

AGENDA

ASSEMBLY BUDGET SUBCOMMITTEE NO. 3 NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION

Assemblymember Ira Ruskin, Chair

WEDNESDAY, MAY 26, 2010
STATE CAPITOL, ROOM 447
9:00 A.M.

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ISSUES ON VOTE ONLY

California Department of Forestry and Fire Protection

1. State Fire Training: \$293,000 augmentation in the California Fire and Arson Training fund to address costs brought on by an increased demand for fire service training.

Senate approved only the two temp-help positions and redirect two permanent positions from the General Fund to the state Fire Training Funds on a 3-0 vote.

Staff Recommendation is to conform with the Senate

Department of Fish and Game

1. **Multiple Adjustments.** Conform to Senate to reduce OE&E expenses by \$5,000 per position for various fish and game proposals.
2. **Due Diligence Review:** Reject previously approved proposal for \$387,000 for due diligence review. This proposal was withdrawn by the Administration after adoption in the Subcommittee.
3. **May Revision -- Fisheries Restoration Grant Program Reduction:** \$1.5 million reduction from the Fisheries restoration grant program. This program can use Federal Funds and Proposition 84 funds to backfill these cuts.
4. **May Revision – CALFED Ecosystem Restoration Program:** \$500,000 reduction to the CAL FIRE Ecosystem Restoration program. This funding would be shifted to Proposition 84.

Department of Parks and Recreation

1. **April Finance Letter—Office of Historic Preservation.** \$888,000 from reimbursement authority for ARRA funds to fulfill regulatory responsibilities to review projects funded by the American recovery and Reinvestment Act.
2. **Reappropriations:**
 - **YMCA of San Diego County**
6029—California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Bond Fund
(1) Item 3790-101-6029, Budget Act of 2002 (Ch. 379, Stats. 2002)
(a) Urban Park Grants as reappropriated by Item 3790-490-6029(1), Budget Act of 2004 (Ch. 208, Stats. 2004)
Provisions:
1. This reappropriation is limited to the \$901,000 grant to the YMCA of San Diego County.
 - **Richmond natatorium**
0005 – Safe Neighborhood Parks, Clean Water, Clean Air, and Coastal Protection Bond Fund
(1) Item 3790-102-0005, budget Act of 2000 (Ch. 52, Stats. 2000__, (a) 80.25-Recreational Grants. (5) Murray-Hayden grants (c) City of Richmond: Richmond Natatorium, to enable seismic retrofit of the Natatorium, as reappropriated by Item

3790-490-0005 (1)(a)(5)(c), Budget Act of 2008 (Chs. 268 and 269, Stats. 2008), and as further reappropriated by Item 3790-494-0005 (5)(a)(5)(c), Budget Act of 2009 (Ch. 1, Stats. 2009)

Public Utilities Commission

- 1. Capital Outlay Technical Adjustment.** Cost neutral transfer capital outlay lease revenue bond payments between budget items to reflect the relocation of commission staff regulating transportation from the Edmund G. Brown Building in San Francisco to a Satellite office.

Wildlife Conservation Board

1. Reappropriations of unencumbered balances for the following programs:
 - Oakland Woodlands Conservation;
 - Prop 12-Reappropriation (BCP);
 - Prop 84-Reappropriation NCCP (BCP);
 - Prop 84 Reappropriation for San Joaquin River Conservancy;
 - Prop 84-Rangeland, Grazing, and Grassland Protection (BCP);
 - Prop 84-NCCP Implementation-Reversion (BCP); and,
 - Prop 50-Colorado River Acquisition (BCP).

State Water Resources Control Board

- 1. May Revision Basin Planning Fund Shift/Fee Increase.** The May revision is requesting to shift 39.2 positions and \$6.1 million for the Basin Planning Program from the General Fund to the Waste Discharge Permit Fund.

California Energy Commission

- 1. May Revise: Clean and Renewable Energy Business Financing Revolving Loan Fund:** May Revision requests to create a continuously appropriated fund that would enable the Clean Energy Business Financing Program to operate a revolving loan program. Without this language, funds repaid for current ARRA loans would be required to be returned to the Federal Government since there is no revolving loan mechanism in the budget.

LAO Recommendation. The LAO recommends that the Legislature adopt budget bill language tied to the CEC's federal funds appropriation to provide the expenditure of up to \$30 million for the Clean and Renewable Energy Business Financing Program conditioned on enactment of legislation establishing the revolving loan fund to be administered by the program. This will ensure that any policy parameters that the Legislature wishes to place on the operation of the loan fund are in place before expenditures for this new program are made.

Staff Recommendation is to approve LAO recommendation

Department of Toxic Substances

- 1. Toxic Information Clearinghouse:** Governor's May Revision is proposing an augmentation of \$403,000 in 2010-11 and \$108,000 in 2011-12 to develop a Toxics Information Clearinghouse (Clearinghouse) pursuant to SB 509 (Simitian). This proposal is only to develop the actual database infrastructure for which the Department proposes

to use interagency contracting to develop the clearinghouse over a 3 year period for a total anticipated cost to the state of \$551,000.

Department of Food and Agriculture

- 1. MR: Mitigating the Spread of the European Grapevine Moth.** The Governor requests \$3 million (federal funds) to support eradication/control activities of the European Grapevine Moth.

Proposed Loans to the General Fund (GF)

The Governor's May Revise contains the following proposed special fund loans (and loan extensions) to the GF:

Loans

- Electronic Waste Recovery and Recycling Account, Integrated Waste Management Fund – \$75 million
- Department of Food and Agriculture Fund – \$15 million

Loan Extensions (through July 1, 2011)

- Renewable Resource Trust Fund – \$35 million
- California Tire Recycling Management Fund – \$10 million
- California High-Cost Fund-B Administrative Subcommittee Fund – \$75 million
- Universal Lifeline Telephone Service Trust Administrative Committee Fund – \$45 million
- Deaf and Disabled Telecommunications Program Administrative Subcommittee Fund – \$30 million

ITEMS TO BE HEARD

3540 – DEPARTMENT OF FORESTRY AND FIRE PROTECTION

ISSUE 1: EMERGENCY RESPONSE INITIATIVE – GENERAL FUND SAVINGS EROSION

Governor's Proposal

The Governor's proposed Emergency Response Initiative (ERI) will levee a 4.8 percent surcharge on all statewide residential and commercial property insurance policies to fund statewide fire protection and emergency response services. Assuming that the surcharge is initiated in March of 2010, this proposal would generate \$238 million in 2010-11, \$200 of which will be used to offset current CAL FIRE wildfire protection costs. Beginning in 2011-12, the ERI will generate roughly \$480 million per year for emergency response expenditures at Cal EMA, Military, CAL FIRE and Local Agencies.

May Revision Revenue Adjustments

Governor's May Revision is proposing a \$124 million General Fund appropriation – and an equal reduction in Emergency Response Initiative Revenues -- to the Department of Forestry and Fire Protection (CAL FIRE) in order to maintain current baseline funding levels at the Department since the Emergency Response Initiative (ERI) was not approved in the Special Session. In addition, this proposal also requests authority for a cash flow loan to CAL FIRE to meet cash needs resulting from the delay in receipt of revenues to the Emergency Response Fund. If approved in the budget, the ERI is now forecasted to generate \$76 million in General Fund relief by backfilling CAL FIRE emergency response costs.

Staff Comments

The Administration's special session budget assumed \$200 million in General Fund (GF) savings from approval of the ERI. Ultimately, the ERI was not approved, resulting in a equal hole in the Department's budget. In addition to the ERI, CAL FIRE has an additional hole in its budget moving forward resulting from interdepartmental reimbursements that are not going to occur. In order to maintain current levels of funding for the Department.

Staff Recommendation: staff recommends that the Subcommittee take the following two actions to address both funding shortfalls:

1. Approve the ERI with the May Revision adjustment to ERI revenues
2. Transfer an appropriate level appropriation authority from the E-Fund to the Department's baseline budget to account for unrealized reimbursements.

