

AGENDA PART I

ASSEMBLY BUDGET SUBCOMMITTEE NO. 3 NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION

Assemblymember Fran Pavley, Chair

**WEDNESDAY, MAY 18 2005
STATE CAPITOL, ROOM 447
8:30 A.M.**

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CONSENT CALENDAR

DEPARTMENT	ISSUE	ACTION
Multiple Departments	May 1, finance letter – Capital Outlay	Approve on consent

ITEMS TO BE HEARD

3340– CALIFORNIA CONSERVATION CORPS

ISSUE 1: EXTENSION OF LIQUIDATION OF PROPOSITION 40 FUNDS

Various Prop 40 funds dedicated to local assistance within the 2004-05 budget are not expected to be expended by the end of the current year. It has been requested that an extension of liquidation for these funds be provided in order to allow for their expenditure in 2005-06.

Staff Recommendation: Staff recommends adopting place holder budget bill language that provides an extension of liquidation for these funds. Direct Legislative staff to work with LAO and Finance to develop budget bill language.

3360 - ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION

ISSUE 1: FRONTIER TRANSMISSION LINE COORDINATING COMMITTEE

The May Revision proposes an increase of \$2.5 million from the Energy Resources Programs Account (ERPA) for two 2-year limited-term positions and \$2.25 million in contract funds. To finance California's participation in the Frontier Transmission Line Project. In April 2005, the governors of California, Nevada, Utah, and Wyoming signed an agreement to create a four-state partnership to develop a transmission line originating in Wyoming with terminal connections in the other three states. The agreement specified that each state would contribute initial funding to support the Coordinating Committee and hire the necessary technical and legal consultants to begin work on the project and bring it to a point where developer(s) will take over and fund the remaining feasibility work. The administration contends that, In the long-run, the new line will provide Northern and Southern California with additional power to meet its future energy needs.

Proposal Should Receive Policy Review. Increasing transmission capacity to California and diversifying the state's sources of electricity are important goals. However, this proposal raises significant California energy policy concerns that should be resolved before the Legislature makes any commitment to support this transmission line. These policy decisions include whether the state should support coal-fired power plants that would be served by the new line and would have significant greenhouse gas emissions as well as determining the extent to which electricity from renewable energy resources in other states might become available to California via this transmission line. Until those issues are resolved, planning for specific routes, capacities, ownership structures and operating protocols is premature. For example, the

Legislature might want to condition any use of the line by California utilities (in terms of PUC rate authorization) on the source of the power being renewable energy or, possibly, true clean coal technology. Such decisions would affect the project economics and perhaps route decisions.

Furthermore, the Frontier line is not currently part of the state's Energy Action Plan developed by the Energy Commission, the Public Utilities Commission and the (now dormant) Power Authority. That plan calls for cost-effective investments in energy conservation, development of additional renewable energy projects, and the development of transmission interconnections within California. The current plan does not call for the construction of a major new transmission that would access additional coal-generated electricity. These issues should first be addressed in the context of policy legislation, such as AB 974 (Nunez).

Staff Recommendation: Do not adopt. Should be considered in legislation.

ISSUE 2: TRANSFERS TO ASSIST THE GENERAL FUND

The large General Fund shortfall makes it important to use all available resources to maintain basic functions and address some of the state's highest-priority needs. Staff has identified the following opportunities to transfer funds to the General Fund without adversely affecting commission programs in 2005-06:

1. **Transfer \$11.5 million from the ERPA to the General Fund.** Energy Commission estimates indicate that ERPA would have a balance of \$14.2 million at the end of 2005-06, based on the subcommittee's budget decisions and restoration of the 0.3 mill surcharge rate in 2006. Transfer of \$11.5 million would leave a reserve equal to 5 percent of expenditures.
2. **Transfer \$4 million from the Public Interest Research, Development, and Demonstration Fund (the PIER Program Fund) to the General Fund.** The Governor's Budget estimates that the PIER Fund will have \$4 million in interest earnings in 2005-06 and a year-end reserve of \$11.2 million. Consequently, transfer of the interest earnings to the General Fund would not affect the program in 2005-06.

Together, these transfers would provide a total of \$15.5 million of additional General Fund resources.

Staff Recommendation: Adopt GF transfer from ERPA of \$11.5 million and GF transfer of interest earnings from PIER Fund (estimated \$4 million).

3600 DEPARTMENT OF FISH AND GAME

ISSUE 1: MAY REVISE: FISH AND GAME PRESERVATION FUND

The Department of Fish and Game (DFG) is supported by a combination of General Fund, Bond Funds, and Federal Funds. About 33 percent of the department's funding is composed of the Fish and Game preservation Fund (FGPF) that receives revenues from various sources: hunting and fishing licenses and taxes, commercial fishing permits and fees and environmental review fees paid by project proponents. Many of the revenue sources are provided by statute to be accessible for use for a broad range of programs related to hunting and fishing, fish and wildlife protection and management.

May Revision Proposal**Balancing the Fish and Game Preservation Fund**

It is requested by the Administration that Item 3600-001-0200 be decreased by \$1,053,000 to reflect an effort by the DFG to bring the Fish and Game Preservation Fund (FGPF) into balance, and that Item 3600-001-0001 be amended to reflect this change.

The FGPF is made up of a large number of special accounts, each of which receives the revenue from one or more special fees. Some of those fees are dedicated to specific purposes, while others are available for general support of the Department's activities. As a result of unanticipated increases in retirement contributions and other costs, some of the FGPF accounts have become over-expended by \$3,665,000, despite the fact that the Fund as a whole is solvent. The DFG is in the process of evaluating actions necessary to bring all accounts back into balance. As a first step, the Department proposes to recognize \$1.7 million in additional revenue to the Streambed Alteration Account, and to reduce operating expenses in all of the accounts by \$1,053,000. These two actions will reduce the imbalance among the various accounts to less than \$1.0 million. Additional actions to resolve this remainder will be proposed in the 2006-07 Governor's Budget.

Staff Comments In their 2004-05 Budget Review, the LAO expressed various concerns with the Department's management and use of dedicated funds within the FGPF. Primarily, the LAO found that the Department proposes to use revenues dedicated by statute for specific programmatic purpose for other purposes in order to fund department wide funding shortfalls. In addition, the LAO had concerns that the 2005-06 budget, the Department's condensed fund display does not show the allocation of dedicated and non-dedicated fund sources and uses – leaving the legislature with very limited tools for prudently reviewing the department's budget.

