Development Plan/Spineflower Conservation Plan ("RMDP/SCP") is adequate under the California Environmental Quality Act ("CEQA"), and that the Department's related Master Streambed Alteration Agreement and two incidental take permits complied with the Fish and Game Code. *Center for Biological Diversity v. Department of Fish and Wildlife* (March 20, 2014) 224 Cal.App.4th 1105.

In the case, the Department and the U.S. Army Corps of Engineers prepared a joint environmental impact statement/environmental impact report ("EIS/EIR") to analyze the potential impacts associated with implementation of the Newhall Ranch RMDP/SCP (only the EIR component was at issue in the case). The RMDP is a conservation, mitigation, and permitting plan prepared in compliance with the Newhall Ranch Specific Plan, which was approved by the County of Los Angeles in 2003. The Specific Plan allows for the development of the large-scale Newhall Ranch planned community, which includes the set aside of large tracts of open space for conservation purposes on approximately 12,000 acres in northern Los Angeles County. The RMDP included a master streambed alteration agreement and two incidental take permits. The SCP component is a conservation plan that expanded an existing spineflower

preserve system; the spineflower is an endangered species under the state Endangered Species Act and a candidate species under the federal Endangered Species Act.

Petitioners brought the action challenging the Department's certification of the EIR as adequate under CEQA and its related decisions to approve the streambed alteration agreement and incidental take permits. The trial court ruled in favor of petitioners and the Department and Newhall appealed. The following is a brief summary of the issues raised on appeal and the Courts of Appeal's ruling:

First, petitioners/respondents claimed the mitigation measures proposed to conserve the unarmored threespine stickleback would result in an unlawful taking of a protected species in violation of the Fish and Game Code. As part of the RMDP component of the project, two bridges would be constructed in the Santa Clara River, where the stickleback is described as abundant. The mitigation included the use of nets to keep the stickleback away from construction areas, and placement of the stickleback in temporary containers for relocation. The Department's conclusion there would be no take was based upon multiple scientific studies concerning the stickleback relative to the Santa Clara River. In reversing the trial court, the Court of Appeal noted that the Department had undertaken extensive surveys of stickleback habitat and the Santa Clara River, retained one of the leading authorities in the field of stickleback protection, and expressly prohibited Newhall from taking stickleback and, therefore, there was substantial evidence in the record that no "take" within the meaning of the Fish and Game Code would occur.

Second, petitioners/respondents claimed the EIR failed to adequately analyze potential impacts to cultural resources associated with the Chumash and Tataviam tribes. The Court of Appeal rejected the claim on both procedural and substantive grounds. Procedurally, the Court ruled that petitioners/respondents failed to raise the issues now raised in litigation prior to the close of the public comment period on the EIR. On that basis, the Court rejected the claims for failure to comply with Pub. Resources Code §21177 regarding exhaustion of administrative remedies. Substantively, the Court of Appeal held that the EIR cultural resources analysis was supported by substantial evidence. The Court relied in part on "extensive pre-onsite survey archival analysis" conducted by experts in the field, the fact that the entire project area was walked in an ordered manner to determine the existence of Native-American cultural resources, and subsequent excavations occurred in areas that archival research, prior studies and the extensive on-site surveys indicated Native American cultural resources were potentially present. On that basis, the Court ruled there was no requirement that additional research be conducted before certifying the EIR.

Third, petitioners/respondents claimed that the Department's rejection of one of the project alternatives as infeasible was not supported by substantial evidence. The Department rejected the alternative at issue because it did not meet the project objectives and that the costs associated with its development rendered it infeasible. As to economic infeasibility, the Court of Appeal held that substantial evidence supported the Department's finding, which was based on an economic study using the industry metric of cost per developable acre. On the basis of the study, the Department concluded that the alternative would require a substantial increase in cost when compared to another alternative and, therefore, was economically infeasible.

Fourth, petitioners/respondents claimed that the EIR failed to analyze the sub-lethal impacts of the project's discharges of dissolved copper on juvenile steelhead. In addition to rejecting the claim for failure to comply with the exhaustion requirements of Pub. Resources Code §21177, the Court of Appeal held that the EIR contained substantial evidence that the project's impacts on

steelhead smolt would be less than significant. The Court relied on evidence showing that after mitigation, dissolved copper would be discharged to the Santa Clara River in concentrations substantially below the California Toxics Rule threshold, and substantial evidence supported the Department's selection of the threshold for evaluating toxicity issues for the smolt.
Fifth, petitioners/respondents challenged the Department's issuance of an incidental take permit for the San Fernando Valley spineflower, asserting the EIR's analysis of project impacts on the spineflower was insufficient and that substantial evidence did not support the Department's determination that spineflower mitigation measures would adequately mitigate the impacts of the take of spineflowers. The take permit, although permitting the take of 4.85 acres of spineflower habitat, also required the creation of 167.56 acres of preserves, including 42.9 acres of expansion areas, and an adaptive management framework to enhance spineflower occurrences. Relying on the expanded preserve area, related buffer areas and expansion areas, and noting that surveys between 2002 and 2007 uncovered less than 14 acres of actual spineflower growth in the RMDP area, the Court of Appeal ruled that substantial evidence supported the Department's scientific strategies and mitigation findings for spineflower.
Based on the above, the Court of Appeal reversed the trial court judgment in its entirety and ordered that judgment be entered in favor of the Department and Newhall. As of this writing, a petition for review and response briefs have been filed with the California Supreme Court.

Legislative Developments
No updates this quarter.

Regulatory Updates
No updates this quarter.

CLIMATE CHANGE

Recent Court Rulings
No summaries this quarter.

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No updates this quarter.

Regulatory Updates
No updates this quarter.

COASTAL RESOURCES

Recent Court Rulings

The Second District has held that an agency with a local coastal program that the Coastal Commission has not yet certified cannot be compelled to establish interim procedures for the processing of coastal development permits. *Hagopian v. State* (2014) 223 Cal.App.4th 349. A property owner developed coastal property without first seeking or obtaining a coastal

development permit as required under the Coastal Act. After giving the owner notices and repeated extensions to comply, the Coastal Commission held a hearing on the alleged violations. The owner presented no evidence in its defense and the Commission found the owner in violation of the Act. The owner filed suit to challenge the Commission's jurisdiction on grounds that permitting authority had passed to the County of Los Angeles, or should transfer to the County, because the County had drafted a local coastal program (LCP) which the Commission had never certified. The owners argued that under Public Resources Code section 30600.5, the Commission must compel the County to establish interim permitting procedures pending approval of its LCP. The trial court ruled that the Coastal Act did not create a mandatory duty in the Commission or the County to cause an interim permitting procedure to be approved at that time. The owners appealed.

The questions before the appellate court were whether the County was the proper permitting body for the owners' property, whether the County must be ordered to assume this authority and whether the Commission may be compelled to issue such an order.

The court held that neither agency had violated a duty. The Commission has initial authority to issue development permits, but the Act allows authority to pass to local governments when they have created, and the Commission has approved, an LCP. Pending Commission certification of the LCP, the local government may establish interim permitting procedures by so notifying the Commission. Because the County had not created an interim permitting program, permitting authority remained in the Commission. Despite some purportedly "mandatory" language in PRC section 30600.5, including that the County "shall" provide drafts to the Commission of all interim procedures and "shall" adopt an ordinance describing these procedures, these duties took effect only if the County chose to establish procedures. Furthermore, the Commission "shall" delegate authority to a local agency only when the agency requests it. The County had not done so, and section 30600.5 did not compel the County to seek interim permitting authority. The Coastal Act's primary purpose to protect California's coasts "would not be served by ceding permitting authority to a local government unprepared to issue permits."

