

AGENDA

ASSEMBLY BUDGET SUBCOMMITTEE NO. 3 NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION

Assemblymember Ira Ruskin, Chair

**WEDNESDAY, APRIL 29TH, 2009
STATE CAPITOL, ROOM 447
9:00A.M.**

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CONSENT CALENDAR

Dep.	Proposal
Water Resources	Bay Delta Monitoring. 5 positions (\$936,000 augmentation from State Water Project Funds) to support and enhance modeling tools used by DWR for planning and management of the State's water resources.
Water Resources	Flow Monitoring Stations. 4 new positions to take over 16 continuous flow monitoring stations in the Sacramento-San Joaquin Delta. These stations are currently being operated by the United State Geological Survey through State funds. Shifting funds to State positions will provide ongoing cost savings.
Water Resources	April Letter: Federal Trust Fund Authority Augmentation. \$5.32 million augmentation in Federal Funds for Central Valley Floodplain Evaluation and Delineation Project.
Water Resources	April Letter: Central Valley Flood Protection Board. Transfer 11 positions from the Central Valley Flood Protection Board to the Department to align program staffing and resources.
Water Resources	April Letter: Salton Sea. \$8 million in reimbursement authority to support Salton Sea Restoration Activities. Currently, \$14 million in Proposition 84 funds that were previously appropriated have not been expended. This authority will allow the Department to move forward on some of these projects.
Water Resources	April Letter: Prop 13 Groundwater Storage Grants. \$218,000 (Prop 13) to provide the balance of grant funding for two contracts with Yuba and Orange Counties.
Water Resources	April Letter: Safety of Dams. \$300,000 (Special Fund) from revenues collected from dam owners to support increased dam safety program.
Fish and Game	Technical Budget Adjustments. \$880,000 adjustment of a series of budget items to better align budgeted resources with programs.
Fish and Game	Facilities Health and Safety Compliance. \$741,000 (Non-dedicated Fish and Game Preservation Fund) in order to enter into a new lease and relocate furniture and equipment from prior facility in San Diego.
Fish and Game	Environmental Review Support. \$500,000 in reimbursements to allow DFG to enter into contracts with Sempra Energy, Tejon Ranch, and Orange County Transportation Authority to provide environmental expertise and accelerate permitting process for these entities.
Fish and Game	Bond Fund Realignment. Various technical adjustments to Propositions 12, 204 and 40 in order to align appropriations with expenditures.

ITEMS TO BE HEARD

3860 – DEPARTMENT OF WATER RESOURCES

ISSUE 1: RECREATION AND FISH AND WILDLIFE ENHANCEMENTS IN THE STATE WATER PROJECT

Governor's Budget Proposal

The Governor's budget proposes \$24.6 million in bond and special funds to pay for benefits to public recreation and fish and wildlife enhancements (R/F&WE) that are provided to the public as a result of the construction of State Water Project capitol infrastructure and its ongoing operation. Examples of benefits for R/F&WE include improvements of campgrounds, new day use facilities, public restrooms, trails and boating facilities ("boating facilities" have included both capitol infrastructure and the basic existence and management of a body of water that allows for boating). By law, the Department of Water Resources (DWR) is required to manage the overall costs of operating the State Water Project and determine, from those totals, what costs should be charged to State water contractors for ratepayer benefits, and which costs should be charged to the State taxpayer for public recreation and fish and wildlife benefits. The following chart outlines for 2009-10 through FY 2011/12 how much the Department is requesting from Proposition 84 for nine separate capital projects to fund the State's portion of R/F&W:

Figure 1.

State Water Project Capital Outlay Costs for Recreation and Fish & Wildlife Enhancement	Revised FY 09/10 through FY 11/12 Amounts		R/F&W % of Total Cost
	Fiscal 2009-10		
	Proj Total	R/F&WE	
Project			
South Delta Improvement Program	\$8,188	\$278	3.40%
Edmonston Pumping Plant Replacements Pumps	\$20,262	\$122	0.60%
Perris Dam Remediation, General	\$239,200	\$15,834	6.62%
Gianelli Pump Generating Plant Butterfly Valves Refurb/Replace	\$18,143	\$249	1.37%
Castaic Intake Tower	\$80,875	\$0	0.00%
SFD Administration Office Bldg, Pearblossom	\$10,843	\$65	0.60%
Santa Ana Pipeline Repairs	\$6,686	\$40	0.60%
SWP Communications Upgrade	\$24,766	\$248	1.00%
SWP Control Systems Upgrade	\$36,118	\$350	0.97%
TOTALS	\$445,081	\$17,186	3.86%

Additionally, in order to fund the R/F&WE costs for ongoing maintenance of the SWP, the Administration is requesting a continuous appropriation from the Harbors and Watercraft Fund of \$7.5 million indexed for inflation to the Department. The Harbors and Water Craft fund is largely supported by boating fees and State fuel taxes to support local grants for boating facilities and public safety activities.

Lastly, while statute requires costs associated by the Department for R/F&WE to be paid for by the General Fund, this budget change proposal follows many years in which no appropriations were made for R/F&WE for neither specific capitol projects nor ongoing SWP operations and maintenance. During this period, the State water contractors have contended that they are owed \$165 million in R/F&WE that were funded from SWP accounts that are allowed under Burns Porter act to be used for R/F&WE. With this proposal, the Administration has developed trailer bill language that would clarify a position that, because the State Constitution prohibits the Legislature from creating certain debts or liabilities for future Legislatures without voter approval, if there is no appropriation in a certain budget year for R/F&WE costs, the State does not carry an obligation to repay those costs in future years.

