

**HEARING POSTPONED****ASSEMBLY BUDGET SUBCOMMITTEE No. 3  
ON RESOURCES AND TRANSPORTATION****ASSEMBLYMEMBER RICHARD BLOOM, CHAIR****WEDNESDAY, MARCH 18, 2020  
9:30 A.M. — STATE CAPITOL, ROOM 447**

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**VOTE-ONLY****0555 CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY****VOTE-ONLY ISSUE 1: CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY TECHNICAL ADJUSTMENTS**

The Governor's budget requests for various bond appropriations, reappropriations, and reversions; technical adjustments; reappropriations; and baseline adjustments to continue implementation of previously authorized programs.

<b>Department Name</b>	<b>Title</b>	<b>Amount</b>	<b>Funds / Proposition</b>	<b>Comment</b>
CalEPA	Environmental Enforcement and Training Account Shift	-	Environmental Enforcement & Training Account	CalEPA requests to shift its Environmental Enforcement and Training Account appropriation from state operations to local assistance
CARB	Extension of Liquidation for Low Carbon Transportation and Zero/Near-Zero Emission Warehouse Facilities Programs	-	GGRF, Trade Corridor Enhancement Account, State Transportation Fund	CARB requests to extend the liquidation deadline for up to \$4.5 million of Transportation Equity Project funds appropriated in the 2016 Budget and up to \$25 million of Freight Demo/Pilot, \$12.5 million of Freight (Warehouse) Demo/Pilot, \$20 million of Transportation Equity Project, and \$35 million of HVIP, appropriated in the 2017 Budget, to June 30, 2023. These extensions will allow for time to manufacture recently commercialized vehicles; permit and install infrastructure; develop and launch community-based projects to meet the mobility needs of low-income and disadvantaged communities.

Department Name	Title	Amount	Funds / Proposition	Comment
CARB	Extension of Liquidation for Proposition 1B Grant Program	-	CA Ports Infrastructure Security, & Air Quality Improvement Account, Highway Safety, Traffic Reduction, Air Quality, and Port Security Fund of 2006 (Prop 1B)	CARB requests to extend the liquidation deadline to June 30, 2022 for up to \$13.1 million Prop 1 B funds appropriated in the 2014 Budget. Advanced technology projects, including low NOx and electric trucks, have taken longer than expected to become operational given the novel technology involved. For example, engine and truck manufacturers typically take a year or more to deliver a new low NOx truck.
DTSC	Augmentation for National Priorities List and State Orphan Sites	\$7,623,000	Site Remediation Account - Toxic Substances Control Account	DTSC requests a onetime increase of \$7,623,000 from the Site Remediation Account for total expenditure authority of \$17,249,000 in 2020-21 to meet the state's 10 percent National Priority List obligation and to remediate orphan sites within the state. To fund this expenditure authority, DTSC requests a one-time transfer of \$11,000,000 from the Toxic Substances Control Account to the Site Remediation Account.
DTSC	Reimbursement Authority Alignment	\$3,000,000	Hazardous Waste Control Account, Toxic Substances Control Account	DTSC requests an increase of \$2,000,000 in reimbursement authority for the Hazardous Waste Control Account and an increase of \$1,000,000 in reimbursement authority for the Toxic Substances Control Account ongoing. In past fiscal years, DTSC has exceeded the reimbursement authority in these two funds. This adjustment will limit the potential for DTSC to exceed its reimbursement authority and not be able to expend the reimbursed funds.

Department Name	Title	Amount	Funds / Proposition	Comment
DTSC	Reinstatement of Transfer from the Site Operation and Maintenance Account to the TSCA	\$140,000	Site Operation and Maintenance Account 0557 - Toxic Substances Control Account	DTSC requests the reinstatement of the transfer of \$140,000 ongoing from the Site Operation and Maintenance Account to the Toxic Substances Control Account to fund the department's cost of providing oversight for sites requiring long-term operation and maintenance.
CalRecycle	Extension of Liquidation of Greenhouse Gas Reduction Funds	-	Greenhouse Gas Reduction Fund	CalRecycle requests to extend the liquidation deadline to June 30, 2023 for Greenhouse Gas Reduction Funds appropriated in 2016. Projects receiving these grant funds include anaerobic digester and compost facilities which require complex permitting and lengthened construction timelines.
CalRecycle	Extended Producer Responsibility Programs Expenditure Authority Alignment	\$200,000	Carpet Stewardship Account, Architectural Paint Stewardship Account, Used Mattress Recycling Fund	CalRecycle requests: (1) an increase of \$100,000 annually ongoing in expenditure authority from the Carpet Stewardship Account ; (2) an increase of \$100,000 annually ongoing in reimbursement authority for the Used Mattress Recycling Fund to align reimbursement authority with historical reimbursement levels; and (3) BBL to augment the expenditure authority for the Architectural Paint Stewardship Account and Carpet Stewardship Account if activities to oversee the respective stewardship programs exceed appropriation in the Budget Act.
CalRecycle	California Tire Recycling Management Fund	-	California Tire Recycling Management Fund	CalRecycle requests Budget Bill Language to authorize the use of the California Tire Recycling Management Fund Local Assistance appropriation to be used for support projects. This flexibility will allow CalRecycle to adjust program funding to leverage potential increases in rubberized pavement projects resulting from increased transportation funding.

Department	Bond Fund (Proposition)	New Positions	2020-21	Request Type	Comment
SWRCB	1	0	\$ 477,000	New Appropriation	Increase in state operations authority in budget year to align with local assistance expenditure projections. This increase will provide sufficient authority to disburse all proposed local assistance funding.
SWRCB	1	0	\$ 158,000	New Appropriation	Increase in state operations authority in budget year to align with local assistance expenditure projections. This increase will provide sufficient authority to disburse all proposed local assistance funding.
SWRCB	1	0	\$ 125,000	New Appropriation	Increase in state operations authority in budget year to align with local assistance expenditure projections. This increase will provide sufficient authority to disburse all proposed local assistance funding.
SWRCB	1	0	\$ 256,000	New Appropriation	Increase in state operations authority in budget year to align with local assistance expenditure projections. This increase will provide sufficient authority to disburse all proposed local assistance funding.

Department	Bond Fund (Proposition)	New Positions	2020-21	Request Type	Comment
SWRCB	1	0	\$ 34,000	New Appropriation	Increase in state operations authority in budget year to align with local assistance expenditure projections. This increase will provide sufficient authority to disburse all proposed local assistance funding.
SWRCB	50	0	\$ -	Reappropriation	Reappropriation to fully encumber existing funds.
SWRCB	50	0	\$ -	Reappropriation	Reappropriation to fully encumber existing funds.
SWRCB	50	0	\$ -	Reappropriation	Reappropriation to fully encumber existing funds.
SWRCB	50	0	\$ -	Reappropriation	Reappropriation to fully encumber existing funds.
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SWRCB	50	0	\$ -	Reappropriation	Reappropriation to fully encumber existing funds.
SWRCB	50	0	\$ -	Reappropriation	Reappropriation to fully encumber existing funds.
SWRCB	50	0	\$ 1,000	New Appropriation	Increase in state operations authority in budget year to align with local assistance expenditure projections. This increase will provide sufficient authority to disburse all proposed local assistance funding.

Department	Bond Fund (Proposition)	New Positions	2020-21	Request Type	Comment
SWRCB	50	0	\$ 5,456	New Appropriation	Increase in state operations authority in budget year to align with local assistance expenditure projections. This increase will provide sufficient authority to disburse all proposed local assistance funding.
SWRCB	50	(2.0)	\$ 130,421	New Appropriation	Increase in state operations authority in budget year to align with local assistance expenditure projections. This increase will provide sufficient authority to disburse all proposed local assistance funding.
SWRCB	50	0.0	\$ 100,000	New Appropriation	Increase in state operations authority in budget year to align with local assistance expenditure projections. This increase will provide sufficient authority to disburse all proposed local assistance funding.
SWRCB	84	0	\$ 57,000	New Appropriation	New appropriation to accommodate future bottled water projects.
SWRCB	84	0	\$ 441,000	New Appropriation	New appropriation to fund projects on priority list.
SWRCB	84	0	\$ -	Reappropriation	Reappropriation to fully encumber existing funds.
SWRCB	84	0	\$ -	Reappropriation	Reappropriation to fully encumber existing funds.
SWRCB	84	0	\$ -	Reappropriation	Reappropriation to fully encumber existing funds.
SWRCB	84	0	\$ -	Reappropriation	Reappropriation to fully encumber existing funds.
SWRCB	84	0	\$ -	Reappropriation	Reappropriation to fully encumber existing funds.



