

**2010 TENTATIVE LEGISLATIVE CALENDAR**  
 COMPILED BY THE SECRETARY OF THE SENATE & THE OFFICE OF THE ASSEMBLY CHIEF CLERK  
 Revised 10-15-09

**DEADLINES**

- Jan. 1** Statutes take effect (Art. IV, Sec. 8(e)).
- Jan. 4** Legislature reconvenes (J.R. 51(a)(4)).
- Jan. 10** Budget must be submitted by Governor (Art. IV, Sec. 12 (a)).
- Jan. 15** Last day for **policy committees** to hear and report bills introduced in 2009 for referral to **fiscal committees** (J.R. 61(b)(1)).
- Jan. 18** Martin Luther King, Jr. Day.
- Jan. 22** Last day for any committee to hear and report to the **Floor** bills introduced in their house in 2009 (J.R. 61(b)(2)). Last day to submit bill requests to the Office of Legislative Counsel.
- Jan. 31** Last day for each house to pass **bills** introduced in 2009 (J.R. 61(b)(3)) (Art. IV, Sec. 10(c)).

JANUARY							
	S	M	T	W	TH	F	S
Interim Recess						1	2
Wk. 1	3	4	5	6	7	8	9
Wk. 2	10	11	12	13	14	15	16
Wk. 3	17	18	19	20	21	22	23
Wk. 4	24	25	26	27	28	29	30
Wk. 1	31						

FEBRUARY							
	S	M	T	W	TH	F	S
Wk. 1		1	2	3	4	5	6
Wk. 2	7	8	9	10	11	12	13
Wk. 3	14	15	16	17	18	19	20
Wk. 4	21	22	23	24	25	26	27
Wk. 1	28						

- Feb. 8** Lincoln's Birthday observed.
- Feb. 15** Washington's Birthday observed.
- Feb. 19** Last day for bills to be introduced (J.R. 61(b)(4), J.R. 54(a)).

MARCH							
	S	M	T	W	TH	F	S
Wk. 1		1	2	3	4	5	6
Wk. 2	7	8	9	10	11	12	13
Wk. 3	14	15	16	17	18	19	20
Wk. 4	21	22	23	24	25	26	27
Spring Recess	28	29	30	31			

- Mar. 25** Spring Recess begins upon adjournment (J.R. 51(b)(1)).
- Mar. 29** Cesar Chavez Day observed.

APRIL							
	S	M	T	W	TH	F	S
Spring Recess					1	2	3
Wk. 1	4	5	6	7	8	9	10
Wk. 2	11	12	13	14	15	16	17
Wk. 3	18	19	20	21	22	23	24
Wk. 4	25	26	27	28	29	30	

- Apr. 5** Legislature reconvenes from Spring Recess (J.R. 51 (b)(1)).
- Apr. 23** Last day for **policy committees** to hear and report to **fiscal committees** **fiscal bills** introduced in their house (J.R. 61(b)(5)).

MAY							
	S	M	T	W	TH	F	S
Wk. 4							1
Wk. 1	2	3	4	5	6	7	8
Wk. 2	9	10	11	12	13	14	15
Wk. 3	16	17	18	19	20	21	22
Wk. 4	23	24	25	26	27	28	29
No Hrgs.	30	31					

- May 7** Last day for **policy committees** to hear and report to the floor **nonfiscal** bills introduced in their house (J.R. 61(b)(6)).
- May 14** Last day for **policy committees** to meet prior to June 7 (J.R. 61(b)(7)).
- May 28** Last day for **fiscal committees** to hear and report to the floor bills introduced in their house (J.R. 61 (b)(8)). Last day for **fiscal committees** to meet prior to June 7 (J.R. 61 (b)(9)).
- May 31** Memorial Day observed.

\*Holiday schedule subject to final approval by Rules Committee.

JUNE							
	S	M	T	W	TH	F	S
No Hrgs.			1	2	3	4	5
Wk. 1	6	7	8	9	10	11	12
Wk. 2	13	14	15	16	17	18	19
Wk. 3	20	21	22	23	24	25	26
Wk. 4	27	28	29	30			

- June 1-4** Floor session only. No committee may meet for any purpose (J.R. 61(b)(10)).
- June 4** Last day to pass bills out of house of origin (J.R. 61(b)(11)).
- June 7** Committee meetings may resume (J.R. 61(b)(12)).
- June 15** Budget Bill must be passed by midnight (Art. IV, Sec. 12(c)).
- June 24** Last day for a legislative measure to qualify for the Nov. 2 General Election ballot. (Elec. Code Sec. 9040)

JULY							
	S	M	T	W	TH	F	S
Wk. 4					1	2	3
Summer Recess	4	5	6	7	8	9	10
Summer Recess	11	12	13	14	15	16	17
Summer Recess	18	19	20	21	22	23	24
Summer Recess	25	26	27	28	29	30	31

- July 2** Last day for policy committees to hear and report bills (J.R. 61(b)(13)). Summer Recess begins on adjournment, provided Budget Bill has been passed (J.R. 51(b)(2)).
- July 5** Independence Day observed.

AUGUST							
	S	M	T	W	TH	F	S
Wk. 1	1	2	3	4	5	6	7
Wk. 2	8	9	10	11	12	13	14
No Hrgs.	15	16	17	18	19	20	21
No Hrgs.	22	23	24	25	26	27	28
No Hrgs.	29	30	31				

- Aug. 2** Legislature reconvenes from Summer Recess (J.R. 51(b)(2)).
- Aug. 13** Last day for fiscal committees to hear and report bills to the Floor (J.R. 61(b)(14)).
- Aug. 16 - 31** Floor session only. No committee may meet for any purpose (J.R. 61(b)(15)).
- Aug. 20** Last day to amend on the Floor (J.R. 61(b)(16)).
- Aug. 31** Last day for any bill to be passed (Art. IV, Sec 10(c), J.R. 61(b)(17)). Final Recess begins on adjournment (J.R. 51(b)(3)).

**IMPORTANT DATES OCCURRING DURING FINAL RECESS**

**2010**

- Sept. 30 Last day for Governor to sign or veto bills passed by the Legislature before Sept. 1 and in the Governor's possession on or after Sept. 1 (Art. IV, Sec.10(b)(2)).
- Oct. 2 Bills enacted on or before this date take effect January 1, 2011 (Art. IV, Sec. 8(c)).
- Nov. 2 General Election.
- Nov. 30 Adjournment *sine die* at midnight (Art. IV, Sec. 3(a)).
- Dec. 6 2011-12 Regular Session convenes for Organizational Session at 12 noon (Art. IV, Sec. 3(a)).

**2011**

- Jan. 1 Statutes take effect (Art. IV, Sec. 8(c)).

