

Senator Lois Wolk, Chair  
Senator Jim Nielsen  
Senator Fran Pavley



**Thursday, March 19, 2015**  
**9:30 a.m. or Upon Adjournment of Session**  
**Hearing Room 112**

**Consultant: Catherine Freeman**

**Oversight**

Managing the Sacramento-San Joaquin Delta System .....2

<u>Item</u>	<u>Department</u>	<u>Page</u>
3885	Delta Stewardship Council.....	5
3860	Delta Conservancy .....	7
3840	Delta Protection Commission..... (no budget issues)	
3940	Delta Watermaster (State Water Resources Control Board). (no budget issues)	

**Items Proposed for Discussion**

<u>Item</u>	<u>Department</u>	<u>Page</u>
3860	Department of Water Resources .....	7
3860	State Water Resources Control Board.....	18
3480	Department of Conservation .....	23

---

**Resources—Environmental Protection—Energy—Transportation**

Pursuant to the Americans with Disabilities Act, individuals who, because of a disability, need special assistance to attend or participate in a Senate Committee hearing, or in connection with other Senate services, may request assistance at the Senate Rules Committee, 1020 N Street, Suite 255 or by calling 916-651-1505. Requests should be made one week in advance whenever possible.

## **Managing the Sacramento-San Joaquin Delta System**

### **Special Presentation: Legislative Analyst's Office**

#### **Panel Discussion on Implementation of the Delta Plan and Management of the Delta System (invited):**

- Patrick Johnston, Member, Delta Stewardship Council
- Erik Vink, Executive Director, Delta Protection Commission
- Campbell Ingram, Executive Officer, Sacramento-San Joaquin Delta Conservancy
- Michael George, Delta Watermaster, State Water Resources Control Board

## Background—Sacramento-San Joaquin Delta Management

Numerous reports have been written about the Delta, management of water moving through the Delta, risks inherent in the state's water system, and funding for these water systems. In January 2015, the Legislative Analyst's Office (LAO) released its most recent report, "Achieving State Goals for the Sacramento-San Joaquin Delta." This report provides a good overall background on current issues revolving around the Delta, including prioritizing demand, funding, governance, and implementation of the Delta Plan. The executive summary follows. The full report is available at [lao.ca.gov](http://lao.ca.gov).

### **LAO Executive Summary: *Achieving State Goals for the Sacramento-San Joaquin Delta.***

The Sacramento–San Joaquin Delta (Delta) is a biodiverse ecosystem that covers about 1,150 square miles and supports over 700 species of fish and wildlife. The Delta is an important source of water for the state and is used to convey water from Northern California to Southern California. In this report, we (1) provide an overview of the importance of the Delta and describe the problems it faces, (2) review efforts to address these problems, and (3) identify issues for the Legislature to consider to help ensure that its goals and objectives for the Delta are achieved.

**Problems in the Delta.** The Delta faces several significant problems. A variety of factors (such as diversions from the Delta) have led to a decline in key native fish species. This decline has resulted in regulatory actions intended to protect the environment but have reduced the amount of water that can be taken from the Delta. Water pollutants in the Delta are also causing harm to species and increasing treatment costs for users of Delta water. Finally, many of the levees that define the geography of the Delta are at risk of failure, with potential consequences for the Delta itself and the state's water supply. Left unaddressed, these problems could persist or worsen over the next 30 to 50 years and could create significant costs for the state and economy.

**Efforts to Address Delta Problems.** Since 1935, the state has engaged in numerous efforts to address the problems in the Delta. Two principal attempts were (1) building a proposed "peripheral canal" to carry water more reliably around the Delta and (2) a partnership with the federal government to build dams and ecosystem restoration projects to benefit the Delta. These attempts were unsuccessful, leading to the state's current efforts to achieve "coequal goals" for the Delta: water supply reliability and ecosystem restoration. These current efforts include (1) the Delta Plan, which is intended to guide state efforts to achieve the goals over the next 50 years, and (2) the Bay Delta Conservation Plan (BDCP), which would build two tunnels under the Delta to improve water supply reliability (to some beneficiaries), as well as complete habitat restoration projects.

**Issues for Legislative Consideration.** While the current efforts to address Delta problems can progress without additional legislative action, there are many opportunities for the Legislature to improve the success of these efforts. We identified several issues for its consideration, including:

- **Managing and Prioritizing Demands for Delta Water.** The Delta is affected by statewide water use and policies that determine how water is managed in the state, such as groundwater management practices. The Legislature established the goal of reducing reliance on the Delta as a source of water but that goal is open to multiple interpretations, each with different effects on the state's economy and the environment.
- **Funding Sources for Some Key Delta Activities Uncertain.** The BDCP is expected to cost \$25 billion dollars over 50 years. However, some sources of funding—such as state bond funds for ecosystem restoration activities—may not materialize. In addition, the costs to implement the Delta Plan are unknown but potentially significant.
- **Current Delta Governance Limits Effectiveness.** Specific provisions of the state's policy for the Delta (the Delta Reform Act of 2009) might restrict the state's ability to enforce the Delta Plan. In addition, there is currently limited integration of regulatory and planning activities that affect the Delta.
- **Slow Implementation of Some Key Activities.** The Delta Plan includes performance measures to track the outcomes related to the state's efforts in the Delta, but that tracking has not yet begun. In addition, there has been slow progress in meeting a statutory requirement to develop a strategy for prioritizing state spending on levee improvements.
- **Challenges to Restoring the Delta Ecosystem.** The numerous factors that harm the Delta—and the complex interaction among them—make it difficult to identify the most cost-effective ways to restore the ecosystem. In addition, many of the planned ecosystem restoration projects have faced challenges, which have delayed their completion.

By addressing some of these issues, the Legislature can improve the likelihood that its goals and objectives for the Delta will be realized.

**Staff Comments.** This budget subcommittee is charged with monitoring and oversight of the Administrations implementation of statute related to the Delta. To this end, while only two departments have submitted budget proposals (on the following pages), the Delta agencies should be prepared to discuss their current efforts to meet statutory requirements in the Delta, and to address concerns about management of the state's water systems, impacts on local entities from these systems, and priorities for agencies as they move forward to implement the Delta Plan.

**Staff Recommendation.** Information item, no action necessary.

## 3885 Delta Stewardship Council

Established in 2009 by the Delta Reform Act, the mission of the Delta Stewardship Council, through a seven-member board, is to further the state's goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Sacramento-San Joaquin Delta ecosystem. The goals are to be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta. In 2013, the council adopted a legally enforceable Delta Plan to further the state's goals and guide state and local agency activities related to the Delta. Under state law, agencies are required to coordinate their actions pursuant to the Delta Plan with the council and the other relevant agencies.

The council is informed by scientific input from the Delta Science Program and the Delta Independent Science Board. The mission of the Delta Science Program is to provide the best possible unbiased scientific information to inform water and environmental decision-making in the Delta. The Delta Stewardship Council is the successor to the California Bay-Delta Authority and CALFED Bay-Delta Program.

**Governor's Budget.** The Governor's January budget includes \$25 million (mostly General Fund), an increase of \$7.2 million. The increase is mainly due to a proposal to implement the Delta Plan.