MULTIPLE DEPARTMENTS – FUNDING FOR AB 32 (NÚÑEZ) IMPLEMENTATION

ISSUE 1: AB 32 (NÚÑEZ) IMPLEMENTATION – OVERVIEW AND VOTE ONLY ITEMS

The Governor’s Budget and April Finance Letters propose expenditures of \$39 million from a new AB 32 Cost of Implementation (COI) Fund to implement the bill’s requirements. These include appropriations for eleven different departments (see Figure 1 on the next page), including \$32.9 million for the Air Resources Board baseline budget, and new appropriations proposed for the Department of Housing and Community Development (HCD); Department of Resources Recycling and Recovery (DRRR), Department of Forestry and Fire Protection (DFFP), State Coastal Conservancy (Coastal Conservancy), Department of Water Resources (DWR), State Water Resources Control Board (SWRCB), Department of Public Health (DPH), and Department of Food and Agriculture (CDFA). For the purposes of this hearing, we will not be hearing the proposals for DPG or HCD since they fall outside of the Subcommittee’s jurisdiction but their proposals are displayed on an informational basis.

Progress To-Date (from LAO Analysis)

Emission Reporting Regulations Adopted on Time. The ARB adopted regulations relating to the reporting and verification of statewide GHG emissions in December 2007. This entails requirements that certain emitters defined in the regulations report each year to the ARB on their level of GHG emissions. This information is aggregated in a statewide emissions inventory, which will be used in the future to measure progress in meeting the goals of the law and to verify that emitters are in compliance with the various AB 32 measures that apply to them.

Scoping Plan Developed on Time. In December 2008, ARB adopted the AB 32 Scoping Plan which contains a list of 72 proposed measures and regulations intended to meet the state’s 2020 GHG emission reduction target. The scoping plan documentation included an analysis of the economic impacts of the plan. The ARB released an update of this economic analysis in late March of this year.

Regulations for Nine Early Action Measures Adopted; Three Not Yet in Effect. As required by AB 32, ARB identified a number of measures for which “early action” would be taken to reduce GHG emissions. Assembly Bill AB 32 required that all of these early action regulations be put in place by January 2010. The board has adopted regulations for the nine early action measures that it identified, the most prominent of which is the Low Carbon Fuel Standard, which requires that the carbon intensity of transportation fuels used in California be reduced over time. However, three of the nine sets of regulations are not yet in effect, and thus are not in compliance with the due date specified in AB 32. These regulations are currently being reviewed by the Office of Administrative Law.

Other Regulations Adopted or Under Development. In addition to developing regulations for the early action measures and market-based compliance mechanisms (discussed below), the ARB has adopted or is developing regulations for other measures included in the AB 32 Scoping Plan. For example, regulations have been adopted to reduce GHG emissions from (1) light-duty vehicles (commonly referred to as the “Pavley regulations”) and (2) trucks used to haul goods at ports. Regulations currently under development would

implement a renewable energy standard and reduce GHG emissions from (1) natural gas transmission and distribution systems and (2) refrigerant systems.

In a recent previous budget analysis, *The 2010–11 Budget: Resources and Environmental Protection*, we raised concerns about ARB's regulatory efforts to develop a renewable energy standard. We recommended that ARB immediately cease spending funds for the purpose of developing a new renewable energy standard or similar requirement absent the enactment of legislation that authorizes such activities.

Cap-and-Trade Rulemaking Under Development. The ARB's Scoping Plan proposes the establishment of a cap-and-trade mechanism to address the state's GHG emission reduction goals. Cap-and-trade is a market mechanism whereby an emissions cap is placed by the government on a defined set of emitters—in this case, entities emitting GHGs—that is decreased over time. Under one approach, emitters could be allocated allowances equal to their current emissions output, with the allowances reduced over time. Alternatively, the right to emit a certain number of units of GHG emissions could be auctioned off to any willing purchaser. (A mix of these two allocation strategies is also possible.) However they are allocated, an emitter that had excess emission allowances (for example, because it was effective in reducing its GHG emissions) could sell them to other emitters still needing them to comply with the regulation. In theory, as the cap decreased over time, emitters would have an incentive to either implement cost-effective technological improvements to decrease their level of emissions or purchase emissions credits from others who could accomplish such reductions in a cost-effective manner.

The ARB released a preliminary draft of its cap-and-trade regulation in November 2009. A revised draft of the cap-and-trade regulation is expected to be released in late Spring of this year. The ARB has indicated that it plans to conduct a hearing on the proposed regulation at an October 2010 board meeting and attempt to adopt the regulation by the end of the calendar year, with an effective date of January 2012.

Staff Comments

As the lead agency, the ARB's budget contains the majority of funding for AB 32 (Núñez) implementation. Ongoing funding for the ARB is dedicated to implementing the scoping plan, with targeted actions developed for each sector (Transportation, Water, Energy, Forestry, etc.) identified in the plan. Beyond sector specific actions, the ARB has also been dedicating staff time to the development of a statewide Cap and Trade system to capture emission reductions not captured through command-control regulatory actions. All of these actions fall within the larger timeline written into AB 32 (Núñez) that requires the Air Board to have additional "non-early action" GHG reduction regulations adopted by the Board by 2011 and enforceable by 2012.

Generally speaking, the various AB 32 proposals requested in this year's budget provide funding to leaders of sector specific Climate Action Teams to extend their workload beyond their current activities coordinated by the ARB. Staff has some overarching concerns with approving these proposals at this time. Some of these proposals move the state's AB 32 implementation beyond the core program being implemented by the ARB and fund departments to pursue broad based research programs. These efforts have general merit but at this time, the program should be focused on fine tuning major GHG reduction actions

for forthcoming implementation deadlines. During this period of sharpening the AB 32 implementation strategy, the ARB should be the principle driver of core-activities as they are responsible under statute for the state's achievement of GHG reductions. The Governor's budget begins to spread AB 32 implementation programs beyond the core program to department's that have not been funded in the past. Staff feels that this is problematic with exception to the proposals to increase staffing at the Water Board and Department of Water Resources as their GHG reduction regulations will be implemented through Integrated Regional Water Management water grant programs that are currently being funded with bond funds.

Figure 1

AB 32–Related Activities in the 2010–11 Governor’s Budget

(Dollars in Thousands)

Budget Item	Department	2010–11 Base Funding		New Funding Proposed in 2010–11		Totals in 2010–11 Governor’s Budget	
		Amount	Positions	Amount	Positions	Amount	Positions
0555	Secretary for Environmental Protection	\$1,821	6.0	—	—	\$1,821	6.0
1760	Department of General Services	416	5.0	—	—	416	5.0
2240	Department of Housing and Community Development	—	—	\$54	0.5	54	0.5
3360	California Energy Commission	590	5.0	—	—	590	5.0
3500	Department of Resources Recycling and Recovery ^a	—	—	501	6.0	501	6.0
3540	Department of Forestry and Fire Protection	—	—	1,255	—	1,255	—
3760	State Coastal Conservancy	—	—	120	0.8	120	0.8
3860	Department of Water Resources	236	1.0	326	2.0	562	3.0
3900	Air Resources Board	32,932	155.0	—	—	32,932	155.0
3940	State Water Resources Control Board	—	—	535	2.0	535	2.0
4265	Department of Public Health	—	—	299	—	299	—
8570	Department of Food and Agriculture	—	—	309	1.0	309	1.0
Totals		\$35,995	172.0	\$3,399	12.3	\$39,394	184.3

^a Formerly the Integrated Waste Management Board. Note that 6 positions and \$501,000 shown for the 2010–11 fiscal year is the result of redirection that was originally approved for the 2009–10 fiscal year.

Lastly, the ARB has not begun to collect revenues from the AB 32 administrative fee. Because the priority for funding should be placed on core activities, staff feels that it would be appropriate at this time for the Subcommittee to be conservative in their appropriation of

fee revenue in order to ensure that core programs have funding available to meet their forthcoming deadlines. Beyond the approval of GHG reduction regulations, the LAO has recommended that the Legislature take a step back in next year's budget and develop an AB 32 cross-cut budget that is tied to specific implementation workload. By moving forward at this point with approval of all of these proposals, the Legislature would make it more difficult to return in the following year to zero-base the AB 32 budget as it transitions from program development to implementation.