Background

The Department of Water Resources (DWR) is responsible for operating the SWP on behalf of the public and water contractors who draw water from the project. Operation of the SWP requires nearly a billion dollars in annual capital and staff resources that generally provide the State benefits to three principle areas: water/energy supply, public recreation and fish and wildlife.

Two statutory actions, the Burns Porter Act approved by referendum in 1959 and the Davis Dolwig approved by the Legislature and signed by the Governor in 1961, attempted to lay out parameters for how the development and maintenance of the State Water Project would be funded. The Burns Porter Act initiated the SWP and provided a \$1.75 billion bond for the capital construction costs of building the State aqueduct and it's various storage and pumping facilities. Additionally, the Burns-Porter Act placed the California Water Fund, which receives revenue from SWP ratepayers, outside the budget process through continuous appropriation to provide an ongoing source of funding for future development and maintenance costs.

The Davis-Dolwig Act further refined the distribution of costs of the SWP between the ratepayers who ultimately receive water deliveries from the SWP and the public who benefits from the SWP through recreation access and fish and wildlife enhancements. Generally, the Davis-Dolwig Act states that the State, through the General Fund, is responsible for paying for those activities that provide public benefits of recreation or fish and wildlife enhancements and that the SWP contractors who deliver water to ratepayers are responsible for funding all costs related to energy generation and water delivery to ratepayers.

LAO Analysis

In the LAO Report titled "Reforming Davis Dolwig: Funding Recreation in the State Water Project," the LAO finds that the Governor's proposal does not address a number of major problems with the implementation of the Davis Dolwig Act and that the administration's approach improperly limits the Legislature's oversight role. The LAO recommends that the budget request be denied, and instead offers the Legislature an alternative package of statutory reforms to the act.

LAO review has found that DWR has interpreted the provisions of the Davis–Dolwig Act broadly and as a result has:

- Over–allocated SWP costs to recreation, thereby overstating the appropriate public funding share of SWP costs for recreation.
- Incurred operational costs of recreation facilities without legislative budgetary review.
- Allocated some regulatory compliance costs of SWP operations to Davis–Dolwig and the State, rather than including them in charges to SWP contractors (users of the water system).

As there is currently no State funding source for costs allocated to Davis–Dolwig by DWR, the SWP contractors, who pay most of the costs of SWP, have fronted the monies with the anticipation of repayment by the State. The lack of a State funding source for recreation has also resulted in a situation in which new revenue bonds for SWP construction have been placed on hold, delaying these construction projects.

To address the shortcomings both in the current implementation of Davis–Dolwig by DWR and in the Governor’s proposal to reform the act, the LAO recommends that:

- The Legislature amend the Davis–Dolwig Act to specify what are eligible costs under Davis–Dolwig (and hence to be paid for with State funds) and what costs are to be met by SWP contractors.
- The DWR evaluate whether SWP facilities mainly used for recreation can be divested from the SWP.
- The Legislature provides clear policy direction on the status of costs previously allocated by DWR to Davis–Dolwig and for which the money has been fronted by the SWP contractors.

Staff Comments

The Davis Dolwig Act was established to ensure that public recreation and fish and wildlife benefits would be preserved as a foundation principle of the State Water Project to be funded by State funds. Under the Davis Dolwig Act, the State taxpayer is responsible for funding R/F&WE benefits for both capital projects and ongoing operations for the State water project. The Department uses a methodology based on derived-benefit and geography to determine what amount is ultimately to be charged to the State for R/F&WE. These methodologies are not fixed and change with time and are committed to the Department in statute as well as tied into contracts entered into by the State with contractors. At the hearing, DWR should be prepared to discuss how they determine R/F&WE and clarify why changes have occurred in this methodology with time.

For capital projects, State appropriations for R/F&WE allow the Department to get revenue bond financing since they can show a committed revenue source to pay back the portion of the project that is determined to be a Davis Dolwig cost. The Department has noted, however if no funds are appropriated in the budget, limited funds from other sources can be used to fill in the financing formula in the short term. Staff has concerns that the projects

identified in the request will not be able to get bond financing if the request is not approved. DWR should be prepared to clarify this at the hearing.

For standard operations and maintenance, the Department considers the State's commitment to fund R/F&WE costs as necessary to guarantee that the operation of the State Water Project provides a higher level than would be required by the regulatory process for fish and wildlife enhancements and public recreation. In recent years, the administration has not requested funding to support R/F&WE costs although the SWP contractors have stated that they are owed \$165 million by the State for R/F&WE costs covered by SWP funds. In this proposal, the administration is stating that the State does not owe the SWP for prior costs that were not included in a proposed budget because the constitution prevents one Legislature from binding another for future obligations. Staff agrees with the administration that the annual budget process, or other formal request by the Department of Finance, is the appropriate avenue for the Administration to acknowledge accrual of R/F&WE costs and request appropriate funds. Through this process, the Department of Finance can clearly State what costs it considers are State obligations.

It is difficult to fully assess under the current statutory requirements what the future Davis Dolwig costs will be. As well, it is unclear to staff what impact inaction on these budget proposals would have on the ability of the Department to move forward with these projects and get bond financing. In recent years, the Department has been able to use what are known as "fourth priority" funds to support R/F&WE costs. At the hearing, the Department should be prepared to discuss the extent of the availability of these funds in the future.