### EXPENDITURES BY PROGRAM (in thousands)

Fund	Actual 2013-14	Estimated 2014-15	Proposed 2015-16
General Fund	\$6,535	\$10,478	\$17,118
California Environmental License Plate Fund	677	791	792
Federal Trust Fund	316	1,000	2,749
Reimbursements	3,460	4,600	4,450
Water Security, Clean Drinking Water, Coastal and Beach Protection Fund of 2002	4,318	1,000	-
<b>Total Expenditures (All Funds)</b>	<b>\$15,306</b>	<b>\$17,869</b>	<b>\$25,109</b>

### POSITIONS BY PROGRAM

Program	Actual 2013-14	Estimated 2014-15	Proposed 2015-16
Delta Stewardship Council	47.7	67.5	70.5
<b>Total Positions (All Programs)</b>	<b>47.7</b>	<b>67.5</b>	<b>70.5</b>

## *Items Proposed for Discussion*

### 1. Delta Plan Implementation

**Background.** The council was created in 2009 as an independent state agency to guide the state's goals of: (1) providing more reliable water supply through the Delta and, (2) restoring the Delta. The Delta Plan, adopted in 2013, is both a regulatory document and a series of recommendations for state and local agencies operating within the Delta. The Delta Plan must, by law, be incorporated into the Bay Delta Conservation Plan (BDCP) when it is completed and permitted—and the council is required to hear appeals of the BDCP approval. The council also manages the Delta Science Program, designed to provide unbiased scientific information to inform water and environmental decision-making in the Delta.

The budget included the conversion of six limited-term positions to permanent, and 12 new positions as well as a baseline increase of \$5.8 million (\$3.2 million General Fund, \$2 million bond funds and \$600,000 from other state departments).

**Budget Proposal.** The Governor's budget requests three new positions, and \$9.25 million (\$6.6 million General Fund, \$850,000 reimbursements, and \$1.7 million federal funds), as well as reappropriation of Proposition 50 bond funds. The funds are requested to fulfill the Delta Plan implementation requirements for the following areas:

- **Delta Science Program.** A total of \$8 million—of this amount, \$5.5 million is General Fund for science contracts and grants (\$1 million of which is one-time), \$850,000 is Proposition 1E bond funds to support three existing positions through an interagency agreement (reimbursements), and \$1.7 million is federal funds. The 2014 budget included 19 positions (six existing and 13 new and permanent).
- **Planning, Performance and Technology.** \$1.2 million (General Fund) and two positions, including \$1 million for one-time consultants. The 2014 budget included three new positions and funding, and one-time consultant contracts (\$900,000), for similar purposes.

**Staff Comments.** Staff concurs with the need to continue a baseline Delta Science Program and the baseline activities proposed by the council in the current-year's budget. However, it was not anticipated that this council would grow over 100 percent in two years, nor that General Fund would be the proposed for the majority of new funding for workload. At the time, the Council did not indicate that there would be a need for additional and ongoing increase in baseline funding for the programs. Staff has concerns about the ongoing increases in budgeting, particularly from the General Fund, for the Council—and suggests this entity should strive to work with other departments to collaborate with existing resources, rather than continue to increase funding so dramatically.

**Staff Recommendation:** Approve federal funds, bond reappropriation, and reimbursements. Hold open General Fund augmentation.

**Vote:**

## 3875 Sacramento-San Joaquin Delta Conservancy

The mission of the Sacramento-San Joaquin Delta Conservancy is to support efforts that advance both environmental protection and the economic well-being of Delta residents in a complementary manner. The conservancy's activities include: protecting and enhancing habitat and habitat restoration; protecting and preserving Delta agriculture and working landscapes; providing increased opportunities for tourism and recreation; and, promoting Delta legacy communities and economic vitality in the Delta. The conservancy acts as the primary state agency to implement ecosystem restoration in the Delta.

**Governor's Budget.** The Governor's budget includes \$11.9 million and nine positions for support of the department. This is an increase of \$10 million from bond funds.

### EXPENDITURES BY FUND (in thousands)

Fund	Actual 2013-14	Estimated 2014-15	Proposed 2015-16
General Fund	\$821	\$940	\$1,006
California Environmental License Plate Fund	71	78	77
Federal Trust Fund	305	286	303
Reimbursements	421	637	637
Water Quality, Supply, and Infrastructure Improvement Fund of 2014	-	-	9,871
<b>Total Expenditures (All Funds)</b>	<b>\$1,618</b>	<b>\$1,941</b>	<b>\$11,894</b>

### POSITIONS BY PROGRAM

Program	Actual 2013-14	Estimated 2014-15	Proposed 2015-16
Sacramento-San Joaquin Delta Conservancy	8.1	9.0	13.0
<b>Total Positions (All Programs)</b>	<b>8.1</b>	<b>9.0</b>	<b>13.0</b>

**Item Proposed for Discussion**

**1. Delta Plan Implementation and Baseline Augmentation**

**Background.** The Legislature created the Sacramento-San Joaquin Delta Conservancy (conservancy) as a primary state agency for ecosystem restoration and economic development in the Delta. The Delta Conservancy was established by the Delta Reform Act of 2009, SB 1 (Simitian), Chapter 5, Statutes of 2009, which also made significant changes to the structure of various state agencies and redefined roles that they play in the Delta. Specifically, the legislation created two new agencies, the Delta Stewardship Council and the conservancy using the former CALFED Bay-Delta Program. These two agencies, along with the Delta Protection Commission, were tasked with different, yet interrelated and complementary, roles in the recovery of the Delta.

**Budget Proposals.** The budget includes two proposals:

1. \$9.9 million (Proposition 1 bond funds) in 2015-16 and reduced to \$9.7 million in out-years, for four years, to fulfill the requirements of the bond. The proposal includes four full-time and permanent positions and office space.
2. \$70,000 permanent baseline increase (General Fund), to cover increased operational costs.

**Staff Comments.** Staff concurs with the conservancy’s need for the bond funds and finds this consistent with the voter-approved Proposition 1 water bond. The need for baseline funding is less clear. As discussed in the oversight hearing on the Environmental License Plate Fund (ELPF), a total of \$2.5 million from Proposition 1 is available to the conservancy for state operations. As nearly 100 percent of the conservancy’s activities are related to the purposes of the bond, it is unclear why the Administration continues to propose both a baseline General Fund increase and continued reliance on the Environmental License Plate Fund. These may be necessary after all state operations allocations from bond funds have been expended, likely in five to ten years. For the four-year period requested to distribute the \$50 million, it would seem that \$2.5 million would be sufficient for the staffing of the conservancy.

2015-16	General Fund (proposed)	ELPF (baseline)	Prop 1 (proposed)	Proposition 1 (Full Allocation)	
				Total	5% for State Operations
Delta Conservancy	\$70,000	\$77,000	\$9.9 million	\$50 million	\$2.5 million

**Staff Recommendation:** Approve bond funds. Hold open General Fund. Hold open ongoing Environmental License Plate Fund baseline funds until a final discussion takes place on these funds in budget committee.

**Vote:**



## 3860 Department of Water Resources

The Department of Water Resources (DWR) protects and manages California's water resources. In this capacity, the department maintains the State Water Resources Development System, including the State Water Project (SWP). The department also maintains public safety and prevents damage through flood control operations, supervision of dams, and water projects.

Additionally, the department's California Energy Resources Scheduling (CERS) division manages billions of dollars of long-term electricity contracts. The CERS division was created in 2001 during the state's energy crisis to procure electricity on behalf of the state's three largest investor-owned utilities (IOUs).