The remainder of the AB 32 portion of the agenda is divided into: (1) items proposed for vote-only; (2) items proposed for discussion; and (3) a consolidated AB 32 recommendation.

Staff Recommended Items for Vote Only

Staff notes no significant concerns with the following AB 32 proposals (as listed in Figure 1 above) for the reasons noted:

- 1. Housing and Community Development.** This request is the jurisdiction of Subcommittee 4; however, staff notes that it is a very modest request for one position to carry out AB 32 implementation strategies that are dependent on new and expanded activities of HCD's mandated administrative responsibilities pursuant to State Housing Element law.
- 2. Department of Resources Recycling and Recovery.** The DRRR request is merely a fund shift of base AB 32 funding from the Integrated Waste Management Account to the COI Fund.
- 3. Department of Water Resources.** The DWR request is critical to ensuring bond funds, specifically in the Integrated Regional Water Management grant program, are leveraged to support AB 32 goals related to water use and energy efficiency.
- 4. State Water Resources Control Board.** Similar to the DWR item above, the SWRCB request addresses water recycling and reuse in order to reduce greenhouse gas emissions associated with water conveyance, treatment, and discharge.
- 5. Department of Public Health.** Similar to Item 1 (above) this item falls outside the Subcommittee's jurisdiction; however, because this proposal leads the study of the impacts of climate change on the public health, staff supports this proposal.

Staff Recommendation for Vote-Only Items 2-4: APPROVE Items 2-4 (Items 1 and 5 will be approved in other Subcommittees).

ISSUE 2: AB 32 (NÚÑEZ) IMPLEMENTATION – ITEMS FOR DISCUSSION

Department of Forestry and Fire Protection**April Finance Letter Proposal**

The Department is requesting a \$642,000 reduction from Proposition 84 and a \$1.25 million augmentation from AB 32 administrative fee revenue in the Air Pollution Control Account to fund the Department's implementation of the AB 32 scoping plan as it relates to the forestry sector.

In total, this \$613,000 augmentation will be used to fund the development of: baseline climate data related to forested lands; metrics to guide risk analyses and program decision making; and, methodologies for tracking and quantifying carbon sequestration. All of these activities are proposed to feed into the following Greenhouse Gas (GHG) reduction strategies:

- Plans for reforestation to sequester more carbon;
- Forestland conservation to avoid forest loss to development;
- Fuels reduction to reduce wildfire emissions and utilization of those materials for renewable energy;
- Urban forestry to reduce energy demand through shading, increase sequestration and contribute biomass for energy generation; and,
- Improved management to increase carbon sequestration benefits and protect forest health.

Staff Comments

Unlike other areas of the Scoping Plan where GHG emissions can be easily identified through industrial or residential points of emission, it is more difficult to pinpoint GHG reductions in the Forestry sector as it encompasses statewide ecosystems and habitats as well as many different potential strategies for reducing or sequestering carbon. While staff recognizes a need for the Department to commit to a fairly broad compliment of strategies to identify and measure GHG reductions, it is not clear from this proposal what specific workload actions these resources will be dedicated to.

Staff generally agrees that the Department will need additional staffing to begin implementation of forestry sector actions as they are adopted by the ARB. Staff feels, however, that this proposal is premature as AB 32 implementation should be focused at this point on fine tuning core regulatory actions and resources should be conserved until revenue collections are steady to ensure that these activities have necessary funding. Additionally, following the recommendation of the LAO to zero-base implementation budgets in next year's budget discussion, staff feels that this proposal would be more appropriate for consideration next year when the program's focus shifts from the "development" to the "implementation" of regulatory actions. As such, staff recommends that the Subcommittee reject this proposal and defer its consideration to next year when there will be a larger, comprehensive AB 32 implementation discussion.

Staff Recommendation: Reject the proposal

State Coastal Conservancy

BCP-2: Develop Wetland Carbon Offset Protocol. The Governor requests \$120,000 COI Fund to develop a wetland carbon offset protocol to reduce greenhouse gas emissions while providing co-benefits consistent with the California Ocean Protection Council's strategic plan.

Staff Comments. Under the AB 32 Scoping Plan, a certain percentage of emissions reductions may be achieved through use of carbon offsets, some of which may occur through off-site projects that act as carbon sinks (e.g., reforestation projects, or wetlands).

Staff finds no compelling reason to approve this request at this time. Consistent with comments made at the outset of this AB 32 discussion, the proposed activities appear far-removed from "core" greenhouse gas reductions strategies, and it is unclear why the state should invest in these activities at this time (when a significant portion of COI Fund revenues are going to pay back special funds loans taken out for AB 32-implementation over the last several years). Additionally, development of policy on offsets is something that, at a minimum, should be undertaken with the Legislature. There are significant issues with offsets including concerns that they result in verifiable and permanent emissions reductions and are not just empty commitments.

Staff Recommendation: Reject the proposal

California Department of Food and Agriculture**Nitrous Oxide Emissions Research**

The Governor requests one position and \$309,000 COI Fund to conduct research and analysis on nitrous oxide levels emitted from California farm lands.

Staff Comments. The state is already supporting research on nitrous oxide through the CDFA Fertilizing Materials Research and Education Program. Consistent with earlier recommendations to focus AB 32 implementation, this proposal is premature as AB 32 implementation should be focused at this point on fine tuning core regulatory actions and resources should be conserved until revenue collections are steady to ensure that these activities have necessary funding.

Staff Recommendation: Reject the proposal

Consolidated Staff Recommendations:

1. **Reject CAL FIRE proposal;**
2. **Reject State Coastal Conservancy proposal;**
3. **Reject Food and Ag Proposal; and,**
4. **Adopt LAO recommended Supplemental reporting language to require the ARB to zero-base the AB 32 budget and submit the report as part of the 2011-12 budget process.**

3900 AIR RESOURCES BOARD**ISSUE 1: IMPLEMENTATION OF ADDITIONAL RULEMAKING REQUIREMENTS (HEARD APRIL 28TH)****Governor's Budget Proposal**

The Governor's Budget is requesting \$559,000 ongoing from the Motor Vehicle Account and Air Pollution Control Fund and 4 positions to support additional ARB rulemaking responsibilities imposed by AB 1085 (Mendoza). AB 1058 requires the Board to distribute to the public any technical, theoretical or empirical study, report, or similar document related to but not limited to air remissions, public health impacts and economic impacts relied by ARB in proposing a regulation.

Staff Comments

According to the Author, the bill was created because during the development of the Private Fleet Rule and On-Road Green House Gas (GHG) reduction measures stakeholders were unable to gain access to underlying technical information for the regulations until shortly before the regulation was released.

Staff notes that the fiscal analysis for this bill, when it was passed, reported that there would be less than \$100,000 in cost for the ARB to implement the bill. When this issue was heard on April 28th, staff from the Board proposed the following amendments to the legislation in order to align the responsibilities under the act with the staffing requirements analysed in the appropriations analysis. Staff has discussed these amendments with Assemblymember Mendoza's staff and no concerns were cited. These amendments would change intent language in the bill to clarify the level of information that is required to be provided by the act.

SECTION 1. It is the intent of the Legislature in enacting this act to ensure that the public is provided sufficient all of the information relied on by state board staff in proposing the adoption, amendment, or repeal of a regulation, including all information so that interested parties may easily and without undue effort reproduce and verify all aspects of state board staff analysis, related to, but not limited to, air emissions, public health impacts, and economic impacts, ~~performed during the development of a regulation.~~ Nothing in this act is intended to supersede the provisions of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) or the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

SEC. 2. Section 39601.5 is added to the Health and Safety Code, to read:

39601.5. (a) The state board shall make available to the public all information described in paragraph (2) of subdivision (b) of Section 11346.2 of the Government Code, related to, but not limited to, air emissions, public health impacts, and economic impacts, before the comment period for any regulation proposed for adoption by the state board.

(b) In meeting the requirement of subdivision (a), the state board shall not release proprietary, confidential, or otherwise legally protected business information. The state board shall release information in aggregated form, where necessary, to protect proprietary, confidential, or otherwise legally protected business information.

