



Senate Budget and Fiscal Review

Subcommittee No. 2 2010 Agendas

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A screenshot of a Microsoft Internet Explorer browser window. The address bar shows the URL: http://www.senate.ca.gov/ftp/SEN/COMMITTEE/STANDING/BFR/_home/Sub1/2004Sub1.pdf. The browser's menu bar includes File, Edit, View, Favorites, Tools, and Help. The Edit menu is open, showing options like Cut, Copy, Paste, Select All, and Find (on This Page)... Ctrl+F. The main content area displays the title page of the "California State Senate SENATE BUDGET & FISCAL REVIEW SUBCOMMITTEE No. 1 Agenda" for "March 8, 2004" and "Upon Adjournment of Session – Room 113". The page also lists the chair and members: "EDUCATION JACK SCOTT, CHAIR BOB MARGETT JOHN VASCONCELLOS". The browser interface includes a search bar, a "Go" button, and a "Links" dropdown. The status bar at the bottom shows "2 of 272" pages and the system clock "10:50 AM".

SUBCOMMITTEE NO. 2

Agenda

S. Joseph Simitian, Chair
Dave Cogdill
Alan Lowenthal



Hearing Outcomes (see Subcommittee actions under individual issues)

Thursday, April 22, 2010
Upon Adjournment of Environmental Quality Committee
Rose Ann Vuich Hearing Room (2040)

Consultant: Bryan Ehlers

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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 916-324-9335. Requests should be made one week in advance whenever possible.

Items Proposed for Vote-Only

3125 California Tahoe Conservancy

1. COBCP-1: Implementation of the Environmental Improvement Program (EIP) for the Lake Tahoe Basin—Non-Bond Funds Only. The Governor requests \$6.4 million from various funds (including \$391,000 from the Habitat Conservation Fund; \$594,000 from the Lake Tahoe Conservancy Account; \$5 million federal funds; and \$440,000 in reimbursement authority) for ongoing implementation of the EIP for the Lake Tahoe Basin.

3560 State Lands Commission

2. BCP-1: School Lands Geothermal Workload. The Governor requests \$160,000 in reimbursement authority (to be supported by School Lands Revenue) to fund increased workload related to geothermal resource development on lands held by the Commission pursuant to the School Lands Bank Act.

3640 Wildlife Conservation Board

3. COBCP-1 (Minor Capital Outlay): Funding for Public Access Programs. The Governor requests \$1 million (Wildlife Restoration Fund) to support projects identified for their wildlife-oriented public access values (including increasing compliance with the Americans with Disabilities Act).

4. COBCP-1: Annual Habitat Conservation Fund Appropriation for Support of Wildlife Protection Act Activities. The Governor requests \$21 million (Habitat Conservation Fund—via transfer from Proposition 1E) for the acquisition, restoration or enhancement of: habitat including native oak woodlands necessary to protect deer and mountain lions; habitat to protect rare, endangered, threatened, or fully protected species; enhancement, or restoration of wetlands, aquatic habitat for spawning and rearing of anadromous salmonids and trout resources and riparian habitat.

5. COBCP-6: Technical Adjustment—Proposition 84 Reversion to Accommodate Sacramento-San Joaquin Delta Appropriation. The Governor requests reversion of \$3 million from the Wildlife Conservation Board's Budget Act of 2009 Proposition 84 appropriation (Item 3640-301-6051). The funds made available in Proposition 84 for Natural Communities Conservation Planning (NCCPs) purposes were inadvertently over-appropriated when Chapter 2, Statutes of 2009, Seventh Extraordinary Session (SBx7 8) appropriated \$24 million for NCCPs in or around the Sacramento-San Joaquin Delta.

3680 Department of Boating and Waterways

6. BCP-1: Public Small Craft Harbor Loans and Boat Launching Facility Grants.

The Governor requests a total of \$16 million in local assistance from the Harbors and Watercraft Revolving Fund (HWRF)—\$6 million for grants and \$10 million for public loans—to renovate existing publicly owned small craft harbor facilities and construct/improve public boat launch facilities.

7. BCP-2: Abandoned Watercraft Abatement Fund (ABAF) Grant Program.

The Governor requests \$500,000 (HWRF) to establish a permanent baseline budget for the ABAF. The ABAF was created to provide grants (requiring a ten percent match) to locals to remove abandoned watercraft and water hazards which threaten public safety on California's waterways.

8. BCP-4: Abandoned Watercraft Surrender Program (AB 166 Implementation).

The Governor requests a \$150,000 transfer from the HWRF to the Abandoned Watercraft Abatement Fund, and authority to expend \$100,000 of those funds to implement a pilot program, pursuant to Chapter 416, Statutes of 2009 (AB 166, Lieu), to provide grants to locals for disposal of dilapidated and unseaworthy vessels surrendered by their owners before they are abandoned. The goal of the program is to improve safety and environmental quality on state's waterways by reducing the number of abandoned vessels; however, it is hoped that an ancillary benefit will be avoided costs associated with removing badly dilapidated abandoned vessels from the water.

9. COCPs: Minor Capital Outlay Projects. The Department of Boating and Waterways requests a total of \$5.4 million (HWRF) for the following minor capital outlay projects:

- a. Statewide Emergency Repairs and Replacement – \$300,000
- b. Statewide Low-Water Improvements – \$600,000
- c. Folsom Lake SRA Granite Bay Stage 2 Ramp Improvements – \$700,000
- d. Folsom Lake SRA Rattlesnake Bar State 2 Ramp Improvements – \$690,000
- e. Silver Strand State Beach Crown Cove Dock – \$400,000
- f. Sonoma Coast State Beach Jenner Visitor Center Boat Ramp Improvements – \$500,000
- g. Mono Lake State Reserve Boat Ramp Improvement – \$290,000
- h. Millerton Lake SRA South Finegold Non-Motorized Access – \$275,000
- i. Gaviota State Park Boat Hoist Improvements – \$200,000
- j. Delta Meadows Boat Ramp Improvements – \$200,000
- k. Turlock Lake SRA Tuolumne River Access – \$125,000
- l. Ahjumawi State Park Boat-In Site Improvements – \$275,000
- m. Salton Sea SRA Corvina Beach Kayak Camp – \$375,000
- n. McArthur-Burney Falls State Park Lake Britton Fish Cleaning Station – \$70,000
- o. Castaic Lake Lagoon Boat Ramp Improvements – \$400,000

3720 California Coastal Commission

10.BCP-1: Coastal and Marine Education Whale Tail License Plate Program. The Governor requests a one-year augmentation of \$127,500 (Environmental License Plate Fund, California Beach and Coastal Enhancement Account) to be supported by revenue collected from the sale of “Whale Tail” license plates. The increase will fund additional coastal education grants to non-profits and government agencies.

11.BCP-2: Operating Expenses and Equipment (OE&E) and Information Technology Baseline Budget Adjustments and One-Time Costs. The Governor requests a baseline increase of \$311,000 (OE&E) and a one-time augmentation of \$80,000 (IT) from the Coastal Act Services Fund to support basic operations of the Commission, including training, equipment, and travel to legally mandated meetings.

3760 State Coastal Conservancy

12.BCP-1: Redirect Existing Funds to Create Two Positions within the Ocean Protection Council. The Governor requests two permanent positions and shifting of \$166,000 (Environmental License Plate Fund) from OE&E to personal services in order to support Ocean Protection Council efforts related to marine debris management, coastal sediment dynamics, sea level rise adaptation, and endangered species protection, among others.

13.COBCP-1: Public Access Program. The Governor requests \$985,000 from various special funds (Coastal Access Account; Beach and Coastal Enhancement Account; and the Violations Remediation Account) to continue implementation of the Conservancy’s Public Access, Education, and related programs.

3820 San Francisco Bay Conservation and Development Commission

14.BCP-1: Reimbursements for Contracting with Metropolitan Transportation Commission (MTC) and the California Department of Transportation (Caltrans). The Governor requests \$460,000 (reimbursement authority) and to make permanent three limited-term positions in order to continue contracting with MTC and Caltrans for permit review and planning activities to expedite projects delivery.

Staff Recommendation (for Vote-Only Items 1-14): APPROVE Items 1-14.

Action: Approved on a 2-0 vote (Cogdill absent).

Departments Proposed for Discussion

Funding and Implementing the 2009 Water Package

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

Figure 4

The Major Components of the 2009 Water Package

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

As discussed previously at a joint Senate-Assembly, policy-budget committee oversight hearing on March 9, the Governor’s Budget contains a number of requests associated with implementation of the Water Package, with the bulk of the proposed spending aimed at assembling the new Delta Governance structure pursuant to Chapter 5 (SBx7 1, Simitian and Steinberg). As outlined in the table below, nearly half of proposed Water Package funding would go to support the new Delta Stewardship Council (Council), the new Delta Conservancy, and the Delta Protection Commission.

Governor's Budget Proposal to Implement the Water Package

State Agency/Major Activities	Proposed 2010-11 Expenditures (in millions)
Delta Stewardship Council <ul style="list-style-type: none"> Creation of the Delta Plan, establishment of the Council, continuation of Delta science programs. 	\$49.1
Department of Water Resources <ul style="list-style-type: none"> Reactivation of the California Water Commission, groundwater monitoring, water conservation projects, and the \$28 million Two-Gates Fish Protection Demonstration Project. 	35.0
Wildlife Conservation Board <ul style="list-style-type: none"> Continuous appropriation authority for Natural Communities Conservation Planning (NCCP) projects. 	24.0
State Water Resources Control Board <ul style="list-style-type: none"> Increased water rights enforcement, new water diversion reporting, Delta Watermaster Program, and water conservation activities. 	5.4
Delta Protection Commission <ul style="list-style-type: none"> Preparation of an economic sustainability plan. 	2.0
Delta Conservancy <ul style="list-style-type: none"> Establishment of the conservancy and early action projects. 	1.3
Department of Fish and Game <ul style="list-style-type: none"> Development of Delta flow criteria. 	1.0
Total	\$117.8

Of the amounts listed above, the vast majority are proposed to be supported in the Budget Year (BY) from existing bond funds (as opposed to the water bond to be sent to the ballot, Chapter 3 [SBx7 2, Cogdill], which was not designed as a funding mechanism for the Water Package).

Below are descriptions and discussions, grouped by theme, of each Water Package-related BCP. Staff notes that there is no BCP before the Legislature for the NCCP projects funding because the Wildlife Conservation Board (WCB) received an appropriation of \$24 million (Proposition 84) in Chapter 2 (SBx7 8, Steinberg). Similarly, SBx7 1 appropriated \$28 million (Proposition 84) to fund the "Two-Gates" project; however, the Governor has proposed to shift this funding to Proposition 50 (and use Proposition 84 funds for other purposes), so the Legislature has a funding decision before it on this item.

Water Package BCPs

Delta Governance. SBx7 1 established **co-equal goals** for the Delta of providing a more reliable water supply to the state, and restoring and enhancing the Delta ecosystem. The bill tasked several entities with carrying out this mission.

1. BCP: Staff Delta Stewardship Council. SBx7 1 created the Council, consisting of seven members with diverse expertise and a broad statewide perspective, and tasked it with the following:

- Develop a **Delta Plan** to guide state and local actions in the Delta in a manner that furthers the co-equal goals (noted above);
- Develop performance measures for the assessment and tracking of progress and changes to the health of the Delta ecosystem, fisheries, and water supply reliability;
- Determine if a state or local agency's project in the Delta is consistent with the Delta Plan and the co-equal goals, and act as the appellate body in the event of a claim that such a project is inconsistent with the goals;
- Determine the consistency of the Bay-Delta Conservation Plan (BDCP) with the co-equal goals; and
- Appoint the Delta Independent Science Board (as a successor to the CALFED Science Program) to provide oversight and review of the scientific research, monitoring, and assessment programs that support adaptive management of the Delta.

Governor's Budget. The Governor requests 58 positions and \$49 million (including \$5.9 GF; \$2.9 million federal funds; and the remainder from bond funds and bond-funded reimbursements) to support first-year operations of the new Council. Consistent with SBx7 1, the bulk of these resources (50 positions and \$34.3 million) are proposed to be transferred from various departments previously responsible for implementing the CALFED program (primarily the Natural Resources Agency, but also the Department of Forestry and Fire Protection, the Department of Fish and Game, and the State Water Resources Control Board). The remaining eight positions are for the Council members, including the Chair and his assistant, and would be new. The roughly \$16 million in increased funding is for development of the Delta Plan (by January 1, 2012) and would come from Proposition 84 (Prop 84) funds (\$2 million previously appropriated to the Department of Water Resources [DWR] by Chapter 1, Statutes of 2008, First Extraordinary Session [SBx2 1, Perata] and the remaining \$14 million from the DWR's Prop 84 funds—requiring a reversion and a new appropriation).

LAO Recommendation. The LAO provides the following analysis and recommendations regarding the Governor's proposals for the Council:

Evaluation of Governor's Budget Proposals for Delta Stewardship Council

In order to provide context for an evaluation of the Governor's budget proposals for the new Delta Stewardship Council (Council), we believe it is useful to first review two of the Council's core statutory responsibilities—the development of the Delta Plan and its work in connection with the Bay Delta Conservation Plan (BDCP) process. We discuss both of these responsibilities further below, and then comment on the 2010-11 budget that is proposed for the Council.

The Delta Plan. The council's main statutory assignment is the development and adoption of the Delta Plan, a planning document to guide state and local agency actions within the Delta. The plan is intended to further the state's goals of ecosystem health and water supply reliability which are to guide the state's actions in the Delta. The plan would guide the state's coordination efforts with other levels of government, and take into account other state Delta planning efforts, including the BDCP process (which we discuss in greater detail below).

The Bay Delta Conservation Plan. As part of its development of the Delta Plan, the council is required to consider the BDCP currently being developed by DWR and a group of stakeholders (including state environmental agencies, local water agencies, and environmental organizations). The council is not required to incorporate the BDCP into the Delta Plan, however, unless certain conditions are met. Specifically, the Department of Fish and Game must determine that the BDCP meets the qualifications to be deemed a natural community conservation plan. Also, the BDCP must have been approved as a habitat conservation plan that meets requirements in the federal endangered species law. The BDCP is being developed to create a long-term conservation strategy for the Delta. When complete, the plan would provide the basis for the issuance of endangered species permits necessary to allow operations of both the state and federal water projects in the Delta for the next 50 years.

This BDCP planning process is voluntary. The stakeholders and the departments participating in this planning process are not required to adopt this plan when it is completed. If the BDCP were not adopted, then the state and federal water projects would again be at risk of being held in noncompliance with endangered species laws. These agencies would therefore be required to achieve compliance with endangered species laws by the more traditional regulatory permitting process.

In order to ensure that the Delta Plan and the BDCP mesh well, the Council is expected to closely monitor and, to some degree, participate in the BDCP process. However, state law also contemplates that the Council will independently review the BDCP and make recommendations as to how it would be implemented.

The Proposed Council Budget. [Section deleted for brevity. See "Governor's Budget" section above for description of proposed funding.]

Figure 8
Positions Proposed for Delta Stewardship Council

Executive	19
Administration	14
Science	12
Planning and accountability	8
External affairs	5
Total	58

Contract Funding Proposed. The Council budget would provide funding for \$42.7 million in contracts with outside contractors and other state agencies. Of that total, \$16 million (paid for with reimbursements from DWR) would be earmarked for the development of the Delta Plan. The budget also assumes that the Council would contract for a project director (at an as-yet-undetermined amount), who would develop a process and schedule to accomplish the Delta Plan, to make presentations to the Council, and to ensure integration of the Delta Plan. Under the Governor's budget plan, this contracted project director would report to an executive-level staff member at the Council.

The Council budget would also continue an existing CALFED contract originally established under the Natural Resources Agency for a BDCP liaison at an annual cost of about \$159,000. The contractor would coordinate Delta-related activities among various state and federal agencies and the council, as well as manage public and legislative outreach activities on behalf of the Council.

Some Budget Modifications Warranted. In general, we believe the Council's budget proposal follows legislative direction regarding the transfer and use of existing resources to establish the Council. However, we recommend two modifications to the proposed budget. We find that the work that would otherwise be assigned to a project direction contractor should instead be handled by one or more of the proposed 19 executive-level staff proposed for the Council. Accordingly, we recommend reducing the Council's budget by \$200,000 (bond funds), our estimate of the approximate annual cost of such a contract.

The proposal to continue the current contract arrangement for a BDCP liaison is also problematic. The current contractor for the Council is the Metropolitan Water District (MWD) of Southern California. Contracting with such a major stakeholder of the BDCP could compromise the ability of the council to conduct its BDCP-related work objectively and without the perception that it was being unduly influenced by one party to the BDCP process. Thus, we recommend reducing the Council's budget by \$79,000 (bond funds) to eliminate the contract for the remaining six months of the contract (June through December 2010). We believe the liaison functions could likewise be handled by one of the Council's executive-level staff.

Long-Term Financing Approach Needed

How Will Implementation of the Delta Plan Be Financed? The new legislative water package requires that implementation of the Delta Plan to be developed by the Council begin by January 2012. However, the water package did not provide a long-term financing plan (the proposed water bond was not designed to fund all components of the legislative package), including for implementation of the Delta Plan. Thus, it is not clear how implementation of a new Delta Plan would be able to proceed in a timely manner as contemplated in the recent legislation.

As we have noted in the past, we believe development of a long-term plan to guide the state's investments in the Delta is warranted. In the absence of such a plan, it has been difficult for the Legislature to evaluate numerous Delta-related funding requests. The development of a long-term financing plan should await the completion of a number of Delta-related assessments. However, these assessments are now largely complete. The two-year timetable for development and implementation of a Delta Plan makes it all the more imperative that such a long-term financing plan also be developed and put in place.

We also continue to believe that such a financing plan should reflect the implementation of the "beneficiary pays" funding principle, whereby the public and private beneficiaries of a state expenditure pay an appropriate share of costs based on the benefit received. We have elaborated on the analytical arguments for this approach in past analyses of resources issues.

Council Should Develop a Long-Term Financing Plan for Delta Improvements. Based on these findings, we recommend that the Legislature adopt statutory language as a part of the budget directing the Council to develop a comprehensive long-term financing plan for state expenditures to implement the Delta Plan in conjunction with the Governor's 2011-12 budget proposal. The plan should identify a long-term funding strategy to support the ongoing operations of the Council and the Delta Conservancy. This plan should be based on the beneficiary pays principle and should clearly delineate public versus private benefits of ongoing state operations expenditures and capital projects reflected in the Delta Plan. If new fees are proposed to carry out actions recommended in the Delta Plan, the fees should be reasonable and proportionate to the benefits directly received by the fee payer. Finally, as we have often recommended in the past, bond financing should be used only for capital projects that have long-term benefits, and for reasonable administrative costs related to those capital projects.

Staff Comments. Staff shares many of the concerns of the LAO, and notes the following regarding the recommendations:

- ***Contract for Project Director for Delta Plan*** – Council staff respond to the LAO recommendation by pointing out that of the 19 positions identified as "executive staff," seven are Council members and seven are clerical/support staff, leaving only five positions to accommodate the recommendation—including the

Executive Director, Chief Counsel, Legislative Director, Chief Deputy, and the Science Deputy. According to Council staff, none of the personnel occupying these positions currently possesses the requisite background in environmental law, water project engineering, and project management and control to carry out the required workload. Furthermore, Council staff contend that the timeline specified in statute necessitates this need be met rapidly and precludes the hiring of a new permanent staff person at this time.

Staff notes that this issue highlights a broader concern for the Committee's consideration—i.e., whether the personnel currently filling the positions proposed to be transferred to the Council are still “right for the job.” The very adoption of the Water Package (including the repeal of the legislation that originally established the Bay-Delta Authority) marks a break with past Delta policy (which is viewed in many circles as failed policy), and opens a new chapter and a fresh beginning. As such, the Committee should inquire with members of the Council as to whether shuffling the same staff to a new agency and a new boss is enough to meet the high expectations of both the Legislature and the public. Furthermore, and more fundamentally, the Committee (and the Council itself) need to ask whether the individuals in those positions have the correct skill sets and the right mind set to implement the new policy embodied in the Water Package.

To the specific question of the Delta Plan Project Director, the Committee may wish to inquire as to why it is not in the long-term best interest of the Council and the state, to bring the personnel with the requisite skills into state service. Further, the Council should be asked to clarify its concerns around Delta Plan timelines that preclude hiring a permanent staff person and necessitate the proposed contract.

Finally, apropos of the issues just discussed, the LAO has recommended requiring the Administration to submit a zero-based budget proposal for Fiscal Year 2011-12 for all CALFED and Delta-related activities (see Appendix A). Staff notes that, were the current timelines not so tight (for both the development of the Delta Plan and the budget process), the ideal time to zero-base these budgets (including the Council) would be now—before implementation of new policies gets underway and before new (or, as the case may be, old) standard operating procedures and organizational culture are established. In either case, staff supports the LAO recommendation to zero-base the CALFED and Delta-related budgets, and recommends the Committee closely consider the timing issue—i.e., whether to require the zero-basing next year, or whether to demand that it be done this year.

- **Contract for BDCP Liaison** – In response to the LAO recommendation that an existing (two-year) contract with MWD for a BDCP liaison should be canceled and the workload re-assigned to executive-level staff, Council staff indicate the contract has been transferred to the DWR (although it is still funded by the

Council). Furthermore, Council staff contend that they lack the requisite expertise to meet the need filled by the current contractor.

Staff again shares many of the concerns of the LAO. Notwithstanding the contract's having been moved to the DWR, the fact that the Council proposes to continue *funding* a contract with MWD, a major stakeholder of the BDCP, could compromise the ability of the Council to conduct its BDCP-related work objectively and without the perception that it was being unduly influenced by one party to the BDCP process.