**Governor's Budget.** The Governor's budget includes \$3.5 billion (including infrastructure expenditures) and 3,469 positions for support of DWR. The proposed budget represents an overall decrease of \$357 million mainly due to decreased appropriations for bond funds.

### EXPENDITURES BY PROGRAM (in thousands)

Program	Actual 2013-14	Estimated 2014-15	Proposed 2015-16
Continuing formulation of the California Water Plan	\$322,103	\$706,218	\$192,147
Implementation of the State Water Resources Development System	818,526	1,697,954	1,697,591
Public Safety and Prevention of Damage	363,185	1,053,476	566,976
Central Valley Flood Protection Board	5,118	14,671	15,401
Services	2,502	7,706	7,716
California Energy Resources Scheduling	881,211	958,001	961,575
Loan Repayment Program	-1,181	-1,405	-1,405
Administration	94,750	91,452	93,196
<b>Total Expenditures (All Programs)</b>	<b>\$2,391,465</b>	<b>\$4,436,622</b>	<b>\$3,440,002</b>

### Items Proposed for Vote-Only

- 1. Administration of Truckee River Operating Agreement.** The budget requests \$150,000 (General Fund) in 2015-16, and \$300,000 annually thereafter, in order to augment the Central California Water Management Program to meet mandated responsibilities under the Truckee River operating agreement.
- 2. Sacramento Valley Water Management and Habitat Protection Project.** Due to an inadvertent error, this item must be rejected without prejudice. The department will provide a substitute proposal during the spring budget process.

**Staff Recommendation:** Approve Item 1. Reject Item 2, without prejudice.

**Vote:**

*Items Proposed for Discussion***1. California Water Commission**

**Background.** The California Water Commission consists of nine members appointed by the Governor and confirmed by the State Senate. Seven members are chosen for their general expertise related to the control, storage, and beneficial use of water and two are chosen for their knowledge of the environment. The commission provides a public forum for discussing water issues, advises the Department of Water Resources (DWR), and takes actions to further the development of policies that support integrated and sustainable water resource management and a healthy environment. Statutory duties include advising the director of DWR, approving rules and regulations, and monitoring and reporting on the construction and operation of the State Water Project.

Proposition 1 dedicated \$2.7 billion for investments in water storage projects and designated the California Water Commission as the agency responsible for appropriately allocating these funds. The commission, through the Water Storage Investment Program, will fund the public benefits of these projects. Eligible projects must also provide measurable benefits to the Delta ecosystem or its tributaries. Specifically, the bond states:

79751. Projects for which the public benefits are eligible for funding under this chapter consist of only the following:

- (a) Surface storage projects identified in the CALFED Bay-Delta Program Record of Decision, dated August 28, 2000, except for projects prohibited by Chapter 1.4 (commencing with Section 5093.50) of Division 5 of the Public Resources Code.
- (b) Groundwater storage projects and groundwater contamination prevention or remediation projects that provide water storage benefits.
- (c) Conjunctive use and reservoir reoperation projects.
- (d) Local and regional surface storage projects that improve the operation of water systems in the state and provide public benefits.

79752. A project shall not be funded pursuant to this chapter unless it provides measurable improvements to the Delta ecosystem or to the tributaries to the Delta.

Further, the bond provides a continuous appropriation such that no moneys in any fund that, by any statute other than a Budget Act, are continuously appropriated without regard to fiscal years, may be encumbered unless the Legislature, by statute, specifies that the moneys in the fund are appropriated for encumbrance.

**Budget Proposal.** The Governor requests eight new, full time positions, and 4.3 existing positions within the Department of Water Resources, to support the commission. The commission intends to expend \$3.3 million of the \$2.7 billion that was continuously appropriated to the commission to support this budget proposal. A budget action is not necessary to approve the funding.

**Staff Comments.** As stated above, funds from this bond allocation are *continuously appropriated*, and therefore this subcommittee will not be approving or denying any project, proposals, or activities related to the commission's duties. Staff has no concerns with the positions requested by the commission.

However, staff is concerned about statements made by the Secretary for Natural Resources at its hearing on March 5, 2015. Specifically the Secretary, in response to a question from a member of the subcommittee, implied that these funds *would be* used for surface storage projects identified by the department. This is not accurate and it must be made clear that the commission will act independently to implement Section 79751 and 79752 of the bond.

The commission met on March 18, 2015, where it discussed the commission's role in allocating bond funds. It also took public testimony and allowed for a public dialogue on the allocation of the funds. It is within this arena that the discussion of how, which, and where, projects will be allocated.

The public are encouraged to attend commission meetings. The next meeting of the commission is scheduled for 9:30 a.m. on April 15, 2015, in Fresno. All meetings, agendas and public documents are readily available on the commission's website [www.cwc.ca.gov](http://www.cwc.ca.gov).

**Commenters:**

1. Joseph Byrne, Member, California Water Commission
2. David Guy, President, Northern California Water Association
3. Danny Merkley, Director of Water Resources, California Farm Bureau
4. Jonas Minton, Water Policy Advisor, Planning and Conservation League

**Staff Recommendation:** Approve positions. No action necessary on funding.

**Vote:**

## 2. FloodSAFE California and Proposition 1E Appropriations

**Background.** The LAO has done extensive analysis of the state's flood proposals and provides analysis and background of the current Governor's proposal, as follows:

**Defining Flood Risk.** According to a November 2013 report by DWR, California faces significant risk from flooding. The flood risk for a given area is determined by the amount of damage (such as damage to property and loss of life) that would be caused if a flood occurred, combined with the likelihood that a flood will occur. For example, an urban area along a river might have a relatively high flood risk—even if a flood is unlikely to occur—because the area has high property values and a large number of residents would be affected if flooding happened. In contrast, a rural area might have a lower flood risk—even if a flood is more likely to occur—because property values and populations in the area are lower.

**State Role in Flood Protection.** Historically, most flooding has occurred in the Central Valley. The state is the primary entity responsible for flood control in this area. The State Plan of Flood Control (SPFC) is the state's system of flood protection in the Central Valley. It includes about 1,600 miles of levees, as well as other flood control infrastructure, such as bypasses and weirs, which are used to divert water at times of high flow.

Within the SPFC, the state funds the construction and repair of flood control infrastructure. Typically, the federal and local governments also provide funding for these projects. The state also provides grants to local governments to support local levee improvements and other activities. For most levee segments, the state has turned over the operations and maintenance to local governments (primarily local flood control districts). Even though some of these local agencies have failed to adequately maintain the levees in the past, the state has been found liable for such levee failures. Outside the SPFC, the state's role in flood management generally consists of providing financial assistance to local governments for flood control projects located throughout the state.

**Voters Passed Proposition 1E.** In November 2006, California voters approved the Disaster Preparedness and Flood Protection Bond Act of 2006 (Proposition 1E) in order to improve the condition of the state's levees. Proposition 1E authorized the sale of \$4.1 billion in general obligation bonds for several broad categories of flood protection activities, such as improvements to the state's flood control system and the construction of bypasses. The measure requires (1) all funds to be appropriated by July 1, 2016, (2) the funds to be directed to projects that achieve maximum public benefits, and (3) the Governor to submit an annual flood prevention expenditure plan that includes the amount of matching federal and local funds.

