

**AGENDA****ASSEMBLY BUDGET SUBCOMMITTEE NO. 3  
NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION****Assemblymember Ira Ruskin, Chair****WEDNESDAY, APRIL 23RD, 2008  
STATE CAPITOL, ROOM 447  
9:00A.M.**

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**CONSENT CALENDAR**

ITEM	DEPARTMENT	SUMMARY
3930	Pesticide Regulation	<b>IT Compliance:</b> \$188K and 2.0 positions (DPR Fund) to comply with increasing information technology control agency requirements.
3930	Pesticide Regulation	<b>Legal Clerical Workload:</b> \$65,000 and 10 positions (DPR Fund) to improve legal clerical support and address increased workload.
3930	Pesticide Regulation	<b>Administrative Services:</b> \$175K and 2.5 positions to provide necessary support in the areas of administrative policies and procedures and clerical assistance.
3930	Pesticide Regulation	<b>AB 1713 implementation, Unclaimed Gas Tax:</b> \$48K and .5 positions (DPR Fund) to provide state oversight and support in administering unclaimed gas tax reimbursements to county ag commissioners.
3940	Water Board	<b>Water Rights:</b> 6.5 positions and \$316,000 (Water Rights Fund) to increase staffing in for the water rights program to address existing backlogs and increased workload needs resulting from water delivery cutbacks in the Delta.
3940	Water Board	<b>Caltrans Storm Water Program:</b> \$75,000 and 1 PY to oversee Caltrans project implementation and management activities in the Lake Tahoe Basin.
3940	Water Board	<b>Leviathan Mine Litigation Defense:</b> \$961,000 (General Fund) in 2008-09 and \$1.21 in 09-10 to be used to pay the Attorney General's Office for a lawsuit to be filed by ARCO regarding the cleanup of mine waste at Leviathan.
3940	Water Board	<b>Wetlands Program:</b> \$202,000 (Waste Discharge Permit Fund) for the Wetlands Program permits backlogs.
3940	Water Board	<b>Proposition 84:</b> \$100.5 million (Proposition 84) for the second year of funding for the Water Board's Prop 84 programs (Ag Water Quality Grants, Urban Stormwater Grants, Clean Beaches Grants).
3940	Water Board	<b>Propositions 204/13/40/50:</b> \$1.293 million in multiple bond funds for ongoing bond program implementation.
3940	Water Board	<b>San Diego County Trans. Projects:</b> Extension of 1.1 limited term staff positions and 1.5 new positions funded through reimbursements to conduct and follow up on environmental reviews for transportation and water supply projects in S.D.
3940	Water Board	<b>Angora Fire:</b> \$100,000 (General Fund) to support 1.0 position to work in the Lake Tahoe basin to participate in fuels reduction planning and regulatory oversight of increased accelerated fuel reduction activities.
3940	Water Board	<b>AB 258 Implementation:</b> \$1.036 million to implement AB 258 (Krekorian) to develop a program to control the discharge of thermoplastic resin pellets.
3940	Water Board	<b>AB 739 Implementation:</b> \$590,000 (Waste Discharge Permit Fee) and 1 position to implement AB 739 (Laird) that requires development and implementation of guidelines for assessing the effectiveness of municipal stormwater programs.
3940	Water Board	<b>AB 1420 Implementation:</b> \$126,000 and .9 position to implement AB 1420 (Laird) that requires water management grants to be conditioned on the implementation of a demand management measure.
3940	Water Board	<b>AB 1481 Implementation:</b> \$850,000 (Waste Discharge) for 2.0 positions and contracting to implement AB 1481 (De La Torre) that requires a general permit for use of recycled water for landscape irrigation.
3940	Water Board	<b>AB 1742 Implementation:</b> \$5.5 million (State Water Pollution Control Revolving Fund Administrative Fund) and redirection of 32 positions to improve services at the Board funded by new assessments approved in AB1742.
3980	OEHHA	<b>IT Branch Staffing:</b> \$116,000 redirection and one position to support IT.
3980	OEHHA	<b>Worker Protection:</b> \$104,000 (DPR) to assist in the development of worker protection regulations relating to pesticides and worker safety.