Since this issue was first heard on April 13th, the department, legislative staff and the LAO have taken a look at the deficiencies within the department's funding and various questionable budgeting practices that have resulted in the current FGPF imbalance. The following proposals have been developed by the LAO to provide a first step in resolving these issues within Fish and Game's Budget.

LAO Comments. The LAO recommends approval of the May Revise proposal (which partially reduces the fund imbalance), plus additional actions to bring the FGPF fully into balance (a combination of revenue increases and expenditure reductions). These additional actions to be taken are included in the chart below.

Balancing the Fish and Game Preservation Fund (FGPF)

(In thousands)

2005-06

FGPF Subaccounts not in balance (2005-06 expenditures exceed revenues with no carry-over balance)	Budgeted Revenues	Budgeted Expenditures	May Revise Shortfall
Herring Research and Management, 0200-17	\$197	\$338	-141
Big Horn Sheep, 0200-11	\$50	\$216	-166
Lake/Streambed, 0200-14	\$3,400	\$3,400	0
Commercial Salmon Stamp, 0200-05	\$75	\$114	-39
Aquaculture, 0200-13	\$105	\$180	-75
Ocean Resources Enhancement Hatchery, 0200-04	\$1,076	\$1,638	-562
Commercial Augmented Salmon Stamp, 0200-06	\$400	\$1,102	-702
Nondedicated	\$81,057	\$81,118	-61
Total Shortfall			-1,746

LAO Analysis		
Increase Revenues (Fees or other source)	Reduce Expenditure Authority ¹	Total Actions
\$51	\$90	\$141
\$36	\$130	\$166
Consider increase of \$39,000 to cover reduced item; if not; reduce expenditure authority		\$39
\$35	\$40	\$75
\$462	\$100	\$562
	\$702	\$702
	\$61	\$61

Supplemental Report Language. Additionally, through various discussions with legislative staff, and the department, the LAO has developed the supplemental report language (Provided in attachment A and B) that will require that the department and the Secretary of Resources to conduct a comprehensive review of the department's statutory mandates and the programs that it provides.

Staff Recommendation: Approve May revision proposal and the following actions.

- 1) Adopt May Revise proposals (recognize an additional \$1.7 million in revenue for streambed alteration fees and reduce nondedicated expenditures by \$1,053,000.
- 2) Adopt the LAO recommendation to:
 - a. Decrease FGPF expenditure authority by \$1,123,000.
 - b. Increase revenues (either thru fees or other revenue sources) for selected dedicated accounts by \$633,000.
 - c. Approve supplemental report language provided in attachments A and B.
- 3) Approve \$200,000 General fund for consulting costs for the proposed FGPF review.
- 4) Approve supplemental report language requiring the department to review the 1600 program to determine what resources are necessary to improve the administration of the program, including, but not limited to a timely and thorough review of all applications and necessary site visits to process applications and providing for ongoing monitoring of approved 1600 permits. This performance evaluation report shall be completed and submitted to the Legislature by the end of FY 2005/2006.

ISSUE 2: ENVIRONMENTAL FILING FEES

The DFG has a vital role as the public trust agency responsible for protecting all fish, and wildlife, of the state. In 1990, AB 3158 (Costa) was enacted, requiring DFG to collect filing fees on approved CEQA projects to defray part of the cost of CEQA review by the department. DFG reviews environmental documents prepared by state and local agencies for projects that may affect or use fish or wildlife. Based on testimony before the Legislature, DFG has never reviewed more than 20% of the CEQA documents it receives, and, usually, reviews only 10-15% of CEQA documents. Originally, this fee was intended to cover the estimated \$8-10 million the DFG spent on environmental review activities in 1990 when it was activated.

The current deficiency in fee collection can be attributed to the following:

- 1) DFG has never reviewed the fee schedule.
- 2) Poor administration by Local agencies.
- 3) Fees are charged based on the type of environmental review document filed, not the complexity of the review or potential harm caused by the project.
- 4) Fees are not collected from all state lead agencies that administer functional programs – not just the Department of Forestry and Fire Protection for THPs. After an MOU with the Department of Pesticide Regulation (DPR) expired in 1994, no fees have been paid by DPR. Likewise, neither the Energy Commission nor Water Board currently pays fees.

Revised Fee Schedule. In proposed trailer bill language (Attachment C), the following changes would: 1) revise the current environmental fee schedule to provide an estimated \$6.1 million in additional revenue annually; 2) Reform the fee structure and collection practices so that projects are not improperly exempted and that an equitable fee is charged for each project, according to the size, complexity and environmental impact of the project; 3) add an annual automatic adjustment to be consistent with other DFG user fees; 4) allow counties to increase their handling fee to reflect the true handling costs. (Right now under the code, the county can only charge \$25).

Staff Recommendation: Approve Environmental Filing Fee Trailer Bill Language included in Attachment C.

ISSUE 3: LANDING FEES

Currently commercial fishing programs undertaken by DFG are funded by landing fees that are assessed on fish receivers, processors, wholesalers, and other entities purchasing fish from commercial fishermen. Last set in 1986, these fees are limited in their use to programs that manage and regulate commercial fishing. The total revenue received in 2003 from these fees was about \$950,000 which is combined with permit fees and other revenues to fund commercial fisheries management, which approximates at \$8.3 million. Because of this increasing need, many permit fees have been significantly increased by regulation to the point that many individual fishermen have a hard time continuing to be engaged in the industry. Shifting a larger share of the total commercial fishing revenues to landing fees will expand the number of industry participants contributing to the DFGs programs.

The DFG's marine fisheries management programs benefit the commercial fishing industry by providing some assurances that the resources will be available in the future. Therefore, given the benefits accrued directly to the fishing industry and the significant needs regarding fishery management, it would be appropriate to revise these landing fees. The subcommittee may wish to consider raising the landing fees currently assessed on the commercial fishing industry and tie it to an ad valorem rate, much as is done in other states. Currently a few species, such as salmon, are taxed at a fairly high amount, but for most others the amount is almost negligible, even for many high value stocks. Creating a broad based Special Fund for all commercial fishing program revenues in order to give assurances to the industry that increased funding will be used for the purposes intended..