**Central Valley Flood Protection Plan Developed.** Subsequently, the Legislature passed the Central Valley Flood Protection Act of 2008 (Chapter 364, Statutes of 2007 [SB 5, Machado]). Chapter 364 required DWR to develop a plan—the Central Valley Flood Protection Plan (CVFPP)—for reducing the risk of flooding throughout the SPFC system, including recommended actions and projects. The CVFPP was developed by DWR in 2012 and identified a total flood control funding need of \$14 billion to \$17 billion.

**State Flood Protection Activities.** The state funds several types of flood protection activities. This includes three types of state-managed capital outlay projects:

- **Urban Capital Outlay Projects.** These projects protect urban areas, typically by improving levees. Projects in urban areas often provide large reductions in flood risk for the protected areas because the levees protect high value property and large populations. However, the way urban capital projects have historically been constructed often negatively affect fish habitat for several reasons, such as by reducing native vegetation. Consequently, such projects often require significant environmental mitigation. The federal government often provides most of the funding for these projects because they meet certain federal criteria for reducing flood risk in a cost-effective manner.
- **Rural Capital Outlay Projects.** These projects protect rural areas by repairing levees and making other improvements, such as flood-proofing structures or widening floodplains. The impact of rural flood projects on fish habitat depends on how they are designed. For example, some of these projects include “setback” levees, which are built further back from the bank of the river. This connects the river to its historical floodplain, which creates additional habitat and provides good food sources for fish and other species. Because these projects reduce risk in rural areas—which do not have high populations or property values—they often do not meet the federal government’s cost-effectiveness criteria. Thus, the state typically pays over half the cost of these projects, with local governments paying the remainder.
- **System-wide Capital Outlay Projects.** These projects include building or expanding existing bypasses (such as the Yolo Bypass near Davis). Bypasses significantly reduce the chance of flooding for large regions—including urban and rural areas—and improve environmental benefits for fish species that migrate through them. However, because some of the flood benefits accrue to rural areas, these projects may not reduce flood risk as cost-effectively as urban projects. The cost shares among state, federal, and local governments depend on the specific project.

The state also provides funding for other activities, including:

- **Grants to Local Governments.** The state provides grants to support a variety of flood protection activities at the local level. Specifically, the state funds a share of the costs associated with projects that are developed and led by local governments. This includes grant programs focused on reducing flood risk in small communities and supporting local levee maintenance.
- **State Operations.** The state also supports various state flood protection activities, such as updates to the CVFPP, analyses of flood risk, levee maintenance, and purchasing equipment and supplies needed to respond to flood emergencies.

**Challenges to Expending Proposition 1E Funds.** While the Legislature has appropriated most of the Proposition 1E funds for specific projects, only \$1.9 billion of Proposition 1E funds had been expended or committed to projects as of June 2013 (the latest information available). According to DWR, this is because the state has faced some challenges in expending Proposition 1E funds. These challenges include difficulties in (1) securing funding for local and federal shares of certain flood protection projects; (2) identifying projects developed by local agencies that have gone through the required design stages and environmental reviews; and (3) securing other local, state, and federal permits needed to complete projects.

**Budget Proposal**

The Governor’s proposed budget for DWR includes \$1.1 billion (nearly all from Proposition 1E) to support various flood control activities. This amount is primarily for capital outlay projects (\$738 million), but also includes some funding for local assistance (\$222 million) and state operations (\$163 million). The proposal would appropriate all remaining Proposition 1E funding and would support 530 existing positions.

**2015–16 Proposed Proposition 1E Appropriations**

*(Dollars in Millions)*

Purpose	Amount	Percent of Total
<b>Capital Outlay Projects:</b>	\$738	66%
In Urban Areas	(320) <sup>a</sup>	(28)
System-wide	(300)	(27)
In Rural Areas	(118)	(11)
<b>Local Assistance</b>	222	20
<b>State Operations</b>	163	15
<b>Totals</b>	<b>\$1,123</b>	<b>100%</b>

<sup>a</sup> Includes \$13.8 million from other bond funds and \$52 million in reimbursement authority.

The Governor proposes to give DWR ten years to encumber the funds (commit to projects) and an additional two years to expend them. This significantly exceeds the typical three-year appropriation for capital projects. Unlike with prior appropriations, the proposal does not identify specific projects that would be funded. The proposal would also allow the department to transfer funds between state operations, local assistance, and capital outlay projects as it deems necessary. The Administration has indicated that it will seek legislation to appropriate some funding prior to the passage of the 2015–16 Budget Act with the intent to expedite flood projects. In future years, the Administration also intends to submit an annual report detailing proposed expenditures for the year and progress on past programs.

**LAO Analysis.** According to the LAO, the Governor’s proposal to allow for a ten year appropriation period limits the ability of Legislature’s ability to conduct effective oversight over the funds. In addition, they are concerned that, without addressing the underlying reason for the delays in appropriating funds, that delays will continue. In addition, the LAO states that the proposal provides no opportunity for the Legislature to weigh trade-offs. Because the funding is intended to achieve only a portion of the state’s flood liabilities, “the Legislature will want to weigh in on which projects and activities are funded in order to ensure that its highest priorities are achieved. However this proposal does not provide the Legislature with such an opportunity.”

**Staff Comments.** Staff concurs with the LAO analysis. It is clear that the department has not been able to spend the bond funds in the manner that the bond measure anticipated. At the time the measure bond was drafted and passed, the Legislature had anticipated that funding would move quickly to necessary projects, given the enormity of the problem. Instead, continued issues with matching funds, both local and federal, caused delays. So, too, the downturn in the economy exacerbated these delays.

**Staff Recommendation:** Staff recommends the following:

- (1) Require the department, by April 1, to present a list of projects and a clear expenditure plan for both the state operations and system-wide allocation pot. This should include specific projects and priorities.
- (2) Approve urban and rural capital outlay, and local assistance proposals.
- (3) Deny trailer bill language allowing for 10-year appropriation. Require the Administration to return with a proposal for a five-year appropriation period, with reporting language. Additionally, require the department to revise the proposal to allow for shifting between funding categories such that the only type of funding shift would be *from* state operations and system-wide capital outlay *to* local assistance and urban/rural capital outlay.

**Vote:**

### 3. Central Valley Flood Protection Board

**Background.** The Central Valley Flood Protection Board (CVFPB) serves as liaison between the State of California, its residents, property owners, Central Valley agencies, and the federal government. Since 2011, it has worked to provide flood protection within California’s Central Valley, while also considering environmental and habitat concerns. Under California law, any modification to the federal/State flood control system, encroachment, or project on, or near, the Sacramento and San Joaquin Rivers or their tributaries, must be approved by the board. The CVFPB is governed by a board consisting of seven Governor-appointed and Senate-confirmed members, plus two non-voting ex-officio members from the California Legislature. The monthly public board meetings provide an open forum where all interests may express their views regarding flood management, and where permits, board-sponsored projects, and other actions are reviewed and approved.