Department	Bond Fund (Proposition)	New Positions	2020-21	Request Type	Comment
SWRCB	84	0	\$ -	Reappropriation	Reappropriation to fully encumber existing funds.
SWRCB	50	0	\$ (3,582)	Reversion	Reversion to prevent bond allocation from being over committed.
SWRCB	50	0	\$ (23,472)	Reversion	Reversion to prevent bond allocation from being over committed.
SWRCB	50	0	\$(111,119)	Reversion	Reversion to prevent bond allocation from being over committed.
SWRCB	50	0	\$(238,998)	Reversion	Reversion to prevent bond allocation from being over committed.

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**Staff Recommendation: Approve this BCP with the exception of the DTSC items.**

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**3940 STATE WATER RESOURCES CONTROL BOARD**

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**VOTE-ONLY ISSUE 2: BUSINESS LICENSES: STORMWATER DISCHARGE COMPLIANCE (SB 205)**

The Governor's budget requests \$175,000 ongoing from the Waste Discharge Permit Fund and one position to implement SB 205 (Hertzberg, Chapter 470, Statutes of 2019).

SB 205 (Hertzberg) requires applicable licensed businesses to obtain regulatory coverage for industrial stormwater discharges through the SWRCB Statewide Industrial Stormwater General Permit. Applicable industrial facilities must demonstrate current coverage under this permit when applying for a new city or county business license or renewing an existing license.

SWRCB will need to assist industrial facility owners to enroll in the Statewide Industrial Stormwater Permit and assist local governments with corresponding local requirements. The requested position will serve as the one SWRCB staff dedicated to providing this service and necessary oversight to assess the expected increase in program workload, including: Regional Water Quality Control Board staff facility inspections for new enrollees, on-the-ground assistance, and enforcement.

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**Staff Recommendation: Approve as Budgeted**

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**VOTE-ONLY ISSUE 3: ADMINISTRATIVE AND ACCOUNTING SUPPORT**

The Governor's budget requests 10 positions to meet increased workload needs for Administrative staffing.

Over the past several years, SWRCB's workload have grown significantly, due to the transfer of the Drinking Water Program, new Bond and Tank Program activities, Cannabis, Safe and Affordable Drinking Water, and new and expanding Water Rights and Office of Enforcement program responsibilities.

The Board currently has over 100 individual funding sources and over 800 program areas that the Water Board is required to report on. In addition, the Water Board collects over \$500 million in revenues annually and billing has been impacted, specifically cost recovery. The complexity of the allocation and fund split process in the system requires ongoing configuration updates. The Water Board will continue to work with both Fi\$CAL and the Department of Finance on refinements. However, in the near-term the Water Board requires additional resources to keep up with existing administrative workload, and to avoid delays in payments.

This request is intended to provide SWRCB's programs the administrative support necessary to meet standard contract, procurement, accounting, and other administrative function deadlines and workload commitments.

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**Staff Recommendation: Approve as Budgeted**

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**VOTE-ONLY ISSUE 4: FISH AND SHELLFISH: PUBLIC HEALTH ADVISORIES (AB 762)**

The Governor's budget requests \$400,000 General Fund one-time (\$380,000 local assistance and \$20,000 state operations) and \$50,000 ongoing for local assistance annually thereafter. The requested funds will be provided to local health officers to post fish consumption health warnings pursuant to AB 762 (Quirk, Chapter 538, Statutes of 2019). The health warnings will notify the public about the potential risks of consuming fish from certain contaminated water bodies.

AB 762 requires local health officers to conspicuously post health warnings at water bodies for which the Office of Environmental Health Hazard Assessment (OEHHA) has published a site-specific fish consumption health advisory. AB 762 specifies this requirement only applies when SWRCB provides funding to local health officers for costs of the posting or if a health officer fails to apply for funding to SWRCB. AB 762 allows SWRCB to adopt program guidelines and requires the board to submit a report on posted health advisories to the Legislature on or before December 31, 2022.

SWRCB estimates that costs of postings for the 115 waterbodies for which OEHHA has developed site-specific fish consumption health advisories for contaminated fish will be approximately \$380,000, and that local health officers will require approximately \$50,000 annually after 2020-21 for maintaining the postings, posting additional signs at new fishing areas, and posting new advisories issued by OEHHA.

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**Staff Recommendation: Approve as Budgeted**

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**VOTE-ONLY ISSUE 5: FRESHWATER AND ESTUARINE HARMFUL ALGAL BLOOM PROGRAM (AB 834)**

The Governor's budget requests 1,500,000 (includes \$750,000 in contract and purchasing) and 5.0 permanent positions from the Waste Discharge Permit Fund to support implementation of water quality and public health protection actions/components of the Freshwater and Estuarine Harmful Algal Bloom Program, pursuant to AB 834 (Quirk, Chapter 354, Statutes of 2019).

The occurrence of freshwater and estuarine harmful algal blooms in the state appears to be increasing each season, which used to be from May to October, but is becoming year-round in some areas. These blooms can occur in all types of fresh and estuarine surface waters and affect humans, domestic animals and wildlife.

AB 834 requires SWRCB to protect water quality and public health from harmful algal blooms and in consultation with the California Water Quality Monitoring Council, OEHHA, State Department of Public Health, Department of Water Resources, Department of Fish and Wildlife, Department of Parks and Recreation, other appropriate state and federal agencies, and California Native American tribes, to establish and maintain a comprehensive Harmful Algal Bloom program.

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**Staff Recommendation: Approve as Budgeted**

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**VOTE-ONLY ISSUE 6: OIL AND GAS MONITORING PROGRAM ONGOING FUNDING FOR UNDERGROUND INJECTION CONTROL (UIC) PROJECT REVIEW**

The Governor's budget requests \$1.353 million ongoing from the Oil, Gas, and Geothermal Administrative Fund to ensure active Class II underground injection control projects comply with the federal Safe Drinking Water Act and applicable state statutes and regulations, safeguarding groundwater resources.

Class II wells are primarily used to inject steam or water for enhanced oil/gas recovery, or to inject waste water (such as brines) from oil and gas production. CalGEM, formerly known as DOGGR, was granted the primary responsibility to regulate Class II wells under the UIC program 1983.

The US EPA conducted an audit in 2011 and found that CalGEM had authorized injection of oil and gas-related disposal fluids into non-exempt aquifers containing high quality water. Additionally, CalGEM identified the presence of water supply wells near some of the injection wells. The US EPA also identified that CalGEM had not been performing its required annual review of active UIC projects. As a result, CalGEM submitted their Renewal Plan for Oil and Gas Regulation to the Legislature in December 2015 and identified a path forward to bring its UIC program into compliance with federal and state regulations. As a part of their compliance plan, CalGEM reached out to operators with injection wells in non-exempt aquifers, providing an opportunity to prepare technical proposals to support exemption of those aquifers under State and federal law.

This requires SWRCB to conduct an annual review of active Class II underground injection control projects in cases where an update or modification to a project is required. In 2017, SWRCB was provided three-year funding to begin working on these reviews and tracking associated workload. This proposal seeks to secure ongoing funding to address the ongoing workload associated with the review of active UIC projects.

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**Staff Recommendation: Approve as Budgeted**

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**VOTE-ONLY ISSUE 7: ONSITE WASTEWATER TREATMENT SYSTEMS - PROHIBITED CHEMICALS (SB 317)**

The Governor's budget requests \$200,000 General Fund to investigate methods to detect and quantify the presence of harmful chemicals in onsite wastewater treatment systems pursuant to SB 317 (Caballero, Chapter 367, Statutes of 2019).