## Correction

*Resource Recycling* would like to acknowledge attribution absent from the October '09 article "Reciclaje de crecimiento (growing recycling)." In the article, Environmental Science Associates was credited with conducting the research for the 2007 report, entitled *Identifying Barriers and Benefits to Effective Multi-family Waste Reduction and Recycling Behaviors*, when, in fact, the study was conducted by Environmental Science Associates (ESA) in association with Portland State University and Tabor Consulting. *Resource Recycling* regrets the error.

## News & Views

### PET recycling rate highest since 1997

For the 2008 calendar year, the recycling rate for PET bottles was 27 percent, the highest recycling rate for the commodity in over a decade, according to a report released by the National Association for PET Container Resources (NAPCOR) and the Association of Postconsumer Plastic Recyclers (APR). Over 1.45 billion of the 5.36 billion pounds of PET bottles generated last year were collected, making it the fifth straight year the recycling rate has increased.

Part of the reason for the 9.8-percent increase over 2007's 24.6-percent PET container recycling rate was a reduction of the material available – 5.68 billion pounds of PET containers were generated in 2007. The lack of growth in PET containers is explained in the report as "a perfect storm" of light-weighting, the poor economy and "continued consumer environmental and dietary concerns."

The majority of collected PET was exported overseas, with 836 million pounds purchased by exporters – primarily by China, and including PET sold in mixed bale shipments – up from 755 million pounds in 2007. With that, U.S. reclaimers also purchased 25.5 million less pounds last year, the lowest total in five years, from 641 million pounds in 2007 to 615.5 million pounds in 2008.

Thirteen PET reclamation facilities, with a combined annual capacity of 847 million pounds, were in operation in the U.S. in 2008 – each plant also operated

## Recycling and Composting Patents

Number	Recipient	Description
7,596,311	Tomra Systems	Reverse-vending machine
7,592,416	Joseph Sanders	PS recycling using solvents
7,591,927	IAC Foundation	Recovered paper product
7,591,222	Alain Lafond	Plastic bottle compressor
D601,321	Intercycle LLC	Paper recycling bin
D602,668	Intercycle LLC	Paper recycling bin
D602,669	Intercycle LLC	Paper recycling bin

Copies of patents can be ordered for \$3 each from the Commissioner of Patents and Trademarks, P.O. Box 1450, Alexandria, VA 22313-1450.

at an average utilization rate of 80 percent. Two-thirds of the market is vertically integrated, where recovered resin is used the reclaimer to make fiber, strapping and other goods.

The recycled PET (RPET) market for 2008 was mixed, with sheet and film growing by nearly a fifth, small – about two percent – growth in fiber use, strapping use down largely due to the economy and, finally, a five percent increase in RPET use in bottles.

The data for the 2008 HDPE recycling level is expected to be released soon. HDPE reclaimers meeting at the Association of Postconsumer Recyclers in South Carolina this week say they expect the 2008 rate to be up slightly over the 2007 level.

### RecycleBank unveils new way to earn points

Recycling rewards program RecycleBank has unveiled a new way for program participants to earn RecycleBank points, while also supporting numerous actions that support the environment: The Gconomy (the "G" stands for green).

The Gconomy program financially rewards individuals, companies and communities for undertaking in such green actions as using solar and wind power, riding public transportation, being efficient with water usage and buying products manufactured from recycled content. And, with the introduction of the Gconomy plan also comes the news that a new credit card has been introduced, which works in conjunction with the program.

Issued by Barclaycard U.S., The Gconomy Visa Card allows card members to earn 1.5 RecycleBank points for every dollar spent at a local or national partnering retailer, and one point for every dollar spent on all other purchases. According

to RecycleBank representatives, a portion of every purchase made on the card will be donated to the company's Green Schools Program, which helps fund environmental initiatives at local schools. In addition, the company has committed itself to donating at least \$1 million to the Green Schools Program, via the Gconomy Visa, over the next five years.

"The Gconomy Visa card elevates the RecycleBank rewards program to new heights by enabling RecycleBank to reward our members, our reward partners, and our local communities," said Morley Ivers, RecycleBank's Chief Rewards Officer, in a press release regarding the program. "We even produced the card from 55-percent recycled plastic to reinforce the importance of saving our precious resources."

More information can be found by going to [www.thegconomy.com](http://www.thegconomy.com).

## State and Province Watch

### Bottle bill veto could have severe results

California Governor Arnold Schwarzenegger's decision to veto Senate Bill 402 not only thwarts any possible expansion to the California Redemption Value (CRV) system, but it also could have dire consequences for the Golden State's 22-year-old deposit beverage container redemption program.

Supported by such entities as in-state retailers, bottled water groups, municipalities, environmental organizations and beer producers, SB 402 would have expanded the CRV program to, as of July 1, 2010, include juices and other fruit drinks sold in paperboard and aseptic packaging; soy, nut, rice and other grain beverages, regardless of their container type; and large bottles of

fruit juice. According to state officials, the move would have added an additional 1.5 billion beverage containers to the deposit program. However, in his veto message, Schwarzenegger claimed that CRV would have been applied to products that likely would have ended up in landfill, as, according to the governor, "there are, at present, no known California end-users for the material types SB 402 adds to the program."

Most importantly, though, had the bill been approved, it would have helped bring the state's Beverage Container Recycling Fund (BCRF) back into balance – a fund that, since the turn of the century, has had nearly \$500 million taken from it, with those monies being redistributed to other sources, including the state's General Fund and its Air Resources Board (for planning of the state's Global Warming Solutions Act). According to Susan Collins, executive director of the Container Recycling Institute, "Because SB 402 didn't pass, the fund is now looking at having \$110 million less than it otherwise would've had in this fiscal year." This brings us to the real problem at hand.

The imbalance in the BCRF has already forced the state's Department of Conservation (DOC) to cut \$131 million

in funding for local governments, local conservation corps recycling efforts, payments for supermarket-based recycling and curbside recycling programs, recycling market development and other performance-based incentives for recycling. On top of that, because of Schwarzenegger's rejection of the measure, and in order to save money, the state may now be compelled to reduce processors payments by as much as 85 percent (the impact of the proportionate reduction on the various payments, fees, and other components of the CRV program can be found by going to <http://tinyurl.com/CRVprogram>). Not good news when 90 percent of all CRV material is handled by either traditional return centers (e.g., scrap yards) or supermarket-sited return centers.