**Budget Proposal.** The Governor’s budget includes two proposals for the CVFPB, as follows:

- (1) \$800,000 (General Fund) to support five new permanent positions located within the board to fulfill assurances that the state has made to the federal government through formal “Assurance Agreements.” Specifically, staff are requested to maintain 116 “Local Maintaining Agencies” in resolving levee deficiencies that caused the federal government to remove more than half of these levees from federal financial assistance to rehabilitate levees after catastrophic failures (so-called “PL84-99” levees). Continued review by federal agents adds to this list as further illegal encroachments and deficiencies in the levees are encountered.
- (2) \$600,000 (Proposition 1E) to update enforcement and permitting requirements while adopting and overseeing the implementation of the Central Valley Flood Protection Plan. The Administration also requests the ability to transfer these funds between capital outlay, local assistance and state operations.

**Staff Comments.** Staff concurs with the need to update enforcement and permitting requirements. However concerns have been raised about the need for General Fund to pay for positions that directly benefit specific local entities. In addition, the use of Proposition 1E bond funds for ongoing enforcement and permitting may not be in keeping with the nature of the bond for long-term and mostly capital, projects.

Over a number of years, the Administration, LAO, and others, have suggested any number of fees, assessments and taxes that would directly benefit those entities who receive the benefit of the state’s flood efforts. For example, in all other state agencies (whether to a public or private agency), fees pay for the majority of regulatory functions. It is unclear why the Administration has not suggested a focused funding mechanism for at least part of these proposals.

**Staff Recommendation:** Hold Open—require the board to return in May with a proposal that is not reliant solely on General Fund or bond funds.

**Vote:**



#### 4. Groundwater Management

**Background.** On September 16, 2014, the Governor signed into law three groundwater bills: (1) SB 1168 (Pavley), Chapter 346, Statutes of 2014; (2) AB 1739 (Dickenson), Chapter 347, Statutes of 2014; and, (3) SB 1319 (Pavley), Chapter 348, Statutes of 2014. This package of bills significantly expands the directed actions and authority of DWR to implement sustainable groundwater management, statewide. The new legislation suggests local agencies form Groundwater Sustainability Agencies (GSA) to manage groundwater through sustainability plans in high and medium priority basins. Financial and enforcement tools were provided in the legislation, to assist GSAs in carrying out effective sustainable groundwater management. The legislation directs DWR to complete regulations, review sustainability plans, alternatives to these plans, and to conduct groundwater assessments.

**Budget Proposal.** The Governor's budget requests \$6 million (General Fund) in 2015-16, and \$8 million for four years from 2016-17 through 2019-20, for DWR to implement the legislation. The proposal includes support of five new, and 26 existing positions, and funding for external consulting and technical assistance.

**Fiscal Analysis of the Bills.** The legislature passed these bills with the following fiscal analysis:

- SB 1168 (Pavley): "Increased annual General Fund costs to DWR of approximately \$4 million *beginning in fiscal year (FY) 2019-20* to collect and manage data, complete evaluations, and assist the State Water Board in developing interim plans. DWR received \$22.5 million in the 2014-15 Budget (\$2.5 million for FY 2014-15 and \$5 million each year from FY 2015-16 through FY 2018-19) which will fund Bulletin 118 (groundwater plans) updates and technical assistance."
- AB 1379 (Dickenson): "No additional state costs for FY 2014-15 through FY 2018-19 to the DWR for initial activities. Annual costs \$3.5 to \$4 million from the General Fund beginning in FY 2017-18 to DWR to review plans and to provide ongoing technical support."
- SB 1319 (Pavley): "Absorbable General Fund costs for DWR to assist SWRCB in developing interim plans. DWR received \$22.5 million in the 2014-15 Budget (\$2.5 million for fiscal year FY 2014-15 and \$5 million each year from FY 2015-16 through FY 2018-19, which will fund Bulletin 118 updates and technical assistance."

**Staff Comments.** Staff reviewed correspondence between the Department and the fiscal committees and concurs with the fiscal analysis of the bills, which was based on estimates provided by the department (verified by staff). Groundwater management is critical to the state of California. In keeping with the intent of the bills, the fiscal analyses allow local governments to improve management of their groundwater basins and do not envision a state role (beyond resources already allocated) for at least two years.

**Staff Recommendation:** Deny Proposal.

**Vote:**

## 3940 State Water Resources Control Board

The State Water Resources Control Board (SWRCB) and the nine Regional Water Quality Control Boards (regional boards or water boards) preserve and enhance the quality of California's water resources and ensure proper allocation and effective use. These objectives are achieved through the Water Quality and Water Rights programs.

**Governor's Budget.** The Governor's January Budget includes \$1.4 billion to support the board's activities, an increase of \$221,000 over the current year budget. This change is primarily due to implementation of the Water Bond (Proposition 1) and recent legislation to provide increased cleanup of groundwater contamination statewide. Most of the board's budget is special funds, with \$32.7 million of the proposed total funding coming from General Fund.

### EXPENDITURES BY PROGRAM (in thousands)

Program	Actual 2013-14*	Estimated 2014-15*	Proposed 2015-16
Water Quality	\$400,422	\$1,074,439	\$1,293,592
Drinking Water Quality	-	35,650	35,030
Water Rights	18,968	25,783	28,948
Department of Justice Legal Services	956	1,217	1,217
<b>Total Expenditures (All Programs)</b>	<b>\$420,344</b>	<b>\$1,137,089</b>	<b>\$1,358,787</b>

\* The 2013-14 budget included the shift of the drinking water program from the Department of Public Health to the State Water Resources Control Board.

### POSITIONS BY PROGRAM

Program	Actual 2013-14	Estimated 2014-15	Proposed 2015-16
Water Quality	1,132.4	1,291.9	1,391.4
Drinking Water Quality	-	229.7	229.7
Water Rights	116.6	135.5	178.5
Administration	284.8	215.0	215.0
<b>Total Positions (All Programs)</b>	<b>1,533.8</b>	<b>1,872.1</b>	<b>2,014.6</b>

**Items Proposed for Vote-Only**

1. **Technical Bond Adjustment.** The Governor's budget requests a reduction of state operations authority in Propositions 13 and 50, and an augmentation of Proposition 84 state operations authority; reversions of the specified amounts for various fiscal years of state operations and local assistance funds for Propositions 13, 40, 50 and 84; and the appropriation of funds for Propositions 13, 40, 50, 84 to ensure the purpose of the bonds are met with the funding of new projects. Additionally, the State Water Board requests that these funds be available for encumbrance until June 30, 2018.
2. **SB 985 Stormwater Resource Plan.** The Governor's budget requests \$381,000 and 3.0 two-year limited term positions from the Waste Discharge Permit Fund to implement the mandates of SB 985 (Pavley), Chapter 555, Statutes of 2014. The intent of the SB 985 is to promote storm water use projects and dry weather non-storm water runoff use projects through storm water resource plans.
3. **AB 2071 Use of Recycled Water for Livestock.** The Governor proposes a one-time, General Fund increase of \$300,000 to implement the requirements of AB 2071 (Levine), Chapter 92, Statutes of 2014. These funds enable the State Water Board to hire contractors to coordinate, oversee, and administer an expert panel to determine if the use of tertiary recycled water for consumption by animals poses a significant health risk to the public or animals.
4. **Small Communities Waste Water Project.** The Governor's budget requests a one-time augmentation of \$4 million for 2015-16, [total of \$12 million for 2015-16, for the State Water Pollution Control Revolving Fund Small Community Grant Fund to assist small disadvantaged communities (SDACs)] with their wastewater needs. These grants will help SDACs achieve compliance with water quality regulations, protect surface and groundwater quality, and help eliminate threats to public health and safety. The State Water Board requests that the appropriated funds be available for encumbrance until June 30, 2017.