- **Long-Term Financing Plan** – Staff supports the LAO's recommendation that the Committee direct the Administration to develop and propose a long-term financing plan for Delta improvements. Generally speaking, every \$1 of bond spending costs the taxpayers (via the GF) \$2 in long-term bond debt service. For this reason, the LAO's advice, that bond financing should be used only for capital projects that have long-term benefits, and for reasonable administrative costs related to those capital projects, is quite sound. Furthermore, the "beneficiary pays" principle seems like an apt approach to fund activities in the Delta since, for example, many of the costs the state anticipates incurring there in the coming years are the result of water exports to other parts of the state, whose historic price has not included the costs of related environmental degradation. Staff notes that while this issue may be the focus of other pending legislation, the Committee may wish to provide a "back-stop" by adopting trailer bill language requiring a financing proposal in the coming fiscal year.

Staff Recommendation: HOLD OPEN.

Action: Held open. The Committee expressed intent to adopt LAO recommendation to zero-base the Council budget with the expectation that other agencies formerly participating in CALFED (e.g., DWR) would be responsible for zero-basing their own share (i.e., the undertaking would not fall solely to Council personnel). Additionally, the Committee:

1. Expressed desire for a clear line of accountability between the Council and the contractors responsible for helping develop the Plan. This could potentially be accomplished by identifying the state staff—tasked with contractor oversight—who would ultimately answer for all Plan activities. Staff will work with LAO and the Assembly to reach final recommendation.

2. Raised concern with use of BDCP liaison with connections to MWD. To the extent that most contract applicants are likely to have had a relationship with the BDCP process, the council Chair suggested that the Committee may wish to adopt language specifying that contract must be independent.

3. Agreed that a long-term financing plan for Delta activities is necessary. As discussions of a "beneficiary pays" fee continue in the policy arena, the Committee agreed with the LAO that looking at existing "CALFED" funds (via the zero-base process) is a good interim strategy.

2. BCP: Staff Delta Conservancy. SBx7 1 created the Delta Conservancy to implement ecosystem restoration activities in the Delta, and tasked it with the following:

- Adopt a strategic plan for implementation of the Delta Conservancy goals;
- Promote economic vitality in the Delta through increased tourism and the promotion of Delta legacy communities;
- Promote environmental education about, and the public use of, public lands in the Delta; and
- Assist in the preservation, conservation, and restoration of the region's agricultural, cultural, historic, and living resources.

Governor's Budget. The Governor requests seven positions and \$1.3 million (including \$829,000 GF and \$500,000 bond-funded reimbursements) to support first-year operations of the new Delta Conservancy. These resources are part of the 57 positions and associated funding currently allocated to CALFED (the balance of which are to be transferred to the Council—as noted above).

Staff Comments. According to the Administration, this proposal represents only an initial allocation of resources for the Delta Conservancy, and will be augmented in the out years by additional transfers of positions and funding from the Council as activities—particularly those surrounding the development of the Delta Plan—ramp down. Therefore, consistent with the LAO's recommendation above, the Delta Conservancy must be part of any discussion of a long-term financing plan for CALFED and Delta-related activities.

Staff Recommendation: HOLD OPEN.

<i>Action: Held open.</i>

3. BCP: Augment Delta Protection Commission. SBx7 1 restructured the Delta Protection Commission (Commission), reducing the membership from 23 to 15, and tasked it with adopting, by July 1, 2011, an economic sustainability plan for the Delta, which is to include flood protection recommendations to state and local agencies, and must be submitted to the Council for inclusion in the Delta Plan.

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

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

Staff Comments. The Commission currently has a staff of three positions, including the Executive Director. Thus, the requested resources would double the existing staff in the long-term and triple it for FY 2010-11. While staff finds that the requested resources are likely sufficient to address the required workload—particularly preparation of the economic sustainability plan for 2011—representatives of several Delta counties have raised concern that the Commission's ongoing budget may not be adequate to support its role in supporting the Delta Conservancy and serving as a major forum for Delta counties to participate in major Delta policy decisions in the coming years.

Staff's major concern with this proposal is the use of the ELPF to support \$2 million in new expenditures at the Commission. Based on the Administration's projects, the ELPF will finish FY 2010-11 with a reserve of only \$555,000 (or 1.2 percent). Given the poor state of the economy, the fact that the license plate fee was raised by eight dollars just over a year ago, and the potential for sales to sag, staff is uncomfortable with the rather thin margin of error the Governor has proposed with respect to the ELPF. Therefore, the Committee may wish to inquire of the Commission and the DOF as to whether other funding options are available. Staff additionally notes that this issue once again highlights the need for a long-term financing plan for Delta-related activities. To the extent that local Delta entities (e.g., the counties) wish to support the Commission's role (as noted above), the Committee may wish to consider financial contributions from locals as one element of a long-term funding plan for the Commission. (Current statute allows the Commission to receive and expend various non-state funds.)

Staff Recommendation: HOLD OPEN.

Action: Held open. The Chair offered no comment on public request for more Commission funding, but indicated this did not necessarily "reflect concurrence."

California Water Commission Reactivation. Chapter 3 (SBx7 2, Cogdill)—the Water Bond Act of 2010—if approved by the voters, would authorize \$11.1 billion in general obligation bonds to support California’s aging water infrastructure and for projects and programs to address the ecosystem and water supply issues in California. SBx7 2 also envisions reactivation of the California Water Commission (Water Commission) after years of dormancy, and outlines various tasks for the Water Commission to perform, including setting rules for selecting projects for the state's investments in public benefits.

BCP: Staff California Water Commission (DWR). The Governor requests six positions and \$817,000 (various funds, but primarily State Water Project—SWP) for support of the nine-member Water Commission (which currently has no staff or appointed members) and its implementation of activities specified in SBx7 2 (Water Bond Act of 2010; or Water Bond). The DWR notes that this request would result in a net budget increase of only \$71,000 because the balance of the requested funding would be shifted from other existing sources, including \$111,000 GF and \$550,000 from the SWP which is continuously appropriated (off-budget).

Staff Comments. If approved by the voters, the Water Bond Act of 2010 would send over \$3 billion of continuously appropriated funds through the Water Commission. Since the Commission is currently inactive and without staff, this proposal would provide the necessary staffing to process those funds. If the Water Bond Act of 2010 is not approved, the DWR argues that the requested resources are still needed as the Water Commission would play a major oversight role in eminent domain decisions and would be required to approve a resolution for those decisions to move forward. Given that the Water Commission has remained dormant for many years, the Committee may wish to further investigate these claims that staffing is needed immediately. In the absence of a compelling rationale, staff will ultimately recommend the Committee adopt TBL to make the requested resources contingent upon voter-approval of the bond.

Staff Recommendation: HOLD OPEN.

Action: Held open. Consistent with staff comments, the Chair expressed concern that the requested resources would be unnecessary if the Water Bond does not pass. Additionally, the Chair inquired as to the whereabouts of former Commission staff (i.e. were they abolished or redirected when Commission went dormant?). The Administration committed to responding to this question, and indicated intent to “go back and focus” the proposal.

Groundwater Monitoring. Chapter 7 (SBx7 6, Steinberg and Pavley) requires, for the first time, local agencies to monitor the elevation of their groundwater basins to help better manage the resource during both a normal water year and in drought conditions.

BCP: Groundwater Monitoring Program (DWR). The Governor requests five positions and \$5.3 million (\$1.3 annually for four years from Proposition 50) for the DWR to carry out the following activities required pursuant to SBx7 6:

- Determine the responsible groundwater monitoring entities in all basins and sub-basins;
- Develop standards for reporting of groundwater elevation data;
- Establish a priority schedule for the monitoring of groundwater basins and the review of groundwater elevation reports;
- Make recommendations to local entities to improve the monitoring program and assist them in complying with the program's requirements; and
- Conduct an investigation of the state's groundwater basins and report findings to the Governor and the Legislature.

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

Staff Comments. SBx7 6 reflects a break-through for the state in groundwater monitoring, as prior law allowed voluntary cooperation in management of groundwater basins, but did not provide for any reporting of groundwater elevation. However, as with other parts of the Water Package, a consensus was not reached on how best to fund new programs on an ongoing basis. In the case of groundwater monitoring, SBx7 6 authorizes the use of any applicable bond funds, but staff notes that the proposed Prop 50 funding is not an ideal match with the required activities. Therefore, the Committee may wish to approve this request for only one year and, similar to other Water Package proposals discussed earlier, investigate (or request the Administration to investigate and propose) an alternative, beneficiary-pays, long-term financing plan.

Staff Recommendation: HOLD OPEN.

Action: Held open.

Water Conservation. Chapter 4 (SBx7 7, Steinberg): (1) creates a framework for future planning and actions by urban and agricultural water suppliers to reduce California's water use; (2) requires, for the first time, the development of agricultural water management plans; and (3) requires urban water agencies to reduce statewide, per capita water consumption 20 percent by 2020 (20x2020).

BCP: Implement the Water Conservation Act of 2009 (DWR). The Governor requests 15 positions and \$12.3 million over three years (\$5.1 million for FY 2010-11) from Prop 84 to carry-out statewide water conservation activities pursuant to SBx7 7, including planning efforts and technical assistance related to implementing the 20x2020 Plan for urban per capita water use reduction.

The Governor additionally requests a reversion of \$28 million in Prop 84 funds originally appropriated to the Two-Gates Project pursuant to SBx7 8, so that sufficient Prop 84 authority is available to fund the requested water conservation and Council expenditures. Instead, the Governor proposes a new appropriation of \$28 million from Prop 50 to support the Two-Gates Project.

Staff Comments. Staff has no significant concerns with the use of Prop 84 funds to support SBx7 7 implementation in FY 2010-11, and notes that the Water Bond Act of 2010 would provide additional out-year funding for these activities. However, to the extent that the Water Bond does not pass, or the Legislature wishes to use Prop 84 funds for other purposes, the Committee may wish to approve this request for only one year and investigate (or request the Administration to investigate and propose) alternative funding (e.g., a broad-based water fee to fund ongoing conservation efforts).

Regarding the Two-Gates Project, which the Governor proposes to fund from a different source than originally contemplated in the Water Package, the LAO notes that the federal government has put the project on hold due to concerns about a scientific review of the proposal and indicates that it is uncertain at this time if, and when, federal authorities will resume funding of the project. The LAO additionally provides the following recommendation:

Two-Gates Project Should Be Put on Hold. We recommend that the Legislature approve the Governor's proposal to revert the Proposition 84 bond funding for the Two-Gates Fish Protection Demonstration Project. However, we recommend that it not approve at this time the administration's proposal to appropriate an identical amount of Proposition 50 funding for the project. This project should be put on hold until such time as the federal government again agrees to support the project and the state has had an opportunity to reevaluate the proposal.

The Committee may wish to have the DWR provide an update on the Two-Gates Project, particularly with regard to whether there is any sign that the federal government plans to move forward on the project in the foreseeable future.

Staff Recommendation: HOLD OPEN.

Action: Held open. The Chair indicated intention to preserve Two-Gates "deal" even if there is no intent to expend funds in the BY.

Other Water Package Proposals. For the sake of context, staff notes that the Committee previously heard and held open the following Water Package budget proposals:

1. Department of Fish and Game: SBx7 1 – Delta In-Stream Flow Criteria. The Governor requests five positions (including 2.2 temporary help) and \$1 million (Prop 84) to implement the Delta in-stream flow criteria requirements of Chapter 5, Statutes of 2009 (SBx7 1; Simitian).

2. State Water Resources Control Board (SWRCB): Water Conservation Measures (Implement SBx7 7). The Governor requests one position and \$155,000 (reimbursement authority) to perform an advisory role in the implementation of SBx7 7.

3. SWRCB: Delta Watermaster and Delta Flow Criteria (Implement SBx7 1). The Governor requests 4.5 positions and \$673,000 (Water Rights Fund) for the Delta Watermaster Program and \$590,000 (reimbursement authority) for development of Delta flow criteria.

4. SWRCB: Improve Water Diversion and Use Reporting (Implement SBx7 8). The Governor requests 2.5 positions and \$253,000 (Water Rights Fund) to process new and supplemental Statements of Water Diversion and Use (Statements) filed in the first year after enactment, and to prepare emergency regulations that allow for the electronic filing of reports.

Staff Recommendation: Continue to HOLD OPEN these items until such time as the Committee is prepared to act on the entire package of water proposals in a May Open Issues hearing.

Action: No discussion. All items remain open.

Review of the Bond Context

The following brief review of the current bond “context” is prelude to a large number of bond requests that follow, both from the DWR and a variety of conservancies and commissions.

Before “the Freeze,” All Bond Appropriations Received Cash. Historically, the Pooled Money Investment Account (PMIA) maintained a “pool” of cash that was used to support bond expenditures across state government. Whenever the pool of funds needed to be replenished, the Treasurer would go to the bond market and sell bonds in order to raise the cash necessary to replenish the pool.

Since Freeze, Bond “Demand” Far Outstrips Cash “Supply.” As discussed in previous hearings (and in some depth on March 4), during the statewide cash crisis of late 2008 and early 2009, the PMIA ran out of cash and a “bond freeze” ensued. Although the state weathered the cash crisis and subsequently resumed selling bonds, the “demand” for bond proceeds (i.e., the amount of bond appropriations approved by the Legislature) has continued to far exceed (by billions of dollars) the “supply” of cash (i.e., the amount of bond proceeds available from actual bond sales). As such, the Administration, and specifically the Department of Finance (DOF) in coordination with the Governor’s Office, has assumed sole responsibility for allocating limited bond cash across the panoply of bond-funded programs.

When Legislature Approves “Excess Demand,” Governor Gets to Set Ultimate Priorities. Relative to the prior practice, in which all bond expenditures approved by the Legislature received cash, the “new” paradigm has resulted in a diminution of legislative control over the prioritization of scarce bond funds. In simple terms, if the Legislature approves expenditure of \$10 bond dollars—say \$1 for each of ten programs—but only \$5 in actual bond proceeds are available, then the Governor gets to decide which five programs receive funding and which five do not.

The above scenario has played out for over a year now, and even after the Treasurer sold nearly \$6 billion in bonds in March 2010, total bond appropriations continue to exceed available bond proceeds. As the DOF continues to manage the bond allocations, the Committee has requested greater detail/transparency regarding its priority-setting process. For example, which departments/programs/projects received the roughly \$6 billion from the recent bond sales, which did not, and why? Perhaps most importantly, what factors guided decisions about the allocations on the margin (i.e., what set apart the “last” program to receive funding and the “last” program that did not receive funding)?

Below is a table showing the allocation of bond dollars from the Spring 2010 sales across broad categories within Resources and Environmental Protection. Other broad categories (e.g., education, housing, etc.) were available, but have been collapsed into “Other.”

Allocation of 2010 Spring Bond Sale Proceeds

Agency	Final Spring 2010 Bond Sales
Existing Projects	
Resources	\$ 487,310,000
DWR	\$ 573,355,000
Water Board	\$ 69,400,000
Other	\$ 1,373,457,321
Total Existing	\$ 2,503,522,321
New Projects	
Resources	\$ 703,615,000
DWR	\$ 20,000,000
Water Board	\$ 10,158,659
Other	\$ 2,662,704,020
Total New	\$ 3,396,477,679
Grand Total	\$ 5,900,000,000

Additional Spring Bond Capacity* \$ 1,100,000,000

*The Treasurer has indicated a total of \$7 billion may be issued in the Spring, with the potential of a third sale in June.

Staff Comments. Staff notes that, several weeks removed from the bond sales, the information above is all that has been provided by the DOF, while no information has yet been made available about allocations at the programmatic level. Additionally, at the time of this writing, the DOF has yet to offer any detailed explanation of its process or how these allocations were determined. As such, staff continues to recommend that the Committee hold open all bond items (and this recommendation is reflected throughout the remainder of the agenda).

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. Historically, the department was also a major implementing agency for the CALFED Bay-Delta Program, tasked with putting in place a long-term solution to water supply reliability, water quality, flood control, and fish and wildlife problems in the San Francisco Bay Delta. As noted above, that program was abolished with SBx7 1, and CALFED responsibilities were transferred to new entities, including the Delta Stewardship Council.

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). The CERS division continues to be financially responsible for the long-term contracts entered into by the department. (Funding for the contracts comes from ratepayer-supported bonds.) However, the IOUs manage receipt and delivery of the energy procured by the contracts. (More on the CERS division of DWR is included in the Energy and Utilities section of this report.)

Governor's Budget. The Governor's Budget includes \$1.5 billion (\$188 million GF) for support of the DWR, a decrease of approximately \$1.6 billion, due primarily to reduced bond fund expenditures. An additional \$3.7 billion in CERS funding is not subject to the Budget Act (these funds are primarily for energy payments related to the 2001 electricity crisis).

ITEMS PROPOSED FOR DISCUSSION

1. BCP: Create Flood Emergency Fund (BBL). Under current law and practice, the DWR responds to local requests for assistance related to flood emergencies. This can be after a flood is in progress, or prior to a flood event when imminent failure of a levee seems likely. The DWR's budget has been built in the past on the assumption that three flood emergency events will occur each year at a cost to the state of approximately \$500,000 per flood event. The DWR's activities include providing sandbags, coordinating state flood fighting efforts (including Conservation Corps members), and levee monitoring. However, actual flood emergency events, and the associated costs for the department to respond, vary greatly based on the weather pattern in any given year. The response to a single flood event has sometimes cost the state more than \$1 million.

Governor's Budget. The Governor requests a shift of \$1 million in baseline GF to a new Emergency Fund ("E-Fund") for exclusive use in responding to imminent flood threats with duration of no more than seven days. The Administration would be provided

authority to redirect the existing GF support for flood management (currently totaling \$40 million GF). The Director of DWR could access this new fund, at his or her discretion, to support emergency response activities. Proposed budget bill language (BBL) would further allow the DOF to immediately transfer additional funds (GF) to the E-Fund without legislative notification whenever the \$1 million appropriation was exhausted.

Staff Comments. According to the Administration, the establishment of a flood E-Fund is necessary because the existing budget (which allocates approximately \$1.5 million annually for emergency flood response activities) provides inadequate flexibility to the DWR to proactively engage imminent flood threats and avert potential disasters or reduce their costs. Under existing law and practice, a department director may not expend at a rate so as to incur a deficiency in funding and no additional funding authority is available to the DWR until the Governor has issued a declaration of emergency (which usually does not occur until after the disaster has struck). The DWR notes that the California Department of Forestry and Fire Protection (DFFP) E-Fund for emergency fire suppression and detection has proven effective in addressing similar issues with regard to fire threats.

As detailed in the LAO *Analysis of the 2010-11 Budget*, of the \$40 million for flood baseline activities, the DWR proposes to allocate \$12.8 million in GF support for flood emergencies, response, and recovery activities, from which \$1 million could be redirected by the DWR to the new E-Fund. Significant additional funding beyond these resources would be available under the Governor's budget proposal for flood management purposes. This includes additional expenditures for flood system maintenance, risk notifications, activation of the State/Federal Flood Operations Center, and the conduct of feasibility studies for improvements to the state system of flood control. The department would also be provided \$211 million in bond funds to evaluate floodplains as well as to complete flood system improvements.

The LAO notes concern with the general lack of justification for this proposal, but is most critical of the lack of fiscal controls and expenditure criteria, as noted below:

E-Fund Proposal Lacks Sufficient Fiscal Controls. As noted earlier, the administration's proposal would redirect General Fund monies from the existing flood management program to a new emergency fund. As we also discussed, DOF would then be allowed to replenish the fund at its discretion with General Fund monies, without any prior notification to the Legislature. We find that this type of "revolving door" funding authority could substantially undermine legislative oversight of departmental expenditures and would provide insufficient fiscal controls. (We have similar concerns about an emergency fund for emergency fire suppression.) We further explain our concerns below.

Funding Impacts to Current Programs Unclear. The department has not explained which current flood management activities would be affected by the redirection of resources to the new E-Fund. While the department states that the level of any current programmatic activity would not be reduced, it is not clear

how this could be the case if funding formerly available for these activities were now set aside in the E-Fund. In our view, such changes greatly weaken legislative oversight over state spending in this area.

Basic Criteria and Priorities for Expenditures Lacking. The administration has not explained how monies in the new E-Fund would be allocated or prioritized by the department. According to the department, the E-Fund could be accessed simply when the department determined there was an “imminent threat” of a flood. It is unclear, however, whether this means the department could access the funds to deploy personnel and equipment even if the customary process of declaring an emergency has not yet been completed.

Ultimately, the LAO recommends the Legislature deny the Governor’s request.

Staff generally agrees with the LAO’s assessment of the proposal, and shares the concern that, as proposed, the E-Fund would not provide the Legislature with adequate fiscal oversight of flood threat expenditures. Furthermore, based on past history, the DFFP E-Fund is not a model the Legislature should look to replicate if it does wish to provide additional flexibility to the DWR in proactively addressing imminent flood threats. Rather, if an E-Fund is to be considered it should be well circumscribed by legislative authority, with clearly specified uses, reporting language, and augmentation limitations/thresholds. Given the significant risk of flood across large parts of California, staff recommends the Committee ask the DWR to more clearly articulate its case (e.g., by identifying past events when the lack of an E-Fund cost the state because of its inability to respond early and adequately to a flood threat), and to explore the options available for reaching an accommodation in which the DWR can obtain additional budgetary flexibility without the Legislature significantly diminishing its fiscal prerogatives.

Staff Recommendation: HOLD OPEN.

Action: Held open. The Chair indicated responsiveness to the general impulse behind the proposal, but requested additional boundaries—e.g., limitation on use of funds that fits “imminent threat” definition (3 days?).