Statewide water contractors have stated that they are willing to fully fund the costs of a peripheral canal if it is built. It is estimated that a new conveyance facility would cost nearly \$6 billion. Under the current Davis Dolwig act, what portion of this project would be the responsibility of the State taxpayer? Would the taxpayer be responsible for operations and maintenance costs for a conveyance facility?

Aside from the General Fund, the State has \$54 million in Proposition 84 (sec. 75050 c) that can be used for Davis Dolwig purposes. The budget proposes an expenditure of \$17.1 million, leaving a proposed balance of \$35 million. Considering the magnitude of costs for projects related to the Delta that are discussed in the Bay Delta Conservation Plan, this balance of bond funds should be considered by the Legislature as a short term funding solution for an ongoing need that could grow exponentially if conveyance projects in the Delta are pursued.

Lastly, staff shares concern with one issue raised by the LAO of whether, or at what level, the State taxpayer should be responsible for the portion of R/F&WE costs for operations and maintenance. Since existing regulatory processes require many of the same R/F&WE costs of the permit applicant that are also charged to Davis Dolwig, these costs could be considered costs of doing business by the SWP as public utilities are required to do .

Staff Recommendation: Hold Open while discussions on Water and the Delta proceed.

ISSUE 2: STATE WATER PROJECT PROGRAM MANAGEMENT GROUP

Governor's Budget Proposal

The Governor's budget is requesting 9 positions (\$1.54 million State Water Project Funds) to support a new centralized program management office for State Water Project (SWP) funded activities. This new office would change the way that the Department manages SWP Divisions by creating a central point within the Department to initiate, track, account for, allocate, and bill costs of SWP projects and programs in order to provide improved program performance for water contractors and State and federal agencies involved in these activities.

The Department contends that this new office will provide increased transparency for SWP operations and will ensure that proper charges are incorporated in DWR's annual Statement of Charges to the water contractors.

Background

The State Water Project is funded by the ratepayers of 29 water contracting agencies. Funds collected from water contractors are used off budget by the Department to support all activities needed to operate, maintain, staff and improve the State Water project.

The State Water Project was developed in the 1960s to convey water from Northern California to Southern California. Costs to maintain and improve the project have increased annually while actions taken to address the environmental complexities of the Delta have attributed to an increase in overall costs.

There have been disputes between the SWP contractors and the Departments on how costs have been billed to the Department. The Department has prepared this proposal to address the management of programs and their subsequent costs that are billed to the SWP.

LAO Recommendation

Reject Positions for Program Management Group. Of the 60 new SWP positions nine are program management positions and cost about \$1.5 million. They would be used to establish a centralized point within DWR to initiate, track, account for, allocate, and bill costs of SWP projects. However, the LAO notes that at least 17 positions related to SWP administration, legal review, and protest resolution have been added to the existing base budget for these activities in the past three years. Moreover, it is unclear why the 50-year old program requires at this time a new central program management group. As the budget request has not been justified, the LAO recommends that it be denied.

Staff Comments

The Department and water contractors who fund the SWP have had ongoing disagreements with how costs have been allocated to the Water Project. This proposal would change the way that the Department manages the different divisions of the SWP in a way that would centralize management and provide a single point of information to resolve inquiries for

information and concerns over how SWP are allocated. While staff does have concerns regarding the overall growth in positions for the SWP over the last 5 years, this proposal has merit as it addresses a key point of contention between the Department and those that are responsible for collecting ratepayer revenue. Additionally, the LAO has cited that there needs to be greater transparency in the SWP and their funding should be placed on budget to do so. This recommendation resulted in reporting language in the 2008-09 budget that required the Department to report to the Legislature on how SWP funds were spent. This report was only submitted in one year; however this proposal would allow the Department to provide the Legislature with expedited reporting information on SWP operations.

At the hearing, the Department should be prepared to address in detail how this new office will serve to improve transparency and management of the different divisions of the SWP to both the contractors and the Legislature.

Staff Recommendation: Approve as budgeted.

ISSUE 3: NEW AND EXPANDED REQUIREMENTS FOR THE STATE WATER PROJECT

Governor's Budget Proposal

The Governor's budget is requesting 42 positions (\$5.9 million) funded from State Water Project (SWP) funds for a broad spectrum of activities for State Water project operation including:

- 15 positions for new regulatory mandated requirements for operating the SWP – \$130,000 travel
- 1 position for the Aquatic Nuisance Species Surveillance and Response Program
- 1 position for endangered species and State water project operations analysis and reporting;
- 10 positions for facilities performance data management and review;
- 10 positions for SWP installation and data collection for PDA systems and increased workload requirements;
- 3 positions for SWP aging facilities at San Luis Field Division and increased workload requirements;
- 4 positions for SWP Safety and Security of SWP Facilities, FERC Environmental Compliance and Monitoring and Increased Workload Requirements;
- 4 positions for SWP Asset Management Support; and
- 3 positions for Operations and Maintenance of new SWP Facilities at the East Branch of the California Aqueduct.

LAO Recommendation

Reject Positions for Expanded Operating Programs. The SWP requests 42 of a total of 60 new positions, which would cost about \$5.9 million, for a broad spectrum of SWP programs, including licensing of energy facilities, protection of endangered species, and asset management. The majority of the positions added over the past three years were added for similar purposes, including positions for energy license implementation and environmental compliance. The LAO does not find that the additional requested positions are justified at this time, and therefore recommend that this component of the staffing request be denied.