Staff Recommendation: Staff recommends that trailer bill language be adopted in concept that would provide the following:

1. Change the tax to a fee and set it based on an ad valorem rate (% of ex-vessel value, value at the dock).
2. Set an initial ad valorem rate to take effect on 1/1/2006 and include a higher second step to take effect at a later date (e.g., 1% on 1/1/2006 and 2% on 1/1/2008). Authorize the FGC to waive a portion of the fee for those fisheries contributing funds or services to an approved research or management program.
3. Specify that landing fees and permit fees, no otherwise deposited in a dedicated account, be deposited in the new Commercial Fishing Conservation, Management and Research Fund rather than the FGPF.
4. Limit the use of funds in the Commercial Fishing Conservation, Management and Research Fund for issuing, administering and enforcing commercial fishing permits; monitoring, inspecting and enforcing measures related to commercial fishing facilities; and research and management necessary to promote sustainable fisheries.
5. Encourage the DFG to seek partnerships with commercial fishing groups in undertaking research and management activities.

6. Direct DFG/FGC to review and adjust individual fishery permit fees so as to cover only the costs associated with the issuance, administration and enforcement of permitted activities.
7. Extend the same commercial fishing ad valorem fee rate to the fees assessed in statute on aquaculture products raised on public lands or waters.

ISSUE 4: MAY REVISE: ELIMINATION OF THE AQUATIC INVASIVE SPECIES COUNCIL

The administration is proposing to eliminate the Interagency Aquatic Invasive Species Council in the following proposal:

Elimination of Interagency Aquatic Invasive Species Council

It is requested that Fish and Game Code Section 6950 through Section 6957, establishing the Interagency Aquatic Invasive Species Council (IAISC), be repealed. Although authorized by Statute, the IAISC was never formed because its mission is already being carried out by DFG in cooperation with other state entities. Eliminating the IAISC represents one initiative by the Administration to improve the efficiency of government by consolidating the number of state boards, commissions and other small entities.

Staff Comments: Staff has no issues with this proposal.

Staff Recommendation: Approve as budgeted with Trailer Bill language.

ISSUE 5: FISH AND GAME FUNDING DEFICIENCIES

1) Land Management

The DFG has lost 25% of its game wardens – who are responsible for protecting fish and Game resources from poaching and other illegal activities. These losses leave the department with a Warden force equal to the one it had in the 1960s. Because of these reductions, the State's ability to maintain, monitor, and protect State lands has been limited due to declining Game Warden staff at the DFG. Due to budget reductions, DFG field staff and wardens have been spread thin over vast areas of responsibility. In some areas, hundreds of square miles are the responsibility of just one Warden. More than simply checking for updated fishing licenses, these wardens are responsible for a broad range of environmental monitoring and enforcement activities.

Staff Recommendation: Staff recommends approval of \$5 million (General Fund) augmentation to provide for additional game wardens. This shall be represented in the budget in its own item and contain the following budget bill language.

Provision (1) It is the intent of the legislature that these funds be provided for the hiring of additional game wardens in order to ensure that California's natural environment is protected through enforcement of existing laws.

Trailer bill language shall also be adopted that directs the department to address current game warden recruitment problems resulting from low salary levels.

2) Wild/Heritage Trout.

Currently, the Wild/Heritage Trout Program is chronically under funded. Current total funding is lower than that of the early 1980s.

Staff Recommendation: In order to bring program funding up to its 1980 levels, staff recommends a \$1.0 million (General Fund) ongoing augmentation and 7 PYs to address workload associated with rebuilding the Wild/Heritage Trout Program to its 1980 levels. Additionally, it is recommended that authority be provided to allow department to spend federal matching funds to hire a seasonal team in each region to augment the work by biologists.

This augmentation shall be represented in the budget in its own item and contain the following budget bill language:

Provision (1) It is the intent of the legislature that these funds be provided for the purposes of protecting and preserving California's wild and heritage trout populations.

3) Timber Harvest Plan Review.

Currently, the Department isn't reviewing any Timber Harvest Plans in the Central Sierra.

Staff Recommendation: Staff recommends approval of \$1.7 million (General Fund) ongoing augmentation and 15 PYs to provide staffing to review timber harvest plans in the Central Sierra. This shall be represented in the budget in its own item and contain the following budget bill language.

Provision (1) It is the intent of the legislature that these funds be provided for hiring of Fish and Game staff to review timber harvest plans in order to ensure that California's natural environment is protected through enforcement of existing laws.

4) State Hatcheries

As discussed in prior subcommittee hearings, funding reductions for statewide fish hatcheries has had severe impacts on the program and facilities.

Staff Recommendation: Staff recommends the approval of \$3.0 million (general fund) to be provided for the operation of the state's fish hatcheries located in various regions of the state.

3640– WILDLIFE CONSERVATION BOARD

ISSUE 1: TIDELAND OIL REVENUES

Background. Established by Chapter 293 Statutes of 1997 - SB 271 (Thompson), Section 6217 of the Fish and Game Code created the Resources Trust Fund and established various conditions and requirements for the operation of the fund including the transfer of monies from the trust fund to the following funds: a one time \$30.3 million into the trust fund; \$2 million to the California Housing Trust Fund; \$27.7 million to the General Fund; \$8 million to the Salmon Account. In 2003-04 the sunset date for this language was extended from July 12, 2003 and is now set to sunset on July 12, 2006.

In the 2005-06 Governor's Budget, budget bill language was adopted that supplanted statute and provided a multi-tiered spending plan for Tideland Oil Revenues. In anticipation of increasing Tideland Revenues, the spending plan was structured so that each spending priority was given a capped funding amount to be received. Once a use had received its maximum funding level of Tideland Oil Revenues, revenues would "spill over" and begin to fund the subsequent priority. This process was created to continue sequentially in 2004-05 until either Tideland Oil Revenues were fully depleted or all intended uses were fulfilled and the remainder was transferred to the General Fund.

Governor's Budget. The Governor's 2005-06 budget includes provisional language that allows the transfer of all Tideland Oil Revenues to the General Fund with \$116 million in revenues built into the budget. Currently the rising price of gas presents possibility that Tideland Oil Revenues will exceed \$116 million and under the proposed budget, any revenues over \$116 million would also divert to the General Fund. The subcommittee may want to consider how it plans to allocate this potential surplus of Tideland Oil Revenues – under such a scenario, the following budget bill language would need to be amended.

3640-401 -- Notwithstanding any other provision of law, the balance of revenues that would have been deposited in the California Housing Trust Fund and the Resources Trust Fund, pursuant to Section 6217 of the Public Resources Code, shall be deposited in the General Fund for the 2005-06 fiscal year.

Staff Recommendation. Staff recommends that following budget bill language be adopted.