2. BCP: FloodSAFE Support (BBL). Prior to the 1900s, the California Central Valley routinely flooded, transforming it into an inland sea. However, this changed in the mid-1900s with the completion of a vast flood control system consisting of levees, weirs, bypasses, and overflow areas. This system fueled the growth of California's agricultural sector and paved the way for millions to settle in the Valley.

However, following years of benign neglect, the state experienced a number of flood control system failures, and in the early 2000s was found liable in the *Arreola* and *Paterno* cases for damages caused by levee failures in 1995 and 1986, respectively. Then, in the wake of the Hurricane Katrina disaster in New Orleans (after which the Sacramento area was identified as the American city most likely to experience "Katrina-like" flooding), the FloodSAFE California (FloodSAFE) initiative was launched in 2006 in order to begin the long process of improving existing flood management systems in California—including levee evaluation, repair, and improvement; delineating flood prone areas; improving flood emergency response; and informing the public about flood risks. FloodSAFE is supported by multiple voter-approved bonds, including Proposition 1E, Proposition 84, and Proposition 13.

Governor's Budget. The Governor requests continued FloodSAFE funding of \$210.8 million (including \$173.8 million Proposition 1E; \$21 million Proposition 84 [continuously appropriated]; and \$16 million Proposition 13) and 37 positions (including 15 new, full-time positions; 13 new limited-term positions; and nine existing positions) to carry out activities across six functional areas. The functional areas are as follows:

- 1) Emergency Response** – The goal of this functional area is to improve the state's flood forecasting and provide adequate materials and improved coordination with locals to quickly respond to flooding events. Examples of expenditures in this area include the deployment of rock material in the delta to be ready in the occurrence of levee failure; levee inspection improvements; improved flood forecasting; and outreach to local responders. To-date, the DWR has been appropriated \$32.2 million for this functional area.

The Governor requests **\$14 million and nine new positions** in this area for: improvements in flood monitoring; climate data collection and runoff forecasting; reservoir operations and river forecasting; and flood operation emergency response. This funding is for ongoing programs.

- 2) Operations and Maintenance** – The goal of this functional area is to make sure that levees, flood corridors, channels, and other flood management facilities are maintained and are in working order. Examples of expenditures in this area include inspections of 293 miles of DWR maintained levees, repair of 114 critical flood-damage sites, conducting vegetation management activities on the Sacramento River flood control projects, completion of sediment removal in the Yolo Bypass and Tisdale Bypass, and control system upgrades at the Sutter Bypass Pumping Plants. To-date, the Department has been appropriated approximately \$30 million.

The Governor requests **\$1 million and four new positions** to support long range efforts to provide environmental mitigation as required for sediment removal and levee repair sites. This represents the first year of funding specifically for these activities.

- 3) Floodplain Risk Management** – The goal of this functional area is to reduce the consequences of flooding by rivers by identifying floodplains to better inform local planning decision making. Examples of prior expenditures in this area include floodplain mapping program, technical assistance to local agencies, building code updates, and 100/200 year Sacramento-San Joaquin floodplain maps.

The Governor's requests **\$11.1 million** for this area for alluvial fan floodplain evaluation and central valley floodplain evaluation and delineation. This represents the first year of funding specifically for these activities.

- 4) Flood Projects and Grants** – The goal of this area, which contains the majority of FloodSAFE expenditures, is to repair, rebuild, or construct new flood protection projects. Prior expenditures in this area include support for the following: urban area early implementation projects on the Feather River, Natomas Basin, Star Bend and Bear River; the flood protection corridor program; the Sacramento River Flood Control System; and the Delta Levee Flood Protection Program.

The Governor requests **\$143 million** (Propositions 84, 1E and 13) to support: State-Federal Flood Control System Modifications (\$50 million); Dutch Slough Tidal Marsh Habitat Restoration (\$3.5 million); Flood Control Subventions Program (\$40 million); Flood Protection Corridor Program (\$20 million); Yuba Feather Flood Protection Program (\$5.9 million); Central Valley Nonstructural Grant Program (\$29 million); North Delta Flood Control and Ecosystem Restoration Project (\$5 million). All of the funding in this proposal except for the Central Valley Non-Structural Grant Program (\$29 million) is an ongoing expense.

- 5) Evaluation and Engineering** – The goal of this functional area is to perform evaluations and assessments of the State-Federal Flood Control System in the Central Valley and the Delta. Prior expenditures in this area include the development of a GIS database of the system, performing core samples of urban project levees, and various levee and hydrological analyses.

The Governor requests a total of **\$2 million** in contract support for follow up efforts for the Delta Risk Management Strategy study. This proposal is an ongoing expense.

- 6) Flood Management Planning** – The Goal of this functional area is to assess how to integrate all of the different flood facilities, operations, and other projects

into one system. Some examples of work in this area include the draft California Water Plan Update 2009, five regional central valley flood protection planning forums, and working groups with local agencies. Funding for this functional area has been in place since 2007-08, primarily for the update of the California Flood Plan.

The budget (**\$24.2 million**) is proposed to continue funding for the Statewide Flood Planning Management Program (\$5.9 million) and the development of the FloodSAFE Conservation Strategy (\$9.5 million) and provide new funding for Delta Subsidence Reversal (\$8.25 million) and the Central Valley Flood Protection Plan (\$15.1 million and 12 new positions).

Finally, the Governor also requests reversion of approximately \$2.5 million from Proposition 13 funding originally appropriated in 2000, and most recently reappropriated in 2006.

Staff Comments. Generally, this request represents a continuation of activities funded in prior years, and staff has no significant concerns with these ongoing expenditures. However, staff echoes concerns of staff in the Assembly that the proposed expenditure of Proposition 1E floodway corridor dollars for the Central Valley Non Structural Grant Program (\$29 million) could be a misuse of funds for their intended purpose if they are used for levee improvements. Thus, the Committee may wish to have the DWR clarify its intent with regard to these funds.

Staff Recommendation. Consistent with other bond funding proposals—HOLD OPEN.

<i>Action: Held open.</i>

3. BCP: Salton Sea Conservation Implementation. The modern-day Salton Sea (Sea) was formed in 1905 when canal diggers from the Imperial Valley made a cut in the western bank of the Colorado River that was breached by heavy flood waters allowing nearly the entire flow of the river to run into the Salton Sink (which sits below sea level). As engineers struggled to repair the damage over two years, the basin filled up and the Sea was created.

The Sea became an instant attraction to migrating birds, and supported (and, in some cases still supports) various introduced species of fish. However, without any natural drainage, and fed by relatively meager inflows from three primary rivers, as well as agricultural run-off from the Imperial and Coachella Valleys, the Sea has receded over the years, and concentrations of salt and fertilizer run-off have increased. As a result, wildlife habitat around the Sea is shrinking and becoming more degraded, and exposed lake bed is releasing toxic dust into the prevailing winds. While the price tag for full-scale restoration is currently out of the state's reach (e.g., one draft plan estimates \$9 billion over 25 years), the Legislature has, for several years running, approved funding for small-scale projects, consistent with the 2007 "Salton Sea Restoration and Management Plan."

Governor's Budget. The Governor requests one-year funding of \$4 million (reimbursement authority) to carry out Salton Sea restoration activities. These funds will be provided through reimbursements from the Department of Fish and Game and the Natural Resources Agency and will be used to construct shallow habitat on the sea as is outlined in the 2007-08 Salton Sea Management Plan.

Staff Comments. The Colorado River Quantification Settlement Agreement between the State, Federal Government, Imperial Irrigation Agency and the City of San Diego establishes water allocations from the Colorado River and the state's obligation for Salton Sea Ecosystem Restoration. The 2007 Salton Sea Management Plan was adopted by the Resources Agency to guide the restoration activities. The proposed funding in this request would be for the creation of low depth habitat for Salton Sea fish such as Tilapia and Pupfish.

Staff notes that funding for this effort has been approved for the last three years to implement the management plan. Staff does not have any issues with this proposal; however, the Committee may wish to receive an update on Salton Sea Restoration activities.

Staff Recommendation: Consistent with other bond funding proposals—HOLD OPEN.

Action: *Held open.*

4. BCP: Multi-Benefit Water Planning and Feasibility Studies. Proposition 84 allocated \$65 million to the DWR for the purpose of conducting statewide water planning and project feasibility studies for California's existing and future needs related to water supply, conveyance, and flood control systems.

Governor's Budget. The Governor requests \$30.6 million from Proposition 84 (including new appropriations totaling \$16 million over the next three years; and reappropriation of approximately \$14.6 million originally appropriated in FY 2007-08), and three new positions to fund the following multi-benefit water planning and feasibility studies activities:

- **Climate Change Evaluation and Adaptation:** \$7.6 million over three years and six positions to conduct detailed evaluations of current and projected climate change impacts on the state's water supply and flood control systems and identify potential system redesign alternatives and other adaptation responses to climate change.
- **Urban and Agricultural Water Use Efficiency:** \$2.5 million over three years and nine positions to begin feasibility studies for new water conservation technologies, develop new best management practices, utilize remote sensing technology for water use measurement, facilitate water transfers, manage agricultural and urban conservation grants, support an agricultural water use measurement program, conduct outreach, and provide technical assistance to various entities.
- **Completion of CALFED Surface Storage Studies:** \$4.4 million reappropriation from FY 2008-09 and 18.1 positions for the completion of surface storage studies for: 1) North of Delta Off-Stream Reservoir (Sites); 2) Los Vaqueros Reservoir Expansion; and 3) the Upper San Joaquin River Basin Storage Investigation (Temperance Flat).
- **Integration of Flood Management and Water Supply Systems:** \$5.2 million reappropriation from FY 2008-09 and 7.3 positions to continue funding a multi-disciplinary team to conduct studies to evaluate system reoperation potential with the goals of improving water supply reliability, improving water quality, protecting and restoring ecosystem health, and expanding flood protection.
- **Implementation of California Water Plan Recommendations:** \$5.9 million appropriation and \$5.1 million reappropriation from FY 2008-09 and 13.2 positions to conduct outreach, collect data and facilitate regional planning needed to update the California Water Plan.

Staff Comments. Generally speaking, Proposition 84 allocated funding for all of the planning activities identified above, and all of these activities have been funded in prior

budgets. The current set of requests either represent a need for new funding to continue ongoing activities or a reappropriation where projects were delayed due to the bond freeze. Thus, staff has no significant concerns with the request, but the Committee may wish the DWR to provide an update on the status on the Surface Storage Studies, including: (1) when they are expected to be completed; (2) the cost-benefit ratios of Temperance Flat (and others, as applicable); and (3) the current cost of water supply from each facility.

Staff Recommendation: Consistent with other bond funding proposals—HOLD OPEN.

<i>Action: Held open.</i>

5. BCP: San Joaquin River Restoration Program. The San Joaquin River historically produced major sport and commercial fisheries (including the largest spring run of Chinook salmon in California), as well as important ecological, water supply, and water quality values.

A 2005 Federal Court preliminary holding in *NRDC v. Rogers* held that the United States Bureau of Reclamation and its contractors, in their operation of Friant Dam since 1945, had not complied with state law, which requires dam owners to release sufficient water to keep downstream fish in good condition. A settlement, which incorporated a separate Federal-State Memorandum of Understanding (MOU), agreed to by Governor Schwarzenegger and signed by the Secretary for Resources, was accepted by the Federal Court in May 2006. The MOU commits the DFG and the DWR to participate in the San Joaquin Restoration Program (SJRRP) created under the settlement. Funding for the implementation of the settlement was anticipated to come from the following sources:

State

- About \$200 million in bond funds from Props 84 and 1E

Federal

- Up to \$300 million of additional Federal appropriations requiring a non-federal cost-share of an equivalent amount
- Central Valley Project Improvement Act (CVPIA) – Up to \$2 million annually of other Friant Division water users CVPIA Restoration Fund payments
- Friant Surcharge Collections – Friant contractors' environmental fee expected to average about \$5.6 million per year
- Friant Capital Repayment – Friant division water users' capital component of their water rates redirected into the San Joaquin River Restoration Fund

Governor's Budget: The Governor requests \$33.8 million in reimbursement authority (\$13.8 million in FY 2010-11; and \$20 million in FY 2011-12) in order to receive Proposition 84 funds from the Natural Resources Agency for support of year four of San Joaquin River restoration efforts.

Staff Comments. As was discussed on March 4, when a related Department of Fish and Game item was heard in Committee, staff's major concern with this program is the extent to which the federal government has failed as a fiscal partner in coming up with the \$300 million noted above. As of this writing, no additional information regarding new federal appropriations for this program was available; however, the Committee may wish to question the DWR regarding the prospects of obtaining future direct federal appropriations since the program will require more than double the funding provided in Propositions 84 and 1E.

Aside from the above question of whether the federal government is paying its fair share of SJRRP costs, staff has no significant concerns with this proposal.

Staff Recommendation: Consistent with other bond funding proposals—HOLD OPEN.

Action: *Did not discuss due to time constraints.*

6. BCP: Agricultural Drainage Reduction. The Lower San Joaquin River (LSJR) is listed as an impaired water body under the California Clean Water Act, due in part to agricultural drainage that has resulted in elevated concentrations of salt, boron, and trace elements (arsenic, chromium, mercury, selenium, and molybdenum). This has led the local and state water boards to set objectives to improve water quality, and prompted creative efforts to reduce the deleterious impacts of agricultural drainage.

Governor's Budget. The Governor requests \$1 million (\$394,000 for 1.7 positions and 0.5 temporary help; and \$606,000 for grants from Proposition 84) in FY 2010-11 to begin implementation of a new five-year program to provide grants for projects that eliminate discharges of agricultural subsurface drainage water from the west side of the San Joaquin Valley into the San Joaquin River (SJR). The resources requested would develop their work plan, prepare, solicit, and evaluate the Request for Proposal. The total expected cost for this program is expected to be \$38.6 million over a five-year period.

Eligible grant entities will be farmers that drain into the west side of the SJR and types of projects will be divided into four categories:

- **Conservation measures:** Projects that reduce the volume of subsurface drainage effluent while at the same time saving water for other beneficial uses. These measures include source reduction, shallow groundwater table management, and groundwater management.
- **Reuse Measures:** Projects that reduce the amount of subsurface drainage effluent while at the same time making additional water available for irrigation and other beneficial purposes. This will involve measuring comprise reuse in salt tolerant crops, regional integrated drainage management systems, reuse in wildlife habitats, wetlands, and pastures.
- **Treatment Measures:** Physical, chemical, and/or biological processes that remove salts and/or harmful constituents from subsurface agricultural drainage water prior to discharging into the SJR.
- **Disposal Measures:** Enhanced evaporation systems that help to store the salts from concentrated agricultural subsurface drainage water.

Staff Comments. This is a new program and the resources requested would generally be for developing local assistance program criteria to address West Side agricultural drainage. The DWR has requested \$606,000 in local assistance funds for the first year of this program with the funding level increasing annually to \$15.3 million in FY 2014-15 (for a total of \$36.6 million).

The proposed activities are consistent with the following bond section:

PRC 70529(a). Projects that reduce or eliminate discharges of salt, dissolved organic carbon, pesticides, pathogens and other pollutants to the San Joaquin River. Not less than forty million (\$40,000,000) shall be available to implement projects to reduce or eliminate discharges of subsurface agricultural drain water from the west side of the San Joaquin Valley for the purpose of improving water quality in the San Joaquin River and the Delta.

Notwithstanding the above authorization, however, staff notes concern that the state is footing the bill for activities for which the federal government is really responsible. The federal Central Valley Project delivers water to most of the farmers from whose land the drainage is occurring, and Congress has agreed decades ago to build a drainage system for the area. However, the project, which would have included a 188-mile concrete-lined canal designed to convey saline drainage water to the Delta, became mired in controversy and resulted only in an 85-mile canal “portion” that discharged into the Kesterson reservoir. The discovery of bird deformities due to high concentrations of selenium led to the shutdown of the reservoir, and, subsequently, to the plan to reroute drainage flows into the SJR (and, ultimately, to the problem driving this BCP). The Committee may wish to ask the DWR for an update on the role (or the lack thereof) on the part of the federal government to solve these ongoing drainage problems.

Additionally, the Committee may want to ask the department: (1) how it came up with the various grant categories sited above and the \$606,000 level of initial program funding; and (2) when it anticipates that it will be ready to begin awarding grants in the budget year. Because this is a new program, staff recommends that the Committee approve the staffing as ongoing but only approve the local assistance funds for one year in order to give the Legislature an opportunity to assess the program design in next year’s budget process before approving ongoing funding.

Staff Recommendation: Consistent with other bond funding proposals—HOLD OPEN.

Action: <i>Did not discuss due to time constraints.</i>
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7. Staff Issue: Coachella Arsenic Contamination. Bond funds may be available to assist residents of the Coachella Valley in obtaining safe drinking water.

Background. In the southeastern Coachella Valley, water quality and access to potable water is a major health priority for residents, largely farm workers and their families living in mobile home parks throughout the unincorporated communities of Mecca, Thermal, and Oasis. Currently, most mobile home parks in these areas are served by private wells, where landowners are responsible for the water quality. As reported by The Desert Sun on January 31, 2010, Riverside County environmental health officials know of wells at 19 mobile home and RV parks that recently tested positive for dangerous levels of arsenic in their groundwater. Studies have linked long-term ingestion to even low levels of arsenic (10 parts-per-billion), to risk of cancer, as well as skin and circulatory system problems.

The Coachella communities above are seeking a safe and sustainable solution to their drinking water problem. Ideally, they would like to hook-up to the nearby Coachella Valley Water District; however, the water district has indicated that it cannot have its existing ratepayers foot the bill. Therefore, due to the modest means of the above communities, another solution is necessary.

Staff notes that Chapter 1, Statutes of 2008, Second Extraordinary Session (SBx2 1, Perata) appropriated \$2 million in Proposition 84 funds to the DWR to address similar water quality and wastewater treatment needs of disadvantaged communities in the Tulare Lake Basin. Should the Committee deem the above need compelling, it may wish to consider a similar use of Proposition 84 funds. To this end staff has obtained information regarding available balances in the Inter-regional/Unallocated "pot" of funding provided for under Proposition 84 for Integrated Regional Water Management (IRWM) projects.

As displayed below, with the appropriation of \$28 million to the Two-Gate Project, the Legislature inadvertently overappropriated Proposition 84 Inter-regional/Unallocated IRWM funds. The Governor proposes to revert that \$28 million and instead appropriate a total of \$23.9 million on other portions of the Water Package (\$14 million to the Delta Stewardship Council for the Delta Plan; and \$9.9 million for Water Conservation pursuant to SBx7 7). This would leave an unappropriated balance of \$25,000.

IRWM Funds Available for Appropriation to the DWR (PRC Sec. 75026 et seq.)

Category	Dollars (in thousands)	Notes
Beginning Balance	\$100,000	
Less Program Delivery (5% Admin)	-5,000	
Less Statewide Bond Costs (3.5%)	-3,500	
Balance for Projects	\$91,500	
Prior Appropriations		
FY 2008-09 (CALFED Science)	-\$8,000	All committed
FY 2008-09 (Colorado River)	-13,484	All expended
SBx2 1 of 2008 (Various)	-46,091	\$2.725 million committed and \$152,000 expended; reappropriation of balance requested in Finance Letter
<i>Subtotal</i>	23,925	(uncommitted = \$67,575,000)
SBx7 1 of 2009 (Two-Gates)	-\$28,000	Inadvertent overappropriation
Proposed Appropriations		
FY 2010-11 Proposed Reversion	\$28,000	Corrects overappropriation
FY 2010-11 Delta Stewardship Council BCP	-14,000	Fund Delta Plan (pursuant to SBx7 1)
FY 2010-11 Water Conservation BCP	-9,900	(pursuant to SBx7 7)
<i>Available Unappropriated Amount</i>	\$25	

So, should the Committee desire to use these IRWM funds to support an integrated water quality project to address the needs of the communities identified above, it will need to look at either denying or partially denying one of the Governor's related Water Package BCPs, or consider using uncommitted funds from SBx2 1 that the Governor is proposing for reappropriation (staff has not yet fully reviewed this proposal and so it is not included in this agenda).

Staff Recommendation: Direct the DWR, DOF, and the LAO to work with staff in identifying Proposition 84 IRWM Inter-regional/Unallocated funds, or other fund sources to address the imminent needs of the Coachella Valley communities identified above.

Action: No action. The Chair requested the Administration and the LAO to work with staff to try and identify suitable funding (approximately \$2 million) to support development of infrastructure plans so that the communities identified can compete for other safe-drinking water funds in the future.

8. Staff Issue: Williams Settlement—San Francisco Turbine Sales. Unanticipated revenues to a state fund may be available to assist in addressing the current GF shortfall.

Background. Following the 2001 “energy crisis,” the state settled claims against several energy corporations, enabling it to renegotiate long-term energy contracts (at lower prices) and obtain cash and assets. As part of one of these agreements, the Williams Settlement (with Williams Energy), the state received \$101 million in cash and \$90 million in assets, including six gas-fired turbine generators that the Attorney General allocated to two local districts (four of the turbines were allocated to the San Francisco Public Utilities Commission and two to the Kings River Conservation District for use in the Fresno area). It was anticipated that the turbines would be used to build new “peaker” plants to provide energy generation to meet peak load requirements. However, by the terms of the 2003 Williams Implementation Agreement, if the turbines were ever to be sold, then the state was to receive a portion of the assets.