Staff Comments

Staff feels that individually the positions requested by the Department have merit and is not aware of any protests of these positions by the State Water Contractors. Staff, however, does share concern with the LAO that there has been excessive position growth at the SWP and recommends that the subcommittee consider adopting statutory reporting language similar to what was adopted by the Senate on April 24th to require that the SWP report annually to the Legislature on their expenses.

Staff Recommendation: Approve as budgeted with statutory reporting language.

ISSUE 4: STATE WATER PROJECT CLIMATE CHANGE ACTIVITIES

Governor's Budget Proposal. The Governor's budget is requesting \$1.75 million augmentation and 9.0 positions from State Water Project funds to provide legal and technical expertise to support the SWP's new climate change energy activities that include: reducing greenhouse gas emissions from SWP operations; increasing the use of renewable energy in the SWP portfolio; and tracking and reporting emissions to the California Climate Action Registry.

Background. AB 32 (Núñez) requires all State agencies to consider and implement strategies to reduce their GHG emissions. SB 85 and supplemental reporting requirements from the FY 2007-08 budget act require DWR to report actions it is taking to:

- Phase out use of coal power supplied from its participation agreement for the partial output of Reid Gardner Plan Unit No. 4, and to replace it with other less carbon-intensive energy resources;
- Reduce fossil fuel use and increase energy efficiency in State Water Project operations (including the amount of sources of electricity used to convey water);
- Reduce fossil fuel use in its California Energy Resources Scheduling division contracts and to replace that fuel with less polluting energy resources;
- Reduce energy and water consumption through DWR's statutory and regulatory authority and through disbursement of bond funds;
- Report the annual carbon footprint of the Department's total operations.

Additionally, there are new reporting requirements established by the Air Resources Board as a result of AB 32 (Núñez) as well as a coordinated effort by the Resources agency to report Department GHG emissions to the California Climate Action Registry.

LAO Analysis. Reject Positions for Climate Change Energy Activities. The SWP requests nine new positions at a cost of \$1.7 million to help SWP shift to a more renewable energy-focused portfolio in meeting its energy requirements. The proposal to increase the use of renewable energy in SWP has merit. The LAO feels that this budget proposal, however, has not justified why existing SWP staff working on energy-related matters could not be utilized for this proposal by redirecting their focus to increasing SWP's use of renewable energy. Consequently, the LAO recommends deletion of these positions.

Staff Comments. Staff feels that the activities funded under this proposal to reduce the State water project's carbon footprint are important to support and this proposal should be approved. While there are existing staff at the SWP that work on energy issues, these are new activities that will require dedicated staff to meet statutory requirements to reduce greenhouse gas emissions. To keep the Legislature informed of their progress, staff recommends that the SWP include in their report to the Legislature on GHG emissions, a status report on its success in phasing out contracts with Reid Gardner Coal power plant.

Staff recommendation: Approve as budgeted

ISSUE 5: DELTA HABITAT CONSERVATION AND CONVEYANCE PROGRAM

Governor's Budget Proposal

The Governor's budget is requesting 17 new positions (\$2.6 million from State Water Project Funds) to support Delta Habitat Conservation and Water Conveyance Planning (DHCCP), design and construction activities. Essentially, these resources would support recommendations made by the Bay Delta Conservation Plan (BDCP) for new conveyance options in the Delta and improvements for fish and wildlife habitat. Specifically, this proposal requests:

- 11 new permanent full time positions, one new two year limited term position and 3 3-year limited term positions to support planning, environmental, right of way, engineering and construction activities related to the Bay Delta Conservation plan and Delta Vision process.
- \$180,000 from Proposition 13 and 2 new limited term positions to support the South Delta Fish Facility Improvement Projects.

Background

In response to crashing ecosystems in the Delta, the State has been supporting various Delta-related planning efforts including the Delta Vision Task force that have all agreed that current water conveyance in the Delta is not sustainable from either an environmental or water supply perspective. As recommended by the Delta Vision, this proposal would provide staff augmentations to manage technical studies to begin studying alternatives available for improving the Delta water conveyance systems by looking at the following:

- The possibility of no new Delta conveyance facility;
- The possibility of a dual conveyance facility, as suggested by the Task Force;
- The possibility of an isolated facility;
- The possibility of substantial improvements and protections of the existing water export system, most often referred to as 'armoring the Delta' or a "through-Delta" solution.

Knowledge gained from this process will be integrated into the ongoing public Bay Delta Conservation Plan (BDCP) discussions between State and Delta stakeholders. Ultimately, it is the goal of the BDCP to develop an overarching habitat conservation plan agreement on the Delta that will provide regulatory assurances for water exports in exchange for aquatic and terrestrial environmental mitigation and enhancement that are above and beyond the requirements of CEQA and NEPA.

The DHCCP was created in June 2008 to support the development of an alternative conveyance of water in the Delta region. The DHCCP is intended to carry forward the recommendations of the Delta Task Force and be in line with potential outcomes of the Bay Delta Conservation Plan. Components of the DHCCP include: Planning and operations Management; Engineering Services; Real Estate Activities; contract management; legal services; Geological investigations; and general office support.

LAO Analysis

Analysis Too Narrowly Focused. While the BDCP process described above will provide useful information to inform the Legislature on the conveyance issue, the LAO thinks that its focus is too narrow to fully inform the Legislature on this issue. That is because the BDCP process is essentially a regulatory process intended to result in permit issuance for SWP operations. As such, the focus of the process is not as broad as the one that considers and balances issues from a Statewide perspective.