In California, traditional return centers, supermarket-sited handling, and non-handling, fee return centers, and even curbside programs, all receive payments from the DOC to compensate them for any of their operating costs that are above scrap value. According to Collins, "If the DOC cuts those payments by 85 percent, you can see pretty clearly how return centers will be operating in the red, and in a hurry. That's the key issue here. Busi-

nesses will only bleed for so long before they're forced to shut down and move on." Continued Collins, "And, if return centers are forced to shutter because of the program, and consumers are using curbside to recycle these containers, then the social contract between the state and the consumers, under the deposit law, has been broken because those people have a right to receive the refund they paid for. We, as a society, should not make it inconvenient for consumers to get the refund back, because then it's just a tax."

Upon hearing the news of the governor's veto, environmental advocacy organization Californians Against Waste (CAW) issued a press release detailing the severe program changes that will likely occur because of the 85-percent cut in funding. Those program changes include, in conjunction with the aforementioned program funding cuts, the elimination of 5,000 recycling-related jobs and the closing of nearly 1,200 supermarket-based recycling centers. This is unfortunate because, as stated by Collins, "some 600 California grocery stores are already unserved by recycling centers and, without relief, they will be obligated to take containers inside their stores." Sources close to the situation are

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**CARDBOARD ONLY**  
BREAKDOWN BOXES



**YARD WASTE ONLY**



**RECYCLE HERE**



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• Aluminum Cans  
• Glass Bottles & Jars (Green, Brown, Clear)  
• Metal Cans



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**ALUMINUM ONLY**



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Reader service #11

speculating that, if recycling centers are to close because of the lack of funding, then grocery stores will be forced to redeem used beverage containers at the register (which is already a fall-back option included in the current deposit law). To note, 5.5 billion containers were recycled via supermarket return centers in 2008.

One provision of SB 402, which would have helped diminish the \$200 million deficit the fund is facing for fiscal year 2009-2010, involved accelerating the payment schedule made by distributors, from

90 days to 60 days. "Had the bill passed, in the year where that change would have occurred, you would get 13 payments in a 12-month period," said Collins. "That 13<sup>th</sup> payment amounts to around \$100 million, giving the fund a one-time boost for that year." This proposal was one part of SB 402 that Schwarzenegger did endorse and, according to his veto message, he has directed his administration to pursue that in emergency regulations.

Another boost for the program would be to expand it to include wine and liquor,

a move that, according to CAW Executive Director Mark Murray, has been proposed multiple times over the last several years. Unfortunately, "the votes have simply not been there, due to opposition from California's influential wine industry," said Murray. "And that continued to be the case this year." The ironic part about this is that, in his veto message, Schwarzenegger claimed that the bill's lack of recognition of wine and distilled spirits, "which are more like the products currently subject to the CRV and are typically paid for



The following is a breakdown of recycling measures that have recently been introduced, debated or voted on by U.S. legislatures.

### Congressional Action

HR3592

Amends the U.S. Internal Revenue Code of 1986 to allow a waste plastic recycling tax credit for producing qualified synthetic oil from recyclable plastic material

### Mercury products

<u>State</u>	<u>Bill(s)</u>	<u>Description</u>
CA	AB1173	Creates free-of-charge fluorescent light recycling opportunities for consumers by requiring that manufacturers establish and maintain recycling programs for residential fluorescent lamps. Bill also prohibits the distribution of energy efficiency investment funds, or other funds generated from usage-based charges on electricity distribution, to manufacturers not meeting compact fluorescent lamps specifications established by the state (vetoed by Governor Arnold Schwarzenegger, the bill works against the state's program of providing monetary incentives to both manufacturers and retailers to reduce the increased costs of CFLs to the consumer, and could compel manufacturers and retailers to choose not to participate in either program. Schwarzenegger also stated that passing the bill would have decreased CFL sales and undermined the state's present energy-efficiency efforts)

### Miscellaneous

<u>State</u>	<u>Bill(s)</u>	<u>Description</u>
CA	AB473	Requires owners of multi-family properties, consisting of five or more units, to offer residents recycling opportunities beginning July 1, 2010 (vetoed by Governor Arnold Schwarzenegger, due to the bill placing costly requirements directly on the owner/operators of multi-family properties)
CA	SB546	Amends current used oil recycling program on several levels, including tweaking the system to longer provide loans, and develop and implement an information and education program to promote methods to reduce the amounts of used oil generated (enacted by Governor Arnold Schwarzenegger on October 11 <sup>th</sup> )

### Tires

<u>State</u>	<u>Bill(s)</u>	<u>Description</u>
CA	SB167	Amends California Tire Recycling Act, requiring that CIWMB expand its five-year tire recycling plan to include the development of projects (i.e., mitigation, cleanup, prevention, re-use and recycling) in the California-Mexico border region that address the movement of used tires from California to Mexico, which that are eventually disposed of in California (enacted by Governor Arnold Schwarzenegger on October 11 <sup>th</sup> )

from consumer's disposable income," was another reason for his decision to deny the bill. However, according to Murray, when asked earlier this year by the DOC for permission to sponsor legislation to add wine and liquor, Schwarzenegger denied that permission.

What happens from this point on is still anyone's guess. Schwarzenegger's administration has written a proposal that details several ways in which long-term relief could be provided to the fund. One of these plans includes having manufacturers pay a larger portion of the processing fees, because, currently, manufacturers only pay

a small percentage of the full processing payment. Additionally, subsequent legislation will more than likely be introduced later this year, or during the 2010 regular session, of which addresses the above issues and, according to Schwarzenegger's message, "should contain provisions that prohibit any additional loans to the General Fund, in the future, and require the General Fund to repay past loans from this program."

However, according to Collins, "If changes aren't made quickly, many redemption centers may close. And, if legislation is passed in 2010 to address the financial

situation, such a "fix" could come too late, as the closed centers may not be able to reopen." Resource Recycling will continue to follow this story.

## New recycling plant planned for Oregon

In a state that could use some good news regarding employment, a new plastics bottle recycling plant is scheduled to be built in the Northern Oregon community of St. Helens, bringing to Columbia County 50 new job opportunities.

## Programs In Action

### Summary of recent developments

Over a dozen North American communities have recently launched, expanded or released information about their municipal recycling programs.