Legislative Developments
No updates this quarter.

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No updates this quarter.

ENDANGERED SPECIES

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FEES/TAXES

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Regulatory Updates
No updates this quarter.

FOREST RESOURCES

Recent Court Rulings
No summaries this quarter.

Legislative Developments
No updates this quarter.

Regulatory Updates

Native American Notification Requirements. In March 2014, the State Board of Forestry and Fire Protection solicited review and comment on proposed regulatory amendments to the Forest Practice Rules, as those regulations relate to the provision of notice to Native American contacts in connection with emergency timber operations. See Cal. Reg. Notice Register 2014, Vol. No. 13-Z, p. 546.

HAZARDOUS MATERIALS/ WASTE

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No updates this quarter.

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INSURANCE COVERAGE

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No updates this quarter.

LAND USE

Recent Court Rulings

The Fourth District Court of Appeal upheld the trial court's denial of a petition for a writ of administrative mandamus challenging approval of a variance to a setback requirement. *Eskeland v. City of Del Mar*, 169 Cal. Rptr. 3d 112 (Cal. Ct. App. 2014).

Jon Scurlock filed an application with the City of Del Mar's Design Review Board to permit him to tear down his existing house and build a new house in the footprint of the old house. The old house and the new design violated the City's 20-foot setback requirement. Scurlock filed for a variance from the setback requirement with the City's Planning Commission, which granted the variance. The Eskelands, along with other residents in the neighborhood, sued to force the City to set aside its approval of the variance. The trial court denied the petition, and the Eskelands appealed.

The issue before the Fourth District Court of Appeal was whether the City properly granted the variance from the setback requirement. Using an abuse of discretion standard, the court reviewed the administrative decision to grant the variance.

The court held: (1) special circumstances applied to the property, for example, a steep hillside and a small area of level building area, such that Scurlock would be at a disadvantage to other property owners if he complied with the 20-foot setback requirement; (2) the City did not grant Scurlock a special privilege; (3) the City did not rezone the area by permitting the variance; and (4) there was no feasible alternate development plan. The court, therefore, affirmed the trial court's denial of the writ of administrative mandamus.

The Second District Court of Appeal held that a Los Angeles municipal ordinance requiring a tentative tract map applied only to projects involving subdivision. *Tower Lane Props. v. City of L.A.*, 168 Cal. Rptr. 3d 358 (Cal. Ct. App. 2014).

Tower Lane Properties sought to build a single-family residential compound on hillside property in Los Angeles. Tower Lane applied to the City's Department of Building and Safety for building and grading permits, and the Department forwarded the building plans to the City's Planning Department to review for compliance with the City's building codes. The Planning Department determined that to obtain a grading permit, Tower Lane had to obtain the Planning Department's approval of a tentative tract map. Tower Lane objected and applied for a waiver to the ordinance, which the City conditioned upon preparation of an environmental impact assessment. Tower Lane refused to prepare an assessment and filed a petition for a writ of mandate to force the City to waive the condition.

The trial court held that the plain language, regulatory context, and historical application of the code section applied only when a hillside project involved subdivision, and Tower Lane's project did not. The court issued a writ ordering the City to waive the condition, and the City appealed.

The Second District Court of Appeal affirmed. The court held that the ordinance applied to subdivisions only. The court found that the definition of "tentative map" under the Subdivision Map Act included "subdivisions," and the statutory framework placed the ordinance next to another section involving land subdivision. The purpose of the ordinance—to allow the City to control grading of an anticipated subdivision—also did not apply to Tower Lane's project. Finally, the court did not defer to the City's interpretation of the ordinance because the City's historical position on the ordinance was unclear and inconsistent. Accordingly, Tower Lane did not need to provide a tentative tract map.

The First District Court of Appeal held that conditioning a building permit on an aircraft overflight easement was not an unconstitutional taking under the United States or California Constitutions. *Powell v. Cnty. of Humboldt*, 166 Cal. Rptr. 3d 747 (Cal. Ct. App. 2014).

The Powells purchased property located approximately one mile from an airport that the County of Humboldt owned. The County previously adopted an Airport Land Use Compatibility Plan. Under the Plan, the County required owners of residential property in a certain zone, Zone C, which was not under a runway approach, but over which aircraft routinely flew at or below 1,000 feet, to provide an overflight easement as a condition of issuing building permits. The Powells' property was located in Zone C, and they sought a building permit from the County for a previously-constructed carport and porch on their property. The County refused to issue the permit unless the Powells granted the overflight easement.

The Powells sued to force the County to approve the permit on the ground that the easement condition, as applied to their permit application, violated the Fifth Amendment of the United States Constitution and Article I, section 19 of the California Constitution. The trial court granted summary judgment for the County, holding the Powells failed to show the easement was

a compensable taking or a discretionary imposition on them, as opposed to a uniform requirement for all building permits in Zone C. As such, the court held the easement requirement was not unconstitutional under federal or California law. The Powells appealed.

The First District Court of Appeal affirmed, holding that the overflight easement was not a taking under the Fifth Amendment or the California Constitution. The court found there was no evidence the easement would permit overflights that would invade the Powells' private airspace, substantially interfere with their use and enjoyment of their property, or cause a measurable reduction in the property's value. The Powells provided no evidence the easement was unconstitutional, and therefore, the court held the condition, as applied to the Powells, was constitutional and affirmed the trial court's judgment.

The Fifth District Court of Appeal held that lawsuits seeking to set aside an approval of an annexation or a change in sphere of influence must follow the procedural requirements for reverse validation actions. *Protect Agricultural Land v. Stanislaus County Local Agency Formation Commission*, 223 Cal. App. 4th 550 (Cal. Ct. App 2014).

The Stanislaus County Local Agency Formation Commission ("Stanislaus LAFCO") approved an application by the City of Ceres ("City") for the West Landing Specific Plan Reorganization ("Plan") to extend the City's territory to the southwest. Protect Agricultural Land ("PAL"), an unincorporated group of residents of Stanislaus County, filed a petition for writ of mandate challenging the approval.

At trial, PAL argued that Stanislaus LAFCO's approval of modifications to the City's sphere of influence and annexation of 960 acres violated the California Environmental Quality Act ("CEQA") as well as the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 ("Cortese-Knox").

The trial court denied the petition. The trial court held that PAL failed to comply with California Government Code section 56103, which requires that parties challenge a local agency formation commission's approval of an annexation and a change in sphere of influence as a "reverse validation action." The trial court further held that PAL failed to comply with the summons and publication procedural requirements for reverse validation actions by failing to name "all interested parties" in the annexation area and by failing to comply with service requirements. Further, the trial court determined that PAL failed to show "good cause" for its failure to comply with the procedural requirements due to PAL's counsel's inadequate legal research of the procedural requirements.

PAL appealed. On appeal, PAL argued that the trial court abused its discretion by (1) treating PAL's Reorganization Act claim as a reverse validation action and (2) refusing to allow PAL to complete the summons and publication procedure.