For example, DWR has indicated that the economic component of its analysis has focused on the potential fiscal impact of various Delta alternatives on State water contractors. While this is an important concern, this focus is too narrow, in our view, and does not appear to be giving adequate consideration to the economic impact of the chosen solution on third parties (such as Delta farmers) or to the fiscal impact of the various alternatives on State finances. Some alternatives could result in significantly greater long-term costs to the State for maintaining levees, roads, and other public facilities.

Ongoing Role Recommended for the Delta Vision Committee. Although the administration has stated publicly on a number of occasions that it will not begin construction of a new conveyance system for the Delta without legislative involvement, the LAO is concerned that the administration is not conducting analyses that will provide the Legislature with the information it will ultimately need to make a wise decision on the conveyance issue. Therefore, the LAO recommends that the Delta Vision Committee be directed to report to the Legislature, prior to its moving forward with construction of a new conveyance system, with the following information on each conveyance alternative evaluated by the administration:

- Costs, including direct costs for construction;
- Potential adverse economic impacts or benefits for third parties. These would include, for example, societal impacts such as impacts on users of the State's drinking water and impacts on sectors of the economy, such as Delta agriculture;
- Potential costs to State and local government agencies;
- Benefits, in terms of the State's ecosystem restoration objectives;
- Benefits, in terms of water supply reliability;
- A clear articulation of the risks and tradeoffs of the alternative, and the policy choices that it involves;
- A clear articulation of the critical assumptions underlying the above findings, and how the findings would change under a different, yet still reasonable, set of assumptions.

As the Legislature proceeds with its search for a Delta solution, it will be important that it be made fully aware of the tradeoffs that it is being asked to accept, so as to ensure that the implemented conveyance solution is consistent with its policy priorities. The LAO thinks that the provision of the information outlined above is necessary to enable the Legislature to establish a sound and sustainable policy for the Delta.

Pumping Plant Fish Protection Activity Funded Inappropriately. The budget requests \$180,000 in Proposition 13 bond funds for the CALFED conveyance program to support the South Delta Fish Facility Improvement Projects. Two new limited-term positions would be responsible for evaluating the impact of Delta pumping on fish populations and protection of fish at the pumping plants. The activities proposed for funding directly benefit both the CVP and SWP water contractors, as they are part of a larger conservation planning effort intended to provide greater regulatory certainty to water exporters and thus greater reliability of water supplies. The LAO recommends that this funding request be rejected, on the basis that the activity's direct beneficiaries—the State and federal water contractors—should pay for the activity, rather than State funds.

Staff Comments

Currently, the Department has limited staff resources to process the initial stages of an EIR, however, this proposal allows DWR to conduct in-depth evaluations of impact needed for all of the technical aspects of a conveyance facility. Staff feels that there is merit to funding positions in the budget to complete comparative studies of different conveyance options in order to properly inform the Legislature of the advantages and disadvantages of the different options for conveyance in the Delta. Staff agrees with the LAO that this review should consist of an examination of all of the impacts noted by the LAO that a proposed facility would have on the State. At the hearing, DWR should be prepared to discuss whether the points of study identified by the LAO will be addressed by the EIR process. Additionally, DWR should discuss how the EIR will be used to inform a future decision by the Legislature on conveyance.

In their BCP, the Department includes construction as one of the activities funded by this proposal. Given the timeline for which a new alternative conveyance facility will be decided upon, designed and ultimately built will be significantly delayed by the regulatory process and by potential litigation, the Department should be prepared to comment on why construction was included in the proposal and whether approval of this proposal by the Legislature would be an approval for construction of a facility.

Staff Recommendation: Hold Open while discussions on water and the Delta proceed.

ISSUE 6: CRITICAL SUPPORT FOR THE DEPARTMENT OF WATER RESOURCES

Governor's Budget Proposal

The Governor's budget includes a \$3.4 million augmentation (State Water Project/Bond Funds) for 26 new permanent positions and four temporary help positions for management and administration.

Positions would be allocated as follows:

- Executive Division – Four temporary help positions to hire retired annuitants;
- Division of Management Services – 12 positions to support Department administration;
- DMS/Departmental Services Office – 3 new positions for procurement and contacting and \$896,000 for security contracting.
- Division of Technology Services – 14 new positions for IT infrastructure and tracking system maintenance;

Because of an increase in staffing levels of 477 permanent program-level staff over the last 3-years, the Department feels that this increase in administrative capacity is needed.

LAO Analysis

Recommend Denial of 26 Positions for Support of DWR Administration. The budget requests 26 new positions and \$3.4 million, of which \$2.7 million would come from SWP funds, to increase administrative capacity to handle workload created by these previous position increases. However, SWP has already received additional administrative positions in recent years. The LAO finds that the request for further additional administrative positions has not been justified, and therefore recommended denying this component of the budget request.

Staff Comments

Staff shares concern with the LAO that the SWP staff levels continue to grow significantly each year. However, because of the importance of the Delta policy issues that they are involved in and the amount of staffing and activities that the Legislature continues to approve for the SWP, this request for administrative support is appropriate.

Staff Recommendation: Approve as budgeted.

ISSUE 7: SOUTH DELTA IMPROVEMENT PROGRAM

Governor's Budget Proposal

The Governor's budget requests a \$29.4 million augmentation from Proposition 1E and \$2.8 million from Proposition 50 for the final design and construction costs for the South Delta Improvement Program (SDIP). The SDIP will consist of permanent operable gates at four locations in the Delta: Middle River, Old River near Tracy, Gantline Canal and Old River near the San Joaquin and will allow water managers to control water flows in the Delta to improve conditions for San Joaquin River salmon and to maintain adequate water levels for agricultural diversions in the south Delta. Currently, the Department uses loose rock barriers in different seasons of the year to achieve some of the benefits of the project.