3640-401 -- Notwithstanding any other provision of law, the balance of revenues that would have been deposited in the California Housing Trust Fund and the Resources Trust Fund, pursuant to Section 6217 of the Public Resources Code, shall be allocated in the following order:

- (1) \$8,000,000 shall be deposited into the State Parks and Recreation fund for the Department of Parks and Recreation Maintenance and Park Ranger staff and deferred maintenance. It is the intent of the Legislature that this augmentation be used to establish up to 40 new parks positions. These funds are intended to be ongoing.*
- (2) \$8,000,000 shall be deposited into the Salmon and Steelhead Trout Restoration Account for salmon and steelhead trout restoration projects*

authorized by Section 6217.1 of the Public Resources Code, including, but not limited to, projects that implement the Coho Salmon Recovery Plan.

(3) Any revenues remaining after expenditure for the purposes specified in paragraph (1) shall be deposited in the General Fund.

ISSUE 2: TIDELAND OIL REVENUE TRAILER BILL LANGUAGE

Background: In 1996 the Legislature passed SB 1187 (Maddy) which provided that 20% of revenues from the production of oil, gas, and other hydrocarbons from state offshore oil and gas leases should be paid to the city or county within whose boundaries the lease is located under certain conditions (Section 6817 of the Public Resources Code). The monies were to be used for beach and coast improvements and environmental mitigations. These revenues do not apply to federal leases. This statute does not have any effect on whether production would take place, but only affected the distribution of any revenues. These provisions affect only Orange, Ventura, and Santa Barbara, counties, and sunset in 2002.

Staff Comments: In the event that there should ever be any new production from existing state leases, local governments will continue to need funds for coastal improvements and environmental mitigation. Additional needs for mitigation funding have emerged involving coastal habitat and water quality.

Staff recommendation: Staff recommends that the subcommittee adopt trailer bill language to extend the sunset to 2012 with an additional 20% of revenues to be provided for land acquisitions on the Gaviota coast and for non-point source water pollution control.

3930 DEPARTMENT OF PESTICIDE REGULATION

ISSUE 1: PESTICIDES RISK ASSESSMENT ACTIVITIES

Background. The Department of Pesticide Regulation (DPR) conducts risk assessments on pesticide ingredients to find out if they are being used in a way that is safe, both for users, and for the general population. The administration proposes providing approximately \$2.9 million for risk assessment activities at the department in the budget year.

The Office of Environmental Health Hazard Assessment (OEHHA) is the primary environmental health risk assessment branch of the state. Given some of the problems identified regarding the department's risk assessment of pesticide ingredients, OEHHA may be a more appropriate entity for risk assessment of pesticides. OEHHA does not have specific risk management responsibilities related to pesticides, which reduces the conflicts inherent at the department. Furthermore, it is likely that there will be synergies gained from centralizing the risk assessments related to pesticides with other toxic chemicals in the environment.

Previous Subcommittee Direction. At the April 4th meeting the Subcommittee staff was directed to provide additional analysis regarding the pros and cons of shifting DPR's risk assessment functions to OEHHA.

Analysis of Potential Shift. Staff has had several meetings with stakeholders and the department regarding this issue since the April 4th meeting of the Subcommittee. Staff finds that there are many issues that would make moving DPR's risk assessment activities to OEHHA in the budget year difficult. The department has indicated that risk assessment is not limited to one division of staff at the department, but allocated to several divisions making it difficult to physically determine what positions would be transferred. Staff finds that there is a considerable history of decisions by the department that make it questionable whether past risk assessments by the department have been completely scientifically derived. Staff recognizes that risk assessment work by the department has improved considerably since the 1990s and that the department has taken several steps to improve the firewalls it has between risk assessment and risk management decisions. Nevertheless, it is likely that, so long as risk assessment and risk management of pesticide products reside in the same department, some persons will be skeptical of risk assessments produced by the department.

Alternate Solution. Staff finds that there are other ways to improve the independence and review of the risk assessment that do not require moving DPR's risk assessment activities out of the department. One option is to amend the statute so that a committee comprised of equal numbers of participants from DPR, OEHHA, and the Scientific Review Panel make the final decision on what exposure levels would be deemed scientifically acceptable. This option would preserve the scientific staff at the department and could alleviate criticism of undue influence from the risk management side of the department.

Staff Recommendation. Staff recommends that the Subcommittee adopt trailer bill language to enact the alternate solution presented above.

3790 – DEPARTMENT OF PARKS AND RECREATION

ISSUE 1: STATE PARKS DEFERRED MAINTENANCE

In the Governor's environmental action plan, the need was identified *to protect and restore California's Parks and Open Spaces*. Specifically, the plan called for the state's Resources Agency to develop a comprehensive facility assessment and improvement plan for state parks, beaches, and coastal access.

Currently our State Parks are severely under resourced to provide maintenance for existing facilities. Since 2003-04, State Park's budget has been reduced by \$419 million dollars. Without more staffing at existing park facilities, the deferred maintenance backlog continues to grow. Currently the deferred maintenance back log for the department is \$857 million.

Staff Recommendation: Staff recommends that \$3.0 million be provided for the department of Parks and Recreation for deferred maintenance.

ISSUE 2: REAPPROPRIATIONS

The following reappropriation is being proposed:

The following item shall be added:

3790-491 Re-appropriation, Department of Parks and Recreation. The balance of the appropriation provided in the following citation is re-appropriated for the purposes provided in the appropriation, and shall be available for encumbrance or expenditure until June 30, 2008.

3790-101-0005, Budget Act of 2001
 Contract Number: C2009410.....(4,819,000)

3790-493—Reappropriation, Department of Parks and Recreation. Notwithstanding any other provision of law, the period to liquidate the encumbrance of the following citation, subject to the following limitation, is extended to June 30, 2005.

0262—Habitat Conservation Fund

- (1) Item 3790-101-0262 (1), Budget Act of 1999 (Ch. 50, Stats. of 1999), 80.25.001-Local Grants-Habitat Conservation Fund Program; provided that this reappropriation is limited to the \$325,000 grant to the Mid-Peninsula Regional Open Space District.

Staff Recommendation: Staff recommends approving reappropriation requests..

3980— OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

ISSUE 1: OEHHA FUNDING

The OEHHA has largely relied on the General Fund to support its operations, and has therefore been subject to significant program reductions in recent years. The LAO believes that there are potential alternative funding sources for many of OEHHA's activities, and that this funding could provide additional General Fund savings in the budget year as well as address OEHHA's unmet funding requirements to meet its statutory mandates.