Municipality/County	Action
Ada County, ID	A new seven-year contract with Allied Waste will bring single-stream recycling to the unincorporated portions of the county
Broward County, FL	Converted 26 of the county's 31 municipalities to single-stream collection
Calgary, Alberta	City officials claim the city's new curbside program is on pace to collect over 80,000 tons per year, twice as much as the community's previous drop-off program
Crestwood, MO	Thanks to a \$164,496 grant from the St. Louis County Health Dept., the city will purchase 4,600 new 64-gallon roll-carts, enough to serve 90 percent of the community
Hartford, CT	Went citywide with the RecycleBank program on October 26 <sup>th</sup> . The program now services 25,000 households
Hope Mills, NC	Commissioners have agreed to institute a curbside recycling program, and has since invited proposals from private waste-hauling contractors for the program
Houston, TX	Officials announced the city will partner with RecycleBank and expand the area's single-stream collection program to cover 22,000 households
Mercer County, PA	The Mercer County Improvement Authority approved a new recycling contract that will update the approach of the county's recycling program, from dual to single-stream, saving county residents more than \$3.2 million over the next three years
Nashville, TN	Officials announced the city's curbside program will be expanded to the neighborhoods of Antioch, Hermitage and Old Hickory
New London, CT	Switched to single-stream collection as of November 1 <sup>st</sup>
North Haven, CT	Expanded to single-stream collection on October 1 <sup>st</sup>
Jefferson City, MO	Recently commenced new mandatory curbside recycling program, which utilizes a 65-gallon rollcart for recyclables. Residential material is pick up on a weekly basis and the service costs homeowners \$15.94 per month
Philadelphia, PA	Received \$14.1 million in grant funding from the U.S. Dept. of Energy, which will be used, to, among other things, expand the RecycleBank program citywide
Pryor, OK	Updated the area's transfer station to accept such recyclable material as paper, cardboard, plastic and aluminum
San Francisco, CA	The City's mandatory food scrap diversion law recently took effect, which requires that all Bay Area residential and commercial building owners contract recycling and composting services
San Mateo County, CA	Settled on a new recycling facility contract with Bulk Handling Systems, which will create the Shoreway Environmental Center. The single-stream and mixed commercial MRF will include an expanded transfer station for more recycling, major traffic improvements, green building features and a new environmental education center. (BHS will install a 45-ton-per-hour system). The center is slated to open in January 2011
Union, MI	Launched new bi-weekly curbside recycling program. The township is slated to pay for the initial year of service, with residents paying \$17 per year after that. The program may also be expanded to multi-family properties
Washington County, UT	Officials announced that the county's recycling program collected more than two million pounds of recyclable material in the program's first year

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF ALAMEDA

10  
11 TOMRA PACIFIC, INC., a Delaware  
Corporation, JOLLY GIANT FLEA  
12 MARKET, INC., a California Corporation  
dba BIG FOOT RECYCLING, and  
13 MICHAEL RAY REGAN and DANIEL  
PATRICK REGAN dba RB ENTERPRISES  
14 RECYCLING,

15 Petitioners and Plaintiffs,

16 v.

17 JOHN CHIANG, California State Controller,  
MICHAEL C. GENEST, California Director  
18 of Finance, and BRIDGETT LUTHER,  
California Director of Conservation, in their  
19 official capacities,

20 Respondents and Defendants.  
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ENDORSED  
FILED  
ALAMEDA COUNTY

NOV - 9 2009

CLERK OF THE SUPERIOR COURT  
By: JOHN BARBER

No. 09 483580

PLAINTIFFS' MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT OF VERIFIED PETITION  
FOR WRIT OF MANDATE (Code Civ.  
Proc. §1085) AND COMPLAINT FOR  
DECLARATORY RELIEF (Code Civ.  
Proc. §1060) AND ATTORNEY'S FEES  
(Code Civ. Proc. §1021.5)

Date: 1-19-10  
Time: 9AM  
Dep't: 31  
Judge: Hon. Frank Roesch

HOWARD  
RICE  
NEMEROVSKI  
CANADY  
FALK  
& RABKIN  
A Professional Corporation

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INTRODUCTION

1

STATEMENT OF FACTS

2

A. The California Beverage Container Recycling Program And Fund.

2

1. The Recycling Program Was Established To Encourage And Increase The Recycling Of Beverage Containers In California.

2

2. The Recyclers And Processors Serve A Critical Role In The Recycling Program.

4

B. The Recycling Program Has Been A Great Success And A Model For Other States' Programs.

6

C. Because Of Improper And Ill-Advised "Loans" From The Recycling Fund To The General Fund, The Recycling Fund Has "Inadequate Monies" For The 2009-10 Fiscal Year And Cannot Make Full Payments To Recyclers And Processors.

7

D. If Recyclers Do Not Receive Adequate Payments This Year, They Will Be Forced To Significantly Scale Back Recycling Operations Or Shut Down Entirely, Bringing Recycling Of Bottles And Cans In California To A Halt.

10

ARGUMENT

12

RESPONDENTS SHOULD BE ORDERED TO REPAY THE "LOANS" FROM THE RECYCLING FUND TO PROTECT THE VIABILITY OF THE RECYCLING PROGRAM.

12

CONCLUSION

14

HOWARD  
RICE  
NEMEROVSKI  
CANADY  
PALK  
& RASKIN  
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§14560	3
§14574	3
§14575(a)	5
§14580(a)	3
§14581	3
§14585(a)	5
Cal. Stats., ch. 379, Item 3480-011-0133 (2002)	8
Cal. Stats., ch. 157, Item 3480-011-0133 (2003)	8
Cal. Stats., ch. 907 (2006)	8
Cal. Stats., ch. 1, Item 3480-011-0133 (2009)	8, 12

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## INTRODUCTION

Petitioners, a group of small, medium and large recycling and processing companies in California, have brought this action to stop the dismantling of the State's Beverage Container Recycling Program ("Recycling Program") and ensure its continued health and vitality in the years to come.

On June 23, 2009, the California Department of Conservation ("DOC") announced that commencing July 1, 2009, there would be "inadequate monies" in the Beverage Container Recycling Fund (the "Recycling Fund") to make the payments required by the Beverage Container Recycling and Litter Reduction Act (the "Recycling Act"), Public Resources Code §§14500 *et seq.* This includes payments and grants to independent companies that handle and process used beverage containers, cities and counties and local conservation corps, all of which are designed to encourage the recycling of used cans and bottles and reduce the amount of litter that is left on public beaches, streets and highways or simply deposited in landfills. Given the shortfall in funding, the DOC reduced these payments by *up to 85 percent*. Effective November 1, 2009, the DOC further reduced these payments by *up to 100 percent* because of the continuing deteriorating condition of the Recycling Fund.

The reason for the Recycling Fund's financial crisis is no mystery. The State Controller, with the approval of the Legislature, has for years been transferring substantial amounts of funds from the Recycling Fund into the state's General Fund without repayment. In the Budget Act of 2002, the Legislature authorized a "loan" of \$218 million, which has never been repaid. In the Budget Act of 2003, the Legislature authorized another "loan" of \$98.3 million, which similarly has never been repaid. (Indeed, although both "loans" were required to be repaid by June 30, 2009, as that deadline approached, the Legislature simply deferred the repayment date to June 30, 2013.) This year's budget likewise authorized the Controller to make yet another \$99.4 million transfer from the Recycling Fund to the General Fund on July 1, 2009.