The Fifth District Court of Appeal affirmed. The Court held that the procedures applicable to reverse validation actions applied to PAL's CEQA claim against Stanislaus LAFCO and the City. The Court further held that PAL's failure to follow the procedural requirements barred PAL's cause of action and that PAL lacked "good cause" for failing to comply with the requirements.

The Court explained that PAL's counsel failed to adequately research the procedural requirements.

Legislative Developments
No updates this quarter.

Regulatory Updates
No updates this quarter.

PROPOSITION 65

Recent Court Rulings
No summaries this quarter.

Legislative Developments
No updates this quarter.

Regulatory Updates

List of Chemicals Known to the State to Cause Cancer or Reproductive Toxicity. For the Office of Environmental Health Hazard Assessment's most current list of chemicals known to the State to cause cancer or reproductive toxicity, see Cal. Reg. Notice Register 2014, Vol. No. 5-13, p. 562.

New Listings. In January 2014, OEHHA announced that – effective January 3, 2014 – emissions from high-temperature unrefined rapeseed oil are known to the State to cause cancer. See Cal. Reg. Notice Register 2014, Vol. No. 1-Z, p. 13. That same month, OEHHA also announced that – effective January 31, 2014 – trichloroethylene is known to the State to cause reproductive toxicity. See Cal. Reg. Notice Register 2014, Vol. No. 5-Z, p. 205.

In March 2014, OEHHA announced that – effective March 28, 2014 – both megestrol acetate and methyl isobutyl ketone were added to the list of chemicals known to the State to cause cancer and reproductive toxicity, respectively. See Cal. Reg. Notice Register 2014, Vol. No. 13-Z, pp. 581, 582.

Notice of Intent. In January 2014, OEHHA provided notice of its intent to list megestrol acetate as known to the State to cause cancer via the "Formally Required to Be Labeled or Identified" listing mechanism. See Cal. Reg. Notice Register 2014, Vol. No. 5-Z, p. 206. This proposal was made final and the listing became effective on March 28, 2014. See Cal. Reg. Notice Register 2014, Vol. No. 13-Z, p. 581.

In February 2014, OEHHA provided notice of its intent to list magestrol acetate as known to the State to cause cancer via the "Formally Required to Be Labeled or Identified" listing mechanism. See Cal. Reg. Notice Register 2014, Vol. No. 6-Z, p. 250. That same month, OEHHA also provided notice of its intent to list nitrite in combination with amines or amides; beta-myrcene; atrazine; propazine; simazine; DACT (G-28273; 2,3-diamino-6-chloro-s-triazine); DEA (G-

30033; des-ethyl atrazine); and, DIA (G-28279; des-isopropyl atrazine) as known to the State to cause cancer via the authoritative bodies listing mechanism. See Cal. Reg. Notice Register 2014, Vol. No. 6-Z, pp. 251, 253, 254; see also Vol. No. 10-Z, p. 430; Vol. No. 11-Z, p. 475; Vol. No. 12-Z, p. 517. Finally, OEHHA provided notice of its intent to list pulegone; pentosan polysulfate sodium; pioglitazone; and, triamterene as known to the State to cause cancer via the Labor Code listing mechanism. See Cal. Reg. Notice Register 2014, Vol. No. 6-Z, pp. 258, 396. In March 2014, OEHHA provided notice of its intent to list N,N-dimethyl-p-toluidine as known to the State to cause cancer via the authoritative bodies listing mechanism. See Cal. Reg. Notice Register 2014, Vol. No. 11-Z, p. 476.

Hazard Identification Materials. In January 2014, OEHHA announced the availability of a hazard identification document to support the reconsideration of chemicals listed under Proposition 65 as known to cause reproductive toxicity. The subject chemicals were listed via the Labor Code mechanism; and, OEHHA initiated this action based on changes to the federal regulations that influence the basis for the original listings via the Labor Code mechanism. See Cal. Reg. Notice Register 2014, Vol. No. 2-Z, p. 58.

In March 2014, OEHHA announced the availability of a hazard identification document to support the reconsideration of three chemicals listed as known to cause reproductive toxicity: hexafluoroacetone; phenylphosphine; and, chlorsulfuron. See Cal. Reg. Notice Register 2014, Vol. No. 11-Z, p. 474.

Labor Code Listings. In January 2014, OEHHA proposed to adopt a regulation that would clarify the procedure and criteria used by OEHHA to list and de-list chemicals via the Labor Code listing mechanism of Proposition 65. See Cal. Reg. Notice Register 2014, Vol. No. 5-Z, p. 180.

Article 6 Clear and Reasonable Warnings. In March 2014, OEHHA announced that it would be holding a public workshop for the purpose of discussing a possible regulatory action to change the existing regulations governing Proposition 65 warnings. See Cal. Reg. Notice Register 2014, Vol. No. 10-Z, p. 430.

Notice of Change in the Identification of Listing Endpoints. In March 2014, OEHHA announced that – effective March 7, 2014 – female reproductive toxicity will be removed as a basis for the listing of toluene. Nonetheless, the chemical will remain on the list of chemicals known to cause reproductive toxicity as the State's experts have found evidence of reproductive toxicity (development endpoint). See Cal. Reg. Notice Register 2014, Vol. No. 10-Z, p. 431. That same month, OEHHA also announced that – again, effective March 7, 2014 – the basis for identifying male reproductive toxicity as an endpoint of reproductive toxicity for methyl chloride has changed. The chemical will remain on the list of chemicals known to cause reproductive toxicity via the authoritative bodies listing mechanism. See Cal. Reg. Notice Register 2014, Vol. No. 10-Z, p. 432.

PUBLIC RECORDS

Recent Court Rulings

No updates this quarter.

Legislative Developments
No updates this quarter.

Regulatory Updates
No updates this quarter.

PUBLIC UTILITIES COMMISSION

Recent Court Rulings

The First District Court of Appeal has annulled a Public Utilities Commission decision approving Pacific Gas and Electric's (PG&E) application to acquire a new gas-fired power plant on the basis that the Commission's finding of need for the project was unsupported by substantial evidence. *The Utility Reform Network v. Public Utilities Commission* (February 5, 2014) 223 Cal.App.4th 945.

In the case, PG&E filed an application with the Commission seeking approval of an agreement by which PG&E would acquire a new gas-fired power plant in Oakley, California. A principal issue in the application proceedings was whether there was a need for the Oakley Project. The need was said to arise in part from California's efforts to obtain a greater percentage of its energy from renewable sources, thus requiring additional conventional electrical generating capacity to cope with fluctuations in supply due to the intermittent nature of wind and solar power.

As evidence of this claimed need, PG&E presented a declaration from an executive of the California Independent System Operator (the CAISO) and a petition the CAISO had filed with a federal agency. Neither the CAISO executive nor the authors of the petition testified in the Commission's proceedings. Because of their hearsay nature, the administrative law judge (ALJ) presiding over the application case ruled these materials could not be used as evidence of the need for the Oakley Project. The ALJ later issued a proposed decision recommending denial of PG&E's application.

The Commission did not adopt the ALJ's decision, and its decision approving PG&E's application expressly relied on the hearsay materials in finding the Oakley Project is needed. Petitioners sought rehearing before the Commission, arguing, inter alia, that the Commission had violated their substantial rights by relying on hearsay evidence the ALJ had ruled could not be used as proof of need for the Oakley Project, and the Commission's decision was unsupported by substantial evidence. After the Commission denied the applications for rehearing, petitioners filed petitions for writs of review under Public Utilities Code section 1756, subdivision (a).