General Fund Supported Activities. Most of OEHHA's activities are required by statute and are supported largely by the General Fund. Using General Fund money, OEHHA identifies cancer-causing chemicals for annual updates of the state list of chemicals in drinking water, provides health risk assessments of "toxic air contaminants," reviews health risk assessments of pesticides, and jointly regulates pesticide worker health and safety with the Department of Pesticide Regulation.

Supplemental Report: In a supplemental report provided by the department March 17, 2005, OEHAA provided that the estimated total cost to comply with existing statutory mandates is \$20.3 million while in the 2005-06 budget, \$14.8 million is being proposed for OEHAA. Because of this funding deficiency, the subcommittee may wish to consider augmenting OEHAA's budget.

Staff Recommendation: Staff recommends that the subcommittee approve a \$1 million General Fund augmentation for OEHAA.

3940 STATE WATER RESOURCES CONTROL BOARD

ISSUE 1: MONITORING ACTIVITIES

Governor's Budget. The SWAMP program is funded by approximately \$5.5 million in fees assessed on waste dischargers in the budget year. This includes approximately \$2 million to support 17 positions and \$3.5 million for contracts.

Approximately \$10 million is proposed from Proposition 50 bond funds to fund the GAMA program in the budget year. The board has indicated that it is currently working on implementing a groundwater monitoring plan that was established in statute. This plan includes completing a baseline hydro-geologic assessment to determine how groundwater flows. The board proposes that it will spend approximately \$50 million over five years to sample wells around the state and establish a baseline set of data on groundwater quality.

.In responding to questions posed to the board in subcommittee hearings regarding expenditure of Section 106 funds, the Board indicated that the \$10.1 million in Section 106 federal funds received by the board are allocated to the following activities:

- \$500,000 for the Storm Water NPDES program;
- \$4 million for the Wastewater NPDES program; and
- \$905,000 for the Total Maximum Daily Load (TMDL) Program.

The remaining federal funds are provided as a contract to U.S. EPA for wastewater, storm water, information technology, and TMDL programs.

Staff Comments. Staff finds that federal law directs that the Section 106 federal funds be used at least in part to support a robust monitoring program. These funds are currently not being used to support monitoring at the board. Furthermore, staff finds that the board's surface water monitoring programs (SWAMP) have suffered from budget reductions over the past several years. Currently, the SWAMP program is monitoring at only 50 sites statewide. This level of monitoring leaves significant data gaps, because many of the state's water bodies remain un-monitored.

Staff Recommendation. Staff recommends that the Subcommittee redirect \$4.5 million in federal funds currently supporting the NPDES program to support the SWAMP program. The board should backfill this reduction in the NPDES program with increase fees from the Waste Discharge Permit Fund.

8570– DEPARTMENT OF FOOD AND AGRICULTURE

ISSUE 1: MEDITERRANEAN FRUIT FLY PREVENTATIVE RELEASE PROGRAM

The Governor's budget is proposing a permanent augmentation of \$8.1 million (General Fund) to make permanent the department's Medfly program that provides the continual release of sterile Mediterranean fruit flies within 2500 square miles for the Los Angeles Basin. Along with the State's annual fiscal commitment to this program, the Federal Government provides matching funds for this program. Originally scheduled to sunset in 2000-01, this program has been extended for one year in each subsequent budget.

Background. The Medfly has the ability to infest over 200 different kinds of fruits and vegetables. The larvae feed inside the produce, making it unfit for human consumption. The department began efforts to control the impact of the Medfly on California's agricultural industry in 1975. Since 1980, the state has spent over \$150 million from the General Fund to support this effort, with a similar amount provided by the federal government. To fight the pest, the department originally used aerial and ground spraying of pesticides but now relies on sterile Medfly releases.

In 2003, the department released a report titled, *Preventing Biological Pollution: The Mediterranean Fruit Fly Exclusion Program*. The report lays out seven options for funding the Medfly Exclusion Program:

1. **Federal Funding.** The report discusses the option of negotiating full federal funding for the program.
2. **General Fund.** Under this option, the state would continue to fund the state's share of the program. This is what the Governor's budget proposes.
3. **Agriculture Fund.** The report discusses the option of funding the program with existing Agriculture Fund monies. The use of the funds, however, are restricted for specified purposes by state law. Therefore, the funding would not be available for this program.
 - a. Fees on retailers that sell produce.
 - b. Fees on consumers' food purchases.
 - c. Fees on international travelers and commerce.
 - d. Fees on domestic growers.

The 2004-05 supplemental report requests that the LAO further explore the option of assessing international travelers and commerce, as well as identify and evaluate additional options if available.

LAO Comments. In their review, the LAO found that because Congress is granted the sole power to regulate commerce with foreign nations, legislation that assessed international travelers and commerce would not be feasible. Rather, it would take congressional action and a possible revision of existing international agreements governing trade and travel.

In recent years the Legislature has expressed concern in funding the Medfly program with state General Funds. Because the Medfly program provides clear benefits to specific agricultural industries, the LAO has recommended in prior years to enact a fee to cover the non federal

costs of the Medfly Program. When considering the option of enacting a fee, the LAO points out that the legislature should consider the following questions:

Should Fee Be Statewide? The department questions whether it is equitable to assess a fee on commodities statewide given that the current control effort focuses on the Southern California region. An infestation in any part of California, however, could result in other states or countries refusing to purchase California agricultural commodities. The agriculture industry throughout California, therefore, benefits from the continuation of the program.

Which Commodities Should Be Subject to a Fee? The department reports that over 200 commodities are subject to Medfly infestations. Assessing each of these commodities could create excessive administrative costs. The fee structure instead could focus on a limited number of key products with the greatest economic interest in the prevention of a Medfly infestation.

Point of Assessment? As noted in the department's report, fees could be assessed at a variety of points along the food supply—at the grower, retailer, or consumer levels. Assessing a fee at the grower level might make the most sense—reflecting that the control of the Medfly is a cost of doing business like other pest control activities.

Should Assessments Vary by Commodity? In developing a fee structure, the department would need to consider the most equitable and efficient way to assess the fees given the differences among the commodities. For example, the department would need to consider whether a fee should be based on weight, value, or some other method of measurement. Many of the commodities already pay into the Agriculture Fund for other purposes. The department, therefore, could build upon these existing fee structures to recover the costs of the PRP.