## 3930 – DEPARTMENT OF PESTICIDE REGULATIONS

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### ISSUE 1: VOLATILE ORGANIC COMPOUNDS REGULATIONS IMPLEMENTATION

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**Governor's Budget.** The Governor's budget is requesting \$2.6 million (DPR) and 11 positions to implement regulations that reduce volatile organic compound (VOC) emissions from pesticides to attain national air quality standards in California and to comply with a federal court order.

**Background.** DPR manages the sale and use of pesticides and can control adverse effects from pesticides in air through pesticide product actions and regulations that can limit application methods and total emissions. Through the reevaluation program, DPR can require pesticide registrants to submit additional data, including emission mitigation measures. DPR is ultimately responsible for evaluating mitigation measures inland taking appropriate regulatory actions to reduce VOC emissions from pesticides.

A recent Federal ruling found that the Department of Pesticide Regulations (DPR) was in violation of not reducing VOC emissions from pesticide use in seven nonattainment areas. The Federal court further ruled that DPR was to approve regulations to reduce VOC emissions to 1991 levels by January 2008. Under approved regulations, DPR will use existing resources, new staff proposed in the BCP and requested local assistance funds for county agricultural commissioners to manage overall fumigant emission by:

- Establish a cap on emissions in the 7 nonattainment areas identified in the ruling.
- Restrict application methods for all seven VOC releasing farm fumigants that are listed as "restricted materials."
- Provide fumigant allowances to individual applicators within non attainment areas.
- Evaluate and incorporate new fumigant products and technology into regulations as they develop.

**Staff Comments.** Enforcement of the VOC regulations will be dependent on a fairly complex working relationship between state personnel, county agricultural commissioners, and individual applicators. As understood by staff, DPR staff will be primarily responsible for setting emission allowances so as not to exceed established nonattainment area caps while the major areas of enforcement of the regulations in the areas of applications quantity and methods will be done in partnership with local agricultural commissioners. Because of the potential complexity and required workload involved in ensuring every applicator is applying only their allotted quantity of fumigants in a manor that is allowable under the regulations, the Subcommittee last year required DPR to report on how it was going verify compliance under the regulations. This report has not been provided yet but staff understands that it is in the final stages of approval. At the hearing, DPR should be prepared to walk the Subcommittee through the development of their regulations and how they are going to measure and verify emission reductions.

**STAFF RECOMMENDATION: Approve as budgeted**

**3940 STATE WATER RESOURCES CONTROL BOARD**  
**4260 DEPARTMENT OF PUBLIC HEALTH**

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**ISSUE 1: INFORMATIONAL ISSUE – DRINKING WATER/GROUNDWATER QUALITY**

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Groundwater aquifers throughout the state are contaminated with nitrates and other compounds that make water from those sources unsafe for human consumption. Particularly acute in the Central Valley and Central Coast, residents from small low-income rural communities have local water systems that draw water from these polluted aquifers and deliver it to service connections - households, commercial properties, schools, etc. - for their use. To protect residents from this water, it is required by law that rate payers be notified that they should drink water from other sources – usually bottled water purchased by the resident - if water contamination exceeds health standards.

As a leading type of contamination, nitrates in public water is a severe public health problem because it restricts the blood's ability to carry oxygen through the body and has an amplified impact on pregnant women, youth, and the elderly. Once found in an aquifer, it is a very expensive process to treat the water that requires capital infrastructure not found in many small community water systems. Additionally, by passing the burden of purchasing and transporting safe drinking water on the resident, the fundamental right to clean drinking water is placed in economic competition with other staples such as food and transportation.

**Role of State Water Resources Control Board.** As a general rule, the State Water Resources Control Board (SWRCB) is, through its regional water boards, responsible under the Porter-Cologne Act to maintain the quality of both surface and groundwater in the state through monitoring and regulatory actions.