Recreational Vehicle (RV) wastewater is a very high-strength waste. RV owners commonly use chemical toilet additives containing formaldehyde to minimize odors from their wastewater holding tanks. The strong effluent from RV wastewater tanks into onsite water treatment systems (OWTS) promote growth of a clogging mat and shorten the life of a drain field.

Presently, there are no rapid test methods to determine the presence of chemical toilet deodorants that contain harmful chemicals. SB 317 requires SWRCB to investigate methods to detect and quantify concentrations of chemical toilet deodorants in septic system, OWTS, or subsurface disposal system that may inhibit biological treatment processes or result in degradation of groundwater quality. Presently, there are no rapid test methods to determine the presence of chemical toilet deodorants that contain harmful chemicals.

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**Staff Recommendation: Approve as Budgeted**

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**ISSUE 8: UPDATE UNIFORM STATEWIDE CRITERIA FOR NONPOTABLE RECYCLED WATER USES (AB 1180)**

The Governor's budget requests 525,000 General Fund annually for two years and \$175,000 for one permanent position ongoing to implement AB 1180 (Friedman, Chapter 455, Statues of 2019).

AB 1180 requires SWRCB to update by January 1, 2023, the uniform statewide criteria for non-potable recycled water uses and requires SWRCB, it adopts standards for backflow protection and cross-connection control through the adoption of a policy handbook, to include provisions for the use of a swivel or changeover device to supply potable water to a dual-plumbed system during an interruption in recycled water service.

The requested resources would enable SWRCB to develop and adopt updated statewide nonpotable recycled water criteria, including work with stakeholder groups, draft regulations, and facilitate the regulations through the administrative and legal process. The one permanent position will provide technical assistance to municipal water systems and recycled water users to review and approve proposed projects to increase recycled water use.

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**Staff Recommendation: Approve as Budgeted**

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**3970 DEPARTMENT OF RESOURCES, RECYCLING, AND RECOVERY****VOTE-ONLY ISSUE 9: BEVERAGE CONTAINER REDEMPTION PILOT PROJECT GRANT PROGRAM (AB 54)**

The Governor's budget requests \$126,000 in 2020-21 and \$124,000 annually for two years thereafter from the Beverage Container Recycling Fund to implement the new Beverage Container Redemption Pilot Project Grant Program, pursuant to AB 54 (Ting, Chapter 793, Statutes of 2019).

During the summer of 2019, CalRecycle conducted outreach and marketing for the Redemption Grant Program. Over a dozen local jurisdictions expressed strong interest in applying for a program grant and the opportunity to address the lack of convenient recycling opportunities in unserved convenience zones. Eligible pilot projects under this program include stationary drop-off locations or mobile collection programs, truck-based recycling collection programs, and bag drop collection systems that allow consumers to deposit beverage containers in a locked and secure drop-off bin.

This request will support CalRecycle in implementing the \$5 million Redemption Grant Program. CalRecycle requires the limited-term Associate Governmental Program Analyst (AGPA) position to aid CalRecycle's development, implementation, and oversight of the Redemption Grant Program. The limited AGPA position will manage the additional workload from applications and responsibilities for the program.

**STAFF COMMENTS**

***Beverage Container Recycling Fund Quarterly Report.*** Pursuant to the California Beverage Container Recycling and Letter Reduction Act, Public Resources Code Section 14556(a) requires the Department of Resources, Recycling, and Recovery to provide the Legislature a report, "not less than every three months," with specified information for the current fiscal year and the budget year. These reports are not published on a timely basis. For example, the most current quarterly report was published on January 30, 2020, which covered Fiscal Year 2018-19 third quarter. The report can provide useful data, however much of the data is forecasted and by the time each quarterly report is issued, those forecasts are likely outdated. It seems that staff time could be better utilized, and more accurate and useful data could be produced in a timelier manner, if this reporting requirement was reduced from quarterly to twice a year.

**Staff Recommendation: Approve as budgeted and add trailer bill language to amend reporting requirement for the status on the Beverage Container Recycling Fund from quarterly to twice a year.**

**VOTE-ONLY ISSUE 10: CARPET STEWARDSHIP PROGRAM (AB 729)**

The Governor's budget requests one position ongoing and \$119,000 in 2020-21 and \$117,000 ongoing from the Carpet Stewardship Account to implement AB 729 (Chu, Chapter 680, Statutes of 2019).

AB 729 revises the Product Stewardship for Carpets Program by requiring carpet stewardship plans to specify the process by which funds assessed by the manufacturer and stewardship organization will transfer to a successor organization. Additionally, AB 729: (1) requires stewardship organizations to implement a system of differential assessments that consumers pay at the point of sale when purchasing carpet; (2) removes the five percent cap on administrative fees; and, (3) increases the base penalty amount to \$5,000 per day. AB 729 also increases the number of programs the Department is likely to oversee.

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**Staff Recommendation: Approve as Budgeted**

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**VOTE-ONLY ISSUE 11: FINANCING MECHANISMS AND SUPPORT FOR IN-STATE RECYCLING MANUFACTURING INFRASTRUCTURE (AB 1583)**

The Governor's budget requests two positions and \$294,000 Recycling Market Development Revolving Loan Subaccount ongoing and .75 positions and \$96,000 Integrated Waste Management Account ongoing to implement AB 1583 (Eggman, Chapter 690, Statutes of 2019).

AB 1583 requires CalRecycle to implement the Recycling Market Development Zone (RMDZ) Loan program that was extended to assist in-state recycling manufacturing. AB 1583 directs CalRecycle to continue providing incentive programs to encourage more in-state recycling infrastructure, which will help the state meet recycling goals as market conditions fluctuate. The RMDZ Loan program includes assessing manufacturer's financial needs, securing applicable funding resources, and providing technical assistance.

The RMDZ Loan Program provides approximately \$5 million to \$7 million annually in loans to support new or expanded recycling infrastructure in designated zones. Since 1993, CalRecycle has funded 201 loans under the program, totaling \$159 million. The loan program has been self-funded from the repayment of outstanding loans since 2005. As a result of the program, recycling manufacturers divert over 500,000 tons of waste materials annually from landfills.

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**Staff Recommendation: Approve as Budgeted**

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**VOTE-ONLY ISSUE 12: PHARMACEUTICAL AND SHARPS WASTE STEWARDSHIP PROGRAM  
(ENFORCEMENT STAFFING)**

The Governor's budget requests \$454,000 in 2020-21, \$935,000 in 2021-22, \$927,000 ongoing thereafter from the Pharmaceutical and Sharps Stewardship Fund, and seven positions to implement the Pharmaceutical and Sharps Waste Stewardship Law SB 212 (Jackson, Chapter 1004, Statutes of 2018). This proposal requests additional loan authority of approximately \$1,000,000 in 2020-21 and \$1,500,000 in 2021-22 from the Electronic Waste Recovery and Recycling Account (E-Waste) to fund start-up costs for Pharmaceutical and Sharps Stewardship Fund.

SB 212 creates an industry-supported funding mechanism for the Pharmaceutical and Sharps Stewardship Program, which will make collection and proper disposal pharmaceutical and sharps waste financially viable. The Pharma/Sharps charge will be paid for directly by covered drug and home-generated sharps manufacturers through a tiered definition of "covered entity" that can include a manufacturer, distributor, re-packager, brand owner, or importer. Covered entities or stewardship organizations must submit annual budgets, which CalRecycle must approve, to fund their programs. SB 212 also directs CalRecycle to assume several new oversight and enforcement responsibilities for stewardship programs to increase diversion and proper disposal of pharmaceutical drugs and home-generated sharps waste.

The 2019 Budget Act included \$1.2 million from the PSSF annually ongoing for ten positions to develop the Pharma/Sharps Program and associated regulations; however, resources for enforcement were not included.

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**Staff Recommendation: Approve as Budgeted**

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**VOTE-ONLY ISSUE 13: USED MATTRESS RECOVERY AND RECYCLING PROGRAM (AB 187)**

The Governor's budget requests \$103,000 Used Mattress Recycling Fund in 2020-21, \$101,000 Used Mattress Recycling Fund ongoing and one position to implement AB 187 (C. Garcia, Chapter 673, Statutes of 2019).