The Court of Appeal concluded the Commission's finding of need is unsupported by substantial evidence because it relies on uncorroborated hearsay materials the truth of which is disputed and which do not come within any exception to the hearsay rule. Under established law, such uncorroborated hearsay evidence does not constitute substantial evidence to support an

administrative agency's finding of fact. Because the remaining evidence in the record fails to support the Commission's finding of need, the decision must be annulled.

Legislative Developments
No updates this quarter.

Regulatory Updates
No updates this quarter.

RESOURCE CONSERVATION

Recent Court Rulings
No summaries this quarter.

Legislative Developments
No updates this quarter.

Regulatory Updates

Mineral Resource Sectors. In January 2014, the State Mining and Geology Board proposed to amend regulations describing the location of mineral resources areas designated to be of statewide significance, and areas where such designation will be terminated, within the San Bernardino Production-Consumption Region, as located in San Bernardino and Riverside counties. See Cal. Reg. Notice Register 2014, Vol. No. 1-Z, p. 8.

Sport Fishing. In January 2014, the Fish and Game Commission (Commission) proposed to amend certain regulations pertaining to sport fishing and possession limits for ocean salmon. See Cal. Reg. Notice Register 2014, Vol. No. 3-Z, p. 70, 72. That same month, the Commission also proposed to amend certain regulations pertaining to sport fishing in the Klamath River and Trinity River. See Cal. Reg. Notice Register 2014, Vol. No. 4-Z, p. 170.

In March 2014, the Commission proposed to amend certain regulations pertaining to Pacific halibut sport fishing. See Cal. Reg. Notice Register 2014, Vol. No. 13-Z, p. 550.

Mammal Hunting. In January 2014, the Commission proposed to amend certain regulations relating to mammal hunting in the 2014-2015 season. See Cal. Reg. Notice Register 2014, Vol. No. 4-Z, p. 111.

Marine Protected Areas. In January 2014, the Commission proposed to amend certain regulations relating to marine protected areas designated pursuant to the Marine Life Protection Act (Fish and Game Code, §§2850-2863). See Cal. Reg. Notice Register 2014, Vol. No. 4-Z, p. 120.

Suction Dredging. In February 2014, the Department of Fish and Wildlife (DFW) proposed to adopt regulations pertaining to the definition of vacuum/suction dredging. See Cal. Reg. Notice Register 2014, Vol. No. 7-Z, p. 285.

SOLID WASTE

Recent Court Rulings
No summaries this quarter.

Legislative Developments
No updates this quarter.

Regulatory Updates
No updates this quarter.

WATER QUALITY

Recent Court Rulings
No summaries this quarter.

Legislative Developments
No updates this quarter.

Regulatory Updates

Stormwater Pollution Prevention Plan Training. In February 2014, the Office of Administrative Law determined that a Fact Sheet issued by the State Water Resources Control Board, titled "Qualified Storm Water Pollution Prevention Plan Developer (QSD) Training Program for Professionals Licensed by the California Board of Professional Engineers, Land Surveyors and Geologists," meets the definition of "regulation" but is otherwise exempt from the rulemaking requirements of the Administrative Procedure Act per Government Code section 11352. See Cal. Reg. Notice Register 2014, Vol. No. 8-Z, p. 344.

Public Health Goals (PHGs). In March 2014, the Office of Environmental Health Hazard Assessment (OEHHA) announced the availability of a second draft technical support document for proposed updates to the PHGs for chlorobenzene, endothall, hexachlorocyclopentadiene, silvex, and trichlorofluoromethane in drinking water. See Cal. Reg. Notice Register 2014, Vol. No. 10-Z, p. 429411.

WATER RESOURCES

Recent Court Rulings

The Third District has held that the statutory procedure for acquiring a right to enter land to conduct precondemnation studies violates the state Constitution when the precondemnation studies themselves would be a taking. *Property Reserve Inc. v. Superior Court of San Joaquin County* (2014) 224 Cal.App.4th 828. To determine the suitability of the proposed route for a canal or tunnels to divert fresh water across California, the Department of

Water Resources sought court orders under the "entry statutes" procedure (CCP 1245.010 et seq.), authorizing entry onto private properties to conduct precondemnation studies. A set of environmental studies would include surveys of the properties' fauna, flora and hydrology, and a set of geological studies would include soil testing and boring activities, including drilling deep, narrow holes and permanently filling them with grout. Together the studies would require entry to the properties for a total of 60 intermittent days spread over a period of two years. The trial court granted the order for the environmental studies but denied the order for the geological studies. Both parties appealed.

The question before the appellate court was whether the two categories of studies would themselves be intentional takings requiring initiation of condemnation procedures, and if so, whether the special entry statutes procedure was a "proceeding in eminent domain" guaranteeing due process.

The appellate court held that both sets of activities were takings. The permanent grout fillings would be a "permanent physical occupation" of land and thus a per se taking prohibited by the Supreme Court's holding in *Loretto v. Teleprompter Manhattan CATV Corp*. (1982). Despite the property owners' inability to show actual damages from the environmental studies, the court held they would cause a "blanket temporary easement" and thus an interest in real property. Yet the entry statutes procedure did not properly provide for the "acquisition and transfer of a property interest" with concomitant guarantees of due process. The procedure did not provide for a hearing on the petition for order of entry, or a jury trial to determine just compensation for a taking caused by the entry. The owners would enjoy due process rights only if they initiated a separate inverse condemnation action challenging the order. To conduct the studies, therefore, the state needed to initiate condemnation proceedings for the studies themselves *and* for any acquisition of land the state determined would be needed based on the studies.

The dissent opined that neither category of studies rose to a taking and that the entry statutes procedure was sufficient to allow entry to the land. The Legislature did not intend that the government initiate two condemnation proceedings for a study to determine whether condemnation would be necessary. The eminent domain law was not designed to limit the precondemnation work of the entry statutes.

The Fourth District has held that Proposition 218 does not prohibit an agency from holding a single "omnibus" protest election involving all customers under a collection of rate increases, rather than separate protest elections for each different rate class. ***Morgan v. Imperial Irrigation Dist.*** **(2014) 223 Cal.App.4th 892.**

In 2008, the District, the sole source of fresh water for residential, municipal, industrial and agricultural customers in the Imperial Valley, increased its water rates. The increase amount differed among types of customer, creating rate "classes." As required by Proposition 218, the District held a protest election on the rate increase. The protests did not meet the 50 percent threshold and the District adopted the increase. Petitioner Farm Bureau challenged the increase, arguing that the District must conduct a separate protest election for each rate class. Individual petitioners ("Individuals") also challenged the increase on procedural and substantive grounds, in

particular the Cost of Service Study that provided the basis for the increase. The trial court upheld the increase but awarded attorneys' fees to the Individuals, finding that they caused the District to delete another set of potential fees for an Equitable Distribution Plan ("EDP) to apportion water available for agricultural uses during times of water shortage.

The question on appeal was whether the omnibus protest hearing for all customers, rather than separate protest hearings for each rate class, violated Proposition 218. The court also considered whether the District's rate increase was supported by substantial evidence.