**Role of the Department of Public Health.** While Regional Water Boards are responsible for ensuring surface and groundwater quality through monitoring and regulation, the Department of Public Health (DPH) is responsible for testing water coming from wells and ensuring that treatment methods produce safe drinking water.

**Staff Comments.** In California, groundwater quality and consumption is not regulated by the state generally speaking. Under practice, it is the responsibility of the party that draws water from the ground to treat that water to a level suitable for consumption. Many smaller disadvantaged communities who live in remote agricultural areas are reliant on groundwater for their water supply but often do not have capital infrastructure to treat contaminated water. If their only water source is contaminated, residents must purchase bottled water for all of their consumptive needs, a cost that is on top of a water bill of \$50-\$70 a month.

While the state has approved some bond funds for this issue, the amounts are not enough to fulfill a small percentage of the overall need. Staff feels that the state needs to look at integrated regional water solutions that could include connecting some of these communities to the many surface water supplies that wind through the central valley; as surface water is generally cheaper and easier to treat than groundwater.

**STAFF RECOMMENDATION: No recommendation at this point, item is informational.**

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**3940– STATE WATER RESOURCES CONTROL BOARD**

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**ISSUE 1: INVESTIGATIONS, ENFORCEMENT, AND FRAUD**

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**Governor's Budget.** The Governor's budget is requesting 8.5 PYs and \$1.3 million Water Discharge/Rights Funds) to increase enforcement in the following two programs.

**Water Quality - 5.2 PYs and \$790,000 (Waste Discharge Permit Fund).** Statute requires that the Water Board levy a Mandatory Minimum Penalty (MMP) on certain water quality violations. When a violation has occurred, the Regional Water Boards have, as a practice, been responsible for bringing resolution to that violation through correction and/or collection of fines and penalties. Currently, the Water Board has a backlog of over 8,500 MMPs that have not been resolved. This BCP is requesting staff and PYs at the state level, rather than through the Regional Boards, to work through this backlog of unresolved violations and apply related enforcement actions.

**Water Rights – 3.3 PYs and \$524,000 (Water Rights Fund).** Funding requested in this proposal would serve to increase enforcement of water rights, primarily in the Delta where authority for many historic water diversion rights are not well documented with the board, offering potential for abuse and fraud.

**Background.** The Water Boards rely on self reporting by dischargers to enforce statewide water quality laws. Under the model, in order to acquire a permit from the state, dischargers must accurately and honestly self monitor by collecting and analyzing their own samples and submit their results to the Board. For water quality, the State does little secondary testing, except for inspections, to determine permit compliance.

For water diversion rights, the authority to divert is first granted by the state then enforced by the Board. Because water rights permits have been granted by the state since the early 1900s, there are enormous archived permits that are not in digital form that are the basis of legal claims for water. Additionally, this program has extraordinary backlog in permit applications because of the significant verification process needed to grant a permit coupled with limited staff resources at the Board. The consequence that the Board faces as a result of their permit backlog and a lack of a fully updated digital record of statewide water rights is a large potential for water diversion rights abuses.

**Staff Comments.** As an issue of importance for the Legislature in the last few years, shortages in staffing and a lack of adequate response by regional boards have been at the crux of the enforcement issue. Staff is in support of the staffing increases and commends the Board for taking a new direction of systematically working through backlogs of enforcement actions that have congested the statewide mission of protection water quality. Often, too much dependence was delegated on regional open-pended negotiated processes, and not enough emphasis on closure and statewide consistency. Staff recommends that this proposal be approved a budgeted.