AB 187 expands the scope of the Used Mattress Recovery and Recycling Program, as well as CalRecycle's oversight responsibilities of the mattress recycling organization. The requested position would help facilitate the additional legal workload, clear a backlog of enforcement cases, amend existing regulations, review amendments to the current Used Mattress Recovery and Recycling Program plan, and provide increased levels of legal consultation between CalRecycle program staff, the mattress recycling organization, and affected stakeholders.

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**Staff Recommendation: Approve as Budgeted**

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**VOTE-ONLY ISSUE 14: SOLID WASTE INSPECTION, ENFORCEMENT, AND REPORTING ENHANCEMENT**

The Governor's budget requests \$367,000 Integrated Waste Management Account one-time, three Environmental Scientist positions and \$361,000 ongoing to perform increased duties associated with inspection, enforcement, data analysis, and evaluation of solid waste facilities.

Current law requires each solid waste landfill be inspected by CalRecycle at least once every 18 months. In addition to inspection, CalRecycle must determine the compliance status of each facility for which a solid waste permit is being issued, revised or modified; this is done through an inspection of the facility.

AB 901 (Gordon, Chapter 746, Statutes of 2015) significantly expands the number of reporting entities, reported information, and enforcement responsibilities from the prior electronic Disposal Reporting System requirements. Approximately 3,000 reporting entities will begin reporting directly to the Department quarterly starting in 2019, using the new electronic online data system (RDRS) developed to capture the new reporting entities with obligations under AB 901.

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**Staff Recommendation: Approve as Budgeted**

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**3980 OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT**

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**VOTE-ONLY ISSUE 15: WELL STIMULATION TREATMENT HEALTH AND ENVIRONMENTAL RISKS**

The Governor's budget requests \$425,000 Oil, Gas, and Geothermal Administrative Fund for three years, to continue to evaluate and assess the health and environmental risks from chemicals used in hydraulic fracturing. OEHHA also requests permanent position authority for two limited-term Staff Toxicologist positions.

This request enables OEHHA, in consultation with other state entities and stakeholders, to: (1) continue an ongoing systematic evaluation of the chemicals used in hydraulic fracturing; (2) screen chemicals with respect to the potential health and environmental hazards they pose; (3) characterize health and environmental risks from high-priority chemicals; and, (4) identify important gaps in scientific information on chemicals that should be filled. These analyses will inform regulatory decisions regarding the continued use of these chemicals in well stimulation activities in California and the selection of safer alternatives.

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**Staff Recommendation: Approve as Budgeted**

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**VOTE-ONLY ISSUE 16: EVALUATING UNASSESSED CHEMICALS USING PRECISION PREVENTION METHODOLOGIES**

The Governor's budget requests \$5.962 million General Fund in 2020-21, \$962,000 and five positions ongoing thereafter. Funds and positions will be used to develop and implement rapid computational and molecular toxicology approaches for identifying toxic chemicals and safer alternatives and to enter into interagency contracts with the University of California to develop these approaches.

**BACKGROUND**

**OEHHA is the lead state agency for the assessment of health risks posed by environmental contaminants.** OEHHA identifies hazards posed by environmental chemicals and develops health benchmarks that identify levels of exposures to chemicals that pose health risks. Policymakers and regulators use these benchmarks to: (1) protect the safety of drinking water, ambient and indoor air, and soil; (2) identify consumer products to regulate in the marketplace; and, (3) remediate or otherwise control exposures of community residents to toxic chemicals from contaminated sites and industrial facilities.

**Many contaminants currently lack toxicity evaluation.** This is because traditional data are sparse, data developed by the federal government are too limited, and methods for translation of newer toxicity data into hazard identifications and health-effects characterizations for regulatory purposes are not sufficiently developed. The assessments OEHHA currently performs rely on data from epidemiological studies or traditional studies of laboratory mice, rats, and other species.

**Proposal to develop and implement new approaches for identifying toxic chemical and safer alternatives.** OEHHA has been working in partnership with University of California (UC) scientists to explore methods to integrate new toxicity data and structure-based computational analyses into its assessment programs, and has determined that the science is sufficiently robust to support the use of these tools in regulatory applications. However, critical data and scientific consensus on methods are lacking, and OEHHA lacks resources and critical expertise for a dedicated program to further develop and implement these new approaches. The requested \$5 million will be used for interagency contracts with the UC to develop and implement rapid computational and molecular toxicology approaches for identifying toxic chemical and safer alternatives. The five positions will apply UC research to advance scientific assessments of currently unevaluated chemicals that support CalEPA's regulatory programs.

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**Staff Recommendation: Approve as Budgeted**

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**3930 DEPARTMENT OF PESTICIDE REGULATION**

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**VOTE-ONLY ISSUE 17: INTEGRATED PEST MANAGEMENT WORK GROUP**

The Governor's budget requests \$350,000 General Fund one-time to continue and build upon the work of an Integrated Pest Management Work Group started in 2019-20, which focuses on systems-wide, long-term strategies for pesticide management.

DPR, in partnership with CDFA, established a cross-sector work group with resources from the 2019 Budget Act to identify, evaluate, and develop safer, practical, and more sustainable alternative pest management tools for California growers. The workgroup has focused on providing practical, short-term solutions and a five-year action plan to invest in new products relative to the cancellation of chlorpyrifos products in the state. The work group includes representatives from California universities, environmental groups, growers and agricultural organizations, farmworker and field labor organizations, agricultural commissioners, commodity boards, pest control advisors, pest management product manufacturers, and state agencies.

To date, the work group has had two in-person meetings, three large-group conference calls, and several smaller focus group calls. The work group is expected to complete a set of recommendations for research, outreach, and regulatory actions in April 2020 to address short- and long-term alternatives to chlorpyrifos.

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**Staff Recommendation: Approve as Budgeted**

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**VOTE-ONLY ISSUE 18: PESTICIDE AIR MONITORING NETWORK CONTINUATION**

The Governor's budget requests \$1,879,000 and five permanent positions in 2020-21 and \$1,854,000 in 2021-22 and ongoing from the Air Pollution Control Fund to continue the current operations of the Pesticide Air Monitoring Network (AMN). The AMN provides air monitoring data for 31 pesticides and several breakdown products in eight California communities that represent the areas of highest agricultural use of some of the most potentially hazardous pesticides in the State.

DPR's AMN sampling procedures involve collecting a set of 24-hour samples at each monitoring site, every week, year-round. DPR uses the monitoring data collected by the AMN to: (1) identify common pesticides present in ambient air and track trends over time; (2) determine seasonal, annual, and multi-year concentrations and compare those concentrations with subchronic and chronic health screening levels to more accurately estimate pesticide exposures; (3) determine if pesticides in air disproportionately affect disadvantaged communities; and, (4) develop measures to mitigate health risks and evaluate mitigation measures.

DPR began a pilot study for Pesticide AMN in 2011. In 2016-17, DPR received funding to permanently maintain and conduct monitoring at three locations. Additionally, DPR and the Air Resources Board received funding to collaborate on a pilot expansion of the AMN for a period of two years and received full-time, limited-term personnel and funds to expand the AMN to five additional locations. Although funding for the pilot expansion of the AMN ended in 2018-19, due to equipment procurement delays, the expanded monitoring at five locations is set to conclude in 2019-20. This proposal will maintain the five additional sites without interruption.

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**Staff Recommendation: Approve as Budgeted**

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**3960 DEPARTMENT OF TOXIC SUBSTANCES CONTROL**

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**VOTE-ONLY ISSUE 19: ARGONAUT DAM PROJECT PHASE II STORM WATER UPGRADE CONSTRUCTION**

The Governor's budget requests \$2.1 million General Fund one-time to complete construction of a storm water system upgrade project in the City of Jackson, California.

The Argonaut Mine, located in Jackson California, is a registered California Landmark and was an active gold mine from 1850 to 1942. The Argonaut Mining Company purchased the mine in 1893. The mine shaft drops nearly 5,500 feet underground and covers approximately 500 acres, making it one of the largest mines in the United States. The mine processed ore using a cyanide leaching method to separate the gold and disposed of the remaining ore tailings into the mine tailings site located within Jackson City limits.