The court upheld the rate increase. Prop. 218 permits agencies to charge different rates to customers as long as the fees are proportional and the total amount the agency collects does not surpass the cost of providing the service. Nothing in the relevant provisions of Prop. 218, at section 6 of article XIII D of the California Constitution, prohibited the District from holding a single protest election. Section 6 does not restrict a protest election only to those citizens paying a particular rate and "similarly situated citizens." Although section 4 of article XIII D, governing assessments, specifically requires weighting each owners' vote in proportion to the amount paid by that owner, section 6 does not; the omission of proportional vote weighting in section 6 "signals that, in the context of fees, each parcel owner receives one vote weighted the same regardless of the proportional amount he or she must pay." Petitioners' approach would instead provide certain parcel owners with more heavily weighted votes. If one rate class successfully objected to its portion of the fees, the agency would be prohibited from making up the difference by increasing rates on other classes.

The court also rejected the Individuals' challenge that the District must make public all protest votes or provide a list of eligible protest voters. Nothing in section 6 required this. The court also denied the Individuals' challenge that the Cost of Service Study was not based on substantial evidence. Finally, the court reversed the trial court's award of attorneys' fees to the Individuals. The court held that the EDP fees were not at issue at trial because the District deleted them before the litigation began. Because the trial court never ruled on the potential fees' constitutionality, the trial court could not award fees based on a "finding" it never made.

Legislative Developments
No updates this quarter.

Regulatory Updates
No updates this quarter.

FEDERAL SUMMARIES

Supreme Court

The United States Supreme Court has held that the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) does not preempt state statutes of

repose. *CTS Corp. v. Waldburger* (June 9 2014) 2014 WL 250466 (U.S.) (Kennedy, J.)(C.J. Roberts, Scalia, Thomas and Alito, JJ concurring)(Ginsbug and Breyer, JJ dissenting).

24 years after seller sold property, property owners brought a state law nuisance action in district court against the seller, alleging that the seller's prior operations at the property contaminated the property owners' well water. The seller moved to dismiss, citing the state statute of repose. That statute provided that "[n]o cause of action shall accrue more than 10 years after" the defendant's last act or omission giving rise to the cause of action. The district court granted the motion to dismiss, but the Fourth Circuit reversed. The United State Supreme Court reversed the Fourth Circuit.

Section 9658 of CERCLA, 42 U.S.C. section 9601, *et seq.*, adopts the discovery rule. Under section 9658, the statute of limitations in CERCLA actions begins to run when a plaintiff discovers or reasonably should have discovered that the harm was caused by contamination. The Court stated that it was "undoubted" that section 9658 preempts any conflicting state statute of limitations The issue was whether section 9658 also preempts state statutes of repose. Analyzing section 9658's language and its legislative history, and discussing the differences between statutes of limitation and statutes of repose, the Court held that section 9658 of CERCLA did not expressly preempt state statutes of repose. The Court also held that section 9658 of CERCLA did not impliedly preempt state statutes of repose.

The United States Supreme Court has upheld the Environmental Protection Agency's Transport Rule, which requires allocation of emission reductions among upwind states to improve air quality in downwind areas under the Clean Air Act's (CAA) "good neighbor" provision. *Environmental Protection Agency v. EME Homer City Generation, L.P.* (2014) 134 S.Ct. 1584 (Ginsburg, J,)(Scalia and Thomas, JJ, dissenting).

The case involved a challenge to an EPA rule interpreting the CAA's "good neighbor" provision. The Court of Appeals for the D.C.Circuit vacated the rule in its entirety, The Supreme Court reversed.

Congress adopted the CAA's "good neighbor" provision to combat the problem of air pollution that is emitted in one state, but that causes harm in other, downwind states. The "good neighbor" provision prohibits in-state sources "from emitting any air pollutant in an amount which will . . . contribute significantly" to a downwind state's "nonattainment . . ., or interfere with maintenance," of any national ambient air quality standard (NAAQS). 42 U.S.C. section 7410(a)(2)(D)(i).

To implement and interpret the "good neighbor" provision, the EPA adopted the Cross-State Air Pollution Rule, commonly known as the Transport Rule. The Transport Rule imposed a two-step process to determine whether an upwind state contributed significantly to downwind non-attainment through its exported pollutants: (1) first the EPA determined whether the upwind state produced one percent or more of a NAAQS in a downwind state; and (2) second the EPA determined whether the pollution could be eliminated cost-effectively. Upwind states would be obliged to eliminate all and any emissions that met both criteria. For each such state, the EPA

issued a Federal Implementation Plan (FIP) allocating that state's emission budget among its in-state resources.

The Supreme Court upheld the Transport Rule, concluding that the EPA could properly consider costs and had the authority to issue the FIPs

Ninth Circuit Court of Appeals

ENDANGERED SPECIES

Recent Court Rulings

The Ninth Circuit has held that standing to challenge a procedural violation of the Endangered Species Act exists as long as remedying the violation "could" better protect the Plaintiffs' interests and that because the Bureau of Reclamation retains "some discretion" to renegotiate Central Valley Project Settlement Contracts, the Bureau must engage in Section 7 consultation before renewing those Contracts. *Natural Resources Defense Council, et al. v. Jewell, et al.* (2014) 749 F.3d 776

The Bureau of Reclamation is responsible for managing Central Valley Project (CVP) and administering CVP contracts. "Settlement Contracts" are CVP contracts between the Bureau and senior water right holders, which resolved the senior right holders' objections to the CVP by providing them with a supply of water from the CVP. "DMC Contracts" are contracts between the Bureau and water users (who do not claim senior rights) to take water from the Delta-Mendota Canal. In 2004, the Settlement Contracts and DMC Contracts were set to expire. During 2004 and 2005, the Bureau renewed a total of 159 Settlement and DMC Contracts.

The Plaintiffs challenged the validity of 41 of the renewed Contracts, alleging that they will harm the delta smelt and that the Bureau violated section 7(a)(2) of the Endangered Species Act by failing to adequately consult with the United States Fish and Wildlife Service prior to renewing the contracts. The District Court found that the Plaintiffs lacked standing to challenge the DMC Contracts because those Contracts contained shortage provisions that allowed the Bureau to take necessary actions to comply with the ESA, and so the alleged injury was not fairly traceable to the alleged procedural violation. The District Court also held that the Bureau was not required to engage in section 7(a)(2) consultation with respect to the Settlement Contracts, because the terms of those Contracts "substantially constrained" the Bureau's ability to negotiate terms that would be more protective of the delta smelt, and consultation is only required when the agency has discretion to take protective action.

The Ninth Circuit, sitting en banc, reversed the District Court. It pointed out that when a plaintiff alleges a procedural violation, the normal standing standards for traceability and redressibility do not apply. Instead, the plaintiff need only show that the violation, if corrected, could result in the protection of the plaintiff's interests. The Ninth Circuit concluded that with adequate consultation the DMC Contracts could better protect the delta smelt, and so the Plaintiffs had standing to challenge the DMC Contracts. With respect to the Settlement

Contracts, the Ninth Circuit noted that consultation is required as long as the agency retains "some discretion" to take protective action, and that the degree of discretion is not controlling. The court found that the Bureau retained "some discretion" because it could choose not to renew the Settlement Contracts. Even if the Bureau was required to renew the contracts, it retained the discretion to renegotiate terms regarding pricing and timing of water distribution, even if it could not renegotiate the quantities of water allocated under the Settlement Contracts.