**Staff Recommendation:** Approve Item 1-4.

**Vote:**

*Items Proposed for Discussion***1. Drinking Water Fee Regulation**

**Background.** The Safe Drinking Water Program is a mandated program to ensure that all small and large public water systems meet the Safe Drinking Water Act standards. Fees are used to support the Safe Drinking Water Program budgetary expenditures. However, for the past two fiscal years, the Safe Drinking Water Program fees have not generated sufficient revenue to support budgetary expenditures. Total revenue for 2012-13 and 2013-14 has fallen short of total program expenditures in the amount of \$1.3 million. The shortfall in revenue has been offset by a combination of Public Water System Supervision federal grant and a set-aside from the Drinking Water State Revolving Fund. The use of alternative funding sources is forcing the program to rely on federal funds that are not guaranteed on an annual basis. Currently, in order to amend the fee schedules, the State Water Resources Control Board (State Water Board) is subject to the Office of Administrative Law's review process. This request is to amend the Health and Safety Code to allow the State Water Board to adopt fee regulations by emergency actions to ensure an annual fee schedule is adopted to generate sufficient revenue to support Safe Drinking Water Program annual budgetary expenditures. This will also align the Safe Drinking Water Program fee process with the State Water Boards' Waste Discharge Permit Fees and Water Rights Fees processes.

**Budget Proposal.** The Governor's budget requests trailer bill language to amend the Health and Safety Code to allow the State Water Board to adopt fee regulations by emergency actions to ensure an adopted annual fee schedule will generate sufficient revenue to support Safe Drinking Water Program annual budgetary expenditures and ensure the immediate preservation of the public peace, health, safety and general welfare. Approving this proposal would give the State Water Board, through emergency regulations, the ability to adopt a fee schedule that would fully support the Safe Drinking Water Program and eliminate the need for federal fund assistance.

**Staff Comments.** Staff concurs with the need for this proposal. As part of the transfer of programs to the State Water Board, it was clear that the board would be reviewing the longstanding issues of funding for the various programs. This would result in a sustainable funding source and reduce the risk of relying on federal funds each fiscal year. It is important to note that the total revenue collected each year through annual fees would be set at an amount equal to the revenue levels set forth in the budget act for this activity. Further, this proposal allows for an annual stakeholder process to discuss fee options, present the findings and recommendation to the State Water Board and get their approval.

**Staff Recommendation:** Approve item.

**Vote:**

**2. SB 445 Implementation—Underground Storage Tank Cleanup Program**

**Background.** This proposal implements the changes placed into law by SB 445 (Hill), Chapter 547, Statutes of 2014, which took effect immediately as an urgency measure on September 25, 2014, and affects the Underground Storage Tank Cleanup Fund (USTCF) and the California Water Boards Groundwater Cleanup programs. SB 445 provides new funding to address the most serious groundwater contamination sources such as solvents (from drycleaners and industries), nitrates (chemical fertilizers), and perchlorate (fireworks, rockets) that have taken thousands of public supply wells out of service in drought-impaired California. The law also supports the continued efforts to address contamination from thousands of petroleum underground storage tanks by requiring removal of single-walled USTs that are likely to have released contaminants into groundwater. The law makes several additions to make funding available to claimants, grantees, and loan recipients. SB 445 provides the State Water Board with the administrative tools to address investigation and timely response to known fraud against the USTCF. This authority will help preserve the funds for their intended purpose. Additional provisions require studies and audits to continue program improvements and accountability.

**Budget Proposal.** The Governor's budget requests: (1) an increase of authority in USTCF of \$39.5 million that will be used to reimburse tank owners and operators for their costs in cleaning up leaking Underground Storage Tanks; (2) an appropriation to the Site Cleanup Subaccount (SCS) of \$24.7 million of which \$4.9 million is one-time and \$19.8 million is ongoing for the investigation and remediation of contaminated sites where there is no viable party; and, (3) an increase of authority in the Petroleum Underground Storage Tank Financing Account (PUSTFA) of \$24.7 million of which \$4.9 million is one-time and \$19.8 million is ongoing for loans and grants for Replacing, Removing, or Upgrading Underground Storage Tanks (RUST).

Additionally, the request includes a one-time appropriation of \$100 million from the Expedited Claim Account (ECA), with availability for expenditure until June 30, 2018. The proposal would fund 21 new positions plus a funding shift equivalent to 17 positions and a permanent augmentation of \$79 million in baseline authority supported by the SB 445 'mil' tax increase. An increase in state operations authority as outlined in the budget request summary will allow the State Water Board to recognize the storage fee increase as implemented by SB 445, as well as expend the additional revenue to support cleanup of leaking USTs.

**Staff Comments.** Staff concurs with the need for the proposal.

**Staff Recommendation:** Approve item.

**Vote:**

### 3. Marijuana Cultivation Enforcement Team

**Background.** California produces more marijuana from outdoor cultivation than any other state. There are two basic ways marijuana is grown outside in the state. The first is illegal cartel use of public lands to grow marijuana. The second is the legal cultivation of marijuana on private lands pursuant to Proposition 215 (1996). The impacts of growing marijuana on both public and private lands are well documented. The State Water Resources Control Board (SWRCB) has observed significant land clearing activities resulting in sediment discharges to many high-value surface waters in the north state, nutrient loading from fertilizers, increased threats to endangered species, and stream diversions that result in dangerously low water levels.

Whether on public or private land, the impact from marijuana cultivation is substantial. The Department of Fish and Wildlife (DFW) has conducted approximately hundreds of marijuana eradication and reclamation missions. These missions have led to the arrest of over 200 illegal marijuana growers, seizure of firearms and over thousands of pounds of marijuana. The state has collected trash, poly pipe, fertilizer, common pesticides, herbicides, and rodenticides, hazmat containers, and removed man-made dams from waterways feeding illegal grows. Costs to reclaim damaged lands and remediate impacts range from \$2,000 to \$14,000 per acre on public land and as high as \$30,000 to \$50,000 per acre on private land.

**Budget Oversight—2014.** This subcommittee heard testimony in 2014 on the issue of marijuana enforcement and focused on the possible use of existing departments—the Department of Food and Agriculture, the Department of Fish and Wildlife, and the Department of Pesticide Regulation—to regulate the sale of medical marijuana, as well as the enforcement of environmental laws for illegal cultivation. The budget approved supplemental reporting language requiring the Administration to report back at budget hearings on its recommendations to require “215” growers to comply with regular permitting, and any needs for regulatory changes.

**Budget Proposal.** The Governor's budget requests \$1.5 million General Fund and 11 two-year, limited-term, positions to continue implementation of a task force and priority-driven approach to address the natural resources damages from marijuana cultivation, primarily on private lands in Northern California, but also in targeted partnerships with DFW on high conservation value state public lands. The proposal continues the 11 positions approved in the 2014-15 budget. The multidisciplinary task force assigned to address this issue will develop a long-term scientific monitoring and permitting program in anticipation of future state regulatory changes related to marijuana. The continuation of the current year effort will be focused in the geographic area with the greatest need, which are those counties covered by the North and Central Valley Water Boards Regions.

**Staff Comments.** The board should provide its update to the subcommittee on the reporting language requested in the 2014 budget.