Staff Recommendation: Approve \$100,000 and 2 AGPA positions with proposed TBL

FUNDING AND IMPLEMENTING THE 2009 WATER PACKAGE

ISSUE 1: OVERVIEW AND VOTE ONLY ISSUES

The Subcommittee heard testimony on the pieces of 2009 Water Package over the course of several hearings during March and April. What follows is a very brief recap of the Water Package, and a summary table of the proposals and the staff recommendations, followed by a more comprehensive set of staff comments where the staff recommendations differ from the Governor’s proposal.

Recap of the Water Package. In late 2009, the Legislature and the Governor agreed upon an historic package of water-related legislation that addressed a host of water issues challenging the state of California, in particular the preservation, restoration, and sustainable management of the Sacramento-San Joaquin Delta (Delta). The series of five bills passed in the Seventh Extraordinary Session of 2009, henceforth referred to collectively as “the Water Package,” are summarized in the table below, developed by the LAO.

Figure 4
The Major Components of the 2009 Water Package

Bill	Topic	Key Provisions
SBX7 1 (Chapter 5, Simitian and Steinberg)	Delta Governance	<ul style="list-style-type: none"> Creates Delta Stewardship Council and Delta Conservancy, and reconfigures existing Delta Protection Commission. Requires the council to create a management plan for the Delta (incorporating work from existing planning efforts)—the Delta Plan. Requires development of water flow criteria for Delta ecosystem.
SBX7 2 (Chapter 3, Cogdill)	Water Bond	<ul style="list-style-type: none"> Places an \$11.1 billion legislative bond on the November 2010 ballot, providing for multiple water program goals. Reactivates California Water Commission (with continuous appropriation authority for new storage projects).
SBX7 6 (Chapter 1, Steinberg and Pavley)	Groundwater	<ul style="list-style-type: none"> Requires groundwater elevation monitoring by local agencies (with guidance from Department of Water Resources). Bars counties and certain local agencies that do not comply with reporting from receiving state water grants and loans.
SBX7 7 (Chapter 4, Steinberg)	Water Conservation	<ul style="list-style-type: none"> Requires a 20 percent reduction in urban per capita water use (and 5 percent overall base reduction—regardless of population) by 2020. Requires agricultural water efficiency, and changes certain water recycling and stormwater targets.
SBX7 8 (Chapter 2, Steinberg)	Water Diversion/Rights	<ul style="list-style-type: none"> Requires increased reporting of water use and water diversion; increases certain penalties for water rights violations.

Governor’s Water Package Proposals. As discussed previously, the Governor’s Budget contains a number of requests associated with implementation of the Water Package, with the bulk of the proposed spending aimed at assembling the new Delta Governance structure pursuant to Chapter 5 (SBx7 1, Simitian and Steinberg). The following summary table contains the various BCPs before the Subcommittee and an abbreviated staff recommendation (AAB = Approve as Budgeted; AWM = Approve with Modifications):

Governor's Water Package Proposals and Staff Recommendations

Item	State Agency/Major Activities	Proposed 2010-11 Expenditures (in thousands)	Abbreviated Staff Recommendations
1	Delta Stewardship Council	\$49,100	AWM
2	Delta Conservancy	1,300	AAB
3	Delta Protection Commission	2,000	AWM
	Department of Water Resources		
4	• Reactivate Water Commission	817	AWM
5	• Groundwater Monitoring	1,321	AWM
6	• Water Conservation	5,086	AAB
	State Water Resources Control Board		
7	• Water Conservation	155	AAB
8	• Delta Watermaster and Delta Flow Criteria	673	AAB
9	• Water Diversion and Use Reporting	253	AAB
	Department of Fish and Game		
10	Delta Flow Criteria	\$1,000	AAB

Below is a proposed vote-only calendar for items that are recommended for approval as budgeted. This is followed by slightly more comprehensive descriptions of the items where staff recommends modifications to the Governor's Budget. Finally, comes a series of proposed refinements to the appropriations contained in Chapter 2 (SBx7 7, Steinberg).

ITEMS PROPOSED FOR VOTE-ONLY

The following items from the table above are proposed for approval as budgeted on vote-only:

Item 2 – Delta Conservancy

Item 6 – Department of Water Resources (DWR) – Water Conservation

Item 7 – State Water Resources Control Board – Water Conservation

Item 8 – State Water Resources Control Board – Delta Watermaster & Delta Flow Criteria

Item 9 – State Water Resources Control Board – Water Diversion & Use Reporting

Item 10 – Department of Fish and Game – Delta Flow Criteria

Staff Recommendation: APPROVE Items 2, and 6-10 as budgeted.

ISSUE 2: 2009 WATER PACKAGE -- ITEMS FOR DISCUSSION

ITEMS PROPOSED FOR DISCUSSION**Delta Stewardship Council (Council)**

The Governor requests 58 positions and \$49 million (including \$5.9 GF; \$2.9 million federal funds; and the remainder from bond funds and bond-funded reimbursements) to support first-year operations of the new Council.

Staff Comments

As was noted when this item was originally heard on April 21st, the bulk of the requested resources are to be transferred from the CALFED program, and the LAO recommends approving this proposal for one year only, and directing the Administration to zero-base all Water Package expenditures in the 2011-12 Governor's Budget that are proposed to be supported from "old" CALFED monies. The intent is to have each entity (council, conservancy, etc.) conduct its own re-justification of the resources it is receiving in the 2010-11 fiscal year. Staff supports this approach and recommends the Subcommittee adopt placeholder TBL to require the Council and other entities (see more below) to submit zero-based budgets next year.

Additionally, as noted previously, there is no long-term financing plan for many Water Package activities, in particular Delta Governance. In the absence of new policy legislation in the interim to establish a long term funding source, staff recommends the Subcommittee adopt placeholder TBL instructing the Administration to propose, as part of the 2010-11 Governor's Budget, a financing plan. In concept, the TBL would require the Administration to identify a non-GF source of support for the various Delta Governance entities, and any other on-going administrative activities (e.g., groundwater monitoring at the Department of Water Resources) for which there is not currently identified a permanent funding source.

As was raised by the LAO, there is strong concern that the contractors that the Council is using to manage the development of the Delta Plan are have conflicting interests and are not acting in an independent capacity from other non-state Bay Delta Conservation Plan interests. To address these concerns Staff recommends the Subcommittee:

- Hold up the funding: Placeholder BBL that restricts the expenditure of the DSC \$16 million appropriated for the development of the Delta Plan until the DSC re-solicits and enters into a contract agreement with contractors that are not also providing contract services for development of the Bay Delta Conservation Plan.
- Give them more time for the plan: Draft Trailer Bill Language that gives the DSC an additional year – until January 2013 to complete the Delta Plan
- Adopt placeholder TBL specifying that any contract for developing the Delta Plan must include provisions ensuring that the contractor's work on the Delta Plan be conducted independently from any work that a contractor may do associated with developing the Bay Delta Conservation Plan. Additionally, staff recommends the Subcommittee require the Council to designate a single staff person to oversee all Bay Delta Protection Plan contracts.

Finally, as discussed in more detail below (see Item 3), the Delta Protection Commission requires additional resources. Since the resources requested for the Council are not consistent with a workload justification, but rather a wholesale shift of CALFED resources (less a small complement for the Delta Conservancy), staff recommends reducing Council funding by \$2 million and shifting these monies to the Delta Protection Commission.

Staff Recommendation:

1. Approve \$47 million for the Delta Stewardship Council.
2. Adopt placeholder BBL that restricts the expenditure of the DSC \$16 million appropriated for the development of the Delta Plan until the DSC re-solicits and enters into a contract agreement with contractors that are not also providing contract services for development of the Bay Delta Conservation Plan.
3. Adopt placeholder trailer bill language that gives the DSC an additional year – until January 2013 to complete the Delta Plan.

Delta Protection Commission.