Staff Comments. Staff has learned that the City of San Francisco recently sold at public auction the four turbines it received from the state in the Williams Settlement. The sale grossed somewhere in excess of \$40 million. By the terms of the Implementation Agreement, San Francisco is entitled to \$2.5 million from the sale of each turbine (\$10 million total), plus some additional amount (including five percent of any amount above \$2.5 million per turbine). Meanwhile, any remaining proceeds are to be deposited into the Electric Power Fund (Fund), which is continuously appropriated to the DWR. Based on conversations with the DWR, staff has learned that approximately \$21 million has already been deposited in the Fund from the sale, and the DWR is currently in talks with the City of San Francisco about the disposition of roughly \$8 million in remaining sale proceeds. DWR staff have indicated that it is the department’s intent to use the sale proceeds deposited to the Fund to effectively credit ratepayers via the DWR’s next Revenue Requirement submittal to the California Public Utilities Commission.

While Legislative Counsel acknowledges that the DWR’s proposed use of the sale proceeds is permissible under existing law, Counsel have provided staff with a verbal opinion that the funds in question are fungible to the GF. Therefore, given the magnitude of the state’s GF deficit, the Committee may wish to consider transferring the \$21 million (plus any additional balance received from the sale) from the Electric Power Fund to the GF. Given that the Electric Power Fund is continuously appropriated, staff recommends that the Committee direct the DWR not to expend the funds until such a decision has been made.

Staff Recommendation: NO ACTION at this time (as the Committee will want to investigate this matter more fully). DIRECT the DWR not to expend any proceeds received from the sale of the San Francisco turbines until the Committee has determined how it wishes to allocate the funds.

Action: No action. Legislative Counsel provided opinion that any proceeds obtained by the state from the Williams Settlement are revenues from litigation and are fungible to the GF. The Chair expressed “no opinion,” but asked that the funds in question no “disappear while we’re deciding.” DWR indicated that “revenue requirement” would not go to the PUC until August.

9. Staff Issue: Use of Agricultural Easements in Flood Corridors. The state has the opportunity to use unappropriated bond funds to achieve two important goals simultaneously—reduce flood threats to public health and safety, and conserve farmlands that are subject to the development pressures of population growth.

Background. The California Farmland Conservancy Program (CFCP)—implemented by the Department of Conservation and discussed in somewhat more detail on page 45—provides grant funding to non-profit land trusts and local governments for the purchase of agricultural conservation easements that protect farmland in perpetuity. However, existing law does not permit the CFCP to provide grants for agricultural flood easements.

Proposition 1E provided (pursuant to Public Resources Code Section 5096.825) \$290 million in bond funding for protection, creation, and enhancement of flood protection corridors and bypasses through various means, including:

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

Staff Comments. Staff notes that, of the \$290 million provided under Proposition 1E for flood corridor programming, approximately \$132 million has been appropriated, \$66.2 million is proposed for expenditure in the Governor’s Budget, and \$81.4 million remains unappropriated. Therefore, funds are available should the Committee wish to direct an amount to be used for flood easements that are in all other ways consistent with the goals and practices of the CFCP for agricultural land conservation.

Staff Recommendation: Direct the DWR, DOC, DOF, and the LAO to work with staff in determining an appropriate amount and methodology for the DOC (or the DWR in consultation with the DOC) to use Proposition 1E funds to obtain agricultural flood easements that meet the state’s flood management and open space goals.

Action: No action. Both DWR and DOC expressed interest in developing way to make a Prop 1E allocation to flood easements “work “ Staff to follow-up to develop recommended action.

Items Proposed for Vote-Only

- 1. BCP: Water Use Efficiency Technical Assistance and Science Program (BBL).** The Governor requests reversion of \$6 million (Proposition 50) originally appropriated in FY 2008-09 that has gone unused due to the 2008 bond freeze, and a new appropriation of \$6 million, including \$3 million for the Water Use Efficiency Technical Assistance Program and \$3 million for the Program Science Evaluation.
- 2. BCP: Water Supply Reliability and Urban Streams Restoration Program (BBL).** The Governor requests \$794,000 (Proposition 50), to be reverted from funds originally appropriated in FY 2003-04, for water supply reliability projects; and \$9.1 million (Proposition 84) to continue the Urban Streams Restoration Program.
- 3. BCP: Sacramento Valley Water Management Program (BBL).** The Governor requests \$8 million (Proposition 204) to be reverted from funds originally appropriated in FY 2008-09, for the Sacramento Valley Water Management and Habitat Protection Measures Program.
- 4. COBCP: American River (Common Features) Project.** The Governor requests \$7 million (\$5 million Proposition 1E; and \$2 million reimbursement authority) to continue the re-evaluation, design, and construction of the American River (Common Features) Project to improve the level of flood protection for Sacramento.
- 5. COBCP: Folsom Dam Modifications Project.** The Governor requests \$38.2 million (\$26.9 million Proposition 1E; and \$11.3 million reimbursement authority) to continue design and construction of the Folsom Dam Modifications Project aimed at enhancing the flood release capability of the dam and increasing the level of flood protection to Sacramento.
- 6. COBCP: Mid-Valley Area Levee Reconstruction Project.** The Governor requests \$2.7 million (\$1.9 million Proposition 1E; and \$750,000 reimbursement authority) to fund the Mid-Valley Area Levee Reconstruction Project which will restore levee sections of the Sacramento River Flood Control Project in reclamation districts between the Tisdale Bypass and the Sacramento Bypass.
- 7. COBCP: South Sacramento County Streams.** The Governor requests \$6.2 million (\$4.4 million Proposition 1E; and \$1.8 million reimbursement authority) to continue construction of the South Sacramento County Streams Project to protect Sacramento from high water events in the Delta and from flooding associated with various local creeks.
- 8. COBCP: System-wide Levee Evaluations and Repairs.** The Governor requests \$48 million (Proposition 1E) to continue: (1) system-wide evaluation of state/federal (project) levees; (2) evaluation of non-project levees that protect urban areas; and (3) repair of levees and erosion sites where deficiencies are found.

9. COBCP: West Sacramento Project. The Governor requests \$3.1 million, including: (1) \$1.2 million (\$625,000 Proposition 1E; and \$550,000 reimbursement authority) to fund the non-federal share of the development of the West Sacramento Project General Reevaluation Report; and (2) \$1.9 million (\$1.4 million Proposition 1E; and \$562,000 reimbursement authority) to fund the non-federal share of design and construction for the north and south slip repair sites of the West Sacramento Project.

10.COBCP: Yuba River Basin Project. The Governor requests \$2.7 million (\$2.2 million Proposition 1E; and \$510,000 reimbursement authority) for completion of the General Reevaluation Report and the design of the Marysville Ring Levee Reconstruction element for the Yuba River Basin Project.

11.COBCP: Butte Slough Outfall Gates Rehabilitation Project. The Governor requests \$15.1 million (Proposition 1E) to rehabilitate the Butte Slough Outfall Gates, and feature of the Sacramento River Flood Control Project that controls the passage of floodwaters from the Butte Basin to the Sacramento River.

12.COBCP: Lower Cache Creek, Yolo County, Woodland Area Flood Control Project. The Governor requests \$1.6 million (\$1.4 million Proposition 1E; and \$200,000 reimbursement authority) for a feasibility study of the Lower Cache Creek, Yolo County, Woodland Area Flood Control Project to improve the existing 10-year flood protection.

13.COBCP: Lower San Joaquin River Feasibility Study. The Governor requests \$1.7 million (Proposition 1E) for the Lower San Joaquin River Feasibility Study to reduce flood damage between Mariposa Bypass and north of Stockton.

14.COBCP: Sutter County Feasibility Study. The Governor requests \$1.9 million (\$1 million Proposition 1E; and \$861,000 reimbursement authority) to investigate measures to improve the level of flood protection for the Yuba City Basin from a 100-year event to the maximum level feasible.

15.COBCP: Land Acquisitions for Mitigation Bank(s) to Support Delta Levee Repairs. The Governor requests \$1 million (Prop 84) to acquire approximately 100-150 acres of land in the Delta where habitat could be restored to provide mitigation for needed levee repairs in the Delta.

Staff Comments. Staff has no concerns with the merits of Items 1-15; however, because each is bond-funded, consistent with the rationale discussed at previous hearings and outlined previously in this agenda, staff recommends the Committee hold all of these items open.

Staff Recommendation: Consistent with other bond funding proposals—HOLD OPEN.

Action: Held Open..

Various Bond Funding Requests

The Governor requests the following bond appropriations and reappropriations for conservancies (and the Wildlife Conservation Board) in the Natural Resources Agency. The Committee may wish to discuss the merits of various proposals; however, consistent with other bond-related requests heard to-date, staff recommends holding these items open until: (1) all such proposals have been heard; (2) additional detail on recent (March) bond sales and bond proceed allocations has been provided by the Administration; and (3) the Committee's priorities have been discussed and established.

3125 California Tahoe Conservancy

The California Tahoe Conservancy (CTC) acquires and manages land to protect the natural environment, provide public access and recreational facilities, and preserve wildlife habitat areas in the Lake Tahoe Basin. It also awards grants to other agencies and nonprofit organizations for the purposes of its programs.

1. BCP-2: Fund Shift to Maintain Baseline Support Budget. The Governor requests \$49,000 in Proposition 50 (Prop 50) funding to replace exhausted Proposition 12 program delivery funds that historically supported CTC baseline activities.

2. BCP-3: Implementation of the Environmental Improvement Program (EIP) for the Lake Tahoe Basin. The Governor requests \$50,000 in Prop 50 local assistance funding to support ongoing implementation of the EIP.

3. COBCP-1: Implementation of the EIP for the Lake Tahoe Basin—Reappropriation Only (BBL). The Governor requests an extension of the encumbrance period for frozen bond funds originally appropriated in the 2007 Budget Act (estimated at \$9.2 million from Prop 84) and the 2008 Budget Act (estimated at \$1.4 million from Proposition 12 and \$4.2 million from Prop 84).

3640 Wildlife Conservation Board

The Wildlife Conservation Board (WCB) acquires property in order to protect and preserve wildlife and provide fishing, hunting, and recreational access facilities. The WCB is an independent board in the Department of Fish and Game and is composed of the Director of the Department of Fish and Game, the Director of the Department of Finance, and the Chairman of the Fish and Game Commission. In addition, three members of the Senate and three members of the Assembly serve in an advisory capacity to the board.

4. COBCP-4: Rangeland, Grazing, and Grassland Protection—Prop 84 Reappropriation. The Governor requests reappropriation of the unencumbered balance (approximately \$12.1 million) of the original 2007 Prop 84 appropriation (which

was \$14.3 million) to fund conservation easements that preserve and protect valuable rangeland, and grasslands that ensure continued wildlife, water quality, watershed, and open space benefits to the people of California.

5. COBCP-5: Oak Woodlands Conservation Program—Prop 84 Reappropriation.

The Governor requests reappropriation of the unencumbered balance (approximately \$13 million) of the original 2007 Prop 84 appropriation (which was \$14.3 million) to fund long-term private and public stewardship and conservation of oak woodlands.

6. COBCP-6: Colorado River Acquisition, Protection, and Restoration Program—Prop 50 Reappropriation.

The Governor requests reappropriation of the unencumbered balance (approximately \$9.9 million) of the original 2003 Prop 50 appropriation (which was \$32.5 million) to fund ongoing efforts in acquiring lands to preserve and protect valuable wildlife resources and working to fulfill the state obligation for regulatory requirements related to California's allocation of water supplies from the Colorado River, including restoration of the Salton Sea and related activities.

7. COBCP-7: Proposition 12 Reappropriation.

The Governor requests reappropriation of the unencumbered balance (approximately \$2.4 million) of the original 2006 Proposition 12 (Prop 12) appropriation (which was \$15.2 million) to fund various activities, including: (1) restoration or acquisition of habitat for threatened and endangered species; (2) restoration, acquisition, or protection of habitat or habitat corridors for threatened, endangered, or fully protected species; and (3) acquisition of certain real property subject to a natural community conservation plan (NCCP).

8. COBCP-8: NCCP Implementation—Prop 84 Reappropriation.

The Governor requests reappropriation of the unencumbered balance (approximately \$11.3 million) of the original 2007 Prop 84 appropriation (which was \$25 million) to fund acquisitions of key habitat lands that would contribute to the successful implementation of regional NCCPs.

3760 State Coastal Conservancy

The State Coastal Conservancy (SCC) is authorized to acquire land, undertake projects, and award grants for the purposes of: (1) preserving agricultural land and significant coastal resources, (2) consolidating subdivided land, (3) restoring wetlands, marshes, and other natural resources, (4) developing a system of public accessways, and (5) improving coastal urban land uses. In general, the projects must conform to California Coastal Act policies and be approved by the conservancy governing board.

9. COBCP-2: Resources Enhancement and Development—Prop 84.

The Governor requests \$32.8 million for various SCC programs that improve various coastal water bodies and promote public access and enjoyment of these areas, including the following: (1) \$10.2 million to the San Francisco Bay Area Conservancy; (2) \$6.3 million

to Monterey Bay watersheds; (3) \$5.7 million to San Diego Bay and watersheds; and (4) \$10.6 million to statewide conservancy programs.

10.COBCP-3: Prop 40 Appropriation and Reappropriations. The Governor requests: (1) \$2.1 million in Prop 40 funding to acquire, protect, and enhance coastal watershed resources and to grant funds for this purpose to public agencies and nonprofit organizations; and (2) multiple reappropriations of Prop 40 unencumbered balances (totaling approximately \$1.8 million) and associated anticipated reimbursements (totaling approximately \$5.2 million) for various projects.

11.COBCP-4: Prop 50 Reappropriations. The Governor requests reappropriation of unencumbered balances (approximately \$1.8 million total) of the \$120 million originally allocated to the Coastal Conservancy in Prop 50 for the purposes of watershed protection and for the acquisition and development of facilities to promote public access to, and participation in, the conservation of land, water, and wildlife resources.

12.COBCP-5: Prop 12 Appropriation and Reappropriations. The Governor requests: (1) \$5.5 million in Prop 12 funding to implement restoration projects in Santa Monica Bay; and (2) multiple reappropriations of Prop 12 unencumbered balances for projects up and down the California coast.

3810 Santa Monica Mountains Conservancy

The Santa Monica Mountains Conservancy (SMMC) acquires, restores, and consolidates lands in the Santa Monica Mountains Zone for park, recreation, or conservation purposes. The SMMC was established by the Legislature in 1980.

13.COBCP-1: Acquisition & Local Assistance Grants – Upper Los Angeles River Watershed and Santa Monica Bay and Ventura County Coastal Watersheds. The Governor requests \$4 million in Prop 84 funding for protection and restoration of rivers, lakes and streams, their watersheds and associated land, water, and other natural resources; and the protection of beaches, bays and coastal waters, and watersheds.

3830 San Joaquin River Conservancy

The San Joaquin River Conservancy (SJRC) acquires and manages public lands (approximately 5,900 acres) on both sides of the San Joaquin River between Friant Dam and the Highway 99 crossing which compose the San Joaquin River Parkway.

14.COBCP-1: SJRC Acquisitions. The Governor requests \$2.7 million in Prop 84 funding (the balance of unappropriated authorized funds for this purpose), as an appropriation to the Wildlife Conservation Board (WCB) who will administer grants and projects, to develop the San Joaquin River Parkway, to preserve and enhance its biological diversity, protect the cultural and natural resources, and provide educational

and recreational opportunities to the public, through acquisitions and conservation easements.

15. COBCP-2: SJRC Environmental Restoration, Public Access, and Recreation.

The Governor requests \$676,000 in Prop 84 funding (the balance of unappropriated authorized funds for this purpose) and \$2 million in reimbursement authority to implement public access, recreation, and environmental restoration projects along the San Joaquin River Parkway. As with the request above, the SJRC will work through the WCB to enhance priority habitat, update the Master Plan, build new trailhead staging facilities and partially fund the River West and Riverbottom Park projects. The proposal would allow expenditure of other state and non-state funds of up to \$2 million for these purposes (if received).

16.WCB COBCP-3: SJRC—Proposition 40 Reappropriation.

The Governor requests reappropriation of the unencumbered balance (approximately \$11.6 million) of the SJRC's original 2004 Prop 40 appropriation (which was \$11 million Prop 40 and \$1 million reimbursement authority) to fund complex land acquisitions and public access and recreation improvement projects that have been in progress for many years, but were recently delayed by the 2008 bond freeze and employee furloughs.

17.WCB COBCP-9: SJRC Proposition 84 Reappropriation.

The Governor requests reappropriation of the unencumbered balance (approximately \$11 million) of the original 2007 Prop 84 appropriation (which was \$10 million Proposition 84 and \$1 million reimbursement authority) to fund complex land acquisitions and public access and recreation improvement projects that were recently delayed by the 2008 bond freeze and employee furloughs.

3835 Baldwin Hills Conservancy

The Baldwin Hills Conservancy (BHC) acquires and manages public lands within the Baldwin Hills area to provide recreational facilities, open space, wildlife habitat restoration, and educational services.

18.COBCP-1: Proposition 40 Reappropriation for Acquisition & Improvement Program.

The Governor requests reappropriation of approximately \$4.8 million in Proposition 40 funding (originally appropriated in 2003) to acquire and develop open space in the Baldwin Hills area and further the expansion of the Kenneth Hahn State Recreation Area.

3850 Coachella Valley Mountains Conservancy

The Coachella Valley Mountains Conservancy (CVMC) acquires and holds, in perpetual open space, mountainous lands surrounding the Coachella Valley and natural community conservation lands within the Coachella Valley.

19. COBCP-1: Land Acquisition. The Governor requests reappropriation of \$5.5 million in Proposition 84 funding (the balance of unappropriated authorized funds for this purpose) to acquire and protect mountainous and natural community conservation plan lands.

Staff Comments. Staff has no significant concerns with the above items (1-19).

Staff Recommendation (for Items 1-19): Consistent with other bond funding proposals—HOLD OPEN.

<i>Action: Held Open..</i>

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 includes \$75.8 million (\$4.8 million GF) for support of the DOC, a decrease of approximately \$635 million, due almost entirely to the transfer of the Division of Recycling (including the Beverage Container Recycling Program) to the new Department of Resources Recycling and Recovery.

ITEMS PROPOSED FOR VOTE-ONLY

1. BCP-1: Information Technology (IT) Maintenance. The Governor requests a one-time appropriation of \$132,000 from various special funds for maintenance of the DOC's IT infrastructure.

Staff Comments. This proposal is similar to one approved by the Legislature last year and coincides with a larger plan to merge data centers throughout the Resources Agency.

2. BCP-5: Geothermal Staffing. The Governor requests \$356,000 (Oil, Gas, and Geothermal Administrative Fund) and two permanent positions and associated equipment (e.g., vehicles) to address increased regulatory workload associated with the safe operation of geothermal facilities.

Staff Comments. Geothermal power generation accounts for approximately 45 percent of the renewable power generated in California, and about five percent of overall electricity use. Due in large part to the enactment of the Renewable Portfolio Standard there has been a significant increase in the number of wells drilled and the corresponding amount of safety and inspection workload (e.g., tests and inspections increased 35 percent from 2004 to 2008). This request would increase staff in the field from six positions to eight (a 33 percent increase).

3. BCP-7: Abandoned Mine Remediation and Inventory Project Funding. The Governor requests \$1.1 million in federal funds for each of three years and two, three-year limited-term positions to implement activities specified in a \$4 million award received from the United States Bureau of Land Management (BLM) to remediate hazardous abandoned mines and inventory abandoned mine sites on BLM lands in California.

Staff Recommendation (for Vote-Only Items 1-3): APPROVE the requests (1-3) listed above.

Action: Approved on a 2-0 vote (Cogdill absent).

DISCUSSION ITEMS**1. BCP-3: Orphan Facility Remediation.**

Background. An orphan facility is any oilfield facility for which the DOC has determined there is no longer a responsible party. Orphan facilities pose a hazard to the environment and public safety if left unattended, and represent a liability to the state. The DOC, Division of Oil, Gas, and Geothermal Resources is responsible for remediation of these sites using revenue from assessments on oil and gas production.

2010-11 Governor's Budget. The Governor requests a four-year limited-term appropriation of \$1 million per year for remediation of 54 orphan facilities identified in a 2007 statewide inventory. No position authority is requested, as the DOC plans to contract out for the work.

Staff Comments. According to DOC staff, the \$4 million estimate is based on past experience with this type of work and was agreed with by the oil and gas industry. As such, staff has no concerns, but would suggest, consistent with action taken in the Assembly, adopting placeholder trailer bill language (TBL) to limit the duration of the necessary fee increase to four years (the duration of this request).

Staff Recommendation: APPROVE, with placeholder TBL, limiting the fee increase to the four-year duration of the request.

Action: Approved with TBL (in conformance with Assembly) on a 2-0 vote.
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2. BCP-6: California Farmland Conservancy Program (CFCP)—Local Assistance (BBL).

Background. The CFCP provides grant funding to non-profit land trusts and local governments for the purchase of agricultural conservation easements that protect farmland in perpetuity. The California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Act of 2002 (Proposition 40) specifically identified \$75 million for the preservation of agricultural lands, grazing lands, and oak woodlands conservation. Of this amount, \$45 million went to the CFCP.

2010-11 Governor's Budget. The Governor requests a one-time appropriation of \$7.9 million for the CFCP and BBL to make these funds, which were originally appropriated in 2006 but were unable to be encumbered, available for three years.

Staff Comments. Since its inception, the CFCP has provided grant funding to protect over 43,000 acres of agricultural land, and has provided over 30 planning/technical assistance grants to facilitate local farm conversion programs. Staff has no significant concerns with this proposal, but, given the scarcity of bond cash and consistent with other bond funding requests, will recommend the Committee hold the item open until all bond proposals have been heard.

Staff Recommendation: Consistent with other bond funding proposals—HOLD OPEN.

Action: Held Open.