NEPA

Recent Court Rulings

The Ninth Circuit has ordered that a logging project in Oregon be enjoined pending preparation of a supplemental EIS to address potential impacts to elk and their habitat. *League of Wilderness Defenders/Blue Mountains Biodiversity Project, et al. v. Connaughton, et al.* (2014) --- F.3d --- (2014 WL 1814172)

The Snow Basin area covers approximately 29,000 acres in the Whitman-Wallowa National Forest, located in northeast Oregon. The United States Forest Service prepared a draft environmental impact statement ("EIS") under the National Environmental Policy Act ("NEPA") for a logging project in Snow Basin in 2011, and finalized the EIS in 2012. The final EIS eliminated a segment of the project involving 170 acres of "regenerative logging," and discussed a "Travel Management Plan" ("TMP") that would address the potential environmental harms of the logging project by regulating off-road motorized travel and limiting the number of roads in the Whitman-Wallowa National Forest. After the final EIS was adopted, the Forest Supervisor withdrew the TMP, and the Forest Service issued a correction notice stating that 130 of the 170 acres that had been removed from the project would be considered for "group selection" treatment.

The Plaintiffs asserted several claims under NEPA and the Endangered Species Act ("ESA"). Under NEPA, they argued that the final EIS' reliance on the TMP was invalid because the TMP had been withdrawn, that the correction notice improperly failed to consider the cumulative effects of the 130-acre project segment, that the EIS generally failed to adequately address cumulative impacts on stream temperatures and sedimentation, and that the EIS did not adequately explain its finding that there were no bull trout in the project area. Under the ESA, the Plaintiffs argued that the determination that bull trout were not in the project area was incorrect. The District Court had denied the Plaintiff's request for a preliminary injunction against the project, finding that they were not likely to succeed on any of their claims, and that the balance of harms did not tip in their favor so as to warrant an injunction.

The Ninth Circuit found that Plaintiffs would likely prevail on their claim that, because the TMP was withdrawn, a supplemental EIS had to be prepared to address the effects of the project without the TMP to ensure the public was not misled about the effects of the project on elk and elk habitat within the project area. However, the Ninth Circuit agreed with the District Court that the Plaintiffs were not likely to prevail on the merits of their claims regarding cumulative impacts or their claims regarding the bull trout. With respect to the cumulative impact claims, the court found that whether logging on the 130-acres would take place at all was too speculative

to require a cumulative impacts analysis, and that the stream temperature issues were pre-existing and thus part of the environmental baseline, rather than an impact of the logging project. With respect to the bull trout, the court found that the Forest Service's reliance on studies showing that the bull trout had been extirpated from the project area was reasonable, and that the evidence cited by the Plaintiffs to show that bull trout were present in the area was not sufficient to render the Service's conclusions arbitrary or capricious. Finally, the Ninth Circuit found that the balance of harms weighed in favor of the Plaintiffs, because allowing the project to continue would cause irreparable harm that outweighed the temporary fire risks and economic losses that would occur if the project was enjoined. The court remanded the case to the District Court, with instructions to enter a preliminary injunction against the project.

WATER RESOURCES

Recent Court Rulings

The Ninth Circuit has rejected challenges to the environmental impact statements prepared in connection with the Quantification Settlement Agreements. *California ex rel. Imperial County Air Pollution Control District, et al. v. U.S. Department of the Interior, et al.* (2014) --- F.3d --- (2014 WL 2038234)

The Salton Sea was created in 1905 when a breach of an irrigation canal resulted in the flodding of the then-dry Salton Basin. Ever since, it has been sustained by irrigation runoff from the Imperial and Coachella Valleys, which obtain water supplies from the Colorado River. California, and specifically water districts within the Imperial and Coachella Valleys, has recently been forced to cut back on the use of Colorado River water. In connection with the reductions, the Imperial Irrigation District agreed to transfer some Colorado River water that has been used for irrigation to urban areas in southern California. The Department of the Interior is responsible for controlling delivery of Colorado River water. It prepared an environmental impact statement to analyze the effect of the transfer agreements on the Salton Sea, among other things ("Transfer EIS"). Later, several affected water districts entered into "Quantification Settlement Agreements" ("QSAs") dealing with the reduction of the use of Colorado River water and intra-district water transfers. The Department of the Interior prepared a second environmental impact statement to address the potential effects of the QSAs, and specifically the effects of altering points of diversion for Colorado River water ("Implementation EIS"). Both EISs were finalized in 2002.

The Plaintiffs filed suit, alleging that the EISs violated the National Environmental Policy Act ("NEPA") and did not comply with the Clean Air Act. With respect to NEPA, they argued that the Implementation EIS was not sufficiently clear regarding whether it incorporated the Transfer EIS and other documents, that it was improper to prepare two separate EISs, that the Department of the Interior should have prepared a supplemental EIS to address changes the water districts made to a mitigation plan, and that the Implementation EIS was substantively inadequate with respect to its discussion of alternatives, air quality, a Salton Sea reclamation project, and growth. The Plaintiffs also argued that the Secretary of the Interior should have performed a conformity determination under the Clean Air Act because the transfers would result in an increase in the Salton Sea's contribution to PM10 levels. The District Court had granted summary judgment,

finding that the Plaintiffs lacked standing, and, in the alternative, that their NEPA and Clean Air Act claims failed.

The Ninth Circuit reversed the District Court as to the Plaintiffs' standing, but affirmed the judgment regarding the NEPA and Clean Air Act claims. It found that the Implementation EIS was sufficiently clear with respect to its incorporation of other documents, and that any errors in the discussion of incorporation were harmless. It held that it was not arbitrary to prepare two EISs because the two documents addressed projects with independent utility: the Transfer EIS considered proposed water transfers, while the Implementation EIS addressed the "on-river" effects of altering points of diversion from the Colorado River. It rejected the assertion that a supplemental EIS was required, because the changes to the mitigation plan were merely a minor variation of what was discussed in the Implementation EIS, and were qualitatively within the spectrum of alternatives the EIS had addressed. Finally, with respect to the claims that the Implementation EIS was substantively inadequate, the court found that the discussion of alternatives was reasonable, and that the EIS sufficiently discussed air quality, the relationship with the reclamation project, and growth.

Federal Regulatory Update

AGENCY ADMINISTRATION

Dispute Procedures. In January 2014, the U.S. Environmental Protection Agency (EPA) issued an interim final rule revising the agency's policies and procedures for certain pre-award and post-award assistance agreement disputes. See 79 Fed.Reg. 4403.

Environmental Report. In March 2014, the EPA announced the availability of its draft EPA's Report on the Environment 2014 for public review and comment. See 79 Fed.Reg. 17145.

Electronic Submissions. In March 2014, the EPA announced that notifications of substantial risk under Section 8(e) of the Toxic Substances Control Act and voluntary For Your Information submissions may be filed electronically using the EPA's electronic document submission system, the Central Data Exchange. See 79 Fed.Reg. 15329.

AIR QUALITY

National Emissions Standards for Hazardous Air Pollutants (NESHAPs). In January 2014, the U.S. Environmental Protection Agency (EPA) published a direct final rule amending the NESHAPs for existing and new secondary lead smelters. See 79 Fed.Reg. 367, 379. That same month, the EPA also issued two proposed NESHAPs: (1) NESHAP for Source Categories – Generic Maximum Achievable Control Technology Standards; and, (2) NESHAP – Manufacture of Amino/Phenolic Resins. These two proposed NESHAPs are applicable to three industrial source categories: (1) Acrylic and Modacrylic Fibers Production; (2) Polycarbonate Production; and, (3) Amino/Phenolic Resins Production. See 79 Fed.Reg. 1676.