The Governor requests six positions (three permanent and three one-year, limited-term) and \$2 million (Environmental License Plate Fund--ELPF) to:

- Prepare, adopt, and update periodically the Delta economic sustainability plan (noted above);
- Complete the process for establishment of a Delta National Heritage Area by Congress;
- Review and analyze land use proposals in the Primary Zone and the completion of a management plan in order to make recommendations to the Council;
- Support the council as a voting member; and
- Support the Delta Conservancy as a member of the Advisory Subcommittee.

Staff Comments. As previously discussed on April 22, representatives of the Commission and several Delta counties have raised concern that the Commission's ongoing budget may not be adequate to support its role in supporting the Delta Conservancy and serving as a major forum for Delta counties to participate in major Delta policy decisions in the coming years. Specifically, the Commission would like an augmentation for contract funding to ensure that it can timely respond to the workload identified above, specifically, preparation of the Delta Economic Sustainability Plan by July 1, 2011; and preparation of the report on recommendations for potential expansion of the primary zone of the Delta, required to be submitted to the Legislature by July 1 of this year. On their May 24th hearing, the Senate took the following action: "**approve a \$1.4 million augmentation to the Commission; and (4) adopt placeholder BBL requiring the \$1.4 million to be expended on specified activities**" (Staff notes that a \$2 million recommended shift to the Commission was reduced by the Committee consistent with testimony indicating that the Commission has requested approximately \$600,000 in the current year from the Council for near-term work on the Delta economic sustainability plan and the Delta Protection Commission Land Use and Resource Management Plan).

Staff Recommendation: Conform with Senate

Department of Water Resources**1) Staff California Water Commission**

The Governor's budget is requesting \$817,000 and 6 positions to support the 9 member California Water Commission that currently has no staff or appointed members. This proposal has a complex funding package with the majority of funding coming from State Water Project Funds (\$550,000) and a combination of existing General Fund (\$111,000) and bond funds (\$85,000). In total, this proposal needs \$75,000 in new budget authority.

Background

Under SBX7 2 (Cogdill), over \$3 billion of continuously appropriated funding in the Safe, Clean, and Reliable Drinking Water Supply Act of 2010 (Bond Act of 2010) would flow through the Commission. Since the Commission is currently inactive and without staff, this proposal would provide the necessary staffing to process those funds through the Commission if the Bond is approved. If the Bond Act of 2010 is not approved in the budget year, the Department argues that the resources are still needed as the Commission plays a major oversight role in eminent domain decisions and is required to approve a resolution for those decisions to move forward.

Staff Comments

Staff feels that there is merit in this proposal if the Water bond Act of 2010 is passed this year since SBX7 2 (Cogdill) gives the Water Commission significant new responsibilities in the expenditure of Water Bond Act funds. Staff has concerns, however, that while the Commission does have workload associated with the adoption of program regulations, eminent domain decisions and approval of non internal administrative procedures, there may not be enough workload to justify a full-time CEA IV, Staff Council III, Senior Engineer and two clerical staff for the Commission if the Bond Act is not approved. Because the Water Commission serves all of the programs within the department, staff feels that the Department should be able to redirect existing staff to complete pre-water bond workload. Staff recommends that the subcommittee approve this proposal contingent upon the passage of the 2010 Water Bond. When this item was heard in the Senate on May 24th, the Senate rejected the proposal outright with the direction to the department that if the bond passes, they can redirect positions or have positions administratively approved to fill this workload. Staff concurs with their action and recommends that the Assembly conform to the Senate action.

Staff Recommendation: Conform to Senate action, reject proposal.

2) Groundwater Monitoring Program (DWR). The Governor requests five positions and \$5.3 million (\$1.3 annually for four years from Proposition 50) for the DWR to carry out the following activities required pursuant to SBX7 6:

- Determine the responsible groundwater monitoring entities in all basins and sub-basins;
- Develop standards for reporting of groundwater elevation data;
- Establish a priority schedule for the monitoring of groundwater basins and the review of groundwater elevation reports;

- Make recommendations to local entities to improve the monitoring program and assist them in complying with the program's requirements; and,
- Conduct an investigation of the state's groundwater basins and report findings to the Governor and the Legislature.

In order to support this request, the Governor additionally requests a reversion of Prop 50 funds originally appropriated to the CALFED Bay-Delta Program in the Budget Act of 2003 for the Red Bluff Diversion Dam Project.

Staff Comments. Consistent with prior staff comments, staff notes that the proposed Prop 50 funding is not an ideal match with the required activities. Therefore, the request should be approved for one year only, with the expectation that the Administration will develop an alternative fund source as part of the long-term financing plan required in TBL (see recommendation for Item 1 above).

Staff Recommendation: Approve funding for one-year only.

3) Necessary Changes to SBX7 7 Appropriations

The following refinements to SBX7 7 of the 2009 Water Package are intended to maximize the impact of the bill.

- a) Broaden Prop 1E flood control project eligibility.** Public benefits resulting from this \$170 million appropriation should be maximized, beyond just protection of water conveyance. Bond language allows for construction/improvement of levees, weirs, bypasses, etc., as well as studies necessary to make future investments in flood control systems. In order to address the multiple objectives of new Delta governance structures and Delta policies, eligibility criteria should be expanded beyond protections for water conveyance to take full advantage of Prop 1E funding potential.

DWR has asked for the second section, below, to clarify expenditure authority for levee improvements beyond those required to protect water conveyance. [SBX7 8 specified that water conveyance protection was the sole project criteria]

Of the funds made available by Section [5096.821](#) of the Public Resources Code, the sum of one hundred seventy million dollars (\$170,000,000) for flood protection projects that improve the sustainability of the Sacramento-San Joaquin Delta, including, but not limited to, projects that reduce the risk of levee failure that would jeopardize water conveyance.

These funds may also be expended by the Department of Water Resources for both of the following purposes:

(1) Local assistance under the delta levee maintenance program pursuant to Part 9 (commencing with Section 12980) of Division 6 of the Water Code, as that part may be amended.

(2) Special flood control projects under Chapter 2 (commencing with Section 12310) of Part 4.8 of Division [6](#) of the Water Code, as that chapter may be amended.

- b) Link stormwater-flood funding to Senator Pavley's SB 790 (2009).** Senator Pavley's stormwater planning bill passed with broad support last year. Stormwater-flood project funds should be linked to this policy.

SB 790 established criteria for comprehensive stormwater planning, emphasizing components that address the use of stormwater for local supply.

State funding for stormwater management should be consistent with these new planning standards.

Of the funds made available by Section 5096.827 of the Public Resources Code, the sum of seventy million dollars (\$70,000,000) to the Department of Water Resources for grants for stormwater flood management projects consistent with a stormwater resource plan developed pursuant to Part 2.3 (commencing with Section 10560) of Division 6 of the Water Code, as that part may be amended. The department may fund one or more pilot projects for the development of model stormwater resource plans designed to improve the integration of flood control, watershed management, and stormwater management, including the integration of all appropriate principles of multi-benefit project design, urban greening, low impact development, and mimicry of natural hydrologic systems.

- c) Broaden Proposition 84 flood control project eligibility.**

Eligibility criteria should be expanded to take full advantage of Prop 1E funding potential and to better support objectives of new Delta governance entities. DWR has asked for the second section, below, to clarify expenditure authority beyond those required to protect water conveyance. [SBX7 8 specified that water conveyance protection was the sole project criteria]

Of the funds made available by Section [75033](#) of the Public Resources Code the sum of thirty-two million dollars (\$32,000,000) to the Department of Water Resources for flood control projects in the Sacramento-San Joaquin Delta designed to reduce the potential for levee failures, including, but not limited to, projects that reduce the risk of levee failure that would jeopardize water conveyance.

These funds may also be expended by the Department of Water Resources for both of the following purposes:

(1) Local assistance under the delta levee maintenance program pursuant to Part 9 (commencing with Section 12980) of Division 6 of the Water Code, as that part may be amended.

(2) Special flood control projects under Chapter 2 (commencing with Section 12310) of Part 4.8 of Division [6](#) of the Water Code, as that chapter may be amended.

- d) Revert Prop 84 and Prop 1E appropriations made in SBX7 8 (Steinberg).** This change is necessary to re-appropriate the funds with amended control language.