Legal Services Fund Swap (Department of Justice)

The Governor's Budget contains a Department of Justice (DOJ) proposal for a legal services fund swap that affects multiple GF departments, but notably the California Coastal Commission (Coastal Commission), the State Lands Commission (SLC), and the San Francisco Bay Conservation and Development Commission (BCDC)—three public trust/land rights entities. Although Senate Budget Subcommittee No. 4 has primary jurisdiction over this proposal, the potential impact on the aforementioned entities is significant enough that it warrants discussion in this subcommittee.

Background. The DOJ represents state departments in various court matters. Under current law, special fund departments reimburse the DOJ for legal work on a billable hours basis. These payments are deposited into DOJ's Legal Services Revolving Fund.

GF departments, however, do not pay the DOJ for legal representation. Instead, the DOJ has its own GF appropriation of \$48.2 million with which it funds this legal work. The department notes that in recent years the amount of workload on DOJ attorneys has been higher than they can absorb with existing resources, and the Attorney General has been directing GF departments to obtain outside counsel, sometimes at greater hourly cost than what the DOJ charges to billable clients.

Governor's Budget. The Governor requests authority to bill GF clients for legal work as it does for special fund clients. In order to accomplish this, the department proposes to reduce its GF authority by \$48.2 million and increase its Legal Services Revolving Fund authority by an equivalent amount. Under Control Section 5.20, the Department of Finance would have the authority to determine how the legal service funding would be allocated among GF clients. The Control Section further requires quarterly reporting to the Joint Legislative Budget Committee regarding the allocations. The Administration also proposes elimination of the existing statutory requirement that charges for DOJ legal services cannot be made against the GF.

Staff Comments. The idea behind making GF departments pay the DOJ for their legal services is that client departments are more likely to exercise greater cost control if they must confront the full costs of litigation (as opposed to the current non-billable arrangement in which the true costs may not be totally transparent to the clients).

General Concerns

While these merits make this proposal worth considering, there are also trade-offs to consider. The total funding provided is \$48.2 million. However, the DOJ reports that the total number of hours worked by the DOJ for GF clients in FY 2008-09 was 456,267 hours. At DOJ's billable rate of \$170 per hour, this comes to \$77.6 million in workload, about 61 percent more than what is actually budgeted. While the DOJ reports that the department has been forced to absorb these costs in recent years through use of overtime and other resources, it is not clear that client departments could reduce their legal workload by 61 percent in the budget year.

In addition, the Administration does not propose to directly allocate the funding to client departments' budgets, but instead would rely upon the DOF to allocate the funds over the course of the fiscal year as requests come in from departments. These factors are likely to leave departments with significant uncertainty as to what they will ultimately have in their budget for legal services, making planning difficult. Adding to this uncertainty is that it is unclear what criteria the DOF would use to determine which legal requests are granted and which are denied. Finally, it is unclear what will happen if, as is likely to occur, the total funding is used up before the end of the fiscal year. Will departments be required to delay, lose, or settle cases that they might not otherwise? Or are they likely to come to the Legislature with deficiency requests?

Concerns Specific to the Public Trust Commissions

The Coastal Commission, SLC, and BCDC were established as independent protectors of public trust resources. With this independence, the commissions are relatively free to act outside of political pressure to take actions that they see are appropriate to protect public trust resources. While recent reductions in available GF resources will inevitably prove challenging for all "non-billable" DOJ clients (see table below for the top ten non-billable clients), the Governor's proposal could also threaten the independence of the commissions by allowing the DOF to make funding determinations regarding their litigation. For example, in an effort to preserve public access to the public trust lands that are our coastline, the Coastal Commission is frequently in litigation with some of the wealthiest, most well connected coastal landowners in California. Leaving the expenditure of each marginal dollar of Coastal Commission's litigation costs at the discretion of the DOF invites the perception and/or the reality of undue political influence from the Governor's Office.

Top 10 Non-Billable Client Hours and Associated Costs (Fiscal Year 2008-09)

	Department	Hours	Costs
1	Corrections and Rehabilitation	294,905	\$50,13,850
2	Mental Health	21,596	3,671,320
3	Franchise Tax Board	17,891	3,041,470
4	Governor's Office	17,686	3,006,620
5	Board of Equalization	15,931	2,708,270
6	Ca. Coastal Commission	12,722	2,162,740
7	Forestry and Fire Protection	12,586	2,139,620
8	State Water Resources Control Board	10,306	1,752,020
9	State Lands Commission	8,286	1,408,620
10	Parks and Recreation	7,837	1,332,290
	<i>Total, All Departments</i>	<i>456,267</i>	<i>\$77,565,390</i>

Options

Under the current system, non-billable client costs are "pooled," and this provides budgetary flexibility to all clients in that one client's low year for litigation costs may be another's high year. One option that Subcommittee 4 and the Administration are discussing is to continue to pool the billable hours for public trust entities. Given that

the state's ongoing fiscal crisis means GF reductions are unavoidable, this pooling approach would offer some protection to the commissions and continue to provide a degree of budgetary flexibility. Other options could include applying the proposed, or similar, cost containment strategies to the main drivers of recent increased costs (e.g., the Department of Corrections and Rehabilitation).

Staff Recommendation. NO ACTION (informational only).

Action: No action. The Committee expressed understanding for need to curtail/contain costs, but noted major concerns with the anticipated adverse impact to "public trust" entities.

Appendix A – LAO’s CALFED Recommendation

The Legislative Package and CALFED

The CALFED Bay-Delta Program. The CALFED encompasses multiple state and federal agencies that have regulatory authority over water and resource management responsibilities in the San Francisco Bay/Sacramento-San Joaquin Delta region. The objectives of the program are to provide good water quality for all uses, improve fish and wildlife habitat, reduce the gap between water supplies and projected demand, and reduce the risks from deteriorating levees. The program’s implementation has been guided since 2000 by what is referred to as the CALFED "Record of Decision"—a legal, environmental planning document that lays out the roles and responsibilities for each participating agency, sets program goals and milestones, and covers the type of projects to be pursued.

In recent years, the Secretary for Natural Resources has been the lead state agency with responsibility for CALFED program oversight, including overall program planning, performance evaluation, and tracking of the progress of these activities. Accordingly, funding for CALFED was provided from the Secretary’s budget. Through legislative budget actions, the Secretary assumed the responsibility for oversight of CALFED oversight as well as some program responsibilities that were previously carried out by the California Bay-Delta Authority (CBDA). The CBDA, originally created to coordinate implementation of continuing CALFED- and Delta-related programs, was in effect eliminated several years ago (although not eliminated in statute), when the Legislature eliminated its funding and transferred its responsibilities to the Secretary.

The passage of Chapter 5 (Statutes of 2009, 7th Extraordinary Session) in the new water package means that the new Delta Stewardship Council will take the lead role in providing oversight for CALFED. The CALFED program oversight and coordination staff in the office of the Secretary, as well as CALFED fiscal staff in CalFire, are to be transferred to the council along with related funding. In addition, the CBDA was statutorily eliminated and its responsibilities assigned to the new council.

Budget Reflects CALFED Expenditures Across Many Departments. While the new Delta council will take the lead for oversight of CALFED, multiple state agencies will continue to spend money to carry out CALFED activities. The state agencies have estimated the amounts that would be spent for these purposes (as seen in Figure 6), including some additional funding amounts requested in the 2010-11 budget plan. Information about these expenditures continues to be compiled by the Delta Stewardship Council by the reporting of the CALFED budget, which cuts across numerous departments.

Figure 6

Proposed CALFED Budget—State Funds Only*(In Millions)*

State	2010-11 (Proposed)
Department of Water Resources	\$206.2
Department of Fish and Game	69.2
State Water Resources Control Board	11.5
CALFED Bay-Delta Program (Delta Stewardship Council)	8.7
Department of Public Health	3.9
Department of Conservation	3.8
San Francisco Bay Conservation and Development Commission	0.1
Department of Forestry and Fire Protection	—
Total	\$303.5

The Governor's budget plan proposes a number of major changes in CALFED expenditures. For example, there would be a major increase in funding for SWRCB for, among other purposes, the development of Delta flow standards. A major decline for CALFED activities for DWR does not reflect an actual decline in the level of programmatic activity, but rather reflects the fact that three years' worth of expenditures (for 2009-10 through 2011-12) were all appropriated in the budget act for the current year.

Time for a Zero-Based Budget for CALFED. In past years, when CALFED and other Delta-related programs activities were at a major crossroads, the Legislature directed the administration to submit a zero-based budget identifying the proposed expenditures of the various state agencies involved in this programmatic area. The intent was to require the administration to justify all CALFED expenditures and thereby enable better legislative understanding of the overall size of the program and how funds were being expended.

Given the Legislature's new policy direction for the Delta and the recent changes in CALFED program oversight, this is an appropriate time, in our view, for the Legislature to direct the council to submit a similar zero-based budget encompassing all CALFED and Delta-related activities in conjunction with the Governor's submittal of the 2011-12 budget. The budget should include a workload analysis and the goals for each of the state's Delta-related investments. The Legislature would then be in a position to eliminate duplicative or unnecessary activities in favor of those that move the state toward the Legislature's stated policy goals for the Delta.

SUBCOMMITTEE NO. 2

Agenda

S. Joseph Simitian, Chair
Dave Cogdill
Alan Lowenthal



Hearing Outcomes

(see Subcommittee actions under individual issues)

Thursday, April 29, 2010
9:30 a.m. or Upon Adjournment of Session
Rose Ann Vuich Hearing Room (2040)

Consultant: Bryan Ehlers

<u>Item</u>	<u>Department</u>	<u>Page</u>
Various	AB 32 Implementation	2
3360	California Energy Commission	10
8660	California Public Utilities Commission	21
8570	Department of Food and Agriculture.....	34
3540	Department of Forestry and Fire Protection	37

Resources—Environmental Protection—Energy—Transportation

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Funding AB 32 Implementation

The California Global Warming Solutions Act of 2006 [AB 32, Nunez] requires the reduction of statewide greenhouse gas (GHG) emissions to 1990 levels by 2020—a 25 percent reduction over current levels. The bill designated the Air Resources Board (ARB) as the lead agency in addressing GHG emissions, including planning, regulatory, and enforcement efforts and set a timeline for completion of various actions, including the following:

- Adopt regulations by January 1, 2008, to require reporting and verification of statewide GHG emissions. *[Adopted on time in December 2007.]*
- Develop a plan by January 1, 2009, encompassing a set of measures that, taken together, would be a means by which the state could achieve its 2020 GHG reduction target. This plan is commonly referred to as the AB 32 Scoping Plan. *[Adopted on time in December 2008, with underlying economic analysis updated in March 2010.]*
- Adopt regulations by, and enforceable no later than, January 1, 2010, to implement “early action measures” to reduce GHG emissions. *[Nine early action measures adopted on time; three still under review by the Office of Administrative Law.]*
- Adopt additional regulations by January 1, 2011, to be enforceable January 1, 2012, to achieve the GHG emissions reductions goals established by AB 32. These additional regulations may include those for “market-based” compliance mechanisms, as defined in AB 32. *[Various regulations have been adopted, including those to reduce GHG emissions from (1) light-duty vehicles (the “Pavley regulations”) and (2) trucks used to haul goods at ports. Regulations currently under development would implement a renewable energy standard (previously discussed in Committee on March 18 with respect to the Renewable Portfolio Standard) and reduce GHG emissions from (1) natural gas transmission and distribution systems and (2) refrigerant systems. The ARB’s Scoping Plan also proposes the establishment of a cap-and-trade mechanism, and regulations are expected to be adopted by the end of 2010 in order to take effect in 2012.]*

Governor’s Budget and LAO Recommendation. The following is taken from a recent LAO report on AB 32 implementation and provides not only an overview of the AB 32 funding and the Governor’s 2010-11 budget proposals, but also the LAO’s recommendations going forward:

Funding for AB 32 Implementation

Majority of AB 32 Implementation Has Been Funded Through Special Fund Borrowing. From 2007–08 through 2009–10, AB 32 implementation has been funded primarily from special funds and bond funds. Over this period, total

funding has ranged from a low of \$30 million in 2007–08 to a high of \$48 million in 2009–10. The largest funding source by far has been the Air Pollution Control Fund, supported by \$84 million in various loans over a three-year period from the Beverage Container Recycling Fund and the Motor Vehicle Account. Statute requires that these loans be repaid, with interest, from revenues from a new AB 32 administrative fee (not yet established at the time the loans were made). We discuss this new fee in further detail below.

New Fee Will Now Be Primary Funding Source for AB 32 Implementation.

Assembly Bill 32 authorized ARB to assess a fee on GHG emitters that are subject to state regulation to pay the state's administrative costs for implementing the statute. The ARB has adopted such a fee, which will go into effect beginning in the budget year. The fee will be assessed on natural gas utilities, users, and pipeline owners and operators that distribute or use natural gas in California; producers and importers of gasoline and diesel fuels; refineries; cement manufacturers; retail providers and marketers of imported electricity; and facilities that burn coal.

For each of the first four years, the overall level of fee collections will be based on a calculation of (1) the total amount of funds needed to implement AB 32-related programs in that year and (2) the amount required annually to repay the special fund loans that supported the program in its early years. (Under the ARB's plan to repay the loan over four years, it will need to collect an additional \$27 million annually for the first three years and \$9 million in the fourth year.) Beginning in year five, the fee will be based primarily on the revenue needed to pay for the program's annual budget. The fee that is charged to any individual emitter will be based on the entity's overall emissions and the carbon intensity of the fuel source associated with those emissions. Invoices are to be sent to affected entities 30 days after the state budget is enacted. The revenues collected will be deposited into the Air Pollution Control Fund, and will be available upon appropriation by the Legislature.

Governor's Budget Proposal

Governor Proposes \$39 Million to Implement AB 32 in 2010–11. The Governor's budget includes \$39 million allocated to twelve departments for the purposes of implementing AB 32-related activities. The figure below summarizes, on a department-by-department basis (1) base budget expenditures, and proposed new expenditures; and (2) the current number of base budget positions and proposed new positions.

Largest Percentage of Funding Goes to ARB's AB 32 Programmatic Activities. As shown in Figure 1, while multiple departments have workload associated with AB 32 implementation, the bulk of this work is being conducted by ARB. The ARB has requested budget approval for 155 personnel-years and \$33 million for the continued implementation of the Scoping Plan. The ARB's

budget request for AB 32 implementation can be broken down into the following five activity areas:

Figure 1

AB 32–Related Activities in the 2010–11 Governor’s Budget*(Dollars in Thousands)*

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

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

Development and Implementation of GHG Emission Reduction Measures in Scoping Plan—\$23 Million; 99 Personnel Years. The Scoping Plan’s GHG emission reduction approach includes developing regulations, incentive programs, voluntary actions, and public outreach programs. Figure 2 summarizes ARB’s allocation of 99 personnel years in the budget year among various activities related to the development and implementation of Scoping Plan measures. For the 13 of the 27 regulations described in the Scoping Plan that have already been adopted, ARB’s role will shift to implementation and

enforcement of these regulations. The ARB will continue working on the development of the balance of the regulations in the budget year.

Figure 2

Development and Implementation of Scoping Plan Measures

	ARB Positions
Fuel, Electricity, and Industrial Sectors	61
Major Activity:	
<ul style="list-style-type: none"> ▪ Develop and implement the renewable electricity standard ▪ Implementation of Low Carbon Fuel Standard 	
Other Activities:	
<ul style="list-style-type: none"> ▪ Develop and implement regulation to reduce sulfur hexafluoride emissions from gas-insulated electricity transmission and distribution equipment ▪ Develop and implement energy efficiency audits for large industrial sources ▪ Develop and implement mandatory commercial recycling ▪ Develop and implement regulation to reduce greenhouse gases from natural gas transmission and distribution ▪ Develop and implement regulation to reduce greenhouse gases from oil and gas production, processing and storage 	
Mobile Sources	13
Major Activity:	
<ul style="list-style-type: none"> ▪ Develop and implement new greenhouse gas emission standards for passenger cars and light trucks ▪ Develop and implement amendments to the zero-emission vehicle regulation ▪ Develop and implement regional greenhouse gas targets pursuant to Chapter 728, Statutes of 2008 (SB 375, Steinberg) 	
Cross-Cutting	25
Major Activity:	
<ul style="list-style-type: none"> ▪ Develop and implement the cap-and-trade regulation for greenhouse gases 	
Other Activity:	
<ul style="list-style-type: none"> ▪ Implement fee regulation 	
Total	99

- **GHG Emission Inventory and Reporting—\$3.8 Million; 19 Personnel Years.** For the budget year, ARB plans to continue to update and maintain the California statewide GHG emission inventory, including an update of GHG emissions for the 2007 and 2008 calendar years. It will also continue to support the mandatory reporting of GHG emissions data to the state, including ensuring third-party verification of emissions data reports. In addition, it will begin development of compliance-based GHG emissions accounting protocols, which are necessary to comply with AB 32's requirements for verification and enforcement of emission reductions.
- **Applied Studies and Scientific Analysis—\$3.5 Million; Ten Personnel Years.** For the budget year, ARB staff will continue to evaluate the technological

feasibility and cost-effectiveness of GHG emission reduction measures, and ARB will continue to fund contracted research that supports AB 32 implementation and the state's long-term goal of 80 percent GHG reduction by 2050.

- **AB 32 Program Planning—\$1.8 Million; 12 Personnel Years.** For the budget year, ARB plans to continue to track and coordinate the development and implementation of the 72 measures in the Scoping Plan among multiple state, federal, and local agencies. This effort is intended to maintain consistency with the requirements of AB 32's regulatory mandates. Planned activities include coordinating the state's several energy entities to meet GHG goals; working with the local air districts on new federally mandated GHG permitting programs; coordinating with the U.S. Environmental Protection Agency on its mobile and stationary-source GHG programs; participating in the Western Climate Initiative activities; and providing policy support to technical staff working on GHG reduction regulations.
- **Support and Administration—\$1.6 Million; 15 Personnel Years.** For the budget year, these staff provide legal, legislative, information technology, and personnel-related support.

Evaluating the Budget for AB 32 Implementation

We do not have significant concerns with the overall level of AB 32-related expenditures proposed for the budget year. The department has generally provided sufficient workload justification for its requests. However, we are concerned that the board's budget may not provide sufficient funding for the board's economic analysis workload. We also are concerned that upcoming shifts in the nature of the AB 32 workload as a whole warrant careful budgetary planning. We discuss these two matters in more detail below.

Is Economic Analysis Underbudgeted? Current law prescribes multiple requirements for economic analyses as part of the regulatory adoption process. Such AB 32-related regulations as the Low Carbon Fuel Standard and the proposed cap-and-trade regulation can be particularly complex and break new regulatory ground, thereby making the required economic analysis challenging and labor-intensive. Our office and peer reviewers have raised concerns about the timeliness and the comprehensiveness of the ARB's economic analysis work connected with AB 32. A committee established to advise ARB on its analysis of the economic impacts of the AB 32 Scoping Plan voiced concern that insufficient ARB staff members and resources were available to analyze the potential economic impacts of AB 32.

Given these concerns, we recommend that the Legislature evaluate at budget hearings whether sufficient resources are being devoted by ARB to AB 32-related economic analysis work. To assist the Legislature in this evaluation, we recommend that ARB be directed to present at budget hearings (1) its projected AB 32-related economic analysis workload for the budget year, in terms of

required hours of staff time or contract resources, (2) the current level of staffing and other resources devoted to AB 32–related economic analysis, (3) the level of staffing and other resources it deems necessary to adequately address the projected workload, and (4) a plan to redirect resources from lower–priority activities to the extent that an unmet funding requirement for economic analysis is identified.

Ensuring That Future AB 32 Expenditures and Fee Levels Are Justified. The implementation of AB 32 will soon be at a major crossroads. Already in the fourth year of implementation, the program’s initial stage of planning, regulation development, and regulation adoption is nearing completion. (Regulations must generally be adopted by January 1, 2011.) The focus of the program will soon naturally shift from regulatory development to implementation and enforcement. As such, the “base budget” funding requirements for the program in future budget years could be substantially different than the program’s current funding requirements.

We believe that, beginning with the 2011–12 budget, the Legislature should step back and reevaluate the base funding requirements of AB 32 program implementation. In other words, the whole budget for AB 32 program implementation going forward after the budget year should be justified. This exercise will also be important from the perspective of ensuring that AB 32 administrative fees are set at an appropriate level to offset the costs of implementing the program.

Therefore, we recommend that the Legislature direct ARB to submit, as part of the 2011–12 Governor’s Budget, a zero–based budget and workload analysis for AB 32 program implementation across all state agencies in 2011–12. The administration should be directed to justify all expenditures proposed to support AB 32 implementation. This would enable the Legislature to better understand the overall size of the program and how funds are being allocated and prioritized for particular programs and functions, as well as how the proposed expenditures will further the goals and objectives of AB 32.

Staff Comments. Staff generally agrees with all of the issues raised by the LAO regarding AB 32 implementation. However, staff additionally notes the following concerns:

- 1) **In developing the soon-to-be released cap-and-trade proposal, it is not clear that the ARB has yet met its statutory obligation to consider localized health impacts from air pollution.** Health and Safety Code 38570 reads in part:

(b) Prior to the inclusion of any market-based compliance mechanism in the regulations, to the extent feasible and in furtherance of achieving the

statewide greenhouse gas emissions limit, the state board shall do all of the following:

(1) Consider the potential for direct, indirect, and cumulative emission impacts from these mechanisms, including localized impacts in communities that are already adversely impacted by air pollution.