Beyond the Medfly? Over time, the state has been involved in the eradication and control of a number of agricultural pests, such as the Mexican fruit fly and the glassy-winged sharpshooter. The Legislature may wish to consider moving beyond a pest-specific fee. Instead, the state could develop an agricultural fee structure that would make funding available each year for the most urgent pest efforts.

LAO Recommendation. In considering the above items, the LAO recommends that, to the extent that the Legislature chooses to assess a fee to cover the state's costs of the program, the Legislature should (1) not approve the General Fund request for this program and (2) instead enact legislation directing CDFA to develop a reasonable fee structure to generate sufficient funds to match federal support for this program.

Staff Recommendation: Staff recommends approving as budgeted.

ISSUE 2: MAY REVISE: REAPPROPRIATION OF THE FEDERAL SPECIALTY CROP FUNDS

The following is proposed by the administration in the May Revision:

It is requested that Item 8570-001-0890 be increased by \$11,629,000 to assist specialty crop growers in California, and that Item 8570-001-0001 be amended to reflect this change. This

increase would appropriate the remainder of the \$63.8 million Specialty Crop Block Grant awarded by the federal government for expenditure by September 30, 2006.

LAO Comment: Currently \$15.2 million available for expenditure prior to September 30, 2006. The May Revision proposal proposes a 2005-06 augmentation of \$11.6 million to the \$3.2 million that is already built into the Governor's budget--for a total of \$14.8 million in budget year spending. There is no BCP for the spending, but the administration's proposed allocation was provided as part of our review of the Sec 28 request:

Buy California	\$3.6 m
International markets	\$2.6 m
Grant management/admin	\$2.1 m
Competitive grants	\$2.0 m
Food safety	\$1.5 m
Emergency response	\$1.4 m
Institute for specialty crops	\$0.7 m
Research	\$0.4 m
Sustainable agriculture	\$0.3 m
Other	\$0.1 m

The remaining \$412,000 is currently scheduled for 2006-07.

The federal government provides broad discretion as to the use of these funds. The Legislature, therefore, should ensure that the use of the funds is consistent with its priorities. We note, for instance, that the administration is proposing to use some of the funds for activities similar to those proposed in its food safety BCP from January.

Staff Recommendation: Due to outstanding concerns regarding a current Joint Legislative Audit request, staff recommends that the subcommittee defer action on this item and send it to conference committee.

ISSUE 3: EMERGING THREATS TO FOOD SUPPLY

The CDFA provides the state's first response to introductions of livestock diseases and contamination of the food supply at the production level in the state. The Governor's budget proposes a \$2.7 million (General Fund) increase to the department's and 17 positions for start-up costs to address threats to food production in California. These threats include diseases that effect both animals and humans and acts of terrorism. The request assumes the approval of an additional \$15.9 million in General Fund support in 2006-07 for full implementation of the program. The proposal includes start-up funding for seven new programs in 2005-06, with four additional programs to be launched in 2006-07.

LAO Comments. In their review of this proposal, the LAO has raised various concerns. First, the LAO raised issue with the justification of the proposal, citing a lack of details regarding how the department will resolve identified needs, and a question of whether the department was proposing new activities or simply supplementing existing resources. Second, the LAO found that the proposal fails to reflect coordination with the two agencies administering the state's current efforts related to terrorism—the Office of Homeland Security (OHS) and the Department of Health Services (DHS). Lastly, the LAO questions the appropriateness of using General Funds when other potential funding sources exist. For example, homeland security grants

would be an appropriate funding source for efforts in the department related to bio-terrorism. In fact, the OHS reports that agricultural terrorism will be one of the funding priorities in the coming year. In addition, OHS administers the state's Antiterrorism Fund, which is funded from proceeds from the sale of California memorial license plates. Half of the amount in the fund may be used by agencies other than OHS for antiterrorism activities. For any expenses not eligible for federal funding, the Antiterrorism Fund would be an appropriate source of funds. The LAO notes that the Antiterrorism Fund has \$1.8 million available in 2005-06 for non-OHS expenditures.

LAO Recommendation: The LAO recommends the deletion of a \$2.7 million General Fund request for reducing threats to the food supply and require that the administration resubmit a request that reflects a coordinated effort with the state's two primary homeland security departments.

Staff Recommendation: Staff recommends that the subcommittee adopt the LAO recommendation.

3790– DEPARTMENT OF WATER RESOURCES

ISSUE 1: APRIL 1 FINANCE LETTER – SAN JOAQUIN RIVER RESTORATION PROJECT

In the Budget Act of 2000, the Friant Water users Authority (FWUA) was initially appropriated \$15.7 million dollars for purposes of feasibility studies and associated pilot projects comprising the San Joaquin River Restoration Program. Many of these studies have not been completed due to current litigation.

In an April 1 Finance Letter, the Governor is proposing to revert \$9.2 million from a prior unused proposition 13 appropriation that was appropriated in 2000 and awarded to FWUA to develop a restoration plan for the river. The DWR also proposes to expend \$1.8 million of the Proposition 13 bond funds being reverted to support two positions and manage contracts to complete the studies started in 2000.

Staff Recommendation: Staff recommends approving the reversion of proposition 13 funds, and provide and deny the \$1.8 million Proposition 13 bond funds being reverted to support two positions and manage contracts to complete the studies started in 2000.

Attachment A**Item 0540-001-0001—Secretary for Resources
Item 3600-001-0001—Department of Fish and Game**

1. **Report on Activities, Statutory Mandates, Funding Sources, and Outcomes.** On or before January 10, 2006, the Department of Fish and Game (DFG) and the Secretary of Resources shall jointly provide a report to the Legislature (including budget and fiscal committees from both houses) on DFG's activities, funding sources, and outcomes. In particular, the report shall be based upon a review of the activities carried out by DFG and shall include the following:

- (a) An analysis for each budgeted program (biodiversity conservation; hunting, fishing, and public use; management of department lands and facilities; conservation education and enforcement, spill prevention and response) of the activities that are occurring, the level of expenditures (by fund source) and personnel years dedicated to each activity for 2005-06. The listing of activities shall be sufficiently detailed; reported activities could include for example, timber harvest plan (THP) review, CEQA review, 2081 permit preparation, invasive species, etc. The report shall also indicate the statutory mandates, if any, for each of these activities.
- (b) An analysis for each budgeted program, of the expenditures and personnel years, if any, that have been redirected to activities outside of the specific program area for which the expenditures were appropriated. The analysis shall identify the specific activities from which funding was redirected and those activities that are benefiting from the redirected resources.
- (c) A listing of all statutory mandates for which there are no budgeted activities currently occurring.
- (d) A report on outcomes projected to be achieved for 2005-06 for the program activities identified in (a) using *actual* 2004-05 outcomes as a basis for these projections. These reported outcomes should include but not be limited to those outcome measures listed in item (g).
- (e) For each of the activities listed above in item (a), identify the level of activity and funding necessary to meet the statutory or programmatic objectives if different from current activity levels.
- (f) It is the intent of the Legislature that the Secretary for Resources and the Department of Fish and Game provide periodic updates to the Legislature on the progress in completing the report. As such, the Secretary for Resources and the Department of Fish and Game shall meet with the staff of the budget committees of both houses by September 15, 2005 and again by November 15, 2005 to discuss the status of the report.
- (g) Outcome measures to be addressed in report:

(i) Program 20, Biodiversity Conservation:

- THP review: The percentage of THPs reviewed, by region and review type.
- CEQA review: (1) The percentage of CEQA documents reviewed, by region and review type. (2) The percentage of the CEQA documents for which AB 3158 fees were paid.
- 1600 (Streambed and Lake Alteration Agreements): Report on the number of:
 - 1) 1600 notifications received, reported by region.
 - 2) 1600 agreements reviewed, reported by region and level of review.
 - 3) 1600 agreements that were issued, reported by region.
 - 4) CEQA documents prepared by DFG as the lead agency for a 1600 agreement.
 - 5) 1600 agreements which became operation by law, reported by region.
- Natural Community and at risk species (rare, threatened and endangered and species of special concern): how many and what were the geographic areas monitored for changes in area and species complexity?
- Listing and recovery of threatened and endangered species: For what species were listing and recovery actions taken and what were they?
- The number of lakes and miles of streams currently managed under the Wild and Heritage Trout Programs
- The number of instream flow studies completed.
- The number of mitigation banks checked for compliance with their mitigation banking agreement.
- The number of fishery management plans prepared under the Marine Life and Management Act.

(ii) Program 25, Hunting Fishing and Public Use

- Harvest species survey: Provide the number, type and results of surveys conducted to determine the number and harvestable surplus of the primary harvest species including but not limited to: deer, elk, turkey, pigs, quail, ducks and geese, antelope, sage grouse, blue grouse, chukar, dove, wild trout, warm water non-native fish, native non-salmonid fresh water fish, ocean fish by species (both commercial and sport angling), crustaceans by species and salmonids by subspecies.
- Species Harvest: Provide the number of the above listed species that were harvested.
- Public Use: Provide an estimate of the number of harvest days of effort that were provided to recreational sportsman for hunting and fish activities.

(iii) Program 30, Management of Department Lands and Facilities

Hatchery Operations:

- Fish Production: By hatchery provide the number of pounds of catchable fish produced and the cost per pound for production.
- Fish Stocked: Provide the number of:
 - 1) Lakes and miles of streams planted with hatchery fish.

- 2)The number of catchable fish planted in lakes, planted in streams, planted in rivers and provide the number of fingerlings aerially stocked in lakes.
- Hatchery fish caught: by water body type (rivers, lakes and streams) provide an estimate of the percentage of the planted catchable fish harvested by anglers.

Lands:

- Number of visitor use days broken out by ecological reserves, wildlife areas and nondesignated lands.
- Number of irrigated acres of habitat broken out by ecological reserves, wildlife areas and nondesignated lands.
- Number of completed land management plans by region and further broken down by ecological reserve and wildlife area along with the acres of DFG lands/conservation easements by the above categories.
- Number of conservation easements by region and the number and acreage of conservation easement lands monitored for compliance with the conservation easement.

(iv) Program 40, Conservation, Education and Enforcement**Hunter and Fisher Education:**

- Provide the number of hunter education classes (and the number of participants) and the number of sportsmen's shows staffed by department personnel (both employees and volunteers).

Conservation Education:

- Provide the number of classes, training sessions (including the estimated number of participants) which the Department staffed (employees and volunteers).

Wardens:

- Provide the number of citations issued categorized as follows:
 - Citations that dealt with resource allocation (e.g. take of species over limits, take of deer out of season, etc.).
 - Citations that dealt with ensuring income to the department (e.g. no license, no or incorrect stamp, etc.).
 - Citations that dealt with resource protection (pollution, 1600 (lake and streambed agreement), take of threatened and endangered species, etc.).
 - Number of citations/arrests for non-Fish and Game Code violations.
- **Program 50, Spill Prevention and Response**
- Number of industry sponsored drills and exercises that are attended by Oil Spill Prevention and Response personnel.

2. **Governor's 2006-07 Budget.** It is the intent of the Legislature that the Governor's 2006-07 Budget include budget change proposals to address any instances in which activities are funded using resources other than those for which funds have been appropriated.

Attachment B**Item 3600-001-0200—Department of Fish and Game**

1. ***Fish and Game Preservation Fund (FGPF) Report.*** On or before January 10, 2006, the Department of Fish and Game shall provide a report to the Legislature (including budget and fiscal committees from both houses) on the Fish and Game Preservation Fund (FGPF). The report shall include the following:
 - (a) A plan for each of the FGPF subaccounts, such that expenditures for any one account do not exceed available resources for that specific account for 2006-07. Such a plan should be reflected in the *2006-07 Governor's Budget*. The plan shall also show a long term sustainable budget plan for each account.
 - (b) A fund condition report for each FGPF subaccount. It is the intent of the Legislature that each account show neither a beginning or ending negative fund balance. To the extent that corrective actions are necessary to address negative fund balances, please identify the corrective actions taken.
 - (c) A plan for each dedicated account whose fund reserves are in excess of 20 percent of the account. Such a plan for each account should provide an analysis of each of the following options:
 - (i) An increase in expenditures, including workload justification
 - (ii) Fee reductions

Attachment C**New Proposed Trailer Bill Language:**

Amend Section 711.4 of the Fish and Game Code:

711.4. (a) The department shall impose and collect a filing fee in the amount prescribed in subdivision (d) to defray the costs of managing and protecting fish and wildlife trust resources, including, but not limited to, consulting with other public agencies, reviewing environmental documents, recommending mitigation measures, developing monitoring requirements for purposes of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), consulting pursuant to Section 21104.2 of the Public Resources Code, and other activities protecting those trust resources identified in the review pursuant to the California Environmental Quality Act.