The Controller's ability to make these transfers, however, was subject to an important condition. Each of the Budget Acts at issue provides that the Controller must "ensure that

1 the programs supported by the [Recycling Fund] are not adversely affected by the loan”  
2 authorized therein. The Legislature’s inclusion of this condition in the Budget Acts was no  
3 accident. The same principle is embodied in Government Code Section 16310, which  
4 expressly prohibits any loans from a special fund “that will interfere with the object for  
5 which a special fund was created.”

6 The “loans” the Controller has made from the Recycling Fund to the General Fund  
7 violate this fundamental principle—they have required the DOC to make drastic cuts that, if  
8 they remain in place, will have catastrophic consequences for beverage container recyclers  
9 and processors in the state and will most likely spell the end of the Recycling Program as it  
10 has existed since 1986. The Respondents must be ordered to repay these “loans”  
11 immediately in order to make whole the Recycling Fund and provide for the continued  
12 viability of the Recycling Program.

#### 13 STATEMENT OF FACTS

#### 14 A. The California Beverage Container Recycling Program And Fund.

#### 15 1. The Recycling Program Was Established To Encourage And Increase 16 The Recycling Of Beverage Containers In California.

17 The Legislature created the California Beverage Container Recycling and Litter  
18 Reduction Act (the “Recycling Program”) in 1986 to encourage increased recycling of used  
19 cans and bottles and reduce the amount of such litter. *See* Pub. Res. Code §§14500 *et seq.*  
20 The Recycling Program is administered by the California Department of Conservation  
21 (“DOC”). *See id.* §14530.

22 The Recycling Program “focuses on three fundamental concepts: (1) a deposit to give  
23 an incentive for recycling by consumers; (2) conveniently located recycling centers where  
24 consumers can recycle and collect the deposits; and (3) the ‘polluter-pays’ principle,  
25 embodied in a processing fee for materials whose cost to recycle exceeds their inherent scrap  
26 value.” Declaration Of Christopher Kao In Support Of Petition For Writ Of Mandate And  
27 Complaint For Declaratory Relief And Attorney’s Fees (“Kao Decl.”) Ex. A at 3  
28 (Department of Conservation, California Beverage Container Recycling Program History

1 and Fund Management Options, February 27, 2007); *see also* Pub. Res. Code §14501.

2 To facilitate the operation of the Recycling Program, the Legislature established the  
3 California Beverage Container Recycling Fund (“Recycling Fund”). Pub. Res. Code  
4 §14580(a). The Recycling Fund was established as a special fund, separate and apart from  
5 the state’s general treasury fund and budgeting process. *Id.* More specifically, the  
6 Recycling Fund was “continuously appropriated to the [DOC] for expenditure without  
7 regard to fiscal year,” to further the DOC’s operation of the Recycling Program. *Id.*

8 The Recycling Fund is intended to be self-sufficient. To that end, the Recycling  
9 Program generates money for the Recycling Fund by collecting both (i) the processing fees  
10 described above from beverage container manufacturers and (ii) recycling deposits—known  
11 as the California Redemption Value (“CRV”)—from beverage container distributors (who in  
12 turn collect the deposits from retailers who collect the deposits from consumers). Pub. Res.  
13 Code §§14560, 14574. The Recycling Program then uses the money in the Recycling Fund  
14 to:

- 15 (1) refund recycling deposits to consumers returning their used bottles and cans;
- 16 (2) make administrative, handling and processing payments to the “Recyclers” and  
17 “Processors” of the empty beverage containers; and
- 18 (3) make other expenditures designed to encourage recycling, including, among other  
19 things,
  - 20 (a) payments to community conservation groups for litter reduction and  
21 recycling programs;
  - 22 (b) payments to cities and counties for litter reduction and recycling programs;
  - 23 (c) payments for public education campaigns; and
  - 24 (d) payments for research and development into improved recycling methods  
25 and manufacturing methods involving recycled materials. *See* Pub. Res. Code §14581; Kao  
26 Decl. Ex. A at 3-4 (describing all of the activities funded by the Recycling Program designed  
27 “to encourage recycling and increase the recycling market and infrastructure throughout the  
28 state”).

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1 The payments to Recyclers and Processors were intended "to create and maintain a  
2 marketplace where it is *profitable* to establish sufficient recycling centers and locations to  
3 provide consumers with convenient recycling opportunities." Pub. Res. Code §14501(f)  
4 (emphasis added).

5 **2. The Recyclers And Processors Serve A Critical Role In The Recycling**  
6 **Program.**

7 The "Recyclers" and "Processors" that handle and process the billions of empty bottles  
8 and cans that pass through the system are obviously critical to the mission of the Recycling  
9 Program. They serve as the link between consumers and the manufacturers that re-use the  
10 recycled materials. See Declaration Of Adrian White In Support Of Verified Petition For  
11 Writ Of Mandate And Complaint For Declaratory Relief And Attorney Fees ("White Decl.")  
12 ¶4.

13 As a general matter, "Recyclers" operate recycling centers where consumers can take  
14 their used bottles and cans and exchange them for recycling deposits and sometimes a scrap  
15 material fee. White Decl. ¶3. Recyclers then bundle up all the returned materials and  
16 arrange for transport of the materials to "Processors." *Id.* "Processors" separate the used  
17 bottles and cans by material type (i.e., glass, plastic, aluminum), compact them, and bundle  
18 them for sale to manufacturers that use the scrap material to create new glass, plastic or  
19 aluminum products, including new beverage containers. See *id.* ¶6.

20 There are two types of recycling centers. "Traditional Recycling Centers," which are  
21 generally large waste processing facilities—typically located outside of densely populated  
22 areas—that receive bulk volumes of empty bottles and cans. White Decl. ¶3. These  
23 facilities account for roughly half of all recycled bottles and cans in the state. *Id.*

24 "Convenience Zone (CZ) Recycling Centers," which are smaller facilities typically  
25 located in supermarket parking lots, are used by consumers to drop off smaller volumes of  
26 empty bottles and cans. White Decl. ¶4. CZ Recycling Centers typically consist of several  
27 large bins and one employee with a scale to weigh returned materials. *Id.* The Recycling  
28 Program requires that a CZ Recycling Center be located within 1/2 mile of a supermarket in

1 the state with gross annual sales of \$2 million, and that each center operate at least 30 hours  
2 per week. *Id.* There are approximately 1,200 certified CZ Recycling Centers in operation  
3 today that account for roughly a third of all recycled cans and bottles in the state. *Id.*