Staff notes that the Department of Public Health's (DPH) AB 32 proposal identified above (in Figure 1), requests resources to, among other things, "determine the co-benefits and/or unintended health consequences of various AB 32 mitigation measures, including the use of health impact assessments." Although the DPH proposal does not mention cap-and-trade specifically, the request raises concern that the ARB is proceeding, full-steam ahead, with development of cap-and-trade regulations without having adequately assessed the health impacts of such a mitigation approach. One example of the potential consequence of this is that the cap-and-trade regulations could systematically under- (or over-) value the benefit of localized GHG emissions (which are frequently accompanied by other emissions harmful to air quality and public health). The result could be that the proposed cap-and-trade system achieves less than optimal results by allowing/encouraging too many (or too few) emission reductions to be achieved out-of-state v. in-state. The Committee may wish the ARB to clarify its health-impact-assessment efforts to-date in relationship to the need for the requested DPH resources and the current roll-out date for the cap-and-trade regulations.

- 2) It is unclear how the nitrous oxide (N₂O) research proposed for funding under the California Department of Food and Agriculture (CDFA) would complement existing research efforts.** The ARB identified collaborative research of N₂O emissions from agricultural nitrogen applications (fertilizer) as number 31 on a list of forty-four early action GHG mitigation measures, and the ARB has signed off on the CDFA's request for one position and \$309,000 (supported by the AB 32 COI fee), including \$150,000 for external contracts, to conduct research and analysis on N₂O emissions emitted from California farmlands. However, staff notes that research on N₂O emissions from agriculture is already under way through the CDFA Fertilizing Materials Research and Education Program (FREP). While the CDFA indicates the proposed AB 32 resources would address "gaps" in the current research, it is not clear to staff whether: (a) such gaps exist and are meaningful in the overall AB 32 picture; and (b) assuming they are important gaps, whether permanent resources are necessary to address what would appear to be a limited-term workload (e.g., conducting a literature review of N₂O emissions research). The Committee may wish the ARB to clarify how the CDFA proposal fits within the broader AB 32 context, why it is a high-priority for funding at this time, and why it requires ongoing funding at this time.
- 3) Finally, there are AB 32-related activities that were previously identified in the "AB 32 Cross-Cut Budget" that are not being proposed for**

funding from the new Cost of Implementation fee. For example, the California Energy Commission has base funding of \$590,000 from the Energy Resources Programs Account that has been identified as AB 32-related. The Committee may wish to clarify whether these expenditures can or should be funded from the new fee (instead of a general surcharge on energy), and more generally whether each requested expenditure is proposed to be funded from a source with a proper nexus (e.g., only GHG mitigation—as opposed to global warming adaptation—efforts may be funded from the new fee).

Staff is prepared to recommend adoption of the LAO recommendation to require a zero-based AB 32 budget next year, but recommends the Committee hold this item open for the time being in order to allow the Administration an additional week to respond to the other concerns noted by the LAO and staff.

Staff Recommendation: HOLD OPEN.

Action: Held Open. In response to Committee questions, the ARB committed to: (1) provide the AB 32 economic analysis workload and staffing data specified in the LAO report by May 5; and (2) complete all necessary public health impact assessments prior to adoption of cap-and-trade regulations.

3360 California Energy Commission

The Energy Resources Conservation and Development Commission (commonly referred to as the California Energy Commission or CEC) is responsible for forecasting energy supply and demand; developing and implementing energy conservation measures; conducting energy-related research and development programs; and siting major power plants.

Governor's Budget. The Governor's Budget includes \$420 million (no GF) for support of the CEC, a decrease of approximately \$366 million, due primarily to reduced federal fund expenditures (after a one-time influx of ARRA dollars in FY 2009-10).

[Discussion items begin on the following page.]

ITEMS PROPOSED FOR DISCUSSION

1. BCP-1: Augment Alternative and Renewable Fuel and Vehicle Technology Program. Chapter 750, Statutes of 2007 [AB 118, Nunez], created the Alternative and Renewable Fuel and Vehicle Technology Program (Program)—subsequently amended by Chapter 313, Statutes of 2008 [AB 109, Nunez]—authorizing the CEC to develop and deploy alternative and renewable fuels and advanced transportation technologies to help attain the state’s climate change policies. The Program is supported by an annual \$10 million transfer from the Public Interest Research, Development, and Demonstration Fund, as well as annual revenues totaling about \$100 million from vehicle registration fees; identification plate fees; and vessel registration fees, which are deposited to the Alternative and Renewable Fuel and Vehicle Technology Fund (Fund).

The CEC has an annual program support budget of approximately \$100 million and provides financial support for projects that:

- Develop and improve alternative and renewable low-carbon fuels.
- Optimize alternative and renewable fuels for existing and developing engine technologies.
- Produce alternative and renewable low-carbon fuels in California.
- Decrease, on a full fuel cycle basis, the overall impact and carbon footprint of alternative and renewable fuels and increase sustainability.
- Expand fuel infrastructure, fueling stations, and equipment.
- Improve light-, medium-, and heavy-duty vehicle technologies.
- Retrofit medium- and heavy-duty on-road and non-road vehicle fleets.
- Expand infrastructure connected with existing fleets, public transit, and transportation corridors.
- Establish workforce training programs, conduct public education and promotion, and create technology centers.

Governor’s Budget. The Governor requests a baseline increase of \$2 million from the (Fund) for contracts and technical assistance, including seeking to establish formal relationships with several national laboratories (approximately \$1.2 million); and a one-time augmentation of \$5 million for various projects.

Staff Comments. Each year the CEC must prepare and adopt a Program Investment Plan (Plan) that lays out its funding priorities and opportunities and describes how Program funding will be used to complement other public and private investments. The Plan is developed with the assistance of an advisory committee made up of representatives of fuel and vehicle technology consortia, labor organizations, environmental organizations, community-based justice and public health organizations, recreational boaters, consumer advocates, academic institutions, workforce training groups, and private industry; and representatives from the Resources Agency; the Business, Transportation and Housing Agency; the Labor and Workforce Development Agency; and the California Environmental Protection Agency. Staff notes that, by regulation, the adopted Plan can be adjusted during the year as the CEC sees fit.

Thus, legislative oversight of Program expenditures is somewhat limited by the fact that the investments/expenditures proposed at the time of Budget enactment are subject to change without consultation with or notification to the Legislature. That said, the budget process does offer the Legislature the opportunity to provide input regarding its priorities and adjust the overall Program spending (appropriation) authority as it sees fit. For example, staff notes that the 2009-10 Investment Plan initially allocated \$40 million for hydrogen fueling infrastructure; however, the Legislature raised concerns during the budget process about the efficacy of these expenditures and the amount was subsequently reduced to \$22 million.

AB 118 Draft Funding Allocation Summary for FY 2010-2011

Project/Activity	Purpose	Funding Allocation for FY (2010-2011)
Electric Drive	Develop and demonstrate advanced on-road and non-road medium- and heavy-duty vehicles	\$14 Million
	Infrastructure and related activities	\$3 Million
	Manufacturing facilities and equipment	\$7.5 Million
	Subtotal	\$24.5 Million
Hydrogen	Fueling Infrastructure	\$14 Million
	Subtotal	\$14 Million
Gasoline Substitutes	Expansion of E-85 dispensers and retail outlets	\$8.5 Million
	Gasoline substitutes production	\$10 Million
	Subtotal	\$18.5 Million
Diesel Substitutes	Diesel substitutes production	\$5 Million
	Bulk terminal storage and blending facilities	\$5 Million
	Subtotal	\$10 Million
Natural Gas	Medium- and heavy-duty vehicles	\$12 Million
	Upgrades to natural gas fueling stations	\$2 Million
	Biomethane production plants and quality testing	\$10 Million
	Subtotal	\$24 Million
Propane	Light- and medium-duty vehicles	\$3 Million
	Subtotal	\$3 Million
Innovative Technologies and Advanced Fuels	Innovative technologies and advanced fuels	\$3 Million
	Subtotal	\$3 Million
Market and Program Development	Sustainability studies	\$2.5 Million
	Program marketing and public education and outreach	\$2.5 Million
	Technical assistance and environmental/market/ technology analyses	\$6 Million
	Subtotal	\$11 Million
Grand Total		\$108 Million

Based on the above, the Committee may wish to ask some, or all, of the following questions:

- Why is industry education and outreach necessary given the very high profile of alternative fuel and vehicle technology energy efforts in California? What kind of return on investment does the CEC expect on the proposed \$2.5 million expenditure for this purpose?
- The CEC proposes \$8.5 million for expansion of E-85 (ethanol) dispensers and outlets. Is not this just a subsidy to corn producers (who supply the vast majority of the inputs for California ethanol)? Notwithstanding the reduced emissions of blending Midwestern corn ethanol in California (rather than in the Midwest where coal is more frequently used for the power supply), why does this proposed investment make sense economically and environmentally when corn ethanol requires seven times the fossil fuel input per unit of energy as sugar cane ethanol?
- The CEC proposes \$14 million for hydrogen infrastructure to support "hydrogen highway" infrastructure—a proposal of which the Legislature disapproved last year. The draft Investment Plan shows fewer than 100 hydrogen fuel cell vehicles (FCVs) were on the roads in California's major metropolitan areas and "theoretical" price tags ranged into the millions of dollars. Granted, this Program is intended to "push" development of future technologies, and hydrogen may eventually pan out, why does it make sense to spend nearly 13 percent of the budget on hydrogen when other technologies are more "ready for prime time" and could produce greater bang-for-the-buck in the short-term?
- The CEC more than doubled funding to biomethane in updates to the current Investment Plan (for a total of \$21.5 million), and is proposing another \$10 million in funding in the new draft Plan. Could you please explain why we are subsidizing, or at least giving preferential treatment to, biomethane when it creates pollution and there are other options to reduce or reuse waste? (Staff notes that state policy is to promote waste reduction, recycling and composting, and only to burn or cook waste that cannot feasibly be managed in one of these more preferable ways.)

Given ongoing concerns and questions raised above, and the fact that the draft 2010-11 Investment Plan is set to be reviewed by the Advisory Committee on April 30, 2010, the Committee may wish to leave this item open for at least another week (or two) of review before determining whether to fully fund not only the requested augmentations but the \$100 million base Program.

Staff Recommendation: HOLD OPEN.

Action: Held Open. The CEC committed to providing updated expenditure data for the current year.

2. BCP-2: Distribution System Infrastructure Analysis to Support Integration and Use of Low Carbon Resources. Combined heat and power (CHP) technologies produce both electricity and steam from a single fuel at a facility located near the consumer, and, by recovering heat that normally would be waste in an electricity generator, save the fuel that would otherwise be used to produce heat or steam in a separate unit. Chapter 713, Statutes of 2007 [AB 1613, Blakeslee], the Waste Heat and Carbon Reduction Act, helped ensure a market for CHP and required the CEC to adopt the guidelines for various applications of combined heat and power systems that reduce waste energy.

Historically, central stations generated the power required by the state and transmitted the electricity at high voltage across the main transmission grid, through substations, where voltage was “stepped down” (i.e., reduced) for transmission to customers via lower voltage distribution system lines. Generally speaking, electrons only flowed one direction—from the power plant to the consumer. However, the push to develop a cleaner, more efficient, and more flexible energy system has resulted in a new focus on a number of areas, including: (1) CHP; (2) distributed renewable generation (smaller projects—like roof-topic solar installations—that are directly connected to the grid); and (3) the re-design of the electricity grid so that electrons (and information about their availability and demand) are able to flow freely to and from consumers/generators as needed (resulting in a “smart grid” that is constantly monitoring power supply and demand and allocating electricity in an optimal and reliable fashion—no unnecessary generation, and no unmet demand).

Governor’s Budget. The Governor requests the 2 two-year limited-term positions and \$282,000 (Energy Resources Program Account—ERPA) originally authorized to support adoption of the AB 1613 guidelines be made permanent. The positions would conduct ongoing oversight and management of the CHP program, but would also address distributed generation (DG) issues associated with developing a “smart grid” (e.g., determining where on the distribution system new generation provides value).

Staff Comments. According to the CEC, the requested positions are necessary to continue maintenance of the AB 1613 guidelines and to implement smart grid technologies. Among other things, the positions would:

- **CHP** – Maintain CHP guidelines. Develop methods for collecting and analyzing CHP data for use in forecasts and assessments to help the ARB assess progress toward meeting CHP goals associated with the AB 32 *Climate Change Scoping Plan*. Monitor and verify compliance based on annual reports provided by CHP facilities. Provide technical support to the PUC and ARB for rulemakings and proceedings.
- **DG/Smart Grid** – Model and plan how to best optimize the use of additional DG, as well as other non-traditional generation such as CHP. This would include: (1) determining where on the grid new generation would provide value; (2) identifying the infrastructure upgrades and new standards that will support smart

grid capabilities; and (3) review and comment on smart grid implementation plans and strategies.

Strictly speaking, AB 1613 requires very minimal staff work from the CEC on an ongoing basis now that program guidelines are in place. Furthermore, the CHP program created under AB 1613 is voluntary and it is not yet known how many (if any) businesses will take advantage. Therefore, to the extent that the CEC partially justifies the need for these two positions using AB 1613, that justification is weak.

Insofar as the CEC further justifies the need for these positions based on workload associated with DG and related smart grid development, staff notes concern that these are not activities the Legislature has directed the CEC to carry out (however beneficial they may be). Additionally, it is unclear the degree to which they may overlap with smart grid activities identified in Item 4 (below) that the CEC believes are necessary to implement Chapter 327, Statutes of 2009 [SB 17, Padilla]. As such, staff cannot support approval of this request at this time. If the Committee does not decide to deny the request outright, it may wish the CEC to identify the relevant statutory references requiring the CEC to undertake the identified activities, and to work with staff to clarify the difference between this proposal and the SB 17 request.

Staff Recommendation: HOLD OPEN.

Action: *Held Open.*

3. BCP-3: Energy Efficiency Program for Existing Residential and Nonresidential Buildings (Implement AB 758). State energy policy prioritizes energy efficiency measures (e.g., replacing incandescent light bulbs with compact fluorescent ones) to reduce energy usage because efficiency strategies generally provide a bigger “bang for the buck” (in terms of energy savings) than investment in infrastructure.

Approximately 60 percent of California’s existing residential building stock, and around 45 percent of non-residential stock, was constructed before the state established energy efficiency standards for new buildings in 1978. Therefore, there are likely significant energy savings to be had by improving the energy efficiency of these buildings.

Chapter 470, Statutes of 2009 [AB 758, Skinner and Bass], requires the CEC to develop and implement (through regulations) a comprehensive program to achieve greater energy savings in existing residential and nonresidential building stock, including energy assessments, cost-effective energy efficiency improvements, financing options, public outreach, and education efforts.

Governor’s Budget. The Governor requests ten permanent positions and \$1.8 million (federal funds), including \$500,000 for contract expenses, to implement AB 758. The proposed federal funds would come from American Reinvestment and Recovery Act (ARRA) dollars for the State Energy Program (SEP) in FY 2010-11, but costs would begin to shift to the ERPA in FY 2011-12, and would be entirely borne by the ERPA beginning in FY 2012-13.

Staff Comments. The CEC has temporarily redirected staff to begin the start-up work required to implement AB 758, including opening of the rulemaking proceeding (which took place in February 2010). Additionally, the CEC has requested the United States Department of Energy to approve an amendment to its ARRA SEP grant application that would authorize the use of ARRA SEP monies, from the \$15 million currently identified for Program Support and Contracts, for AB 758 purposes.

Staff notes that neither the BCP, nor the CEC’s public website, nor materials provided in multiple hearings before the budget and policy committees this year indicated that the ARRA SEP Program Support and Contracts monies would be used for this purpose. While AB 758 specifically instructed the CEC to use ARRA funds for this purpose, the CEC could have, and should have, been more transparent about which “pot” of funding it intended to use. At it stands, this episode raises some question about how other Program Support and Contracts funds are to be spent and the Committee may wish the CEC to provide additional detail (not only to legislative staff, but to the public via the CEC website).

As to the requirements of the bill and the justification for the requested resources, staff notes that this proposal is consistent with the legislative fiscal analysis of the bill. However, there remains some dispute over whether or not the bill permits the program to be supported by state funds—as noted above, the Administration proposes to use

ERPA funds in the out-years once ARRA dollars are exhausted. The language in question reads as follows:

The commission shall fund activities undertaken pursuant to this section from the Federal Trust Fund consistent with the federal American Recovery and Reinvestment Act of 2009 (Public Law 111-5) or other sources of nonstate funds available to the commission for the purposes of this section.

Staff notes that the word “only” (which immediately preceded “fund”) was deleted from an earlier version of the bill, in order, presumably, to make use of ERPA (or other state funds) legal. However, to the extent that existing statute remains unclear (in that use of state funds is not explicitly authorized) there is room for alternate interpretations and/or legal challenge. Thus, the Committee may wish to consider: (1) a clarifying amendment to the statute; and/or (2) opting to fund only the development of the program (which would require significantly fewer resources than proposed), and defer the decision to fund program implementation until a later date when a future source of non-ARRA funds, that is clearly legal, is identified.

Staff Recommendation. HOLD OPEN for the time being and direct the CEC and DOF to work with staff and LAO to develop a refined estimate of the resources necessary to develop the program (rather than develop and implement it).

Action: Held Open. Legislative staff are to pursue a clarifying opinion from Legislative Counsel regarding the above funding concerns.

4. BCP-4: Smart Grid Development (Implement SB 17). As discussed briefly in Item 2 (above), the term “smart grid” refers to an electricity distribution system that allows for the flow of information (and electrons) in two directions—recognizing that with DG, traditional “customers” will increasingly become energy suppliers. Through this modernization of the grid, the goal is to increase efficiency, reliability, and flexibility of the system, and reduce the rate at which additional electric utility infrastructure needs to be built. A smart grid is a key element to the greening of California’s electrical system due to the intermittent nature of renewable electricity resources such as wind and solar.

Chapter 327, Statutes of 2009 [SB 17, Padilla] established the smart grid policy for the state and requires the following:

- The PUC, *in consultation with* the CEC and the Independent System Operator (ISO), to determine the requirements for a smart grid deployment plan, consistent with state and federal law, no later than July 1, 2010.
- Electrical corporations, by July 1, 2011, to develop and submit a smart grid deployment plan to the PUC for approval.
- The PUC, *in consultation with* the CEC, the ISO, and electrical corporations, at each step of deployment, to evaluate the impact of deployment on major initiatives and policies.
- Each Publicly-Owned Utility (POU) to develop by July 1, 2011, a smart grid deployment plan consistent with federal law.

Governor’s Budget. The Governor requests two permanent positions and \$287,000 (ERPA), to provide the PUC with consultation on defining and developing a smart grid in California.

Staff Comments. As the CEC’s role under SB 17 was intended to be merely consultative, the Senate fiscal analysis estimated costs of only \$100,000 annually (from the Public Interest Research, Development, and Demonstration Fund—PIRDDF). However, based on this request (for nearly triple the originally estimated resources) and conversations with CEC staff, it is clear that the CEC sees a larger role for itself in SB 17-implementation particularly with regard to the POUs. As staff does not necessarily see an explicit role for the CEC in developing smart grid plans at the POUs (this is a federal mandate), the likely recommendation would be to deny all but \$100,000 and one position from this request. However, the Committee may wish to have the CEC further explain its rationale for additional resources (and for the use of the ERPA, as opposed to the PIRDDF).

Staff Recommendation: HOLD OPEN.

Action: Held Open.

5. FL: Augment Siting Program and Renewable Energy Development Support (TBL). The CEC's Siting, Transmission, and Environmental Protection Division (Division) licenses thermal power plants of 50 megawatts (MW) or more, as well as associated transmission line infrastructure, fuel supply lines, and other related facilities. As such, the Division must ensure compliance with the Warren-Alquist Act (which authorized the CEC) and the California Environmental Quality Act (CEQA).

Beginning in the aftermath of the 2000-01 state energy crisis, and accelerating with the adoption of the Renewable Portfolio Standard (RPS), siting applications for new electricity generation in California have increased dramatically over the last number of years. For example, since 1999, the CEC has approved 68 projects, more than double the number of projects approved in the preceding 25 years. According to the CEC, the current siting workload is four times higher than the historic average, 26 projects under active review, of which 15 are traditional natural gas-fired power plants and 11 are solar thermal power plants. In addition, the CEC is also reviewing two major amendments to existing licenses, and it expects to receive another six to eight power plant applications over the next six months alone.

Governor's Budget. The Governor requests nine positions and a two-year total of \$8.7 million—\$6.2 million in FY 2010-11—from the Energy Facility License and Compliance Fund to process electricity generation siting applications and to ensure the more rapid development of the Desert Renewable Energy Conservation Plan (DRECP). Of the requested amount, \$5.2 million in FY 2010-11 and \$3.8 million in FY 2011-12 would go to continued funding of a peak siting workload contract (valued at \$6.2 million in the current fiscal year).

Additionally, the Governor requests trailer bill language (TBL) to increase existing licensing fees and expand them to include renewable generation. The proposed increases include raising: (1) the standard fee from \$100,000 to \$250,000; 2) the per-megawatt fee from \$250 to \$500; and 3) the fee cap from \$350,000 to \$750,000.

Staff Comments. Last year the Legislature approved a total of \$5.1 million and 28.5 positions to address increased Siting Division workload. However, historically, noncompetitive salaries have made certain siting positions difficult for the CEC to fill and retain. So, more recently, Chapter 9, Statutes of 2010, Eighth Extraordinary Session [SBx8 34, Padilla] provided the CEC to pay recruitment and retention differentials to certain employees working in the Division. While CEC staff indicate the new differentials provided a significant boost to morale, and will hopefully lead to improved recruitment and retention (it is somewhat early to gauge the impact), the Division remains highly dependent upon contracted staff to address the current historic peak workload. Furthermore, the CEC expects these high-priced contract staff will be necessary for some years to come as siting applications can take many years to process. Thus, while the CEC deems it appropriate to continue using some contracts (rather than hire permanent staff to address workload that is not ongoing), it requests additional state staff to provide: (1) adequate oversight of the contracted help; and (2)

best value to the state by supplanting more costly contractors with less costly state personnel (where long-term workload justifies additional permanent staff).