This proposal is for the acquisition and planning phase of the project. Currently this project is proposed to be 100 percent State funded although Department States in their BCP that they would prefer to cost share with the Federal Government and State Water Project contractors.

LAO Analysis

South Delta Improvement Program Funded Inappropriately. The budget proposes \$29.4 million in bond funds (Propositions 13 and 50) for final design and construction costs for a capital project under the South Delta Improvements Program. The total cost of the project is projected to be about \$105 million. This project directly benefits water users of both the federal Central Valley Project (CVP) and SWP by improving water flow conditions near the pumping plants at Tracy and therefore the reliability of water supplies. However, the budget proposal does not include any funding contribution from the State and federal water project contractors. The proposal acknowledges that a federal cost-sharing agreement has not been secured and that the project, while accomplishing program goals, will "result in a disproportionate level of cost to the State." As this project is now moving into the construction phase, the LAO thinks that cost-sharing agreements with the project's water-user beneficiaries are long overdue. Accordingly, the LAO recommends that the funding proposal be rejected, on that grounds that it is inappropriately funded from State funds rather than by the project's direct beneficiaries.

Staff Comments

Staff agrees with the LAO that this project should have a higher cost share with those that benefit from its operation. At the hearing, the Department should be prepared to discuss with the subcommittee:

What phase of the project is this request for?

What is the anticipated timeline for regulatory approval for the projects?

How much of this funding request is anticipated to be expended in the budget year?

Are there any federal stimulus funds available for the project?

Staff Recommendation: Hold Open as discussions on the delta proceed.

3600 – DEPARTMENT OF FISH AND GAME

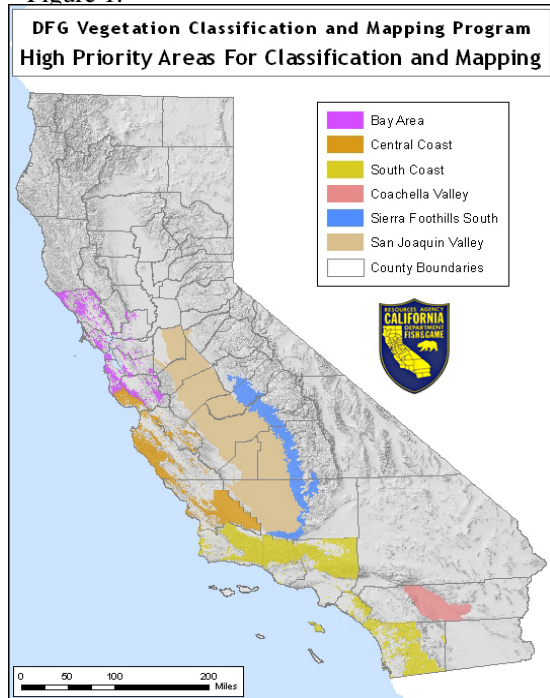
ISSUE 1: VEGETATION MAPPING/WILDLIFE CORRIDORS

As part of their mission, the Department of Fish and Game (DFG) is responsible for identifying, developing and managing wildlife corridors for game and non-game animals Statewide. One strategy in particular that the Administration has discussed as a successful tool for identifying corridors is statewide vegetation classification mapping.

Vegetation Mapping. The Department of Fish and Game Biographic Data Branch has been creating detailed GIS mapping of vegetation/habitat maps. Vegetation/habitat mapping uses precise aerial photography combined with on the ground data gathering to develop pinpoint maps of land vegetation. Vegetation is a cornerstone data set for identifying critical habitats for game and non game species. Once vegetation data is gathered for an area, local planners can then overlay other information such as land use to prioritize land development and conservation activities.

Staff Comments. In August 2007, The Department received a \$2.6 million Proposition 84 grant from the Wildlife Conservation Board (WCB) to further the development of a Statewide vegetation classification and mapping program for the State of California. The first vegetation map product to be developed by the Department was intended to be for the

Figure 1.



northern Sierra Nevada Foothills. Pursuant to direction provided by the subcommittee in 2007, the Department and the WCB have identified additional priority areas to be mapped in figure 1. Additionally, the Department has been working with CalTrans to map wildlife corridors that are potentially impacted by State highways.

At the hearing, the Department should be prepared to provide an update to the committee on the program's progress for both Proposition 84 and CalTrans funded projects. Included in this report, the Department should be prepared to discuss how many acres have been mapped, how much funding has been spent, and, future expectations considering the thawing bond fund crisis.

Additionally, AB 2785 (Ruskin) required the Dept. of Fish & Game to identify the most essential wildlife corridors and habitat linkages in California, and make the information available to all other agencies

and to the public. At the hearing, the Department should present on how it is using this information in order to protect critical wildlife habitat and food supply by preventing the disruption of wildlife corridors.

Staff Recommendation: None, item is informational.

ISSUE 2: SUCTION DREDGE MINING PERMITTING

Background. In 1994 the Department of Fish and Game (DFG) adopted regulations to implement the suction dredge program, as required by statute. Suction dredging is the practice of vacuuming river or lake bottoms for gold. Once removed, sediment and gravel from the river bed are processed by the miner through various sifting grades to extract gold. Along with gold, this process also extracts mercury from the rivers that was used during the gold rush to separate gold. Once processed, material originally taken from the river is either dumped back into the river or otherwise disposed of.