**STAFF RECOMMENDATION: Approve as budgeted**

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**ISSUE 2: LAO ISSUE: SUPPLEMENTAL ENVIRONMENTAL PAYMENTS**

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**Regional Water Board Authority Over Enforcement Penalties.** Under current law, the regional boards may administratively issue civil liability penalties against companies, cities, and individual waste dischargers that violate water quality laws or permit conditions, or do not comply with enforcement and penalty orders of the boards. Monetary penalties collected through these enforcement actions are paid to the state board and deposited in the Cleanup and Abatement Account (CAA), an account within the State Water Quality Control Fund. These funds are used to address priority water quality cleanup and abatement activities throughout the state. The budget projects revenues of about \$5.2 million in the budget year to CAA. This amount fluctuates depending on the size and number of individual penalties assessed in any given year.

**SEPs.** As an alternative to paying penalties that are deposited into the CAA, current law allows dischargers to pay a portion of their penalty assessment by providing funding for water quality improvements within the region in which the enforcement action was taken. These are known as Supplemental Environmental Payments (SEP). The SEPs are projects, generally proposed and implemented by nonprofits, local governments, or collaborative efforts, that enhance the beneficial uses of the waters of the state, provide a benefit to the public at large, and are not otherwise required by board directives. Examples of SEPs include pollution prevention projects, environmental restoration programs, water education activities, and watershed assessments.

**LAO Review.** The LAO found that implementation of SEPs varies widely among regions. Only some regional boards have formal criteria for implementing SEPs, with a list of preapproved projects available. While some regions generally track SEP projects well and report projects to the state board, in other regions the LAO found complaints on a variety of issues emanating both from the regulated community as well as those organizations or local governments eligible for SEP funding. These include complaints about the lack of standards for awarding SEP funding, lack of accountability for completion of SEPs, and lack of clear criteria for the penalty phase of enforcement proceedings. A lack of reporting of SEPs causes problems both in tracking completion of the projects as well as in comparing enforcement actions taken across regions and across waste dischargers.

**Use of SEPs Not Always Authorized in Statute, Reduces Funding Available for Statewide Enforcement.** Current law states that a regional board may allow certain monetary penalties to be reduced by *up to 50 percent* if accompanied by a SEP. For other penalties, such as certain administrative civil liabilities, SEPs are not expressly authorized by law. It is the current practice of both the state and regional boards, however, to allow SEPs in such cases, even though not expressly authorized in statute. Within the past three years, six of the nine regional boards issued SEPs reflecting over 50 percent of a penalty amount. In at least one region, all SEPs issued over the past three years were for over 50 percent of the total monetary penalties. This practice reduces the amount of funding in CAA available for statewide water quality cleanup and enforcement purposes.

**State Board Has Role in SEP Oversight.** The LAO review found that the state and regional boards both have statutory responsibility for tracking and reporting enforcement activity. The LAO also found that a regional board may include in any penalty the projected administrative costs associated with the implementation of a SEP. While the majority of day-to-day oversight of a SEP project is conducted by the regional board, we find that the state board has a role in providing oversight of the SEP process, and is ultimately responsible for reporting on enforcement activity and outcomes statewide. These state board costs are eligible for funding within the administrative component of a SEP.

**State Fiscal Oversight of SEP Funding Can Be Lacking.** The SEP is designed to be a beneficial project completed as part of a penalty for discharger violations. However, at least one regional board has shifted funding accepted for SEPs to a non-state entity (a local water agency) who keeps the funds in a trust fund as “holding funds” for a potential, but not certain, future SEP project. As a consequence, the state loses its fiscal oversight of SEP funding.

**LAO Recommendations.** The LAO is recommending that:

1. Regional boards should update their enforcement-related data entries to include all penalties and SEPs issued, and this information should be available on the state board’s public and internal websites.
2. Controls should be established for the current regional board practice of setting up trust funds as holding funds for SEPs. For example, what happens to these funds should a SEP project not come to fruition? We think the state board, in its next update of its statewide enforcement policy, should set clear guidelines for such trust funds, including clear and reasonable time limits for the trust fund, with requirements that SEP projects commence by a date certain of the SEP funding being established.
3. Regional boards be required to annually report to the state board on all SEPs issued, and the amount of monetary penalty these SEPs offset, in order to assure regional board compliance with current statutory requirements governing the use of SEPs. We think that this recommendation should increase the availability of funds in the CAA by up to \$500,000 in the budget year, based on a review of historical enforcement penalty collection. The LAO therefore recommends that the expenditure authority from the State Water Quality Control Fund be increased by a like amount, allowing the state board to increase its oversight of regional board enforcement activity.