While the Division hired twenty new staff in Fall 2009, filling most of the newly approved positions, there remain 18 Division vacancies, including seven (out of 50) Planners—the journey-level classification for licensing workload. CEC staff indicate that they are currently working with a contractor and the Department of Personnel Administration to develop a new classification structure for the entire CEC that will help to address the recruitment and retention problems in the Planner series classifications. However, in the meantime, while it is generally more economical to use civil service employees than to employ contractors, the current heavy workload has constrained the CEC's ability to train new staff, and thus the number of additional staff added at this particular time must be curtailed to take this into account. Even so, the Committee may wish to inquire as to why the CEC is not looking to focus more on adding supervisory-level positions in order to ensure that there is adequate oversight of contracted work and to prevent bottlenecks in the siting approval process.

With regard to the requested TBL, staff notes that the CEC proposal is largely consistent with the LAO recommendation to delete the existing fee-exemption for renewable projects. While originally intended to encourage development of renewable generation, the CEC estimates that the fee-exemption has resulted in foregone revenue to the Division of \$3.3 million since the end of 2007, at a time when the Division is unable to meet statutory application-processing deadlines due to lack of resources. Furthermore, the LAO points out that, viewed from the standpoint of the beneficiary pays principle, the fact that ratepayers support 88 percent of the Division's costs is inequitable. While the proposed fee changes would bring about more parity between the ratepayers and developers/operators in terms of supporting the Division's costs, staff notes that it would not achieve a 50/50 split (as might be deemed equitable). DOF staff have indicated that the Administration intends to monitor the effect of the fee changes on developer/operator behavior (in order to make sure that the changes do not actually result in decreased revenue), but intends to move toward a 50/50 cost-allocation in the future. Staff would only point out that the current Administration will leave office in November and there is great uncertainty about whether a future Governor will follow through on this commitment. Thus, the Committee may wish to determine what fee level would achieve parity between ratepayers and developers/operators and weigh the benefits versus the risks of enacting higher fees now.

Staff Recommendation: HOLD OPEN.

Action: *Held Open..*

8660 California Public Utilities Commission

The California Public Utilities Commission (PUC) is responsible for the regulation of privately owned "public utilities," such as gas, electric, telephone, and railroad corporations, as well as certain video providers and passenger and household goods carriers. The PUC's primary objective is to ensure adequate facilities and services for the public at equitable and reasonable rates. The PUC also promotes energy conservation through its various regulatory decisions.

Governor's Budget. The Governor's Budget proposes \$1.2 billion to support the CPUC in the budget year. This is approximately \$150 million less than estimated expenditures in the current year. This is due to a large reduction in the California High-Cost Fund B Administrative Committee Fund, a special fund. The commission does not receive any General Fund support.

Governor's Budget. The Governor's Budget includes \$1.4 billion (no GF) for support of the PUC, an increase of roughly \$200 million over current year expenditures, due primarily to an increase in the Universal Lifeline Telephone Service Trust Administrative Committee Fund.

ITEMS PROPOSED FOR VOTE-ONLY

1. BCP-2: Increase Compliance Audits of Utility Procurement Activities (Focus on Day-Ahead and Hour-Ahead Transactions). The Governor requests one position and \$85,000 from the PUC Utilities Reimbursement Account (PUCURA) to better evaluate the utilities' compliance with procurement rules for electric resources. Specifically, the PUC proposes to increase audits from less than 0.5 percent of quarterly transactions to approximately one percent, with a focus on the millions of dollars spent on day-ahead and hour-ahead transactions.

2. BCP-5 Rail Transit Safety Oversight. The Governor requests three positions and \$312,000 (Public Transportation Account, State Transportation Fund) for increased rail transit safety oversight, including: (1) better tracking of corrective action plans; (2) additional inspections of 12 existing rail transit systems and the dozens of new construction projects underway at any given time.

3. BCP-6: Pilot Test and Survey of Limited English Proficiency (LEP) Communications Customers. The Governor requests \$2.3 million (reimbursement authority) to conduct a customer satisfaction survey of limited English proficient customers of California communications utilities relative to the general English proficient population. A pilot may be conducted to develop sample design parameters from a limited number of customers in order to determine final design parameters for the survey, which will then be administered over the remainder of a two-year period to approximately 15,000 LEP customers. Carriers with \$10 million or more in annual intrastate revenue are ordered to provide reimbursement on a prorated basis.

4. BCP-9: Centralized Fines and Restitution Collections (Make Permanent Limited-Term Positions). The Governor requests three limited-term positions and \$162,000 (various special funds) originally approved in FY 2008-09 be made permanent in order to continue a pilot program for centralized fines and restitution collections. The pilot program was initiated in response to a State Controller's Office audit recommendation to address an internal control weakness.

5. BCP-10: Modernize Elevators at PUC Headquarters. The Governor requests a one-time augmentation of \$2.2 million (various special funds) to modernize seven 23-year old elevators in the PUC headquarters building. PUC staff indicate that problems with the elevators resulted in over 150 calls last year, resulting in costs in excess of \$25,000, and a consultant study (previously approved by the Legislature) determined that, while the elevators have an expected 30-year useful life, \$2.2 million in modernizations (e.g., install new motors) are required.

6. BCP-13: Comprehensive Energy Efficiency Residential and Non-Residential Programs (Implement AB 758). The Governor requests one position and \$112,000 (PUCURA) to implement Chapter 470, Statutes of 2009 [AB 758, Skinner and Bass]. AB 758 requires the CEC, in consultation with the PUC, to develop and implement (through regulations) a comprehensive program to achieve greater energy savings in existing residential and nonresidential building stock, including energy assessments, cost-effective energy efficiency improvements, financing options, public outreach, and education efforts.

7. BCP-14: Establish Net Surplus Compensation for Solar and Wind Distributed Generation (DG) Net Energy Metering Customers (Implement AB 920). The Governor requests 2.3 positions (including 0.3 one-year Administrative Law Judge) and \$242,000 (PUCURA) to conduct a ratemaking proceeding and ongoing program monitoring for a new Net Surplus Compensation Program, pursuant to Chapter 376, Statutes of 2009 [AB 920, Huffman], that would allow customers on Net Energy Metering tariffs to sell excess electricity to their electric utility after certain conditions are met.

8. FL: Technical Adjustment—Align Lease Revenue Bond Payments with Programs Housed in Main Headquarters Building. The Governor requests deletion of Items 8660-003-0412 and 8660-003-0461 and a corresponding increase of \$712,000 in Item 8660-003-0462 to reflect the relocation of Commission staff regulating transportation from the PUC headquarters building (meaning the funds that support these activities will no longer be billed for lease revenue bond payments on the headquarters facility).

9. BCP-7: Division of Ratepayer Advocate (DRA) – Energy Efficiency Programs and Activities. The Governor requests one position and \$96,000 (PUC Ratepayer Advocate Account) to ensure investor-owned utility energy efficiency programs are cost-effective for ratepayers. The DRA indicates that the approved 2010-12 energy

efficiency program budget for the four largest energy utilities is \$3.1 billion, a 61 percent increase in ratepayer investments over the previous cycle. The requested position would augment the two DRA positions currently assigned to energy efficiency program monitoring.

10.BCP-8: DRA – Energy Low Income Assistance Programs & Activities. The Governor requests one position and \$95,000 (PUC Ratepayer Advocate Account) to address expanding workload on energy low income assistance programs and activities, including the California Alternative Rates for Energy (CARE) program, the Low Income Energy Efficiency (LIEE) program, and a new rulemaking on the adoption of regulation related to arrearage management and shut-off prevention for residential customers of electricity and natural gas utilities. With nearly five million California energy customers projected to be low income by 2012, and utility investments in the above programs growing (e.g., CARE expenditures by the four largest utilities increased from \$126 million to \$818 million from 2001 to 2008), the DRA indicates the one position currently assigned to monitor these activities is insufficient to adequately serve ratepayers.

Staff Recommendation (for Vote-Only Items 1-10): APPROVE Items 1-8 listed above, but HOLD OPEN Items 9 and 10 due to questions from the Chair.

Action: APPROVED Items 2, 5, and 8 on a 3-0 vote. APPROVED Items 1, 3, 4, and 7 on a 2-1 vote (Cogdill voting no). HELD OPEN Items 6, 9, and 10.

ITEMS PROPOSED FOR DISCUSSION

1. BCP-1: Renewable Portfolio Standard (RPS) and Renewable Transmission. As discussed on March 18, 2010, when this Committee heard a similar item related to the Air Resources Board (ARB), though in conceptual agreement on a 33-percent RPS, the Governor and the Legislature remain at odds over how best to implement such a standard, and the Governor has plunged ahead, ordering the Administration to implement a 33-percent standard in the absence of legislative approval.

The LAO included the RPS issue in its *Analysis of the 2010-11 Budget Bill*, and the following is the bulk of the LAO's write-up with some staff edits for brevity:

Current RPS Law

RPS Standard Now Set at 20 Percent. Current law, as amended in 2006, requires each privately owned electric utility to increase its share of electricity generated from eligible renewable energy resources by at least one percent each year so that, by the end of 2010, 20 percent of its electricity comes from renewable sources.

Enforcing the RPS. Current law requires the California Public Utilities Commission (CPUC) to enforce compliance by the private utilities (commonly referred to as investor-owned utilities, or IOUs) with the 20 percent RPS. The CPUC is prohibited from ordering an IOU to procure more than 20 percent of its retail sales of electricity from eligible renewable energy resources.

Vetoed 2009 RPS Legislation. During the 2009 legislative session, the Legislature passed, and the Governor subsequently vetoed, a package of RPS-related bills. These bills—which included SB 14 (Simitian), AB 21 (Krekorian), and AB 64 (Krekorian)—together would have increased the RPS target for IOUs to 33 percent by 2020 and also made publicly owned utilities subject to the same RPS targets as these other electricity providers. In his veto messages, the Governor cited his policy concerns about the Legislature's approach to meeting a 33 percent RPS, a target which he nonetheless supported.

Administration's Recent RPS Activity Circumvents Legislative Authority

As discussed below, our review finds that over the last few years, the administration has been involved in a number of activities that, in effect, circumvent the Legislature's policy direction as reflected in current RPS law.

Governor's Two Executive Orders. In November 2008, the Governor issued an executive order calling for *all* providers of retail electricity (thereby including publicly owned utilities) to obtain 33 percent of their electricity from renewable sources by 2020. State government agencies were directed to "take all appropriate actions" to implement this target. In September 2009, after vetoing legislation that would have placed a 33 percent RPS target in statute, the Governor issued another executive order directing ARB to develop a regulation

“consistent with” a 33 percent renewable energy target. The executive order indicated that the administration believed that it had the legal authority to establish such regulations under the Global Warming Solutions Act of 2006 (commonly referred to as “AB 32”). The ARB currently is working to develop this regulation.

Executive Orders Cannot Replace or Circumvent Lawmaking. In a recent written opinion, the Legislative Counsel advised us that, as a general proposition, the Governor may not issue an executive order that has the effect of enacting, enlarging, or limiting legislation. In the context of the Governor’s September 2009 executive order, we are advised that the ARB may not adopt a renewable energy–related regulation that contravenes, changes, or replaces the statutory requirements of the current RPS law. According to Legislative Counsel, AB 32 does not authorize the ARB to adopt such a regulation. Since current RPS law is very prescriptive in its requirements, this prohibition would severely constrain the ARB in developing its regulation pursuant to the executive order. For example, we are advised by Legislative Counsel that the ARB could not develop a regulation that contravenes the current–law prohibition upon requiring an IOU to procure more than 20 percent of its electricity from renewable sources. Given this legal opinion, in our view it would clearly be inappropriate for the administration to circumvent the existing RPS law by attempting to implement a new renewable energy standard on its own authority.

Planning Activities. Despite these legal constraints, the administration has been involved in various planning activities that assume an RPS target that is different than the one established in current law. For example:

- The ARB’s plan to implement AB 32 (commonly referred to as the AB 32 Scoping Plan) includes a 33 percent RPS as one of its primary measures to achieve the state’s greenhouse gas emission reduction goals.
- Multiple Integrated Energy Policy Reports prepared by the California Energy Commission have evaluated the state’s ability to achieve a 33 percent RPS.
- The Renewable Energy Transmission Initiative planning group (an administration initiative involving multiple state energy and environmental agencies, public and private utilities, and environmental interests, among others) has conducted its planning work and analysis based on the assumption of the imposition of a 33 percent RPS target.
- The CPUC is moving forward with efforts to implement a 33 percent RPS with respect to the private utilities it regulates, through its Long–Term Procurement Plan process.

Budget Issues

Administration’s Spending Related to a 33 Percent RPS. Although the Legislature has not approved a budget request related explicitly to the evaluation

or implementation of a 33 percent RPS, the administration has spent significant resources for these purposes and has plans to continue this spending. The figure below summarizes these ongoing and proposed expenditures, which would total \$4 million in 2010–11 under the Governor’s budget proposal.

Administration’s 33 Percent RPS–Related Spending

(In Thousands)

	2009–10	2010–11
Air Resources Board		
Base budget	\$1,900	\$750
Proposed budget request	—	—
California Public Utilities Commission		
Base budget	\$553	\$423
Proposed budget request	— ^a	1,800
Totals	\$2,453	\$2,973

a Budget request for \$322,000 was denied by the Legislature.

The ARB estimates that it will spend \$1.9 million (from the Air Pollution Control Fund) in the current year and \$750,000 in the budget year to develop RPS–related regulations pursuant to the Governor’s executive order and the AB 32 Scoping Plan. No specific funding requests for this purpose have been submitted to the Legislature for the budget year. For CPUC, the *2009–10 Governor’s Budget* proposed a \$322,000 increase for the commission to begin the process of implementing a 33 percent RPS. The Legislature denied this budget request, finding that the proposal was premature, pending enactment of the enabling legislation to establish the 33 percent RPS. However, the CPUC has continued to conduct planning and analysis for a 33 percent RPS, and estimates that it will spend \$553,000 (from the Public Utilities Reimbursement Account) in the current year for this purpose (\$423,000 for staff costs and \$130,000 for consulting fees).

The CPUC plans to spend \$423,000 for staffing costs for these same purposes in the budget year from its existing budget resources. In addition, the Governor’s budget includes requests totaling \$1.8 million (from the Public Utilities Commission Utilities Reimbursement Account [PUCURA]) for CPUC to implement a 33 percent RPS in 2010–11. These requests include \$800,000 for seven personnel–years in staffing to implement a 33 percent RPS, and \$1 million annually (for each of the next five years) to contract for RPS program evaluation and technical assistance.

Administration’s Spending Plans Are Problematic. The administration’s spending plans discussed above are problematic for a couple of reasons. First and foremost, the expenditures by CPUC and ARB to develop RPS–related

regulations are premature given the current statute authorizing a 20 percent RPS. This regulatory activity should not occur until or unless the Legislature enacts a 33 percent standard, and only then should be implemented in a fashion consistent with any policy parameters for a revised RPS that have been established by the Legislature.

The ARB's expenditures to develop a higher RPS are particularly problematic. This is because the ARB is delving into a subject matter—renewable energy procurement—that is both outside its area of statutory responsibility and outside its area of technical expertise. The ARB is spending significant funding to work with CPUC to come up to speed on the subject matter of renewable energy procurement. In our view, this is an inefficient use of state resources. These ARB activities also constitute an inappropriate duplication of effort, given that CPUC plans to move ahead at the same time to implement a 33 percent RPS that would apply to the entities that it regulates.

Analyst's Recommendations. Given that the administration's spending plans are both premature and an inefficient and duplicative use of resources, we recommend that the Legislature take the following actions to remedy this situation. Specifically, we recommend that the Legislature:

- Deny CPUC's budget request for an additional \$1.8 million (from PUCURA) for RPS-related activity in the budget year.
- Reduce CPUC's PUCURA appropriation (Item 8660-001-0462) by an additional \$423,000—the amount the commission anticipates spending from its base budget to implement a 33 percent RPS in the budget year.
- Reduce ARB's Air Pollution Control Fund appropriation (Item 3900-001-0115) by \$750,000—the amount the board anticipates spending from its base budget to develop a renewable energy standard regulation in the budget year.
- At budget hearings, specifically direct CPUC and ARB to immediately cease spending funds for the purpose of developing a new renewable energy standard or similar requirement absent the enactment of legislation that authorizes such activities.

Staff Comments. On March 18, 2010, the Committee agreed unanimously with the findings of the Legislative Counsel and the LAO that the Governor has overstepped his authority in ordering the Administration to pursue what amounts to a 33-percent RPS. As a result, the Committee adopted the LAO recommendation and reduced the ARB budget accordingly. At that time, the Chair noted to the head of the ARB that the cessation of work on a 33-percent RPS, would go a long way toward allowing both parties to continue to negotiate an agreement (via a policy bill) in good faith. However, in the interim, staff is unaware of any such move toward accommodation by the Administration. As such, the staff recommendation will be to adopt the LAO recommendation as it pertains to the PUC.

Staff Recommendation: ADOPT the LAO recommendation on the PUC by: (1) denying the \$1.8 million augmentation requested for FY 2010-11; and (2) reducing the PUC's base budget by \$423,000 (Item 8660-001-0462). Additionally, again DIRECT the PUC and the ARB to cease spending funds for the purpose of developing a renewable energy standard or similar requirement absent the enactment of legislation that authorizes such activities.

Action: *APPROVED the LAO recommendation less \$1,000, on a 3-0 vote, in order to send the issue to Conference.*

2. BCP-3: Provide Staffing to Evaluate Advanced Energy Storage (AES). Many of the renewable energy resources available to California to meet its greenhouse gas reduction and RPS goals provide only intermittent electricity (e.g. when the sun is shining or the wind is blowing). However, this may not coincide with the timing of demand, and so an efficient and cost-effective means of storing energy would obviate the need to continue investing millions of dollars in infrastructure that is only needed when wind and solar production drops suddenly or when demand is peaking.

AES includes a variety of versatile resources that can help to integrate intermittent renewables into the grid by providing ancillary services such as emergency backup, generation (spinning reserve), and storage of off-peak generation for use at peak hours. Some examples of AES include: advanced batteries; pumped hydroelectric storage (that is, pumping water from a lower to a higher reservoir at night and reversing this process during the day, with the pump then being used as a turbine and the motor as a generator); and compressed-air energy storage (pumping air into a suitable enclosure where it is stored at high pressures and can later be used to drive turbines and generators).

Governor's Budget. The Governor requests three positions and \$310,000 (PUCURA) to evaluate the cost effective use of AES in support of various California policy goals, but primarily the RPS and AB 32.

Staff Comments. The PUC notes that the value of a particular AES resource will depend heavily on its location and application, and in the current policy environment, it may be difficult or impossible for an AES owner to capture all of the benefits that an AES facility can provide, thus creating a disincentive to investment. The PUC indicates that there is emerging interest (e.g., from PG&E) in large-scale storage technology, and proposes to use the requested resources to address issues related to large-scale and small-scale storage technologies, in a variety of applications and ownership structures, in order to better inform policies that provide proper incentives for AES owners and developers.

As the PUC notes, global experience with AES technologies is small. For example, there are two existing compressed-air energy storage facilities in operation worldwide. Additionally, it is unclear how much storage capacity is even needed. As a result, staff has concern that this request may be a bit premature. The Committee may wish the PUC to provide additional justification as to why the requested resources are needed now. Additionally, the Committee may wish the PUC to clarify how, and to what extent, the CEC and, particularly, the ISO, are involved in AES discussions. Staff notes that this request includes one position to serve primarily as a coordinator with state and non-state entities, but it is not clear on the state side whether other agencies are prepared to accommodate/respond to that coordination.

Staff Recommendation. DENY the request.

Action: Held Open. The Chair requested the PUC to continue conversations with LAO and Committee staff to better define the extent of the state's storage capacity need.

3. BCP-4: Bring Energy Efficiency Program Evaluation and Planning (Reimbursable Contracting Authority) On-Budget. By law, energy efficiency is the resource of first choice to meet California's growing energy demand, and investor-owned utilities (IOUs) operate various energy efficiency programs to help the state achieve its energy goals. As such, the PUC is responsible for monitoring these energy efficiency programs to ensure proper use of ratepayer funds.

Historically, the PUC has used technical consultants to perform independent evaluation and analysis of energy efficiency savings and other impacts associated with the ratepayer-funded IOUs programs and to provide technical assistance to PUC staff that oversee the evaluation of these programs. However, up until now those contracts were "off-budget." That is, while PUC staff managed the contracts, the utilities paid for the contracts directly (i.e., the contracts did not run through the PUC's reimbursable budget).

Governor's Budget. The Governor requests an increase of \$40 million in reimbursable consultant services to bring energy efficiency program evaluation, measurement, and verification (EM&V) "on-budget." Of the requested amount, \$3 million would be for technical expertise to help identify and develop energy efficiency program strategies and improvements to make existing IOU programs more effective; and \$37 million would be for technical assistance in developing, conducting, and monitoring EM&V.

Staff Comments. By allowing the PUC to contract directly for all EM&V projects, this request would reduce the potential for conflict of interest between the IOUs and the contractors who help PUC staff to monitor and evaluate the IOU's energy efficiency programs. Additionally, bringing these functions "on-budget" would promote transparency and provide the Legislature with greater fiscal oversight of the program. According to the PUC, if this proposal were to be denied, the same level of contracting would occur, but the PUC would simply not be in a position to pay for the contracts directly.

Staff Recommendation. APPROVE the request.