In 2005, the Karuk Tribe of California filed a complaint for declaratory relief against DFG in Alameda County Superior Court alleging DFG's issuance of suction dredge permits in the Klamath, Scott, and Salmon River watersheds violated the California Environmental Quality Act (CEQA) because of the potential for suction dredge mining in these watersheds to result in significant impacts to the newly listed Coho salmon. It is claimed that suction dredging reduces spawning habitat, increases turbidity that harms species and releases pollutants such as mercury, that were sequestered beneath layers of sediment and rock.

On December 20, 2006, the Alameda County Superior Court ordered DFG by June 2008 to "...conduct a further environmental review pursuant to CEQA of its suction dredge mining regulation and to implement, if necessary, via rulemaking, mitigation measures to protect the Coho salmon and/or other special status fish species..." The Court found that DFG has a legal obligation to review the environmental effects of suction dredge mining on Coho salmon and other fish species of special concern.

Staff Comments

The West Coast Salmon population is facing acute risks for survival. In 2008 and 2009, the State and federal government have completely closed all ocean salmon fishing due to precipitously dropping salmon populations. Inland, DFG has banned or extremely limited salmon fishing in the Sacramento, Yuba and Feather rivers where the most important spawning grounds are located. While the Department has acknowledged that suction dredge mining causes harm to endangered fish populations like coho salmon, staff has concerns that the Department has not taken any action to reduce the activity – as was done with fishing – under the circumstances that many of California's native salmon are facing extinction.

In the 2008-09 budget, \$1.5 million General Fund was approved to complete a court ordered environmental review of the Department's Suction Dredging Program. Additionally, the subcommittee approved a moratorium on suction dredge mining in various rivers with sensitive anadromous fish populations until the EIR was completed and new program guidelines were adopted.

At the hearing, the Department should be prepared to discuss what impacts suction dredge mining have on anadromous fish habitats, what the expected timetables for completion of the EIR and what interim measures are being taken to enforce suction mining in sensitive water so as it doesn't degrade habitat for endangered anadromous fish. Staff has concerns that while DFG is completing the EIR of the program, the Department's lack of program enforcement personnel will allow further potential degradation of Statewide anadromous fish habitat.

While the Subcommittee last year supported placing a moratorium on suction dredging in select rivers throughout the State, this trailer bill language was not included in the final budget deal. There is interest from some stakeholders in pursuing a complete moratorium on all suction dredge permits in the State until new regulations are adopted for the program through the following budget and trailer bill language:

Proposed Budget Bill Language

Provision (Item 3600-001-001)

1. *Notwithstanding Section 5653 of the Fish and Game Code, none of the funds appropriated by this item may be spent for the purpose of issuing permits that authorize use of any vacuum or suction dredge equipment in any river, stream, or lake of this State, unless and until the director certifies to the Secretary of State that all of the following has occurred:*

(a) *The Department has completed the environmental review of its existing suction dredge mining regulations, as ordered by the court in the case of Karuk Tribe of California et al. v. California Department of Fish and Game et al., Alameda County Superior Court Case No. RG 05211597.*

(b) *The Department has transmitted for filing with the Secretary of State pursuant to Section 11343 of the Government Code, a certified copy of the new regulations adopted pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, whichever occurs first.*

(c) *The new regulations are operative.*

Proposed Trailer Bill Language

SECTION 1. Section 5653.1 is added to the Fish and Game Code, to read:

5653.1. (a) (1) The program of the Department governing the issuance of permits to operate vacuum or suction dredge equipment is a project pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) and may proceed only if the Department has caused to be prepared, and certified the completion of, a programmatic environmental impact report on the project.

(2) The issuance of permits pursuant to Section 5630 is not a ministerial act pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), and permits shall not be issued by the Department pursuant to the program when a subsequent or supplemental environmental impact report is required to be prepared and certified pursuant to Section 21166 of the Public Resources Code.

(3) This subdivision does not constitute a change in, but is declaratory of, existing law.

(b) Notwithstanding Section 5653, the use of any vacuum or suction dredge equipment in any river, stream, or lake of this State is prohibited until the director certifies to the Secretary of State that all of the following have occurred:

(1) The Department has completed the environmental review of its existing suction dredge mining regulations, as ordered by the court in the case of Karuk Tribe of California et al. v. California Department of Fish and Game et al., Alameda County Superior Court Case No. RG 05211597.

(2) The Department has transmitted for filing with the Secretary of State pursuant to Section 11343 of the Government Code, a certified copy of the new regulations adopted pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, whichever occurs first.

(3) The new regulations are operative.

STAFF RECOMMENDATION: Approve complete moratorium trailer bill and budget bill language as proposed.

ISSUE 3: DIESEL VEHICLE RETROFIT PROGRAM

Governor's Budget Proposal

The Governor's Budget is requesting a one-time augmentation of \$900,000 to retrofit 60 percent of the Department's diesel powered vehicles that are subject to the new diesel vehicle emissions regulations enacted by the Air Resources Board. This augmentation is proposed to be funded from the following:

- \$405,000 General Fund
- \$270,000 Fish and Game Preservation Fund
- \$270,000 Environmental License Plate Fund
- \$63,000 Oil Spill Prevention Administration Fund
- \$54,000 Reimbursements
- \$45,000 Hatcheries and Inland Fisheries Fund

Staff Comments

The Department has identified 75 diesel powered vehicles that need to be retrofitted in order to meet regulatory requirements of the Air Resources Board. This proposal is funded by a mix of General Funds and Special funds that represents the distribution of how these vehicle resources are used by the Department. Staff does not have any concerns with this proposal as the Department is required to meet this mandate by 2010 and they have distributed the costs of the program among the Department's various special fund sources.