The funds appropriated from Chapter 1.699 (commencing with Section 5096.800) of Division 5 of the Public Resources Code by Chapter 2 of the Seventh Extraordinary Session of 2009 are hereby reverted.

The funds appropriated from Division 43 (commencing with Section 75001) of the Public Resource Code by Chapter 2 of the Seventh Extraordinary Session of 2009 are hereby reverted.

- e) **Provide direction on the Department's expenditure of Proposition 84 Funds for Coachella Water District.**

Provisions

Of the funds provided in this item that are used to implement a pilot program for disadvantaged community assistance within the Coachella Irrigation District, the department shall require a recipient of funds under the pilot program to do all of the following:

- (a) Implement a community engagement process that includes consultation with the appropriate stakeholders, including, but not limited to, the county in which the project is located, local environmental health departments, tribes with existing or ancestral land within or adjacent to the region's boundaries, community based organizations and representatives of disadvantaged communities , and other appropriate entities with experience or interest in drinking water and wastewater infrastructure and other water related issues affecting disadvantaged communities.
- (b) For purposes of contracting or subcontracting services to complete pilot program requirements, give consideration to nonprofit organizations or other organizations with relevant experience in the region in which the project is located.
- (c) Consider methods that provide cost savings for high-priority water-related problems affecting disadvantaged communities, including consolidation of community water systems, wastewater systems, and flood systems, and steps to implement consolidation of those systems, where appropriate and feasible.

Consolidated Staff Recommendation: Approve staff recommendations for items 1,2,and 3 for the Department of Water Resources and Trailer Bill outlined above.

3860– DEPARTMENT OF WATER RESOURCES

ISSUE 1: USE OF AGRICULTURAL EASEMENTS IN FLOOD CORRIDORS

The state has the opportunity to use unappropriated bond funds to achieve two important goals simultaneously—reduce flood threats to public health and safety, and conserve farmlands that are subject to the development pressures of population growth.

Staff Comments. As previously discussed on April 21st, Proposition 1E provided (pursuant to Public Resources Code Section 5096.825) \$290 million in bond funding for the protection, creation, and enhancement of flood protection corridors and bypasses through various means, including:

- Acquiring easements and other interests in real property to protect or enhance flood protection corridors and bypasses while preserving or enhancing the agricultural use of real property; and
- Acquiring interests in, or providing incentives for maintaining agricultural uses of, real property that is located in a flood plain that cannot reasonably be made safe from future flooding.

Given the lack of Williamson Act funding, these Proposition 1E monies offer a unique opportunity to fill a need to support maintaining land in agricultural use while meeting state flood goals. To this end, staff recommends appropriation of \$10 million in Proposition 1E funds to the DWR with BBL directing the DWR to work with the Department of Conservation to identify high quality agricultural easements with flood management values consistent with the requirements of the bond act. Of the \$10 million, \$5 million is to come from the \$29 million proposed by the Governor as part of the FloodSAFE BCP and intended for use in the Central Valley Nonstructural Grant Program (previously approved by the Subcommittee), and \$5 million is to come from previously unallocated funds (in Public Resources Code Section 5096.825).

Staff Recommendation: Appropriate \$10 million Proposition 1E funds (consistent with staff comments) for flood corridor projects using agricultural easements and/or incentives, and ADOPT BBL directing the DWR to work with the Department of Conservation in achieving the dual goals of flood protection/management, and conservation of agricultural lands.

ISSUE 2: STATE WATER PROJECT FACILITIES FISH AND WILDLIFE ENHANCEMENT

Governor's Budget Proposal

The Governor's budget proposes an ongoing augmentation of \$15.6 million from proposition 84 and an ongoing continuous appropriation of \$7.5 million from the Harbors and Water Craft Fund 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&WE:

Figure 1.

State Water Project Capital Outlay Costs for Recreation and Fish & Wildlife Enhancement	Revised FY 10/11 through FY 12/13 Amounts		R/F&WE % of Total Cost
	Fiscal 2010-11		
	Proj Total	R/F&WE	
Edmonston Pumping Plant Replacements Pumps	\$12,231	\$73	.3%
Perris Dam Remediation, General	241,000	13,737	5.7%
Gianelli Pump Generating Plant Butterfly Valves Refurb/Replace	16,072	220	1.3%
Castaic Intake Tower	80,460	483	.6%
SFD Administration Office Bldg, Pearblossom	8,267	50	.6%
SWP Communications Upgrade	20,130	201	.9%
SWP Control Systems Upgrade	34,923	339	.9%
TOTALS	\$413,083	\$15,013	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 its various storage and pumping facilities. Additionally, all of the water contracts related to the SWP were included in the Act which has the effect of requiring a vote of the people or a mutual agreement between the state and the contractors to change them. Lastly, 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.

Ability to fund Capitol Projects: 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. To date the department has been using "fourth priority" revenues to fund Davis Dolwig. The Department has noted that these funds are diminishing. At the hearing, the Department should update the Subcommittee on how much of these funds remain available.

Operations and Maintenance: 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 as 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.

Staff Concerns: Staff has three primary concerns with this proposal. First, as discussed by the LAO, the State invests significant resources into R/F&WE through our funding of State Parks, Fish and Game and Boating and Waterways. However, when the Department calculates how much the state's share of costs should be for R/F&WE for either a capitol project or maintenance, these state expenditures are counted towards the state's share in the calculation. If state funds are being used to support costs that are otherwise being required under regulatory permitting as a cost of doing business, the public should be able to count those expenditures towards other R/F&WE costs. Staff understands that this is difficult for capital expenditures since the Department needs to present a complete financing plan prior to going to selling bonds and an investment into a boating ramp, for example, would not functionally work in a financing plan. Staff feels, however, the state investments into non SWP R/F&WE costs can be used to count against the R/F&WE costs of overall SWP operation and maintenance.

Second, the Department should not be calculating R/F&WE costs into capital improvements that do not have any tangible public benefits. Staff feels that expenditures that do not physically move water for recreation or invest directly recreation expenditures should not be supported as they are primarily initiated to support the transfer of water for non R/F&WE purposes.

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. To remedy this, staff feels that an independent contractor should evaluate the Department's practices for determining public R/F&WE benefit.

Staff Recommendation:

As a compromise, staff is recommending that the Subcommittee follow the principles outlined in the staff comments and approve the following:

- 1) Reject proposed continuous appropriation of \$7.5 million from the Harbors and Watercraft Fund with trailer bill language stating the Legislatures intent that non-SWP R/F&WE expenditures are eligible to count towards R/F&WE costs for operations and maintenance.

2) Approve the following R/F&WE funding levels for 2010-11.

State Water Project Capital Outlay Costs for Recreation and Fish & Wildlife Enhancement	Proposed FY 10/11 through FY 12/13 Amounts		R/F&WE % of Total Cost	Staff Reco amount	Staff Reco R/F&WE % of Total Cost
	Fiscal 2010-11				
	Proj Total	R/F&WE			
Edmonston Pumping Plant Replacements Pumps	\$12,231	\$73	.3%	\$73	.3%
Perris Dam Remediation, General	241,000	13,737	5.7%	4,372	5.7%
Gianelli Pump Generating Plant Butterfly Valves Refurb/Replace	16,072	220	1.3%	73	1.3%
Castaic Intake Tower	80,460	483	.6%	181	.6%
SFD Administration Office Bldg, Pearblossom	8,267	50	.6%	0	0
SWP Communications Upgrade	20,130	201	.9%	0	0
SWP Control Systems Upgrade	34,923	339	.9	0	0
TOTALS	\$413,083	\$15,013		\$4,699	

3) Approve BBL directing the allocation of \$200,000 from existing SWP contracting authority for an independent review of the Department's methodology for calculating public R/F&WE benefits. This review shall include an evaluation of how non-SWP R/F&WE should be included in the Department's SCRUB methodology and periodic consultation with the LAO.

ISSUE 3: QUANTIFICATION SETTLEMENT AGREEMENT LOAN GUARANTEE (SENATE ISSUE)

The Imperial Irrigation District (IID) has requested the state—via the California Infrastructure and Economic Development Bank (I-Bank)—provide a loan guarantee in order to insure that it can issue revenue bonds required to finance water conservation measures designed to ensure that California continues to receive the maximum amount of water from the Colorado River.