Mine tailings and waste from ore processing left materials tainted with arsenic, lead and mercury. The contaminated tailings and waste from the mine are being held back by dams. The Argonaut Dam contains an estimated 165,000 cubic yards of contaminated tailings and collects storm runoffs from approximately 120 acres of property.

The 2016-17 Budget Act provided DTSC with \$14.3 million to complete the dam retrofit, which was completed in December 2018. However, without updating the city's storm water system, the risk of flooding remains.

This Phase II Storm water Upgrade project will prevent downstream flooding in the city by expanding the current capacity of the storm drains to meet current standards.

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**Staff Recommendation: Approve as Budgeted**

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**VOTE-ONLY ISSUE 20: COST RECOVERY MANAGEMENT SYSTEM (CRMS) IT PROJECT**

The Governor's budget requests \$2.71 million one-time, split between the Hazardous Waste Control Account, the Lead-Acid Battery Cleanup Fund, and the Toxic Substances Control Account, to migrate, implement, and support the project plan for the platform upgrade of the Cost Recovery Management System.

The Cost Recovery Billing System (CRBS) is the existing platform used for recovering DTSC's costs. DTSC uses CRBS to issue invoices to responsible parties, track cost data, record payments, and reconcile account balances to verify that reimbursement claims are accurate. DTSC also uses CRBS to maintain data on the number of invoices processed and the amount of reimbursement received.

In August, 2014, the California State Auditor issued a report on DTSC's cost Recovery efforts. The report found several deficiencies in DTSC's cost recovery processes. It specifically noted that CRBS was no longer supported and the system could not perform basic functions, such as tracking settlement agreements or automating the process for issuing collection letters to billable parties. The lack of basic functionality was an important factor in DTSC's failure to collect response costs in a timely manner.

The proposed CRMS platform upgrade will address the operational needs of DTSC, and minimize security and failure risks posed by the existing system. The CRMS project was approved by the California Department of Technology (CDT) in November 2019. Upgrading the CRMS platform is critical as the existing system is no longer supported, cannot be upgraded to meet changes in statute, is subject to security threats, and because cost recovery constitutes a significant source of revenue for DTSC.

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**Staff Recommendation: Approve as Budgeted**

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## ITEMS TO BE HEARD

### 3940 STATE WATER RESOURCES CONTROL BOARD

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#### ISSUE 1: SAFE AND AFFORDABLE DRINKING WATER STAFFING

The Governor's budget requests 48 positions to fully implement the new Safe and Affordable Drinking Water Program pursuant to SB 200 (Chapter 120, Statutes of 2019).

#### BACKGROUND

**SB 200 established a funding mechanism to help local water systems provide safe drinking water.** SB 200 created the new Safe and Affordable Drinking Water Fund and enhanced the authority of SWRCB to guide drinking water systems to long-term sustainable solutions. The program, created by SB 200, builds upon existing regulatory and funding efforts to address long standing drinking water issues in small water systems in disadvantaged communities. SB 200 provided SWRCB additional tools. Those tools include, but are not limited to:

- Safe and Affordable Drinking Water Fund. Up to \$130 million per year is allocated for assisting small disadvantaged community water systems in finding long-term solutions. Funding will be used for consolidations, planning, technical assistance, administrators, replacement water, and operations and maintenance (once system sustainability is achieved).
- Consolidation Authority. SWRCB works with small community water systems on voluntary consolidation agreements to combine with nearby larger systems. SWRCB has authority to force mandatory consolidations, under appropriate circumstances, where voluntary efforts are not successful.
- Water System Administrators. SWRCB has the authority to name administrators to oversee small water systems that lack management and technical capacity. Administrators work with water systems to put them on a path to long-term sustainability.
- Mapping and Needs Assessment. SWRCB has ongoing efforts to assess water system needs including financial and other capacity issues. SWRCB is working on more accurately mapping water system boundaries and on linking water quality data (groundwater and surface water) with drinking water data. The information gained from the Needs Assessment will inform future work under SB 200.
- Technical Reporting. SB 200 grants SWRCB the authority to require technical reports that may include both technical details about the water system and technical, managerial, and financial capacity of the system.

In addition, SWRCB is working on interim drinking water solutions for affected communities, providing a wide range of technical assistance services and working on water system regionalization (both physical and managerial).

**Proposal for additional positions to implement SB 200.** SWRCB received 23 positions in 2019 to begin regulatory development and initial implementation of SB 200. SWRCB is now requesting for 48 additional positions in order to fully implement the program. The additional 48 positions would be as follows:

- Division of Financial Assistance (DFA): 21 positions. DFA requests 21 additional positions beginning 2020-21 to do the following: (1) develop and adopt a fund implementation plan, which must include funding priorities and guidelines; (2) take lead in coordinating with the Division of Drinking Water (DDW) and the Division of Administrative Services (DAS) in conducting the assessment of funding needs and developing estimates of expected revenue; (3) engage with stakeholders, including marketing and outreach; and, (4) application review, project management, grant agreement and contract development, and fiscal tracking of funds for administrators and technical assistance for disadvantaged communities. Of the 21 positions requested, 16 will be dedicated to administrative functions (e.g. contracting and policy development) and five will be dedicated to program implementation (e.g. direct technical assistance and needs analysis).
- Division of Drinking Water (DDW): 13 positions. DDW requests 13 positions to fully engage with water systems that are failing to provide drinking water that meets established standards, as well as work with state small water systems and private domestic well owners. Work for the positions will include conducting technical, managerial, and financial evaluations; establishing the need for and ordering administrators for water systems; community engagement required to issue orders for administrators and consolidation; and, coordination of project development with DFA and DDW District Engineers.
- Office of Chief Counsel (OCC): five positions. OCC requests five positions to support work associated with DDW and DFA efforts. SWRCB currently has four attorneys assigned to support DDW, while Water Quality and Water Rights have 12 and 10 respectively. Attorneys tasked with DDW and DFA assistance are needed for the following: (1) provide legal review of consolidation orders; (2) provide legal review of petitions of consolidation orders and represent DDW in petitions that come before SWRCB; (3) work with the Attorney General's office to defend lawsuits brought against DDW for challenges to consolidation orders; (4) work with administrators to address potential legal obstacles to consolidations or funding; (5) provide legal review of standards and procedures for the policy handbook that define the use of administrator powers and requirements by SWRCB; (6) assist with the development of implementation plan to administer grants and contracts for the Safe and Affordable Drinking Water Fund; (7) develop recommendations for potential follow-up actions when non-compliance with financial assistance agreements is identified by staff; (8) develop diligence protocols and assist program staff with due diligence review on projects; and, (9) develop local assistance funding agreement templates and bespoke agreements, and review project funding agreements.
- Office of Public Participation (OPP): seven positions. OPP requests seven positions to coordinate and lead public outreach and communication efforts with stakeholders in communities that lack safe drinking water. These stakeholders include residents of disadvantaged communities (many of which are non-English speaking), small water



system officials, elected officials, civic and religious organizations, and farmers. Because of the nature of the drinking water systems being addressed, reaching the goals for the Safe and Affordable Drinking Water Program will require a higher level of community engagement than other existing SWRCB programs. All seven positions will support program implementation.

- Division of Information Technology (DIT): two positions. DIT requests two positions to provide information technology (IT) support of enhancements for geographic information system (GIS) technology and application development. The positions will also provide ongoing maintenance of these systems. The position assigned to the GIS unit will support the enhanced Human Right to Water web portal, including maps and reports of contaminated aquifers that exceed primary federal and state drinking water standards. This position will be responsible for providing GIS technical system architecture and systems development support of the new GIS services included in the new public web portal. The positions assigned to the application development unit would design, build, implement, and maintain SWRCB systems that will provide data management and project tracking for the program. These two positions will support administration of the program.