4 CZ Recycling Centers derive revenue by selling the scrap materials delivered to the  
5 center. Except in the case of a few extremely high-volume CZ locations, this revenue is  
6 often lower than the costs of operating the center. CZ Recycling Centers would not be cost-  
7 effective without support from the state. White Decl. ¶8. Accordingly, the Recycling  
8 Program pays recyclers two types of payments. First, there is a set per-container "handling  
9 fee," which is intended to promote a wide geographic dispersal of recycling centers in the  
10 state. *Id.* ¶11; *see also* Pub. Res. Code §14585(a) (handling fees are intended to "provide an  
11 incentive for the redemption of empty beverage containers in convenience zones"). Second,  
12 there are "processing payments" intended to help recyclers offset the deficiency between the  
13 market value of the scrap material and cost of transporting empty beverage containers to a  
14 processing facility.<sup>1</sup> *Id.* ¶9; *see also* Pub. Res. Code §14575(a) (payments must be made to  
15 processors when the empty beverage containers have a "scrap value less than the cost of  
16 recycling"). The "processing payment" is adjusted regularly based on the commodity prices  
17 of the scrap materials. *Id.* ¶10. Without these Recycling Program payments, the operation  
18 of CZ Recycling Centers is a money-losing proposition in California. *Id.* ¶¶8, 12; *see also*  
19 Declaration of K. Thomas Smith In Support Of Verified Petition For Writ Of Mandate And  
20 Complaint For Declaratory Relief And Attorney Fees ("Smith Decl.") ¶¶5, 10; Declaration  
21 of Daniel Patrick Regan In Support Of Verified Petition For Writ Of Mandate And  
22 Complaint For Declaratory Relief And Attorney Fees ("Regan Decl.") ¶¶7-10.

23 The Petitioners in this action each operate CZ Recycling Centers located primarily at  
24 supermarkets throughout the state:

25 TOMRA presently operates approximately 382 CZ Recycling Centers throughout the  
26

27  
28 <sup>1</sup>The DOC typically makes "processing payments" directly to Processors, who in turn  
pass the payments through to Recyclers.

1 state of California (TOMRA has so far had to close 30 of its sites because of the reduction in  
2 funding from the DOC) and has roughly 700 employees statewide (TOMRA has so far laid  
3 off 45 employees because of the reduction in funding from DOC). White Decl. ¶5.  
4 Collectively, TOMRA recycling sites, together with TOMRA's commercial business, are  
5 responsible for the recycling of slightly less than 3 billion bottles and cans a year. *Id.* ¶¶5-7.

6 Big Foot Recycling operates eighteen CZ Recycling Centers in Northern California.  
7 *See* Smith Decl. ¶2. It currently has 45 employees (Big Foot was forced to conduct a series  
8 of layoffs as a result of the July 1, 2009 cuts). *Id.* ¶11. Big Foot recycles approximately 64  
9 million used beverage containers annually from its eighteen sites, and another 36 million  
10 from sites owned by other companies. *Id.* ¶2.

11 Until very recently, RB Recycling operated four CZ Recycling Centers in the San  
12 Diego area (it has been forced to close one center because of the reduction in funding from  
13 the DOC). Regan Decl. ¶¶2, 9. It has eight employees (RB Recycling has laid off one  
14 employee due to the July 1, 2009 cuts). *Id.* ¶5. The four RB Recycling centers handled  
15 approximately one million bottles and cans a month. *Id.* ¶3.

16 All Traditional Recycling Centers also act as Processors. Some CZ Recyclers also act  
17 as Processors, including TOMRA and Big Foot. White Decl. ¶¶5-6; Smith Decl. ¶2.

18 **B. The Recycling Program Has Been A Great Success And A Model For Other**  
19 **States' Programs.**

20 By any measure, the Recycling Program has been an unmitigated success. Recycling  
21 of empty bottles and cans in the state is now nearly 75 percent of all beverage containers  
22 sold, almost double the rate of recycling that existed before the Recycling Program was  
23 established. *See* Kao Decl. Ex. B (DOC Biannual Report, May 8, 2009); Ex. C (California  
24 Resource Recovery Association, "Some Facts About California's Bottle Bill"). In particular,  
25 recycling of glass and plastic bottles has increased from an almost negligible level to 76  
26 percent of glass bottles and an amazing 91 percent of HDPE (high-density polyethylene)  
27 plastic bottles in 2008. *Id.*

28 In 2008, Californians recycled more than *16.1 billion* beverage containers and

1 California leads the country in total quantity of bottles and cans recycled and in per capita  
2 recycling percentage. Kao Decl. Ex. B; White Decl. ¶7. In addition, according to the  
3 California Resource Recovery Association, a public interest group, the Recycling Program  
4 has cut the amount of beverage container litter on public beaches in half, and significantly  
5 reduced litter throughout the state. See Kao Decl. Ex. C.

6 The Recycling Fund that supports the Recycling Program has for the most part been  
7 financially sound, "the result of many years of revenues exceeding expenditures." See Kao  
8 Decl. Ex. A at 1. Indeed, through Fiscal Year 2006-07, the Fund had generated a balance of  
9 more than \$200 million. *Id.* Ex. C; see also *id.* Ex. D at 51 (Governor's Proposed Budget  
10 2008-09). This is largely because "redemption payments are made for 100 percent of  
11 beverage containers sold in California, but refund values are only paid for the containers that  
12 are recycled in California." *Id.*, Ex. A at 1.

13 Recently, because of an increase in spending by the Recycling Program in an effort to  
14 boost recycling rates to at least 80 percent, expenditures now exceed revenues. In Fiscal  
15 Year 2006-07, the Recycling Fund generated revenues of approximately \$834 million, but its  
16 expenses were \$892 million, a shortfall of \$58 million. See Kao Decl. Ex. D at 51. In Fiscal  
17 Year 2007-08, the Recycling Fund generated revenues of approximately \$1.062 billion, but  
18 its expenses were \$1.110 billion, a shortfall of \$48 million. See *id.*, Ex. E at 49-50  
19 (Governor's Proposed Budget 2009-10). In Fiscal Year 2008-09, which ended on June 30,  
20 2009, the Recycling Fund generated revenues of approximately \$1.038 billion, but expenses  
21 were \$1.136 billion, a shortfall of nearly \$100 million. See *id.*

22 **C. Because Of Improper And Ill-Advised "Loans" From The Recycling Fund**  
23 **To The General Fund, The Recycling Fund Has "Inadequate Monies" For**  
24 **The 2009-10 Fiscal Year And Cannot Make Full Payments To Recyclers And**  
**Processors.**

25 The recent operating deficits in the Recycling Fund would have posed no threat to the  
26 Recycling Program if the Legislature had not made "loans" totaling \$415.7 million from the  
27 Recycling Fund to the General Fund.