The QSA

As a result of a court order, California's use of Colorado River water will eventually be limited to 4.4 million acre-feet annually, or up to 800,000 acre-feet less than California's historical use. In October 2003, a number of historical users of Colorado River water, including IID, the San Diego County Water Authority (SDCWA), the Coachella Valley Water District (CVWD), and the Metropolitan Water District of Southern California (MWD) reached an agreement—the QSA—in order to ensure that California can implement water transfers and supply programs that will allow California to live within the state's 4.4 million acre-foot basic annual apportionment of Colorado River water.

Among the major features of the QSA were the following: (1) voluntary water transfers from the IID to SDCWA, CVWD, and MWD ramping up to hundreds of thousands of acre-feet annually over time; and, (2) various conservation measures (e.g., lining of the All-American Canal). In fact, in an illustration of how finely balanced is the QSA, various water transfers and water conservation projects are inextricably linked—the water is only available by way of conservation (e.g., preventing thousands of precious acre-feet from seeping into the bed of an earthen canal by lining the canal with concrete), and the conservation projects require revenues from the transfers to support bond financing. Due to the potential risk of reduced water-transfer revenues stemming from early termination clauses in the QSA, an important part of the agreement from the IID's standpoint was the commitment on the part of the state to provide IID with a loan guarantee—through the I-Bank—for its water conservation efforts.

I-Bank Requirements

The I-Bank is authorized to finance public infrastructure and private development that promotes economic growth, revitalizes communities, and enhances the quality of life for Californians. In the case of the IID, the I-Bank was approached in early 2003 to guarantee up to \$150 million in IID water conservation-project debt. Later that year, the I-Bank approved a Preliminary Loan Guarantee Commitment for IID and transferred \$20 million from the I-Bank fund to a "Guarantee Trust Account" established at the I-Bank for the purpose of paying IID water conservation-project debt obligations, as needed (e.g., if anticipated water transfer revenues failed to meet the IID's debt obligations).

Under existing law, the I-Bank is required to maintain a reserve account requirement—as established by the Legislature—such that if the amount in the IID Guarantee Trust Account falls below the reserve account requirement, then the I-Bank would report a deficiency to the Legislature and request an appropriation to fulfill the reserve account requirement. In the case of the IID's 2003 Preliminary Loan Guarantee Commitment, a reserve account requirement was never set and the preliminary commitment expired on December 31, 2009.

Staff Comments. The Senate heard this issue on May 13 to discuss the I-Bank's recent extension of the IID's preliminary loan guarantee commitment for one additional year, and the IID and the I-Bank have agreed to a proposal that would identify the \$20 million (now \$24 million due to the accrual of interest) in the Guarantee Trust Account as satisfying the reserve account requirement. This would allow the loan guarantee to be finalized and the IID to begin selling revenue bonds to support construction of various water conservation projects. As noted above, the I-Bank would alert the Legislature and request an appropriation in the event the IID transfer revenues were insufficient to meet its debt service requirements and the Guarantee Trust Account was tapped.

Staff notes that, according to the IID, the funds in the Guarantee Trust Account are sufficient to meet several years of anticipated debt service payments. Therefore, should the I-Bank guarantee ever be triggered, the IID indicates it would have ample time to renegotiate contracts such that an additional appropriation would likely be unnecessary (as it would be able to re-assume its debt obligations before the Guarantee Trust Account was exhausted). In any case, staff notes that the Legislature would have the option of denying any request for a supplemental appropriation, the bond purchasers having been fully aware of this downside risk to their investment from the outset.

Staff Recommendation: Staff Recommends that the Subcommittee conform to the Senate's action to identify the amount in the IID Guarantee Trust Account as meeting the reserve account requirement for the obligations of the IID, up to \$150 million, to be guaranteed by the I-Bank; and further specify that the I-Bank guarantee would be triggered, upon appropriation by the Legislature, by a reduction or elimination of transfer revenues under the QSA (and related agreements) between the IID and SDCWD.

3860 - DEPARTMENT OF WATER RESOURCES
3600 – DEPARTMENT OF FISH AND GAME
0540 – SECRETARY FOR RESOURCES AGENCY
3940 – STATE WATER RESOURCES CONTROL BOARD

ISSUE 1: MAY REVISION PROPOSAL – IMPLEMENTATION OF THE 2010 WATER BOND

Governor's May Revision Proposal

The Governor's May Revision proposes to begin expenditure of the 2010 Water Bond in 2010-11 and 2011-12 if the Bond is approved by the voters in November. In total, the Department will be requesting over \$650 million in appropriation authority for new projects from the 2010 Water Bond included in the following comprehensive list of the proposal:

Bond Section	May Revision Proposal	
	2010-11	2011-12
<i>Chapter 5 - Drought Relief</i>	\$213.7	\$132.5
DWR: Drought Relief Grants	\$145.0	\$112.9
DPH: Safe Drinking Water State Revolving Fund		\$12.3
DPH: City of Maywood		\$7.3
Water Board: Small Community Wastewater	\$68.7	
<i>Chapter 6 - Water Supply Reliability</i>	\$32.4	\$28.7
DWR: Integrated Regional Water Management	\$12.0	\$28.0
DWR: Conveyance Projects	\$20.4	\$0.7
<i>Chapter 7 - Delta Sustainability</i>	\$72.4	\$122.0
DFG: Ecosystem Restoration Projects	\$72.4	\$122.0
<i>Chapter 9 - Conservation and Watershed Protection</i>	\$57.9	\$0.0
Agency: Red Bluff Diversion Dam	\$57.9	
DWR: Reimbursements from Agency	(57.9)	
<i>Chapter 10 - Groundwater Protection and Water Quality</i>	\$103.5	\$194.0
DPH: Groundwater projects and emergency grants	\$103.5	\$194.0
<i>Chapter 11 - Water Recycling</i>	\$645.2	\$220.0
DWR: Recycling and Conservation	\$295.0	\$45.0
Water Board: Water Recycling	\$350.2	\$175.0
Total	\$1,125.1	\$697.2

LAO Comments and Recommendation.

Proposal is Mostly Premature, Pending Development of Multiyear Expenditure Plan and Program Expenditure Criteria. We find that most of the Administration's May Revision proposal is premature, for two main reasons. First, the Administration has not prepared a comprehensive, multiyear expenditure plan for the future bond. This is problematic because, unless expenditures from multiple bond provisions that serve similar objectives are well coordinated over the lifetime of the bond, the Legislature cannot be assured that the bond funds are being spent as effectively and efficiently as possible. (As an example of such multiple bond provisions, the Department of Water Resources budget proposal includes \$4 million (over two fiscal years) for a groundwater assistance program using the future bond's Integrated Regional Water Management allocation. The May Revision proposal also proposes nearly \$300 million for expenditure over the next two years for other groundwater-related state operations and local assistance programs, using various other allocations in the bond that total over \$1 billion.) Second, criteria have yet to be developed to guide the expenditures of many of the programs funded from the future bond. While criteria may have been established for previously funded programs, it is clear from the budget proposals that these criteria are likely to change for the new water bond. Lacking these criteria to evaluate, the Legislature cannot be assured that the Administration's spending plan is consistent with its expenditure priorities.

Recommendations. The LAO recommends the Legislature deny most of the funding for the implementation for the 2010 water bond, instead approving funding at a level mostly for planning purposes, with a direction to the Administration to submit (1) a comprehensive, multiyear bond expenditure plan and (2) details of program expenditure criteria, to the Legislature in conjunction with the Governor's 2011-12 budget. Second, the LAO recommend approval of the proposed state share of funding for the "shovel-ready" Red Bluff Diversion Dam project, as this specific project clearly fits within a provision of the bond allocating funds expressly for projects that improve salmonid fish passage in the Sacramento River watershed.

Staff Comments

While in the past we have faced limited abilities to sell bonds and fund related projects, the Department of Finance feels that these bond expenditures, as well as others discussed in prior hearings, fit within the State's general cash plan and can be funded in the budget year. When this issues was heard on May 19th, the Subcommittee voiced strong support for moving forward with funding for Drought Relief, The Red Bluff Diversion Dam and Water Conservation Funding.