#### STAFF COMMENTS

The requested resources are intended to enable the SWRCB to quickly implement solutions for communities lacking safe drinking water. To obtain a better understanding of how SWRCB is implementing SB 200, the Subcommittee may wish to ask the following questions:

- 1) With your list of more than 300 public water systems needing help, how does the SWRCB plan to fix these systems on a regional basis, to avoid having to create 300 separate plans?
- 2) How will the SWRCB ensure that the problem systems get a sustainable solution to their drinking water quality problem, as opposed to a quick fix for the contaminant immediately at hand? If the system goes back into non-compliance in a few years, will it cost more State funding to fix it again?
- 3) How is the Board engaging successful water agencies in the region with the failed systems? Does the Board's authority to appoint other water agencies as administrators need augmentation?
- 4) Implementation of drinking water solutions must involve community engagement. How does the Board plan on ensuring that its actions remain accountable to the community with the problem?

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**Staff Recommendation: Hold Open**

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**3960 DEPARTMENT OF TOXIC SUBSTANCES CONTROL****ISSUE 2: GOVERNANCE AND FISCAL REFORM PACKAGE**

The Governor's budget requests the following to provide DTSC governance and fiscal reform:

- \$3 million General Fund annually for two years.
- Fifteen permanent positions.
- Trailer bill language to revise the Environmental Fee rates and the hazardous waste fee rates and structure.
- Trailer bill language to authorize the Board to set future fee rates, based on appropriations by the Legislature, under a capped fee-setting authority.

The Governor's budget also includes \$12 million General Fund for the Toxic Substance Control Account and \$19.5 million General Fund for the Hazardous Waste Control Account in order for both accounts to remain solvent in 2020-21.

**BACKGROUND**

**The Department of Toxic Substances Control (DTSC) has three major program areas.** DTSC is responsible for protecting public health and the environment by overseeing the state's response to releases of hazardous substances and disposal of hazardous waste. DTSC investigates, removes and remediates contamination as part of that mission. DTSC operations fall under three major program areas:

1. **Site Mitigation and Restoration Program.** This program is responsible for the cleanup and restoration of contaminated sites throughout the state; including legacy landfills (e.g., Stringfellow Acid Pits and the BKK Landfill), the Santa Susana Field Lab, military bases, former industrial properties, and school sites. It is funded primarily by the Toxic Substances Control Account.
2. **Hazardous Waste Management Program.** This program is responsible for several important DTSC functions. It issues permit decisions for proposed new hazardous waste facilities and the approximately 110 existing hazardous waste facilities in California that treat, store, and dispose of hazardous waste. The program's staff conducts inspections and takes enforcement actions to ensure compliance with hazardous waste laws and regulations. This program oversees the hazardous waste generator program. In addition, it provides hazardous waste management-related policy support, regulatory and statutory interpretation, financial assurance, and data management support for internal and external stakeholders. The program also provides emergency response support for hazardous materials-related emergencies throughout California.
3. **Safer Consumers Products and Workplaces Program.** This program is responsible for reducing toxic chemicals in consumer products, creating new business opportunities in

the emerging green chemistry industry, and helping consumers and businesses identify what chemicals are in the products they buy.

Through this program, DTSC identifies and prioritizes chemicals of concern in consumer products, evaluates alternatives, and specifies regulatory responses to reduce chemicals of concern in products.

**Funding sources for DTSC.** DTSC's funding comes primarily from the Hazardous Waste Control Account and the Toxic Substances Control Account. Each discussed in greater detail below:

- *Hazardous Waste Control Account (HWCA)* – HWCA is a repository for revenues from cost recovery activities and fees paid by various hazardous waste generators, transporters, and facilities. With the exception of the Activity Fee for Permitting, the rest of the fees were last amended in statute in 1998 or earlier. The fees collected and deposited into HWCA are:
  - Generator fee (constitutes 45 percent of HWCA)\*
  - Disposal fee (constitutes 10 percent of HWCA)\*
  - Facility fees (constitutes 9 percent of HWCA)\*
  - EPA ID Verification (constitutes 9 percent of HWCA)\*\*
  - Manifest fees (constitutes 4 percent of HWCA)\*\*
  - Transportable Treatment Unit fee\*\*\*
  - Cost recovery activities
  - Fee for service for Permitting

*\*These fees are subject to an annual CPI adjustment and are collected by the California Department of Tax and Fee Administration.*

*\*\*These fees are not subject to an annual CPI adjustment and are collected by DTSC.*

*\*\*\*This fee is subject to an annual CPI adjustment and is collected by DTSC.*
- *Toxic Substances Control Account (TSCA)* – TSCA is a repository for revenues from cost recovery, penalties, interest, and the Environmental Fee. Revenues from the Environmental Fee constitutes 80 percent of TSCA with the rest making up the remaining 20 percent. The Environmental Fee was established in 1989 and is subject to an annual CPI adjustment.

**Both HWCA and TSCA has been operating with a structural deficit.** Expenditures out of HWCA and TSCA has exceeded revenues for many years. HWCA became insolvent in fiscal year 2018-19 with a \$4.8 million shortfall and a projected \$24.8 million shortfall in 2019-20 absent remedial action. The Budget Act of 2019 provided HWCA with \$27.5 million in General Fund to backfill the shortfall and maintain existing operations. The Governor's proposed budget for 2020-21 would provide \$12 million in General Fund for TSCA as it is projected to be insolvent in the budget year.

A number of factors contribute to the operating structural deficit in both accounts. They include increasing legislative mandates, an outdated fee structure that no longer corresponds to the proportion of waste generated or disposed, increasing costs relating to the state obligated cost

share for National Priority List sites, and a backlog of unresolved response costs worth approximately \$194 million at over 1,600 cleanup sites over a 25-year period.

**In addition to its fiscal deficiencies, DTSC has been criticized for lack of transparency and ineffective implementation of its statutory mandates.** Specific incidents across California have exposed and continue to expose glaring failings in DTSC's implementation of its core programs, as well as its support programs. Such incidences include the mishandling of the hazardous waste facility permitting and enforcement of Exide and the Quemetco battery recycling facilities; delayed site remediation; failed public participation and transparency activities; and personnel issues have all led to decreased stakeholder confidence and public trust in DTSC's ability to meet its mandate to protect public health and the environment.

In August 2014, the State Auditor issued a report citing DTSC's neglected cost-recovery efforts. According to the audit, DTSC failed to collect an estimated \$194 million in cleanup costs from polluters since 1987, failed to send out nearly \$142 million in bills, and for the \$52 million in assessments the DTSC did mail, but never collected.

Furthermore, community groups that live near hazardous waste facilities are concerned that DTSC is not properly enforcing state and federal law and is allowing facilities that have numerous violations of state law and regulation, or have an expired permit, to continue to operate. Due to a growing backlog of applications to renew hazardous waste permits, many facilities are operating on "continued permits." These facilities operating on a continued permit are likely using outdated technologies, practices, and safeguards and are potentially releasing hazardous wastes into the environment.

Over the past five years the Department has sought to reduce the permit backlog for hazardous waste facilities. In 2014 the Legislature appropriated additional limited-term staff to help reduce the permit backlog, noting there were 24 continued permits. Despite those limited-term positions, as of January 2019, there were 29 continued operating permits – with 4 of those being expired for a decade or more.

Additionally, the regulated community is concerned about the length of time it takes DTSC to process a permit, with processing a permit extending years beyond the expiration date of their permit, which impacts the costs associated with processing a permit.

**DTSC, the Administration, and the Legislature have all taken several actions aimed at restoring public confidence and to help DTSC better achieve its mandate.** Over the last five years, the Legislature has conducted numerous hearings on DTSC's internal controls, its business practices, and its basic statutory obligations. In those hearings, the budget and policy committees have evaluated the following four main areas: (1) reviewing and monitoring the department's strategic plan and reorganization; (2) auditing cost recovery at the Department; (3) providing staffing to improve permit backlogs and business operations; and, (4) improving enforcement at the Department.

As a result of those hearings, statutory changes were made to clarify and strengthen the statute to help DTSC better achieve its mandates, and budget augmentations were made to give DTSC

the resources to reduce backlogs and address outstanding programmatic failings. Efforts include increasing cost recovery from those responsible for hazardous waste contamination, reducing permitting backlogs, strengthening enforcement, and improving the financial sustainability of its operating funds.

However, many of the underlying concerns about transparency, accountability, and long-term stability of DTSC programs remain.