(b) The filing fees shall be proportional to the cost incurred by the department ~~and shall be annually reviewed and adjustments recommended to the Legislature in an amount necessary to pay the full costs of department programs as specified.~~ The department shall adjust the fees annually pursuant to Section 713.

(c) (1) All project applicants and public agencies subject to the California Environmental Quality Act shall pay a filing fee for each proposed project.

(2) Notwithstanding paragraph (1), no filing fee shall be paid pursuant to this section if the lead or certified regulatory program agency finds that the project is ~~either of the following:~~

~~—(A) C categorically exempt from the California Environmental Quality Act.~~

~~—(B) De minimis in its effect on fish and wildlife.~~

(3) Notwithstanding paragraph (1), no filing fee shall be paid pursuant to this section if all the following conditions exist:

(A) The project is being undertaken by the department.

(B) The project costs are payable from any of the following sources:

(i) The Public Resources Account in the Cigarette and Tobacco Products Surtax Fund.

(ii) The California Wildlife, Coastal, and Park Land Conservation Fund of 1988.

(iii) The Habitat Conservation Fund.

(iv) The Fisheries Restoration Account in the Fish and Game Preservation Fund.

(v) The Commercial Salmon Stamp Account in the Fish and Game Preservation Fund.

(vi) Striped bass stamp funds collected pursuant to Section 7360.

(C) The project is implemented through a contract with either a nonprofit entity or a local government agency. The filing fee shall be paid at the time and in the amount specified in subdivision (d). Notwithstanding Sections 21080.5 and 21081 of the Public Resources Code, no project shall be operative, vested, or final until the filing fees required pursuant to this section are paid.

(d) The fees shall be in the following amounts:

(1) A base filing fee of one hundred dollars (\$100.00) shall be charged for each project. In addition to the base fee, the following fees shall be imposed:

a. Five hundred dollars (\$500.00) for subdivisions between 10 and 49.9 acres,

- b. One thousand two hundred and fifty dollars (\$1,250) for subdivisions greater than 50 acres,
- c. Five hundred dollars (\$500.00) for multifamily residences,
- d. One thousand two hundred and fifty dollars (\$1,250.00) for commercial projects,
- e. Seven hundred and fifty dollars (\$750) for utility projects.

These filing fees shall be paid to the county clerk at the time of filing a notice of determination pursuant to Section 21152 of the Public Resources Code or to the Office of Planning and Research at the time of filing a notice of determination pursuant to Section 21108 of the Public Resources Code, as appropriate.

~~For a project which is found by the lead or certified regulatory agency to be de minimis in its effect on fish and wildlife, no filing fee shall be paid, whether or not a negative declaration or an environmental impact report is prepared pursuant to the California Environmental Quality Act.~~

~~(2) For a project which is statutorily or categorically exempt from the California Environmental Quality Act, including those certified regulatory programs which incorporate statutory and categorical exemptions, no filing fee shall be paid.~~

~~(3) For a project for which a negative declaration is prepared pursuant to subdivision (c) of Section 21080 of the Public Resources Code, the filing fee is one thousand two hundred fifty dollars (\$1,250). The filing fee shall be paid to the county clerk at the time of filing a notice of determination pursuant to Section 21152 of that code or to the Office of Planning and Research at the time of filing a notice of determination pursuant to Section 21108 of that code, as appropriate.~~

~~(4) For a project with an environmental impact report prepared pursuant to the California Environmental Quality Act, the filing fee is eight hundred fifty dollars (\$850). The filing fee shall be paid to the county clerk at the time of filing a notice of determination pursuant to Section 21152 of the Public Resources Code or to the Office of Planning and Research at the time of filing a notice of determination pursuant to Section 21108 of that code.~~

~~(5) (3) For a project which is subject to a certified regulatory program pursuant to Section 21080.5 of the Public Resources Code, the filing fee is eight hundred fifty dollars (\$850) one thousand seventy-five dollars (\$1,075). The filing fee shall be paid to the Secretary of the Resources Agency upon filing of the notice of determination pursuant to Section 21080.5 of that code. If the filing fee is to be paid by the state lead agency, the payment shall be made pursuant to a memorandum of understanding with the department.~~

~~(e) The county clerk may charge a documentary handling fee of twenty-five dollars (\$25) per filing for each filing, in an amount not to exceed the actual handling costs, in addition to the filing fee specified in subdivision (d).~~

~~(1) The county clerk of each county and the Office of Planning and Research shall maintain a record of all environmental documents received. The record shall include, for each environmental document received, the name of each applicant or lead agency, the document filing number, and the filing date. The record shall be made available for examination or audit by authorized personnel of the department during normal business hours.~~

~~(2) The filing fee imposed and collected pursuant to subdivision (d) shall be remitted monthly to the department within 30 days after the end of each month. The amount of fees due shall be reported on forms prescribed and provided by the department.~~

~~(3) The department shall assess a penalty of 10 percent of the amount of fees due for any failure to remit the amount payable when due. The department may pursue collection of delinquent fees through the Controller's office pursuant to Section 12419.5 of the Government Code.~~

(f) Notwithstanding Section 12000, failure to pay the fee under subdivision (d) is not a misdemeanor. All unpaid fees are a statutory assessment subject to collection under procedures as provided in the Revenue and Taxation Code.

(g) Only one filing fee shall be paid for each project unless the project is tiered or phased, and separate environmental documents or review by the department is required.

(h) This section does not preclude or modify the duty of the department to recommend, require, permit, or engage in mitigation activities pursuant to the California Environmental Quality Act.

(i) The permit process of the California Coastal Commission, as certified by the Secretary of the Resources Agency, is exempt from the payment of the filing fees prescribed by paragraph ~~(5)~~ (3) of subdivision (d) insofar as the permits are issued under any of the following regulations:

(1) Subchapter 4 (commencing with Section 13136) of Chapter 5 of Division 5.5 of Title 14 of the California Code of Regulations.

(2) Subchapter 1 (commencing with Section 13200), Subchapter 3 (commencing with Section 13213), Subchapter 3.5 (commencing with Section 13214), Subchapter 4 (commencing with Section 13215), Subchapter 4.5 (commencing with Section 13238), Subchapter 5 (commencing with Section 13240), Subchapter 6 (commencing with Section 13250), and Subchapter 8 (commencing with Section 13255) of Chapter 6 of Division 5.5 of Title 14 of the California Code of Regulations.