28 In the Budget Act of 2002, the Legislature authorized the Controller, at the direction of



1 the Director of Finance, to make a "loan" of \$218 million from the Recycling Fund to the  
2 General Fund. Cal. Stats., ch. 379, Item 3480-011-0133 (2002). The Legislature, however,  
3 expressly specified that; "[i]t is the intent of the Legislature that the repayment is made so as  
4 to ensure that the programs supported by this fund are not adversely affected by the loan."  
5 Id. (emphasis added).

6 In the Budget Act of 2003, the Legislature authorized the Controller, at the direction of  
7 the Director of Finance, to make an additional "loan" of \$98.3 million. Cal. Stats., ch. 157,  
8 Item 3480-011-0133 (2003). Again, the Legislature expressly specified that: "It is the intent  
9 of the Legislature that the repayment is made so as to ensure that the programs supported by  
10 this fund *are not adversely affected* by the loan." Id. (emphasis added).

11 Although each of these "loans" were originally to "be fully repaid by June 30, 2009,"  
12 neither was repaid. Instead, as the deadline for repayment approached, the Legislature  
13 simply deferred the payment date until June 30, 2013. Cal. Stats., ch. 907 (2006) (extending  
14 the repayment dates).

15 Making matters worse, the Legislature authorized the Controller, at the direction of the  
16 Director of Finance, to make yet another loan of \$99.4 million in the Budget Act of 2009, to  
17 be repaid by June 30, 2013. Cal. Stats., ch. 1, Item 3480-011-0133 (2009). As with the prior  
18 loans, the Budget Act of 2009 expressly provides that "repayment shall be made so as to  
19 ensure that the programs supported by the California Beverage Container Recycling Fund  
20 *are not adversely affected* by the loan." Id. (emphasis added).

21 These "loans" have placed the Recycling Fund in a perilous position. In a June 2, 2009  
22 report to the Budget Committee, California's Legislative Analyst's Office noted that at the  
23 end of Fiscal Year 2009-10 (commencing July 1, 2009 and ending June 30, 2010), the  
24 Recycling Fund's projected deficit would be \$160 million (*see* Kao Decl. Ex. F (June 2,  
25 2009 LAO Report, "May Revision Overview: Resources")), and on June 23, 2009, the DOC  
26 announced that there were "inadequate monies" in the Recycling Fund for Fiscal Year 2009-  
27 10 to pay the full amount of handling fees and processing payments. *See id.* Ex. G (June 23,  
28 2009 DOC Notice to All Recycling Program Participants).

1           Accordingly, on July 1, 2009, the DOC reduced handling fees *by 85 percent* and  
2 processing payments *by nearly 30 percent*. See Kao Decl. Ex. H (October 20, 2009 DOC  
3 Notice to All Recycling Program Participants). Specifically, the original handling fee of  
4 \$.0098 per container was reduced to \$.00147. *Id.* The original processing payment for  
5 glass, for example, was reduced from \$.026 per container to \$.022. *Id.*

6           The DOC also made huge cuts to other recycling programs supported by the Recycling  
7 Fund, including, for example, grants to local conservation corps (reduced from nearly \$19.5  
8 million to less than \$3 million), funding for public education and information (reduced from  
9 \$5 million to \$75,000) and payments to cities and counties to support local recycling efforts  
10 (reduced from \$10.5 million to \$1.575 million). Kao Decl. Ex. H.

11           The DOC announced still further reductions on October 20, 2009. Effective  
12 November 1, 2009, the DOC reduced handling fees *by 100 percent* and processing payments  
13 *by an additional 5 percent*. Kao Decl. Ex. H. Thus, the already reduced handling fee of  
14 \$.00147 per container was further cut to \$0. *Id.* The reduced processing payment for glass  
15 was cut from \$.022 per container to \$.019. *Id.*

16           The DOC also made additional cuts to its community programs. For example, the  
17 DOC further reduced grants to local conservation corps (from less than \$3 million to less  
18 than \$1 million), funding for public education and information (from \$750,000 to less than  
19 \$250,000) and payments to cities and counties to support local recycling efforts (from  
20 \$1.575 million to \$525,000). Kao Decl. Ex. H. According to the DOC, these drastic cuts  
21 were necessary “due to the lack of monies in the Fund.” *Id.*

22           Given the relative healthy status of the Recycling Fund as reviewed above, the root of  
23 this shortfall in the Fund is obvious—the \$415.7 million in “loans” from the Recycling Fund  
24 to the General Fund. Absent these transfers, there would be sufficient funds in the  
25 Recycling Fund to pay all of the anticipated expenses of the Recycling Program, including  
26 the full handling fees and processing payments currently being paid to program participants.  
27 There should be no mistake—these “loans” are the reason why there are insufficient assets in  
28 the Recycling Fund to continue to meet the obligations of the Recycling Program. Indeed, in

1 vetoing a recent bill that would have added revenue to the Recycling Fund by both  
2 increasing the CRV and expanding the types of containers subject to the CRV, Governor  
3 Schwarzenegger stated that the Recycling Fund is “facing a severe deficit at the end of the  
4 2009-10 Fiscal Year because Californians are recycling more and *because this fund has*  
5 *made loans to the General Fund of hundreds of millions of dollars over the past several*  
6 *years.” Id., Ex. I (Governor Schwarzenegger’s Veto Message, SB 402, October 12, 2009).*

7 **D. If Recyclers Do Not Receive Adequate Payments This Year, They Will Be**  
8 **Forced To Significantly Scale Back Recycling Operations Or Shut Down**  
9 **Entirely, Bringing Recycling Of Bottles And Cans In California To A Halt.**

10 The cuts to the Recycling Program that took effect on July 1, 2009 have had  
11 catastrophic consequences for the Recyclers that participate in the Recycling Program, and  
12 as a direct consequence, the entire Recycling Program as a whole. The further cuts that took  
13 effect on November 1, 2009 only compound the dire situation facing these Recyclers.

14 Without the full handling fees and processing payments traditionally paid by the  
15 Recycling Program, the owners of CZ Recycling Centers have been operating at a loss.  
16 White Decl. ¶¶14-17; Smith Decl. ¶9; Regan Decl. ¶9. The reduction in handling fees and  
17 processing payments, on top of the already depressed commodity prices for scrap materials  
18 (which has already caused huge losses for CZ Recycling Center operators), has been  
19 disastrous for all:

- 20 • TOMRA has incurred more than \$5 million in losses so far this year as a result of  
21 the July 1, 2009 payment reductions and is projected to lose more than \$9 million  
22 this calendar year given the additional November 1, 2009 reductions. White Decl.  
23 ¶¶15-16. (Indeed, if the November 1, 2009 reduced payments had been  
24 implemented on January 1 of this year, TOMRA would have suffered losses of  
25 more than \$18 million in this calendar year alone. *Id.* ¶17.) TOMRA cannot  
26 remain in business in California if it sustains losses at these levels.