**Staff Recommendation:** Approve item.

**Vote:**

## 3480 Department of Conservation

The Department of Conservation (DOC) is charged with the development and management of the state's land, energy, and mineral resources. The department manages programs in the areas of: geology, seismology, and mineral resources; oil, gas, and geothermal resources; and agricultural and open-space land.

**Governor's Budget.** The Governor's budget proposes \$92 million for the DOC in 2015–16, a net decrease of \$8 million (eight percent) below estimated expenditures in the current year. This decrease is driven primarily by the expiration of one-time funding provided for certain oil and gas regulatory activities.

### EXPENDITURES BY PROGRAM (in thousands)

Program	Actual 2013-14*	Estimated 2014-15*	Proposed 2015-16*
Geologic Hazards and Mineral Resources Conservation	\$19,438	\$24,801	\$26,559
Oil, Gas and Geothermal Resources (DOGGR)	37,380	55,009	45,608
Land Resource Protection	32,355	12,041	9,950
Office of Mine Reclamation	7,049	7,420	8,778
State Mining and Geology Board	1,102	1,244	1,244
<b>Total Expenditures (All Programs)</b>	<b>\$97,324</b>	<b>\$100,515</b>	<b>\$92,139</b>

### POSITIONS BY PROGRAM

Program	Actual 2013-14	Estimated 2014-15	Proposed 2015-16
Geologic Hazards and Mineral Resources Conservation	101.4	115.0	115.0
Oil, Gas and Geothermal Resources	176.5	244.9	244.9
Land Resource Protection	20.7	23.9	23.9
Office of Mine Reclamation	37.4	40.5	40.5
State Mining and Geology Board	4.0	4.0	4.0
Administration	92.5	112.6	112.6
<b>Total Positions (All Programs)</b>	<b>432.5</b>	<b>540.9</b>	<b>540.9</b>

***Items Proposed for Vote-Only***

- 1. Proposition 50 Watershed Program Implementation Study.** The budget requests one, two-year limited-term appropriation of \$200,000 in 2015-16, and \$358,000 in 2016-17 from Proposition 50 bond funds. The appropriation is proposed to be used by the Division of Land Resource Protection to fund a comprehensive evaluation to address the effects, benefits, and outcomes resulting from the Proposition 50 watershed program implementation.

**Staff Recommendation:** Approve Item 1.

**Vote:**



*Items Proposed for Discussion***1. Mine Mapping in California**

**Background.** The DOC has been tasked with tracking and mapping mines throughout the state (both functioning and abandoned). The main focus of the department has been locating abandoned mines through its Abandoned Mine Lands Unit (AMLU). The AMLU estimates of the number of abandoned mines in California include the following:

- Approximately 165,000 mine features (a single human-made object or disturbance associated with mining, tailings, machinery and facilities, etc. A mine can be comprised of one or more features) on more than 47,000 abandoned mine sites exist statewide.
- More than 39,400 abandoned mines (84 percent of 47,000 sites) present physical safety hazards, and approximately 5,200 (11 percent) present environmental hazards.
- More than 62,000 abandoned mine features (38 percent of 165,000 features) are hazardous openings.
- Federal lands contain approximately 67 percent of the abandoned mines in the state (primarily on Bureau of Land Management, National Park Service, and U.S. Forest Service property). Approximately 31 percent are on private lands, and about two percent are on State or local lands.

**2014 Budget Actions.** In discussions with the department in 2014, it became clear that the department needed to embark on an information-technology project to improve the way it provided information on mines in the state. To that end, the department estimated (and continues to estimate), that a state feasibility study report, and major funding, would be necessary to provide the public with information on mapped mines.

At the time, both budget and policy staff disagreed with this statement and worked with the department to identify a lower-cost, and more timely solution to the problem. It became clear that the department was able to take advantage of off-the-shelf software that would allow the public more access to information on mines, similar to the well tracking software used by the State Water Resources Control Board. An allocation of \$100,000 (General Fund), for three years, could be used to purchase software (MineTracker) compatible with the existing GeoTracker and EnviroStor software used by the Cal-EPA agencies. This option would save the state the cost of developing a “custom base” option that will take one to two years to develop.

Both Assembly and Senate budget committees approved the proposal. The proposal was subsequently removed at the request of the Governor’s office at the end of the budget process citing General Fund issues. Instead, the department was required to report back to budget committees on its efforts to produce a working information management system.

**Request to Army Corps of Engineers (February 2015).** On February 6, 2015, the DOC Office of Mine Reclamation sent a letter to the U.S. Army Corps of Engineers (USACE) requesting \$300,000 for development of a mine reclamation and remediation enterprise data management system (mine mapping). Specifically, the DOC requested an USACE contractor support to assist in completing an analysis and study for the proposed development and implementation of data management system. The request includes assistance with scanning all paper mine records and files to electronic format for the purposes of making report data searchable and retrievable and tracking and reporting statistics for individuals mines, counties. The department intends to digitize mine site and reclamation boundaries from filed reports in ArcView (a readily accessible geographic information system mapping program).

The DOC request to USACE outlines an enterprise data system that would include, but not be limited to:

- An enterprise system that is compatible with the DOC enterprise system, computing platform, and DOC geodatabases.
- An application containing all of DOC's mine related data and associated web application.
- Integration of processes associated with analyzing, prioritizing, managing and implementing mine reclamation and remediation in the state.
- Data access for federal, state, and local agencies, and the public.
- Direct online document and fee submission by mine operators in compliance with state mine reclamation requirements.
- A mobile application for digital field inventory and compliance inspection work providing data download and upload with the system.
- Business workflow management to assist with processing and tracking reclamation and compliance efforts.
- Scan and convert all mine records, reports, and maps to electronic format.
- Digitize in ArcView maps of reclamation and mine site boundaries and geographically based data points from paper documents.

**Staff Comments.** The need to improve the state's mine mapping has not diminished. For example, during every major wildfire, safety briefings are held to alert those working on the fire to hazards that crews may face. Having clear and accessible information for public and private entities during these discussions would be extremely important to prevent unnecessarily dangerous situations, not only for crews but for private entities also maintaining assets (such as utility crews, cleanup crews, etc.). Through discussions with the department, it is clear that the department maintains that it should embark on a major information technology project, in-house and custom, that would "allow it control" over the development of the system. Staff disagrees that each state agency should maintain multiple custom information technology projects. Rather, state agencies should embrace lower cost and off-the-shelf products that are compatible with existing systems.

Staff concurs with the department's needs, as outlined to the USACE; however, is confused why this proposals is not being made through the budget process. Given the interest of the Legislature, the department should be engaging in a discussion with budget and policy committees about the need for a new enterprise data system. The department's approach will take at least 3-5 years to begin implementation. Staff believes this timeframe could be reduced significantly with a more modest and targeted approach.

**Staff Recommendation:** Staff recommends approval of \$100,000 (General Fund), for three years, for the department to purchase software, to provide immediate management of data that can be made available to public and private agencies.

**Vote:**

## 2. Surface Mining Regulation

**Background.** The Surface Mining and Reclamation Act of 1975 (the act) establishes the state's regulations for surface mining operations. Under the act, surface mining operators are required to have a mining permit, an approved reclamation plan, and secured financial assurances. (Financial assurances are used to pay for any mine reclamation costs in the event that a mine operator defaults on its obligation to reclaim the mine at the end of its useful life.) The act is administered by the DOC's Office of Mine Reclamation (OMR) and the State Mining and Geology Board (SMGB), which is also located within DOC. However, local entities—such as cities and counties—typically operate as the lead agencies in regulating mines within their jurisdictions.