Staff Recommendation: Only approve one year funding for Drought Relief, The Red Bluff Diversion Dam and Water Conservation Funding.

3480 – DEPARTMENT OF CONSERVATION

ISSUE 1: UNDERGROUND INJECTION CONTROL AND ENHANCED OIL RECOVERY

May Revision Proposal: The Governor's May Revision is proposing an augmentation of 17 positions and a baseline appropriation of \$3.179 million (\$2.712) ongoing from the Oil, gas and Geothermal Administrative Fund to enhance the regulatory programs of DOGGR to deal with Underground Injection Control (UIC), which includes Enhanced Oil Recovery (EOR). This proposal will result in a 1.4 cent fee increase.

Background

Since California's oil fields are relatively old and are not easily extractable, oil companies use UIC to liquefy and push oil out of fields by injecting highly pressurized air, liquid or steam into the ground. This process is important to the state's oil economy as it has allowed for statewide oil fields to remain in production after easily pumped resources were depleted.

While UIC is a widely used method of increasing oil production, there are clear, immediate risks that need to be addressed related to UIC. Much like drilling for water, on-land oil drilling occurs in areas where wells are drilled, abandoned and re drilled to continue extraction when adjacent wells run dry. With UIC, highly pressurized fluids or gas are pumped into the ground with the intent to force oil through the underground fractures up into the active oil wells. If there are abandoned oil wells that were not properly capped in the immediate area, there is a serious threat that oil can be pushed up through abandoned wells and pollute the surrounding environment.

The Department has 8 district offices and 12 staff that have been responsible for permitting UIC activities statewide. For the last 25 years, however, the department has been doing so without any clear adopted regulatory framework. It is reported that the Department's does not have a base understanding of the UIC technologies that are being permitted, are not staffed for effective ground inspections of wells and are aware that UIC activities are currently forcing oil to the surface, which is then collected and cleaned up by oil drilling companies without adequate Department involvement.

Staff comments

Staff has serious concerns with the lack of regulatory authority and basic program awareness that the Department has been operating under for the last 25 years. Staff has met with the Department and absolutely agrees with their request to remedy this situation by providing 17 statewide positions develop from regulatory frameworks, conduct inspections and work with industry to implement best practices. In addition to this augmentation, the program director has reported that they have made a significant change to the permitting hierarchy by requiring that all UIC permits now be approved by the central office in Sacramento.

While staff understands that there is reluctance to approving fee increases, this is a situation where the state's regulatory framework for oil drilling has been historically negligent and the regulated community is now facing significant permitting delays if these resources are not approved and the program does not address these deficiencies.

Staff Recommendation: Approve as budgeted with TBL requiring the Department to report annually on permitting levels and enforcement actions by the program. Reporting language will sunset July 1, 2015.

8570 – DEPARTMENT OF FOOD AND AGRICULTURE

ISSUE 1: STATE BOARD OF FOOD AND AGRICULTURE

Governor's Budget

The Governor requests three positions and \$513,000 (Agriculture Fund). According to the CDFA, these positions would help the Board address critical environmental, community, and business issues, complex regulations, and conflicting priorities that confront 75,000 California farmers and ranchers and threaten the state's \$37 billion agricultural economy. The State Board of Food and Agriculture (Board) consists of 15 members, appointed by the Governor, who each represent and further the interest of a particular portion of the agricultural industry. The Board acts as a consultative and policy body for farmers and consumers, and is empowered by law to investigate the needs of the agricultural industry and the functions of the CDFA in relation to such needs, and to confer and advise the Governor and the Secretary (of the CDFA) on how the agricultural industry and the consumer of agricultural products may best be served by the CDFA.

Staff Comments

The CDFA notes that although the Board is authorized in statute to "make investigations, conduct hearings, and prosecute actions concerning all matters and subjects which are under jurisdiction of the Department," the Board does not have its own administrative staff. Accordingly, the Board is seeking the requested positions so that it may more effectively and efficiently represent consumers, farmers, and ranchers on critical issues such as climate change; water supply, reliability, and quality; air quality; alternative energy; public health, invasive species, wildlife habitat; and, animal welfare; and forging alliances. For example, CDFA staff indicate these positions would help deliver "ground-truths" to the California Environmental Protection Agency, the Natural Resources Agency, the California Emergency Management Agency, the Department of Health and Human Services, and the Labor and Workforce Development Agency.

When this issue was heard on May 12th, staff had concerns that there was not enough workload to support the request for senior staff and the position request was not appropriate during this period of budget reductions. At the hearing, the Department clarified how the proposed staff would be used to support the farming community's on the ground implementation of environmental policies rather than acting as a more political voice of opposition to state mandates.

Additionally, at the hearing, the Department committed to providing a detailed work plan which is attached on the following page. Staff feels that the work plan address concerns with proposed workload for a core staff. Staff however feels that the Subcommittee should consider approving these positions as 2-year limited term positions this will be a new function with supplemental reporting language requiring the Board staff to report on actual workload completed. This will allow the legislature to compare actual with proposed in order to allow a better evaluation of this activity when the Department returns in 2 years with a proposal to continue staffing.

Staff Recommendation:

Appendix A California Department of Food and Agriculture Workplan – State Board of Food & Agriculture

It is vital that the Board effectively and efficiently represent consumers, farmers, and ranchers to meet the needs of all of California. A rapidly increasing number of critical environmental, community, and business issues, complex regulations, and conflicting priorities confront California's 75,000 farmers and ranchers and threaten the \$37 billion agricultural industry vital to consumers nationwide and the State's economy. Following are some of the issues that the Board and its staff will focus on beginning in July 2010.

CALIFORNIA AG VISION 2030 - Early in 2008, the state board conducted seven public listening sessions across the state to gain insight on the policy priorities for California agriculture. These listening sessions and hundreds of comments by agricultural stakeholders resulted in the release of the California Ag Vision 2030 framework which identified three policy areas for the state: *Better Health and Well-being: Meeting the Nutrition Needs of California's Diverse Population; A Healthier Planet: Agricultural Stewardship of the Natural Resource Base upon which California and Food Production Depends; Thriving Communities: Food Production is a Driver of Sustainable California Economic Growth.* The California Agricultural Vision 2030 has been a priority of the Board for several years and consists of goals and actions that the agricultural industry wants to achieve by the year 2030.

Through a series of work sessions involving more than 90 leaders from agriculture, local food groups, environmental and conservation organizations, academia, and other stakeholder groups, seven short-term action priorities within these policy areas were established: regulatory improvement, immigration reform, water security, land and natural resources, better access to healthy food, invasive species and environmental stewardship. These action priorities will be the focus of the Board and its staff beginning in July 2010. It is anticipated that additional focus actions will be developed during the implementation of these short-term action items.

- REGULATORY IMPROVEMENT - *Emerging regulations must be integrated into the farming and ranching business models and encourages the sustainability of our food supply.*
- IMMIGRATION REFORM - *Encourage a stable workforce.*
- WATER SECURITY - *A reliable supply of water delivered from multiple sources to grow enough food to continue our food independence and provide jobs through continued export growth.*
- LAND AND NATURAL RESOURCES - *Maintain existing farm and ranchlands; discourage resource erosion; expand urban gardens.*
- BETTER ACCESS TO HEALTHY FOOD - *Provide consumers a domestic food supply at the highest possible level of safety. All Californians have access to healthy food and understand the importance of meeting the Dietary Guidelines for Americans.*
- INVASIVE SPECIES - *Prevent the entry and establishment of foreign plant and animal pests/diseases.*
- ENVIRONMENTAL STEWARDSHIP - *Agriculture will have the incentives and assistance to help farmers and ranchers contribute to the state's goal of lowering greenhouse gas emissions below 1990 emission levels. Generate on farms and ranches at least 25 percent of the total renewable energy produced in the state.*
- ECONOMIC DEVELOPMENT - *By 2030 California agriculture exports will double and consumers worldwide will view California as the supplier of the highest quality, safest and most environmentally produced products.*