Staff Recommendation: Approve as budgeted.

ISSUE 4: RENEWABLE ENERGY REGULATORY ACTION TEAM

Governor's Budget Proposal

The Governor's budget is requesting a \$3.057 million augmentation in reimbursement authority and 22 two-year limited term positions to establish a Renewable Energy Action Team and a Renewable Energy Conservation Planning Program that will work to expedite the citing of renewable energy generation facilities Statewide.

This proposal will allow the Department to lead the development of a multi-species conservation strategy for regions with high renewable energy potential, provide permit assistance technical assistance to energy generators, and coordinate citing requirements with other State and federal agencies in order to expedite the regulatory permitting.

Background

This proposal will help implement the Governor's Executive Order S-14-08 that increased the renewable portfolio standard to 33 percent and required the California Energy Commission (CEC) and Fish and Game (DFG) to undergo a streamlined regulatory process for renewable energy generation facility citing in California. Subsequent to the Executive Order, the Department and the CEC have entered into an interagency Memorandum of Understanding to do the following:

- Coordinate and resolve RPS project siting and biological resources issues with other jurisdictional federal and State resources/regulatory agencies;
- Complete an environmental opportunities and constraint analysis for proposed RPS energy project development regions and locations;
- Provide pre-development guidance to assist developers with siting projects to avoid and minimize environmental impacts;
- Complete best management Practices (BMPs) to assist the design and construction of projects with minimal environmental impacts;
- Complete an assessment of areas where Habitat Conservation Planning (HCP) and NCCP's can be leveraged to provide expedited project permitting and achieve high biological conservation values;
- Complete a draft multi-species conservation strategy and a regional NCCP for the Mojave and Colorado Desert Regions to permit RPS developments;
- Conduct an on-going program of developing multi-species regional conservation strategies/plans in other areas where they are needed to ensure protection of fish and wildlife resources and facilitate RPS energy project siting and developing.
- Conduct an on-going program of permit assistance to facilitate construction of individual RPS projects in environmentally suitable locations.

Staff Comments

For the first two years, the Department is proposing that the program be funded entirely, \$3.06 million, from Energy Commission and Wildlife Conservation Board funds. Starting in fiscal year 2010-11, the Department plans on collecting revenue from energy generators that benefit from the program to support the costs of development and management of Renewable Energy NCCPs. The Department has not traditionally charged fees to beneficiaries of NCCPs. For the hearing, Department should be prepared to discuss the preliminary details how this NCCP fee would be administered and whether it could serve as a model for funding other NCCPS.

Staff Recommendation: Approve as budgeted

ISSUE 5: ECOSYSTEM RESTORATION PROGRAM

Governor's Budget Proposal. The Governor's budget requests \$22 million in Proposition 84 bond funds for DFG to continue CALFED ecosystem restoration projects in the Delta. To date, the Department has identified one project to be funded from the proposed appropriation—the restoration of Dutch Slough Tidal Marsh—at a cost of \$5.9 million.

April Finance Letter. In an April Finance Letter, the Department requests an additional \$7.6 million in State Water Project funds for various projects to address low levels of dissolved oxygen and methyl mercury discharges in the Delta.

LAO Analysis. The LAO recommends that the Legislature reject the January 10 budget proposal for \$22 million for new ecosystem restoration projects until the Legislature has had an opportunity to consider the long-term uses and configurations of the Delta as both an ecosystem and a water supply system. The result of those deliberations may be significant changes to the way in which the State uses the Delta. The LAO believes it would be premature to fund restoration projects before those decisions are made, since fundamental changes to the Delta may make the proposed projects unsustainable in the long term.

In addition, the “End of Stage One Report”—the administration’s review of the CALFED program’s performance between 2000 and 2007—found that in-Delta ecosystem restoration projects have made little progress in improving the Delta’s natural environment, as evidenced by the dramatic decline in fish species such as the Delta smelt. Further, the CALFED program has not yet developed performance measures for monitoring and evaluating project outcomes. Until such performance measures are developed, the LAO believes it would be fiscally imprudent to continue to fund restoration projects whose benefits are uncertain and will not be verifiable.

Staff Comment. Staff disagrees with the LAO that funding on ecosystem projects in and up-stream of the Delta should be put on hold until there is an absolute decision on the configuration of the Delta. Today, there are multiple ecosystem crises that are directly related to the current operation of through-Delta conveyance. Regardless of which Delta configuration is decided upon, through-Delta conveyance will continue for many years since a new conveyance system will face years of legislative, legal and construction delays.

In the meantime, staff recommends that the subcommittee discuss how this funding can be directed to provide immediate benefit for crashing species such as salmon and Delta smelt. As proposed, this proposal does not identify any projects in particular that would be funded from the appropriation; instead, the ERP program depends on stakeholder committees to determine projects priority. At the hearing, the Department should be prepared to discuss: What projects will be funded by the BCP, how those projects will help the current Salmon and Delta Smelt crises, and what measures are used by DFG to measure the effectiveness of the ERP program.

Staff Recommendation: Approve as budget and April Letter Proposals as budgeted