The SMGB is the policy advising and appeal body for the act. Under the act, the SMGB also generally assumes the role of the lead agency if the local entity is not adequately performing its duties under the act. The OMR provides technical assistance to lead agencies and mine operators in the development of reclamation plans and financial assurances. The OMR also works with lead agencies to ensure that mining operations are conducted in accordance with their approved reclamation plans, as well as collects and analyzes data submitted by agencies and mine operators to monitor compliance.

The DOC's regulatory activities related to the act are currently supported by three special funds:

- **Surface Mining and Reclamation Account (SMARA).** The federal government provides states a portion of royalties collected from mining activities on federal land. Under state law, the first \$2 million provided to California is deposited in the SMARA, to be used to administer the Act. The remaining federal mining revenues provided to California—estimated to be \$93 million in 2015–16—are used to fund K–14 education.
- **Bosco–Keene Renewable Resources Investment Fund (RRIF).** The RRIF receives 30 percent—\$1.2 million in 2015–16—of the royalties provided to the state from geothermal leases on federal lands. The remaining federal royalties go to local agencies (40 percent) and the California Energy Commission (30 percent), generally to support geothermal related activities, including exploration, research, and development activities.
- **Mine Reclamation Account (MRA).** The MRA receives revenue from two sources: (1) a \$14 daily fee paid by mines in cities and counties where the SMGB acts as the lead agency and (2) annual regulatory fees paid by mine operators (reporting fees). Total annual revenue from the daily fee is about \$180,000. For the reporting fees, DOC is required to adopt a fee schedule designed to cover its cost in carrying out the act, including reclamation plan and financial assurance review, mine inspection, and enforcement. However, existing law establishes annual caps on reporting fees for both an individual mine operator (about \$5,000 in 2014–15) and total reporting fee revenue (about \$4.5 million in 2014–15). Individual mine reporting fees are based on the total value of the minerals extracted. Both caps are adjusted annually for inflation. In 2015–16 total mine reporting fee revenue is expected to be \$3.5 million, roughly \$1 million less than the cap.

- **Funding for Regulatory Activities Is Structurally Imbalanced.** Funding for the department's regulatory activities is structurally imbalanced. While revenues have remained relatively constant over the last few years, a variety of factors have increased costs, including increases in employee compensation and health costs and payments for general statewide administrative costs. Total revenues deposited into the three funds is projected to be about \$6.8 million—roughly \$2 million less than current costs. In recent years, this deficit was covered by reserves. The deficit is expected to continue, and potentially grow, in future years. Without any changes, these funds are projected to be insolvent in 2016–17.

**Budget Proposal.** The Administration proposes to address the structural deficit by increasing the amount of revenue deposited into the SMARA by tying the portion of the state's federal mining revenues that go to DOC to the SMARA appropriation in the annual state budget act. Effectively, the amount of federal mining royalties going to SMARA would be increased by the amount needed to make up the difference between costs and revenues—about \$2 million 2015-16.

**LAO Analysis.** The LAO raises several concerns about the Governor's proposal. First, they acknowledge that there are several options available to the Legislature for addressing the structural deficit including: (1) reducing spending; (2) increasing SMARA revenue; (3) increase RRIF revenue; and, (4) increase MRA revenues. Each of these options results in tradeoffs to and policy decisions.

Further, the LAO suggests that MRA is the most appropriate funding source to address the deficit. Specifically, the LAO states:

**MRA Is Most Appropriate Funding Source to Address Deficit.** In our view, state regulatory activities should generally be funded with revenues from fees paid by the regulated industry. The MRA is funded from reporting fees paid by mine operations and these funds must be used to administer the state's mining regulations, including reclamation plan and financial assurance review, mine inspection, and enforcement. Therefore, in our view, the mine reporting fees are the most appropriate funding source for funding the department's regulatory activities related to the Act.

**Relying on MRA Would Require Raising Caps.** Currently, nearly all mine operators are paying the maximum individual reporting fee. Therefore, in order to generate a significant amount of additional revenue, the Legislature would need to raise or eliminate the maximum individual reporting fee. However, the existing cap on total revenue would only allow the department to collect an additional \$1 million in revenue—less than what is needed to fully address the \$2 million deficit.

If the Legislature wishes to use MRA funds to fully address the deficit, it would also need to increase or eliminate the cap on total reporting fee revenue. Increasing mine reporting fees to address the entire structural deficit would increase the total amount of fee revenue by more than 50 percent—almost all of which would likely be paid by mine operators who are currently paying the maximum individual reporting fee (currently \$5,000). The effect on any individual mine operator would depend on two main factors: (1) how much the Legislature increased the cap and (2) the details of how the department adjusted the fee schedule for individual mine operators.

The LAO recommends rejecting the Governor's proposal and instead recommends the use of MRA to address the deficit.

**Staff Comments.** Staff agrees that the structural deficit must be addressed. The tradeoff requires the Legislature to either reduce funding to Proposition 98 programs, or to raise fees paid by mine operators. The department should be prepared to discuss what impact a fee increase (either to partially or fully offset the structural deficit), would have on individual mine operators. It may be appropriate for the policy committees to discuss a fee proposal.

**Staff Recommendation:** Approve as proposed.

**Vote:**

**3. Oversight on the Division of Oil, Gas, and Geothermal Resources (DOGGR)**

**Background.** The Senate Natural Resource and Senate Environmental Quality Committees held a joint oversight hearing on March 10, 2015, titled “Ensuring Groundwater Protection: Is the Underground Injection Control (UIC) Program Working.” Since June 2014, when a set of oil and gas waste disposal wells were ordered “shut in” by DOGGR, there have been a number of news stories released, as well as acknowledgements made by DOGGR, that numerous oil and gas related injection wells are improperly sited and present a risk of contamination to good quality groundwater used for drinking water and agricultural irrigation processes. Investigations by the U.S. Environmental Protection Agency and State Water Resources Control Board concur with this assessment and have raised a number of concerns about the way in which DOGGR manages the program, and protects groundwater quality.

**Budget Actions.** Beginning in 2011-12, the department acknowledged deficiencies in its programs and requested, during the May Revision process (three years in row), major changes to program funding. The budget committees concurred with the need for funds, but, having been given only two weeks to review these major proposals on more than one occasion, split the funding, instead requesting the department return with a long-term and comprehensive proposal.

Between 2011 and 2013, the budget added 53 positions and over \$7 million in annual ongoing funding. The budget also required the department to annually provide updates on its UIC program for five years. To date the department has filed only one report.

**Budget Request.** The budget proposes reappropriation of \$1.5 million in unencumbered funds from the Oil, Gas, and Geothermal Administrative Fund. Funding is proposed to be used to implement software development contract services related well stimulation activities.

**Staff Comments.** Staff continues to be concerned about the department’s lack of focus on water resources in the state. The Central Valley Water Quality Control Board is actively reviewing surface and groundwater resources near underground injection wells, and both public and private entities are questioning DOGGR’s various water quality exemptions, its record keeping, and its ability to manage this program. The department should be prepared to discuss the budget allocations received by the division and its commitment to managing this program.

**Staff Recommendation:** Hold Open.

**Vote:**