In March 2014, the EPA finalized the residual risk and technology review conducted for nine source categories regulated under the NESHAPs: Group IV Polymers and Resins; Pesticide Active Ingredient Production; and, Polyether Polyols Production. See 79 Fed.Reg. 17340.

New Source Review (NSR). In January 2014, the EPA proposed to approve general permits for use in Indian country pursuant to the Indian Country Minor NSR Rule for new or modified minor sources in the following five source categories: (1) hot mix asphalt plants; (2) stone quarrying, crushing and screening facilities; (3) auto body repair and miscellaneous surface coating operations; (4) gasoline dispensing facilities; and, (5) petroleum dry cleaning facilities. The EPA also presented an alternative proposal, and proposed certain changes to the Indian Country Minor NSR rule. See 79 Fed.Reg. 2546, 10441.

National Ambient Air Quality Standards (NAAQS). In January 2014, the EPA provided notice that three draft documents prepared as part of the current review of the NAAQS for ozone were available for public review and comment: (1) Health Risk and Exposure Assessment for Ozone, Second External Review Draft; (2) Welfare Risk and Exposure Assessment for Ozone, Second External Review Draft; and, (3) Policy Assessment for the Review of the Ozone National Ambient Air Quality Standards, Second External Draft. See 79 Fed.Reg. 4694.

In February 2014, the EPA provided notice of the availability of the following draft document for review and comment, Integrated Review Plan for the Primary National Ambient Air Quality Standards for Nitrogen Dioxide. See 79 Fed.Reg. 7184. That same month, the EPA provided notice of a workshop relating to the review of the secondary NAAQS for oxides of nitrogen and sulfur. See 79 Fed.Reg. 8644.

In March 2014, the EPA provided notice of the availability of the following draft document for review and comment, Integrated Review Plan for the Primary National Ambient Air Quality Standard for Sulfur Dioxide. See 79 Fed.Reg. 14035.

State Implementation Plan (SIP) Revisions.[1] In January 2014, the EPA published direct final rules approving revisions to the: (1) AVAQMD, MDAQMD, MBUAPCD and SCAQMD portions of the California SIP that relate to VOC emissions from architectural coatings, liquefied petroleum gas transfer and ignition of barbecue charcoal (79 Fed.Reg. 364, 378); (2) EDAQMD portion of the California SIP concerning negative declarations for VOC source categories (79 Fed.Reg. 2375, 2404); and, (3) SBCAPCD portion of the California SIP concerning VOC emissions from solvent cleaning machines and operations, coating of metal parts and products, and polyester resin operations (79 Fed.Reg. 4821, 4862).

In March 2014, the EPA: (1) proposed to approve a SIP revision relating to the VCACPD's Reasonably Available Control Technology (RACT) demonstration for the 1997 8-hour ozone NAAQS (79 Fed.Reg. 13266); (2) issued a final rule approving a SIP revision providing for

[1] The SIP-related acronyms follow: Antelope Valley Air Quality Management District (AVAQMD); El Dorado County Air Quality Management District (EDAQMD); Mojave Desert Air Quality Management District (MDAQMD); Monterey Bay Unified Air Pollution Control District (MBUAPCD); Placer County Air Pollution Control District (PCAPCD); Santa Barbara County Air Pollution Control District (SBCAPCD); South Coast Air Quality Management District (SCAQMD); Ventura County Air Pollution Control District (VCAPCD).

attainment of the 2008 lead NAAQS in the Los Angeles County nonattainment area (79 Fed.Reg. 13875); (3) issued a final rule approving revisions to the SCAQMD portion of the California SIP pertaining to CO emissions from cement kilns and to the EDAQMD portion of the California SIP relating to that district's RACT demonstration for the 1997 8-hour ozone NAAQS (79 Fed.Reg. 14176); (4) published a direct final rule approving revisions to the PCAPCD portion of the California SIP concerning VOC emissions from graphic arts operations and surface preparation and cleaning operations (79 Fed.Reg. 14178, 14205); and, (5) published a direct final rule approving revisions to the California SIP concerning emissions inventories for the 2006 24-hour fine particle matter NAAQS for the San Francisco Bay and Chico nonattainment areas (79 Fed.Reg. 14404, 14460).

Emissions Modeling Platform. In January 2014, the EPA provided notice that the 208 Emissions Modeling Platform data were available for public review and comment. See 79 Fed.Reg. 2437.

Standards of Performance. In February 2014, the EPA provided notice of its proposal to amend the Standards of Performance for New Residential Wood Heaters, and add two new subparts – Standards of Performance for New Residential Hydronic Heaters and Forced-Air Furnaces and Standards of Performance for New Residential Masonry Heaters. The EPA's proposal would significantly reduce PM emissions, as well as CO, VOC and hazardous air pollutant emissions. See 79 Fed.Reg. 6330.

Off-Highway Recreational Vehicles. In February 2014, the EPA provided notice of its decision to grant the California Air Resources Board's request for authorization of amendments to the State's Off-Highway Recreational Vehicles and Engines regulations. See 79 Fed.Reg. 6584.

Nonroad Diesel Engines. In February 2014, the EPA provided notice of its adoption of amendments to the technical hardship provisions under the Transition Program for Equipment Manufacturers relative to the Tier 4 standards for nonroad diesel engines, and to the replacement engine exemption generally applicable to new nonroad engines. See 79 Fed.Reg. 7077.

Protection of Stratospheric Ozone. In March 2014, the EPA provided notice of its proposal identifying uses that qualify for the critical use exemption and the amount of methyl bromide that may be produced or imported for those uses for both the 2014 and 2015 control periods. The EPA also proposed to amend the related regulatory framework to remove provisions related to the sale of pre-phase-out inventory for critical uses. See 79 Fed.Reg. 13006. That same month, the EPA also issued a direct final rule updating regulations governing the trade of HCFCs (to reflect that HCFC control measures have now taken effect under Article 5 of the Montreal Protocol); referring to Party ratification status; addressing commodity codes for ozone depleting substances; and, addressing other minor topics. See 79 Fed.Reg. 16680.

Alternative Test Methods. In March 2014, the EPA announced the availability of the broadly applicable alternative test method approval decisions issued by the EPA under and in support of the Clean Air Act in 2013. See 79 Fed.Reg. 14033.

ATTORNEY'S FEES

No updates this quarter.

CEQA

No updates this quarter.

CLIMATE CHANGE

New Source Performance Standards (NSPS). In January 2014, the U.S. Environmental Protection Agency (EPA) withdrew its April 13, 2012 proposed NSPS for carbon dioxide emissions for fossil fuel-fired electric utility generating units, and proposed new standards for fossil fuel-fired electric utility steam generating units and stationary combustion units. See 79 Fed.Reg. 1352, 1430, 3557, 10750, 12681.

Greenhouse Gas (GHG) Reporting Program. In January 2014, the EPA announced that the comment period on the proposed rule titled, "Greenhouse Gas Reporting Program: Amendments and Confidentiality Determinations for Fluorinated Gas Production," was extended. See 79 Fed.Reg. 2614.

In March 2014, the EPA proposed revisions to and confidentiality determinations for the petroleum and natural gas systems source category and the general provisions of the GHG Reporting Rule. See 79 Fed.Reg. 13394.