**DTSC's Internal Improvement Initiative.** In early 2012, DTSC launched its "Fixing the Foundation" initiative, which includes more than 30 different activities intended to improve its operations and restore public trust in the Department. Activities include increasing cost recovery from those responsible for hazardous waste contamination, reducing permitting backlogs, strengthening enforcement, and improving the financial sustainability of its operating funds. This effort includes multiple goals at every level of the organization, from staff engagement, to permitting backlogs and cost recovery.

In 2014, DTSC released its Permitting Enhancement Work Plan as a comprehensive roadmap to guide efforts to improve DTSC's ability to issue protective, timely and enforceable permits using more transparent standards and consistent procedures. In the 2014-15 Budget Act, DTSC requested and was granted 8 limited-term positions and \$1.2 million for reduction of backlogged permitting application review. As part of the 2015-16 Budget Act, DTSC requested, and received, an additional \$1.632 million and 16 limited-term positions for two years to address the permitting backlog. Though, as noted above, the permitting backlog is now longer than in 2015 and the limited-term positions have expired.

**Many legislative efforts to improve DTSC's function were vetoed in the Brown Administration, citing fiscal issues with DTSC.** While Governor Brown recognized the need for improved programmatic performance by DTSC, he vetoed multiple efforts citing that none of those statutory changes should be done without also addressing the budget issues with the Department. Those vetoed bills include, but are not limited to:

1. **AB 248 (Reyes, 2017) Hazardous waste: facilities: permits** would have made statutory changes to improve the permitting process for hazardous waste facilities. The bill was vetoed the Governor. The veto message stated: "...Adding new responsibilities to the DTSC must be undertaken holistically while considering the resources and funding available. Doing anything less robs the community of a real solution and sets government up for failure. Addressing the structural problems at the DTSC, both fiscal and administrative, will not be an easy task, but one that is achievable if the Administration and the Legislature work together. I look forward to the partnership."
2. **AB 1179 (Kalra, 2017) Hazardous waste facilities: inspections** would have required the DTSC to, on or before January 1, 2020, adopt regulations establishing inspection frequencies for permitted hazardous waste treatment, storage, and disposal facilities and for hazardous waste generators and transporters. The bill was vetoed the Governor. The veto message stated: "...There is no question that comprehensive reform of the DTSC's operations is needed and the Administration is committed to working with the Legislature

on that task. When it comes to protecting the public health of our communities, government cannot afford to make promises it cannot keep. Adding new responsibilities to the DTSC must be undertaken holistically while considering the resources and funding available. Doing anything less robs the community of a real solution and sets government up for failure. Addressing the structural problems at the DTSC, both fiscal and administrative, will not be an easy task, but one that is achievable if the Administration and the Legislature work together. I look forward to the partnership."

3. **AB 2474 (Quirk, 2018) Hazardous waste: identification: testing** would have authorized the DTSC to evaluate the suitability of two acute aquatic toxicity test protocols, one testing for toxicity to fish embryos and the other for toxicity to daphnids, for hazardous waste identification and requires the DTSC to provide one or both of the tests as optional alternatives to the acute aquatic toxicity test currently in its regulations, which is performed on fish. The bill was vetoed the Governor. The veto message stated: "...This bill authorizes the DTSC to evaluate alternative methods from its standard bioassay procedure when determining if a product is hazardous waste. The DTSC currently has the authority to establish alternative methods of testing a product's toxicity to aquatic life. Despite this, it has not exercised this option because such tests are too expensive. The DTSC has a structural deficit and I am not inclined to sign legislation that creates additional cost pressures."
4. **SB 812 (De León, 2014) Hazardous waste** would have modified DTSC's permitting process and public participation requirements for hazardous waste facilities. This bill additionally would have established a Bureau of Internal Affairs to oversee DTSC and investigate departmental misconduct and a DTSC Citizen Oversight Committee to receive and review allegations of misconduct. The bill was vetoed the Governor. The veto message stated: "This bill attempts to fix the hazardous waste facility permitting process by establishing a community oversight committee, a three-year timeline for issuing permits, and an amended regulatory process for standardizing permit decisions. The author is seeking transparency and accountability in the Department's permitting process, and rightfully so. The delay and complexity that has plagued the Department's permit process over the last few decades has resulted in an inadequate and unresponsive regulatory program. Unfortunately, there are provisions in the bill that will unintentionally delay the Department's current plan to revise its program and complete its review of expired permits over the next two years. Instead of risking further delay and confusion, I would like to personally work with the author on modifications to the language, including providing the Department the necessary authority and adequate resources to fulfill our shared objectives of improving the performance of this critically important state program."

**Continuing legislative efforts in the current legislative session.** There are a number of legislative bills introduced in the current session aimed at addressing various aspects of DTSC's operations. These bills each represent the continuing concerns with DTSC's ineffective regulation of hazardous waste. Some of those proposals are described below:

1. **AB 3354 (Friedman).** AB 3354, introduced in February 2020, would eliminate DTSC's Safer Consumer Products (green chemistry) program. The California Safer Consumer

Products program strives to reduce toxic chemicals in consumer products. Lawmakers and environmental groups alike have accused this program of moving too slow to address hazardous compounds in consumer products. As a result, many lawmakers have pursued their own stand-alone bills to ban or restrict chemicals. Yet, those measures have failed passed due to the existence of this program. According to the author, this measure is intended to initiate a discussion about the program.

2. **AB 995 (C. Garcia).** At the end of the legislation session in 2019, Assemblymember Cristina Garcia, Bloom, and others introduced AB 995, which seeks to reform the department as well as assess the appropriate fee structure needed to enable a functioning department. To accomplish these goals, AB 995 would establish a Board of Environmental Safety at DTSC and create a fee taskforce. The newly created Board would be the policy setting body for DTSC, decide permit appeals and be the public interface for DTSC. One of the first tasks anticipated for this Board is for it to approve a statewide Hazardous Waste Management Plan.

AB 995 would also create a fee taskforce to be led by the Secretary of CalEPA to conduct a comprehensive evaluation of DTSC's fee structure and identify a funding structure that provides sufficient resources for DTSC to carry out its statutory mandates.

Lastly, AB 995 would also make a number of statutory changes to deadlines and processes within the permitting program to ensure timely response by both the permit applicants and DTSC, and would make improvements to the department's financial assurances requirements.

AB 995 is currently pending a policy hearing in the Senate.

**The Administration proposes a reform package intended to resolve DTSC's governance and fiscal problems.** The Administration proposes to remedy DTSC's fiscal instability by providing DTSC the ongoing authority to set and revise fees. To address transparency and governance issues, the Administration proposes to create the Board of Environmental Safety. Each of these proposals are discussed in further detail below:

- **Fiscal reform proposal.** The proposal would provide the newly created Board ongoing fee setting authority for HWCA and TSCA, subject to the annual appropriation by the Legislature. The proposal also includes making structural changes to HWCA by eliminating the Manifest, US EPA ID, and Disposal Fees, and adjusting the Generator Fee to a price-per-ton model.

The proposal also includes an adjustment to align the remaining HWCA fees and Environmental fee levels with the 2020-21 appropriations by the Legislature. Future fees would be set by the Board based on appropriations by the Legislature.

In other words, the fees raised for the budget year through 2021-22 would only cover the cost of current operations and the appropriated General Fund amount cover the shortfall.

Another round of fees would need to be raised in order to pay for additional services and programming.

- **Board of Environmental Safety Proposal (Board).** The proposal envisions a five-member Board to provide strategic guidance for DTSC, enhance public transparency and accountability on DTSC processes. The proposed Board would have fee-setting authority, have the authority to hear permit appeals, and evaluates the operations of DTSC. The proposal also includes an independent ombudsperson for the Board. The ombudsperson would report to the chair of the proposed board to serve as an impartial resource to the public for the evaluation of suggested actions the Department should undertake.
- **General Fund transfers to maintain solvency in both accounts.** In addition to the aforementioned elements of the Administration's DTSC reform package, the Governor's proposed budget includes a \$12 million General Fund transfer into TSCA and \$19.5 million General Fund transfer into HWCA. Absent these transfers, both accounts would face a shortfall in fiscal year 2020-21.