27 According to Lawrence Adrian White, President and CEO of TOMRA Pacific, “[i]f the  
28 processing payments and handling fees remain gutted, TOMRA will suffer unsustainable  
losses that would necessarily result in cessation of TOMRA’s California business

1 operations.” White Decl. ¶18.

- 2 • Based on the reductions implemented on November 1, 2009, Big Foot Recycling  
3 projects that it will operate at a loss of \$23,000 a month going forward Smith Decl.  
4 ¶¶8-9. According to K. Thomas Smith, the President of Big Foot Recycling, these  
5 types of losses cannot be sustained and “would likely result in the financial failure  
6 of Big Foot’s convenience zone recycling business.” *Id.* ¶12. Big Foot has already  
7 instituted layoffs in response to the July 1 funding reduction, and will be forced to  
8 begin closing operations if funding is not restored in the near future. *Id.* ¶¶11-12.
- 9 • RB Recycling’s recycling centers “have historically operated on a slim margin of  
10 profit.” Regan Decl. ¶6. According to Daniel Patrick Regan, the owner-operator of  
11 RB Recycling, reduction in payments by the DOC has “had a catastrophic effect on  
12 our already strapped business.” *Id.* ¶9. RB Recycling has already had to close one  
13 of its four recycling centers and terminate one of its employees. *Id.* Mr. Regan  
14 himself has had to deplete his personal savings to keep the company in operation.  
15 *Id.* If the funding reductions continue unabated, RB Recycling has “no viable  
16 option other than closure.” *Id.* (emphasis added).

17 Obviously, the affect of the DOC’s funding cuts to the key participants in the  
18 Recycling Program will have a *direct and unavoidable* consequence for the Recycling  
19 Program. If TOMRA, for example, were to shutter operations in California, roughly one-  
20 third of all CZ Recycling Centers—which are literally scattered throughout every corner of  
21 the state—would close. White Decl. ¶¶5, 19. Assuming that many other similarly-situated  
22 CZ Recyclers and Processors throughout the state would likewise have to drastically scale  
23 back operations, if not close entirely, literally billions upon billions of used bottles and cans  
24 in the state will go unrecycled. The entire purpose of the Recycling Program will be  
25 thwarted, as bottles that would otherwise be recycled will be left on public beaches, streets  
26 and highways or discarded in landfills. *See, e.g.,* Regan Decl. ¶15 (“[T]he lack of  
27 convenient recycling sites will allow potentially millions of pounds of recyclable material to  
28 litter the State of California.”); White Decl. ¶22 (“If [the] subsidies are gone forever, then

1 recycling as Californians have known it for more than two decades will cease to exist.”).

2 **ARGUMENT**

3 **RESPONDENTS SHOULD BE ORDERED TO REPAY**  
4 **THE “LOANS” FROM THE RECYCLING FUND TO**  
5 **PROTECT THE VIABILITY OF THE RECYCLING PROGRAM.**

6 Petitioners seek the issuance of a writ of mandate to restrain the Respondents from  
7 performing their official duties in violation of law. *See Planned Parenthood Affiliates v.*  
8 *Van De Kamp*, 181 Cal. App. 3d 245, 262-63 (1986) (writ relief is available and appropriate  
9 to prevent non-judicial officers from unlawfully exercising their official duties). There is no  
10 question in this case that the Respondents, by failing to repay the \$415.7 million in “loans”  
11 made from the Recycling Fund to the General Fund, are violating the law.

12 Each of the 2002, 2003 and 2009 Budget Acts provide expressly that repayment of the  
13 “loans” from the Recycling Fund to the General Fund is mandatory when needed “to ensure  
14 that the programs supported by the California Beverage Container Recycling Fund are not  
15 *adversely affected* by the loan.” *E.g.*, Cal. Stats., ch. 1, Item 3480-011-0133 (2009)  
16 (emphasis added). These Budget Acts are entirely consistent with the longstanding principle  
17 enunciated in *Daugherty v. Riley*, 1 Cal. 2d 298 (1934), that a loan from a special fund to a  
18 general fund must “be returned to that fund as soon as funds are available” and should not  
19 even be made in the first place if it would “interfere in any manner with the objects for  
20 which such fund was created.” *Id.* at 309 (construing Political Code §444). Today, this  
21 principle is reflected in Government Code Section 16310, which expressly prohibits any  
22 loans from a special fund “*that will interfere with the object for which a special fund was*  
23 *created.*”

24 Here, the record establishes that the “loans” from the Recycling Fund have quite  
25 plainly “adversely affected” the Recycling Program and will continue to “interfere” with the  
26 purpose of the Recycling Fund until they are repaid. As set forth in detail above, because  
27 the Recycling Fund has been severely depleted, the DOC has had no choice but to begin  
28 paying dramatically reduced handling fees and processing payments to CZ Recyclers and  
Processors (along with substantial cuts to other recycling programs supported by the

1 Recycling Fund, including, for example, grants to local conservation corps, funding for  
2 public education and information and payments to cities and counties to support local  
3 recycling efforts). The whole point of these payments, as set forth expressly in the  
4 Recycling Act, is to “*enhance the profitability* of recycling centers.” Pub. Res. Code  
5 §14501(f) (emphasis added): As it stands now, the Recycling Fund has been so depleted that  
6 the DOC is paying *no* handling fees whatsoever and sharply reduced processing payments,  
7 resulting in huge financial *losses* for CZ Recyclers and Processors. If the reductions  
8 continue unabated, it will be next to impossible for most if not all CZ Recyclers and  
9 Processors in the state to stay in business and continue their participation in the Recycling  
10 Program. See White Decl. ¶18; Smith Decl. ¶¶9-12; Regan Decl. ¶9.

11 *A fortiori*, the Recycling Program will be severely harmed if the DOC cannot for the  
12 foreseeable future make full payments to the CZ Recyclers and Processors. If the CZ  
13 Recyclers and Processors are forced to dramatically scale back operations or cease doing  
14 business altogether, the entire purpose of the Recycling Program will be thwarted. Billions  
15 upon billions of the used bottles and cans currently being recycled will not be recycled. If  
16 consumers can no longer find convenient outlets for the recycling of used bottles and cans,  
17 they are more likely to go back to their old ways of discarding them in landfills or worse, on  
18 streets, beaches and other property. This will essentially end the Recycling Program as we  
19 have known it in this state and counteract all of the good that the Recycling Program has  
20 achieved in the 23 years since its inception—plainly an untenable result.

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**CONCLUSION**

For the foregoing reasons, the Court should issue a writ of mandate directing (1) the repayment of funds to the Recycling Fund and (2) the restoration of full handling fees and processing payments to participants in the Recycling Program.

DATED: November 6, 2009.

Respectfully,

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