Interagency Special Report. In February 2014, the EPA, on behalf of the U.S. Global Change Research Program, requested public engagement in the preparation of an Interagency Special Report on the Impacts of Climate Change on Human Health in the United States. See 79 Fed.Reg. 7417.

1990-2012 GHG Inventory. In February 2014, the EPA announced the availability of the Draft Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2012 for public review and comment. See 79 Fed.Reg. 10143.

COASTAL RESOURCES

No updates this quarter.

ENDANGERED SPECIES

Sierra Nevada Yellow-Legged Frog, Northern Distinct Population Segment (DPS) of the Mountain Yellow-Legged Frog, and Yosemite Toad. In January 2014, the U.S. Fish and Wildlife Service (Service) announced the re-opening of the public comment period on its April

25, 2013 proposal to list the Sierra Nevada yellow-legged frog and the northern DPS of the mountain yellow-legged frog (populations that occur north of the Tehachapi Mountains) as endangered species, and the Yosemite toad as a threatened species. The Service also re-opened the comment period on its related critical habitat designation proposal, and announced the availability of the draft economic analysis. See 79 Fed.Reg. 1805.

Modoc Sucker. In February 2014, the Service provided notice of its proposal to remove the Modoc sucker from the federal list of endangered and threatened wildlife, based on a thorough review of the best available scientific and commercial information. See 79 Fed.Reg. 8656.

Webber's Ivesia. In February 2014, the Service announced the re-opening of the public comment period on its August 2, 2013 proposal to designate critical habitat for Webber's ivesia. The Service also announced the availability of the draft economic analysis and an amended required determinations section, as well as a proposed revision to the unit boundaries and acreages for five units, which results in an increase of approximately 159 acres in the proposed designation of critical habitat. See 79 Fed.Reg. 8668.

Suisun Thistle, Soft Bird's-Beak, California Sea-Blite, California Clapper Rail, and Salt Marsh Harvest Mouse. In February 2014, the Service announced the availability of the final recovery plan for the three endangered plants and two endangered animals listed in the subject heading. See 79 Fed.Reg. 10830.

Eureka Valley Evening-Primrose and Eureka Valley Dune Grass. In February 2014, the Service provided notice of its proposal to remove Eureka Valley evening-primrose (also known as Eureka evening-primrose and/or Eureka Dunes evening-primrose) and Eureka Valley dune grass (also known as Eureka dune grass) from the federal list of endangered and threatened plants. See 79 Fed.Reg. 11053.

Pallid Manzanita. In March 2014, the Service announced the availability of the draft recovery plan for the pallid Manzanita for public review and comment. See 79 Fed.Reg. 11816.

Tidewater Goby. In March 2014, the Service announced its 12-month finding on a petition to reclassify the tidewater goby as threatened (in lieu of endangered). Based on its review of all available scientific and commercial information, the Service concluded that the reclassification is warranted and, therefore, proposed to reclassify the species as threatened. See 79 Fed.Reg. 14340.

Arroyo Toad. In March 2014, the Service announced its 12-month finding on a petition to reclassify the arroyo toad as threatened. Based on its review of all available scientific and commercial information, the Service concluded that the reclassification is warranted and, therefore, proposed to reclassify the species as threatened. See 79 Fed.Reg. 17106.

ENERGY

Environmental Radiation Protection Standards. In February 2014, the U.S. Environmental Protection Agency (EPA) provided advanced notice of a proposal rulemaking to update the EPA's "Environmental Radiation Protection Standards for Nuclear Power Operations" (40

C.F.R. Part 190). The Nuclear Regulatory Commission is responsible for implementing and enforcing these regulations. See 79 Fed.Reg. 6509.

FEES/TAXES

No updates this quarter.

FOREST RESOURCES

No updates this quarter.

HAZARDOUS MATERIALS/ WASTE

Conditional Exclusion of Carbon Dioxide (CO2) Streams. In January 2014, the U.S. Environmental Protection Agency (EPA) finalized hazardous waste management regulations issued pursuant to the Resource Conservation and Recovery Act to conditionally exclude CO2 streams that are hazardous, provided those streams are captured from emission sources, injected into Underground Injection Control Class VI wells for purposes of geologic sequestration, and meet other certain conditions. See 79 Fed.Reg. 350.

Pesticide Spray Drift. In January 2014, the EPA announced the availability of two draft guidance documents for public review and comment that describe how off-site spray drift will be evaluated for ecological and human health risk assessments for pesticides. See 79 Fed.Reg. 4691, 16793.

Pesticide Volatilization. In March 2014, the EPA announced the availability of several draft guidance documents for public review and comment that detail the EPA's approach in developing a pesticide volatilization screening methodology for human health. See 79 Fed.Reg. 16791.

INSURANCE COVERAGE

No updates this quarter.

LAND USE

No updates this quarter.

PROPOSITION 65

No updates this quarter.

RESOURCE CONSERVATION

National Wildlife Refuge System. In January 2014, the U.S. Fish and Wildlife Service (Service) proposed a policy to implement a strategic approach to the growth of the National Wildlife Refuge System. See 79 Fed.Reg. 4952.

Migratory Bird Treaty Act. In February 2014, the U.S. Environmental Protection Agency (EPA) announced the availability of a draft memorandum of understanding between the EPA, Office of Pesticide Programs, and Service regarding implementation of Executive Order 13186, "Responsibilities of Federal Agencies to Protect Migratory Birds." See 79 Fed.Reg. 6900.

2013-2014 Refuge-Specific Hunting and Sport Fishing Regulations. In March 2014, the Service issued a final rule adding 6 national wildlife refuges to the list of areas open for hunting and/or sport fishing, adding new hunts at 6 refuges, increasing the hunting activities at 20 other refuges, and increasing fishing opportunities at 2 refuges. The EPA also adopted refuge-specific regulations pertaining to migratory game bird hunting, upland game hunting, big game hunting, and sport fishing for the 2013-2014 season. See 79 Fed.Reg. 18410.

SOLID WASTE

No updates this quarter.

WATER QUALITY

National Pollutant Discharge Elimination System (NPDES) Permits. In January 2014, Region 9 of the U.S. Environmental Protection Agency (EPA) provided notice of availability of its final general NPDES permit for discharges from offshore oil and gas exploration, development and production facilities located in federal waters off the coast of southern California. The general permit applies to 23 existing development and production platforms, as well as to any new exploratory drilling operations located in and discharging to the specified lease blocks on the Pacific Outer Continental Shelf covered by the permit. See 79 Fed.Reg. 1643.

Uniform National Discharge Standards. In February 2014, the EPA and the U.S. Department of Defense provided notice of proposed performance standards for certain discharges incidental to the normal operation of a vessel of the Armed Forces into the navigable waters of the United States, the territorial seas, and the contiguous zone. See 79 Fed.Reg. 6117.

National Primary Drinking Water Regulations. In February 2014, the EPA provided notice of its direct final action to make minor revisions and corrections to the final Revisions to the Total Coliform Rule, as authorized under the Safe Drinking Water Act. See 79 Fed.Reg. 10665, 10752.

Effluent Limitations. In March 2014, the EPA finalized changes to the effluent limitations guidelines and standards for the Construction and Development point source category. See 79 Fed.Reg. 12661.

WATER RESOURCES

No updates this quarter.