**Staff Recommendation: Approve LAO recommendation**

**ISSUE 3: LAO ISSUE: FULL APPLICATION OF "POLLUTER PAYS" PRINCIPAL**

The LAO has recommended in their analysis of the budget that the Legislature increase revenues through new and existing fees to support all of the Water Board’s core water quality and water rights activities. In 2008-09, the budget provides about \$152 million for the board’s core regulatory and water quality management programs, and for water rights regulation. Of this amount, \$38.7 million is from the General Fund, with the remainder provided by a mix of permit fees, federal funds, bond funds, and other special funds.

**General Fund Budget–Balancing Reductions Proposed for Core Programs.** The Governor’s budget is proposing across the board cuts in most of the Water Boards core regulatory programs. As shown in Figure 1., proposed cuts total \$4.3 million in General Fund and with the exception of funding for cleanup at Leviathan Mine, the reductions are roughly about 10 percent of the General Fund support level for each of the activities funded from that source.

<b>Figure 1</b>	
<b>Proposed General Fund Budget-Balancing Reductions</b>	
<i>2008-09 (In Thousands)</i>	
<b>Program Activity</b>	<b>Amount</b>
<b>Regulatory Programs</b>	<b>\$1,150</b>
Forest activities	(440)
Water rights program	(390)
Agricultural waiver program	(180)
Pollution discharge program (NPDES)	(140)
<b>Water Quality Management</b>	<b>\$2,389</b>
Total Maximum Daily Loads (TMDLs)	(1,449)
Basin planning	(610)
Nonpoint source program	(130)
Other water quality programs	(200)
<b>General Cleanup Programs</b>	<b>\$510</b>
Leviathan Mine	—
Underground storage tank program	(290)
Spills, Leaks, Investigations, Cleanup	(220)
<b>Administrative Overhead</b>	<b>\$253</b>
<b>Total</b>	<b>\$4,302</b>

**Boards Not Keeping Up With Workload.** The LAO has expressed concern in several prior *Analyses* that the state and regional boards’ inability to keep up with their workload in their core programs has resulted in backlogs in the TMDL program and in water quality and water rights permitting and enforcement. To avoid further exacerbating backlogs within these programs, the LAO recommends that the Governor’s proposed budget–balancing reductions in regulatory programs (totaling \$1.2 million) be offset fully by fee revenues of a like amount

(\$400,000 in the Waste Discharge Permit Fund, \$400,000 in the Water Rights Fund, and \$400,000 of new THP fee revenues) so that program reductions will not have to be made to create the General Fund savings.

***Recommend New Broad-Based Fee to Replace General Fund Support for Water Quality Management.*** The bulk of the board's General Fund supported programs—\$19.6 million—relate to the assessment of the state's water quality, and the related development of water quality standards and plans which ultimately form the basis of the board's permitting and enforcement actions.

Although not strictly regulatory program activities, the LAO finds that the board's water quality management activities are appropriately funded by a broad-based fee on water users statewide who, as users, impact water quality. This is a somewhat broader application of the polluter pays principle applied currently to regulatory programs. As an example of a potential fee structure, a fee of less than \$10 per year, per individual water utility hookup, to include residential, commercial, and agricultural users would provide funding at the level of current General Fund support for these activities (\$19.6 million). The LAO thinks that shifting funding for the board's core water quality management activities to fees would provide greater funding stability to these activities that are the foundation of much of the board's work.