#### LAO COMMENTS

**Board of Environmental Safety would help improve transparency and accountability.** The LAO recommends the Legislature establish a board in order to improve DTSC's transparency and accountability, and thereby help restore confidence in the Department within the regulated community and the public. The LAO notes that SWRCB and CARB already exist under CalEPA and have demonstrated that a board-based structure can be a successful model for environmental regulatory agencies. In the LAO's view, the long-term benefits of establishing a board to oversee DTSC's activities could eventually outweigh the short-term costs and result in the public receiving improved services. However, if the Legislature authorizes a new oversight board, the LAO would recommend that it consider a range of issues to ensure that the structure and responsibilities of the board are consistent with legislative priorities. This could include consideration of the board membership and confirmation requirements, as well as the level of authority the board would have over DTSC.

**Decide Whether to Establish a Board Before Weighing HWCA and TSCA Proposals.** The LAO recommends the Legislature decide whether to establish a board within DTSC before weighing the merits of the Governor's proposals to restructure charges for HWCA and TSCA. Under the Governor's proposed budget trailer legislation, full implementation of the proposal to allow a board to set charges for various entities under HWCA and TSCA is contingent upon first establishing such a board. If the Legislature rejects the Governor's proposal to establish a board, the proposed budget trailer legislation regarding HWCA and TSCA charges would require significant revision before they could be implemented. The LAO recommends the Legislature consider the scope of the board's authority and define its responsibilities consistent with legislative priorities before the Legislature takes up the issue of whether such a board should be given the authority to annually adjust HWCA and TSCA charges.

**Withhold Action on General Fund Transfers Pending May Revision.** The LAO recommends the Legislature wait to take action on the Governor's proposal to transfer General Fund to TSCA



and HWCA. Given the level of uncertainty that has plagued these two funds over the past several years, the LAO believes it makes sense to wait until the May Revision when more information about prior- and current-year revenues and expenditures will be available before taking action on this item. The LAO will provide an updated analysis of TSCA and HWCA fund conditions at the time of the May Revision.

#### STAFF COMMENTS

Effective regulation of hazardous waste is essential for the protection of public health. DTSC's difficulties are a result of multiple factors, though undoubtedly, a major factor is the shortage of funding in both HWCA and TSCA. The fees that feed into these funds have not been adjusted for over 20 years and do not reflect significant program expansions and new mandates.

Over the last several years, there has been a number of internal and external efforts to improve DTSC's ability to satisfactorily meet its core mission and statutory mandates. Despite these efforts, the Department continues to not meet public expectations, especially in regards to clean-up and permitting activities.

This proposal comes at a time when HWCA and TSCA are both in need of funding from the General Fund in order to backfill the deficit. Absent any changes, both accounts will continue to need funding from the General Fund to stay balanced, thereby subsidizing fee payers with tax payer dollars.

To address the issue of transparency, this proposal, like AB 995, envisions the creation of a Board of Environmental Safety. The Board is intended to provide DTSC transparency, board policy direction, and resolve permit appeals. However, the creation of a Board is the only commonality between AB 995 and the Administration's proposal. In addition to the creation of a Board, AB 995 proposes statutory changes to improve and speed up the permitting process and ensure the proper financial assurances are in place. AB 995 would also task the Board with creating a statewide hazardous waste management plan. The Administration's proposal does not include these statutory changes or any other statutory changes that aim to improve existing programs.

Further, the Administration proposes providing the Board fee setting authority in order to address the funding shortfall in HWCA and TSCA. AB 995 proposes creating a fee taskforce in order to evaluate the appropriate fee structure.

While the Administration's proposal is well-intended and seeks to respond to the suite of problems at DTSC, the proposal falls short on several fronts. First, the creation of a Board in and of itself is not going to resolve the many longstanding operational shortfalls at DTSC. The creation of a Board to conduct permit appeals and to provide a forum for public input is an excellent step forward, increasing transparency at DTSC. However, transparency is not the only problem at DTSC. Without making changes to some of the programmatic controls contemplated in AB 995, the creation of a Board would not resolve the permit backlogs nor the deficient financial assurances currently in place.

With regard to the funding piece of this proposal, it is clear that the existing fee structure does not provide adequate funding for DTSC. The Administration's proposal seeks to resolve this by providing DTSC the ability to administratively raise fees. However, the proposal does not require DTSC to conduct an evaluation of whether to increase, consolidate or create fees prior to the raising of fees, nor does the proposal discuss whether there are existing budgetary deficiencies that prevent DTSC from meeting its statutory mandates. Staff notes that DTSC has less authorized positions than when the Department was first created in the 1990s, despite substantial new and expanded programs.

In a presentation to this Subcommittee last February, DTSC reported that they were conducting a workload analysis that would establish what the resources needed to meet DTSC's statutory mandates are compared to current budget allocations and distributions. This workload analysis was anticipated to have been completed last fall, but no information has yet to be released.

Absent understanding of the resources needs at DTSC and an evaluation of the corresponding fees needed to keep DTSC balanced, providing fee authority is premature. Without the workload analysis, the Legislature cannot make an informed decision on whether additional appropriations are needed, and if so, for what responsibilities. Additionally, the Legislature does not have a frame of reference by which to judge whether the new fee caps proposed by the trailer bill are reasonable. While it is desirable to move as quickly as possible to eliminate the need for General Fund support of DTSC, doing so without knowing how the fee caps relate to the existing resource needs might lead back to this funding conundrum in the near future. A fee task force would allow for a discussion of how to best structure fees that meet the needs identified by the workload analysis.

#### General Questions:

- What is the basis for the Administration's fee proposal?
- Could you explain why each fee was selected for an increase and the rationale on how the increase was determined?
- Was there any consideration to program impacts with these fee increases?
- What is the status of DTSC's workload analysis and when will the results be shared with the Legislature and the public?
- Without the workload analysis, what confidence does DTSC have that the fee increases allowed under the caps would adequately and appropriately fund DTSC?
- What is DTSC's plan if the Legislature does not provide DTSC fee authority at this time?
- How would granting fee setting authority to the Board improve program outcomes at DTSC?
- If the onus is still with the Governor and the Legislature to approve for what purposes DTSC will receive additional funding, then what role does the Board have in ensuring that the Department is properly funded?

- Is its "fee authority" almost more of an administrative function, to merely raise the fees to a level to cover future appropriations?
- AB 995 would implement a number of statutory changes to improve operations at DTSC, particularly to improve permitting and financial assurance. Has the Administration considered incorporating these changes proposed by AB 995 into its proposal? Would the Administration be open to incorporating these changes into this proposal? If not, what is the Administration's plan to fixing these operational problems at DTSC?
- How would this proposal result in near-term programmatic improvements?

#### TSCA-specific Questions:

- If the proposed \$12 million General Fund transfer into TSCA is rejected, what happens next? Will there be sufficient funds in TSCA to cover the state's federally-required cost share obligations for NPL sites?
- How does the Department intend to apportion the Environmental Fee between orphan sites and the state cost share of NPL sites in 20-21 and 21-22?
- Will this proposal's allocation of \$12 million of General fund into TSCA increase the number of non-federal cleanup sites that may be remediated?
- Does the fee cap for the Environmental Fee in the proposal ensure the state will be able to meet its cost share requirements for the anticipated future NPL sites? If so, how does the costs relating to orphan sites factor into those calculations?
- What other funding options, if any, did DTSC consider to cover the state cost share for NPL sites? Orphan site cleanups? Green Chemistry costs?

#### HWCA-specific Questions:

- If the fee proposal were to be adopted, what regulatory program improvements would be anticipated? That is, how much could the permit process time improve, the number of inspections to be completed, the number of cleanups performed, etc.?
- What information did DTSC use to inform their decisions on which fees to raise and by how much?
- Did DTSC consider any new or restructured fees that would more appropriately place the costs of regulation on the regulated entities compared to the current fees?
- There are many areas in which DTSC is underperforming. How would the Board consider raising the fees to take into account the costs associated with activities DTSC is currently not undertaking?

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**Staff Recommendation: Hold Open**

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