The LAO therefore recommends the enactment of legislation to establish the new broad-based fee at a level that will replace the General Fund support budgeted for water quality management (\$19.6 million) and offset the Governor's proposed General Fund budget-balancing reduction of \$2.4 million for these activities. The LAO recommends that the legislation create a new special fund for the deposit of these new revenues. In order to create full-year General Fund savings from our recommendation in the budget year, it would be necessary to enact urgency legislation to create the new broad-based fee.

**Staff Comments.** Staff agrees with the LAO that the Water Board's chronic inability to generate enough revenues to fully support their programs has resulted in water quality and water rights workload across the state that is not being completed. Additionally, because of this funding shortfall, the Water Board does not have the necessary staff needed to adequately enforce state laws and protect the state's water resources from inappropriate use and excessive pollution. Staff recommends that at this time it is appropriate to move forward with the LAO's proposal for a broad based water quality surcharge to fund the Board's activities. This proposal takes the same creative funding approach as the Administration's Fire Protection surcharge by distributing the costs of water quality among all beneficiaries of these programs. This new funding mechanism could be used to not only backfill the proposed budget year cuts, but to also increase monitoring, enforcement, and reduce backlogs in TMDL assessments.

**STAFF RECOMMENDATION. Approve LAO recommended Trailer Bill Language in concept to create a broad based water quality surcharge**

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**ISSUE 4: LAO ISSUE - CALIFORNIA INTEGRATED WATER QUALITY SYSTEM**

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**Governor's Budget.** The budget proposes \$129,000 (Waste Discharge Fund) in contract funds for CIWQS. This proposal does not propose to directly augment day-to-day data entry and quality control at the regional board levels, but rather increases efforts at the state board level to manage CIWQS through outreach and training activities.

**Background.** The SWRCB IT systems serve a variety of purposes, including administrative functions, permitting and enforcement systems, water quality monitoring, and providing public access to water quality and enforcement data (through the Internet). On numerous occasions, the Legislature has stressed the fundamental role that management of data—including permitting, enforcement, and water quality—at the boards plays in assisting the board to carry out its mission. The board's CIWQS is the main IT program used to assist the state and regional boards in this regard.

**LAO Comments.** In their analysis of last year's budget, the LAO cited various deficiencies including a lack of strategic plan, circumvention of legislative oversight, and data entry backlogs which resulted in misleading information to the public on permitting and enforcement. At that time, the Board was aware of these issues and initiated an external review of the program. The review committee met in May 2007 to make recommendations to the board, with a report back on progress to the committee due in December 2007. The Legislature also imposed certain oversight measures on the board including (1) adopting budget bill language prohibiting the development of new IT projects until a strategic plan was submitted to the Legislature for review, and (2) supplemental reporting language requiring the board to submit a report on its IT projects.

**Staff Comments.** To support its mission to manage statewide water quality and use, the Water Board depends on complex data enforcement management. The IT infrastructure being requested by the Board is important because it will provide the system by which the Board documents, cross references, and tracks all of its reporting and enforcement data.

In last year's budget Subcommittee, the Legislature required that the Water Board report in order to help the Legislature evaluate the need for additional funding for IT programs, including at both the state and regional board levels, and to evaluate the Board's progress in implementing reforms to CIWQS. At the time of the LAO's analysis of the budget, the Water Board had not yet submitted their report to the Legislature and the LAO thus recommended rejecting this proposal until that report was received. Since that time, the Water Board was able to submit a report to the Legislature that shows how the Water Board is taking corrective action to construct their IT infrastructure in a way that is consistent with previous LAO recommendations. Most importantly, rather than investing into one monolithic enterprise software system, as was pursued in the past, the Water Board is now looking to develop unique software to support each of its many functions while ensuring that all components can interact independently within a modular framework. Because it appears to staff that this very large project is on an agreeable track with legislative direction, at the hearing the LAO and the Water Board may want to discuss how the Subcommittee could consider supporting this project continually through the out-years.

**Staff Recommendation. Approve as budgeted.**