Action: APPROVED on a 3-0 vote.

4. BCP-11: State Electricity Regulators Assistance Project (ARRA). Federal ARRA initiatives have placed additional demands on the PUC to expedite activities focused on energy efficiency, smart grid, energy storage, demand response, alternative fuel vehicles, transmission, carbon sequestration, and electric vehicles. The Energy Division advises the Commissioners and Administrative Law Judges on these topics, and there are currently approximately 50 open proceedings and more than 100 related advice letters (informal compliance filings) in this area.

The PUC applied for and received a \$1.7 million grant from the United States Department of Energy to increase administrative support of the activities identified above.

Governor's Budget. The Governor requests four limited-term positions and \$745,000 (federal funds) to provide four years of increased staffing to support the following activities:

- Address the growing number of dockets and advice letters related to ARRA electricity topical areas;
- Facilitate timely consideration of electricity dockets and advice letters including implementation and program activities related to ARRA topical areas; and
- Create additional intern positions and better train existing staff to address complex energy regulatory issues.

Staff Comments. The PUC began implementing this proposal in the current year via the Control Section 28 budget adjustment process. Staff notes no significant concerns with this request, but, given the high threshold for accountability associated with ARRA funding, wanted to be sure this item was brought to the members attention should there be any questions.

Staff Recommendation. APPROVE the request.

Action: APPROVED on a 3-0 vote.

5. BCP-12: State Broadband Data and Development Grant Program (ARRA).

Increasingly, high-speed Internet access is no longer viewed as just a luxury, but as critical for economic development, education, and health care. For example, as mandated under ARRA, the Federal Communications Commission recently laid out an ambitious vision (a National Broadband Plan) for wiring the entire country with broadband in order to bring affordable, high-speed Internet connections to all Americans and make access much faster for people who already have broadband.

Last July the Governor designated the PUC as the sole entity in California eligible to apply for federal grant funding under the National Telecommunications and Information Association's (NTIA) State Broadband Data and Development Grant Program (State Broadband Mapping program). The PUC received \$2.4 million for two years of broadband mapping activities.

Governor's Budget. The Governor requests four limited-term positions and \$2.4 million (federal funds) to support four years of broadband mapping and planning efforts.

Staff Comments. In addition to providing the NTIA with the desired broadband data regarding availability, speed, and infrastructure for every broadband service provider, the PUC indicates the data collected under this proposal will be utilized to create a statewide, interactive broadband map that will be available to the public (via the Internet). This mapping effort will inform state policymakers in efforts to eliminate the digital divide.

The PUC began implementing this proposal in the current year via the Control Section 28 budget adjustment process. Staff notes no significant concerns with this request, but, given the high threshold for accountability associated with ARRA funding, wanted to be sure this item was brought to the members attention should there be any questions.

Staff Recommendation. APPROVE the request.

Action: APPROVED on a 3-0 vote.

6. Staff Issue: Landlords Charging Exorbitant Rates for Drinking Water in Certain Coachella Valley Communities. Last week in a discussion of the Department of Water Resources budget (April 22, 2010), the Committee heard a staff issue involving drinking water quality for a number of the unincorporated communities in the Coachella Valley (including Mecca, Thermal, and Oasis). It has come to staff's attention that, in addition to the health concerns posed by the level of naturally-occurring arsenic in the well water in that region, many members of these communities are being charged exorbitant rates by their water providers (e.g., the mobile home park owner) for the pumping of arsenic-laced water. For example, a number of residents have received monthly water bills in excess of \$500.

The PUC investigates water and sewer system service quality issues and analyzes and processes utility rate change requests. Additionally, the PUC works directly with utility management to track and certify compliance with PUC requirements. The PUC's objectives in regulating water utilities rest on four key principles: 1) safe, high quality water; 2) highly reliable water supplies; 3) efficient use of water; and 4) reasonable rates and viable utilities.

Staff Comments. It has come to staff's attention that in at least one instance, dating to June 2009, a community resident filed a complaint with the PUC. The defendant made a filing in November 2009, but the issue is still awaiting a PUC ruling. Therefore, the Committee may wish to inquire as to status of the complaint, and, in particular, when the resident(s) can expect a ruling.

Staff Recommendation: Informational only at this time.

Action: No action required. The PUC indicated that it was moving as quickly as possible to review this matter, but would likely not have a resolution until Summer 2010.

8570 Department of Food and Agriculture

The California Department of Food and Agriculture (CDFA) provides services to both producers and consumers of California's agricultural products in the areas of agricultural protection, agricultural marketing, and support to local fairs. The purpose of the agricultural protection program is to prevent the introduction and establishment of serious plant and animal pests and diseases. The agricultural marketing program promotes California's agricultural products and protects consumers and producers through the enforcement of measurements, standards, and fair pricing practices. Finally, the department provides financial and administrative assistance to county and district fairs.

Governor's Budget. The Governor's Budget includes \$377 million (\$130 million GF) for support of the CDFA, an increase of approximately \$38 million, due primarily to increased efforts to control and eradicate various agricultural pests (supported by increased industry assessments as well as federal funds).

ITEMS PROPOSED FOR VOTE-ONLY

1. BCP-1: Mitigate the Spread of the Asian Citrus Psyllid (ACP). The Governor requests 38 one-year limited-term positions, 117 temporary help positions, and \$19.8 million (federal funds) to fund detection and quarantine to prevent the spread of the ACP in California. These efforts to protect the million-dollar California citrus industry are supported by the United States Department of Agriculture (USDA).

2. BCP: California Citrus Pest and Disease Prevention Committee (Implement AB 281). The Governor requests seven positions and \$15 million (Agriculture Fund) to implement the California Citrus Pest and Disease Prevention Committee created pursuant to Chapter 426, Statutes of 2009 [AB 281, DeLeon]. This legislation was passed largely in response to the threat posed by the ACP (see Item 1 above) and the requested funding would be supported by an industry-approved assessment.

3. BCP: Citrus Nursery Stock Pest Cleanliness Program (Implement SB 140). The Governor requests two positions and \$250,000 (Agriculture Fund) to establish a Citrus Nursery Stock Pest Cleanliness Program to protect citrus nursery source propagative trees from diseases, pests, and other risks and threats. The requested expenditure would be supported by a new assessment on the industry.

4. BCP-3: Relocation and Consolidation of Programs: Annex Building and Westfield Downtown Plaza. The Governor requests a one-time augmentation of \$4.6 million (various funds) and an ongoing augmentation of \$116,000 to support the costs associated with the relocation of CDFA staff that is currently located in the Annex Building at 1215 O Street and at the Westfield Downtown Plaza at 560 J Street. The O Street facility was ordered vacated due to lack of fire and safety protection and the

Westfield Downtown Plaza has been subject to repeated burglaries (to which the building management has failed to adequately respond).

5. BCP: Fertilizing Materials: Organic Input Material (Implement AB 856). The Governor requests three positions and \$416,000 (Agriculture Fund) to monitor input material production processes at fertilizing material manufacturing facilities, consistent with Chapter 257, Statutes of 2009 [AB 856, Caballero], in order to ensure that “organic” foods are truly organic (and are not tainted by use of “non-organic” input materials in fertilizer).

6. BCP: Municipal Shelter Spay-Neuter Fund (Implement AB 2291). The Governor requests \$194,000 (Municipal Shelter Spay-Neuter Fund) to distribute, consistent with Chapter 328, Statutes of 2008 [AB 2291, Mendoza], grants to eligible municipal shelters for the purposes of providing low cost or free spay-neuter services. The grants are to be supported out of approximately \$196,000 in contributions to the above-named fund from voluntary contributions designated on the 2008 California Tax Return.

7. BCP-2: Continue Support of Board of Equalization (BOE) Tax Enforcement Program. The Governor proposes to make permanent an existing pilot project in which CDFA personnel at the Needles (I-40) border protection stations inspect cargo, photocopy pertinent documents, and pass along potential leads to the BOE for collection of use tax. In FY 2008-09 the project resulted in \$14.3 million in GF revenue, and the Administration anticipates similar revenue on an ongoing basis with the continuation of the program. To this end, the Governor requests three positions and \$244,000 (\$232,000 ongoing) in reimbursement authority (so that the CDFA can expend GF support provided by the BOE through an interagency agreement).

Staff notes that this item conforms to a related request in the BOE budget.

8. BCP-7: Expand the BOE/CDFA Tax Enforcement Program to Three Additional Stations. The Governor requests nine positions and \$706,000 (reimbursement authority) to expand the BOE/CDFA Tax Enforcement Program (see description above in item 2) to three additional border protection stations (Yermo, Truckee, and Hornbrook). The Administration estimates the requested resources would generate an estimated \$44.4 million increase in annual GF revenue.

Staff notes that this item conforms to a related request in the BOE budget.

Staff Recommendation (for Vote-Only Items 1-8): APPROVE the requests (1-8) listed above.

Action: APPROVED Items 1-6 on a 3-0 vote. APPROVED Items 7 and 8 on a 2-1 vote (Cogdill voting no).

ITEMS PROPOSED FOR DISCUSSION

BCP-5: Add Staff to State Board of Food and Agriculture. The State Board of Food and Agriculture (Board) consists of 15 members, appointed by the Governor, who each represent and further the interest of a particular portion of the agricultural industry. The Board acts as a consultative and policy body for farmers and consumers, and is empowered by law to investigate the needs of the agricultural industry and the functions of the CDFA in relation to such needs, and to confer and advise the Governor and the Secretary (of the CDFA) on how the agricultural industry and the consumer of agricultural products may best be served by the CDFA.

Governor's Budget. The Governor requests three positions and \$513,000 (Agriculture Fund). According to the CDFA, these positions would help the Board address critical environmental, community, and business issues, complex regulations, and conflicting priorities that confront 75,000 California farmers and ranchers and threaten the state's \$37 billion agricultural economy.

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

Staff notes concern with the lack of justification for the requested resources insofar as it is unclear that the three requested positions would provide significant added value given that many of the "critical issues" identified above already have very public/transparent regulatory and rulemaking processes (e.g., air quality, water quality, and climate change) that require the diverse opinions and interests of the state, including the agricultural community, are considered. Additionally, the CDFA has not adequately demonstrated that there is a "problem"—that is, that these existing processes have failed to incorporate the views and needs of farmers and ranchers into the policy-making process. The Committee may wish to request the CDFA to further clarify its justification in this respect; however, in the absence of additional, and compelling, information, and in light of the Committee's general prejudice against expanding the state payroll during the ongoing fiscal crisis, staff recommends this request be denied.

Staff Recommendation: DENY the request.

Action: DENIED the request on a 2-1 vote (Lowenthal voting no).

3540 Department of Forestry and Fire Protection

The California Department of Forestry and Fire Protection (DFFP), under the policy direction of the Board of Forestry, provides fire protection services directly or through contracts for timberlands, rangelands, and brushlands owned privately or by state or local agencies. In addition, DFFP: (1) regulates timber harvesting on forestland owned privately or by the state and (2) provides a variety of resource management services for owners of forestlands, rangelands, and brushlands.

DISCUSSION ITEM

Staff Issue: Funding and Fiscal Oversight of Fire Prevention and Fire Protection Expenditures.

Background. DFFP “fire protection” involves activities directly related to fighting an active fire, while “fire prevention” includes any number of activities aimed at reducing or eliminating the risk of a fire starting—including mechanical fuel reduction, prescribed burns, and defensible space inspections.

The proposed FY 2010-11 DFFP fire protection budget is approximately \$1 billion (including \$523 million GF—counting both base budget and Emergency Fund [E-Fund] resources—and another \$200 from the Governor’s proposed Emergency Response Initiative homeowner’s insurance surcharge—which would have to be backfilled by GF if it fails to gain sufficient votes [as it did last year]).

By comparison, the proposed DFFP fire prevention (and resource management) budget contains about \$30 million (a significant portion of which comes from GF).

Fire protection costs continue to rise, due in no small part to increased development in the wildland urban interface and the concomitant need to protect life and property from wildfires in these areas, and the DFFP’s increasing role in the state as an all-purpose emergency response agency. Given the state’s ongoing fiscal woes and the fact that fire protection and prevention costs are predominately borne by the GF, it is worth investigating whether fiscal oversight is adequate and whether each dollar is being spent optimally.

Staff Comments. In the stead of a lengthy staff write-up, the LAO will provide a hand-out that will frame several items for the Committee’s consideration and provide various recommendations. These items include:

- **E-Fund** – The DFFP E-Fund is intended to pay large incident fire-fighting costs. Is this reflected in the Governor’s Budget? Does the Legislature currently have adequate oversight of E-Fund expenditures?
- **Fire Protection v. Fire Prevention** – “An ounce of prevention is worth a pound of cure.” Are we currently budgeting the right amounts for fire protection and fire prevention, or is there a more optimal allocation of scarce GF?

- **Defensible Space Inspections** – When the Legislature signed-off on a 2006 memorandum of understanding to approve year-round staffing and the extension of the firefighter workweek, the expectation was that increased DFFP staffing would lead to increased defensible space inspections in the off-peak season. Has this occurred, and have these additional staff hours been maximized to prevent fires during the rest of the year? (Staff notes that the DFFP has not yet submitted the statutorily required fire prevention report that was due on January 1, 2010.)
- **Schedule A Agreements** – The DFFP commonly contracts with local government for the department to provide local fire protection and emergency services. Is the state receiving fair compensation for these agreements?

Staff Recommendation: Request LAO, DOF, and DFFP to work with staff to formulate a set of actions, for adoption at a future hearing, that will improve legislative fiscal oversight of the DFFP fire protection and fire prevention activities and better optimize the expenditure of limited GF resources.

Action: No action required; however, the Committee adopted the staff recommendation.

SUBCOMMITTEE NO. 2

Agenda

S. Joseph Simitian, Chair
Dave Cogdill
Alan Lowenthal



Agenda – Part A

Hearing Outcomes

Senators present at hearing: Simitian and Lowenthal

Day: Thursday May 6, 2010
Time: 9:30 am or upon adjournment of session
Room: Rose Ann Vuich Hearing Room (2040)

Consultant: Brian Annis

Transportation

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2720 California Highway Patrol

Department Overview: The mission of the California Highway Patrol (CHP) is to ensure the safe and efficient flow of traffic on the state's highway system. The CHP also has responsibilities relating to vehicle theft prevention, commercial vehicle inspections, the safe transportation of hazardous materials, and protection and security for State employees and property.

Budget Summary: The Governor proposes total expenditures of \$2.0 billion (no General Fund) and 11,494.4 positions, an increase of \$57 million and an increase of 205 positions.

Activity: (funding in millions):

Activity	2009-10	2010-11
Traffic Management	\$1,676	\$1,729
Regulation and Inspection	199	204
Vehicle Safety	45	46
Administration	306	307
TOTAL	\$1,921	\$1,977

Major Funding Sources (funding in millions):

Fund Source or Account	2009-10	2010-11
Motor Vehicle Account (MVA)	\$1,724	\$1,779
State Highway Account (SHA)	59	60
Reimbursements	113	114
Federal funds	19	18
Other special funds (no General Funds)	6	6
TOTAL	\$1,921	\$1,977

Changes since the January 10, 2010, Governor's Proposed Budget: The Administration submitted two April 1, Finance Letters that would increase expenditures by \$6.7 million (\$2.8 million Motor Vehicle Account), with no change to authorized positions. The Administration submitted four May Capital Outlay Finance Letters that would decrease planned expenditures by \$2.4 million. Additionally, the Administration has indicated expenditure savings in 2009-10 which are not included in the January 10 numbers.

April 15, 2010, Hearing: The Subcommittee heard CHP issues on April 15 and left some issues open for further analysis and review. The issues in this agenda are both the remaining April 15 issues and the new May Capital Outlay requests.

Issues for Discussion and Vote:

- 1. Officer Staffing Augmentation (BCP #18).** The Governor requests \$17.8 million (\$28.5 million ongoing) to add 180 CHP Officer positions (of this number, 85 uniformed positions would be added in 2010-11 and 95 would be added in 2011-12). The funding level includes about \$4.8 million for associated vehicles and equipment. This issue was heard at the April 15, 2010, Subcommittee hearing, but left open for review of the Uniformed Staffing Study.

Background: Beginning in 2006-07, the Legislature started approving annual increases in CHP Officer positions. Through this process, about 600 Officers have been added, to bring the total number of authorized Officer positions to 6,491. With this year's request, the number of Officers added since 2006-07 would rise to 780 and the total number of Officers would rise to about 6,671.

Outcome for Traffic Safety: As the Legislature has approved new CHP positions over the past four years, the Subcommittee has discussed goals and performance measures with the CHP. One goal was to staff all commands on a 24/7 basis – this goal has been achieved with the Officers approved in recent years. The BCP includes various measures of traffic outcomes, such as fatal collisions – that statistic was on the rise through 2005, but has since been falling (the annual number of deaths was 2,141 in 1998, it rose to 2,736 in 2005, but it has fallen to 2,091 in 2008).

Uniformed Staffing Study: The CHP distributed the Staffing Study after the April 15 hearing. The study seeks to quantify the benefit gained from a new Officer. For example, each new Officer, on average, could be expected to each month produce two additional driving under the influence (DUI) arrests, 47 citations, 13 accident-related activities, three traffic-control activities, 11 assists to CHP and/or other government agencies, 19 partner assists, 25 responses to calls for service, and 11 verbal warnings. The other major question, involved the optimal staffing level for the CHP. The study sought to answer this question by suggesting that staff should be increased until the industry standard time allocation is achieved of 33.3 percent encumbered enforcement activities, 33.3 percent administration, and 33.3 percent proactive patrol. The report indicates an additional 2,730 Officer positions would be needed to achieve this 33/33/33 time allocation.

Staff Comment: The correlation between recent staffing increases and recent improvement in traffic safety statistics, provide one justification for new CHP staff. The Uniformed Staffing Study may provide a tool for analysis going forward, but the availability of budget funds and continued improvements in safety statistics may be more determinate.

Staff Recommendation: Approve the budget request.

Action: *Approved on a 2 – 0 vote.*

- 2. Homeland Security Augmentation / License Plate Recognition System (April FL #1):** The Administration requests a permanent augmentation of \$3.9 million (federal funds) to allow the CHP to expend grant revenue from the federal Department of Homeland Security (DHS), to be distributed via the California Emergency Management Agency (CalEMA). These grants will be used to acquire security equipment and to provide training for coordinating the state security efforts with federal agencies. Items purchased would include commercial radiation detection devices, night vision goggles, and license plate recognition systems.

License Plate Recognition (LPR) System: Of the \$3.9 million requested, \$2.0 million would fund the purchase of 100 mobile LPR systems strategically located throughout the state and integrated into one LPR network. The CHP indicates this equipment could help track down a suspect, such as in an Amber Alert situation. The CHP also notes, the data would be retained “for a time.” Therefore, the system would also store license plate data for every vehicle that passes by an LPR. The CHP indicates they already have some LPR units in operation.

Staff Comments: Last year, this Subcommittee reviewed a Department of Motor Vehicles (DMV) budget request to implement facial-recognition software. The Subcommittee voted to add budget bill language that prohibits expenditure for this purpose unless subsequent legislation authorizes use of this technology. This CHP budget raises similar privacy issues. The Subcommittee may want to consider budget bill language or trailer bill language to place in law certain CHP policies that are meant to provide privacy protection.

Trailer Bill Language for LPRs: The following key privacy-protection provisions of the CHP’s LPR policy could be placed into statute to provide greater transparency to the public and continued privacy protections going forward.

- License plate data captured by LPRs shall be deleted after 72 hours.
- No LPR data shall be sold, or made available to any party without a legitimate law-enforcement purpose.
- The CHP shall monitor internal use of the data to ensure no unauthorized use.
- Annual reporting on LPR practices and usage, including any changes to policy. (For efficiency, it may be desirable to combine this report with the existing annual auto-theft report).

Staff Recommendation: Approve the request with the addition of trailer bill language to include the above components.

Action: *Approved request, plus trailer bill language, on a 2 – 0 vote.*

- 3. Capital Outlay Finance Letters (submitted May 3, 2010):** The Administration submitted four new Finance Letter requests on May 3, all related to capital outlay projects.
- **Santa Fe Springs Area Office – Reappropriation (Acquisition):** The Administration requests a reappropriation of \$4.2 million (Motor Vehicle Account) to acquire land for the Santa Fe Springs Area Office replacement project. Acquisition funding was originally provided in the 2007-08 budget, but the land purchase has been delayed. The Administration indicates it is now back on track to purchase the land in 2010-11 and also proceed to the working-drawing phase (\$1.3 million was approved for this at the April 15th, 2010, hearing). The Administration will likely submit a Capital Outlay Budget Change Proposal (COBCP) for 2011-12 requesting approximately \$19.6 million for construction.
 - **Mojave, Fresno, and Grass Valley (Build-to-Suit Lease Projects):** The Legislature has previously approved the Administration's request to pursue build-to-suit lease agreements for new field offices in Mojave, Fresno, and Grass Valley. The Administration requests to add budget bill language to provide CHP the option of entering into a capitalized lease. Current law allows a straight lease with options to buy on a fixed timeline. With a capitalized lease, the CHP could negotiate to own the property at the end of the lease term.
 - **CHP Enhanced Radio System Tower Projects (Acquisition, Preliminary Plans, Working Drawings, and Construction):** The Administration has two May Letters related to the radio upgrade project, which was discussed at the April 15 hearing. The requests involve adjustments to the timelines, and sometimes different locations, or options, for tower replacement or lease. On net, the requests indicate additional savings of \$2.4 million over the previous cost estimates.

Staff Recommendation: Approve these requests.

Action: *Approved requests on a 2 – 0 vote.*

2740 Department of Motor Vehicles

Department Overview: The Department of Motor Vehicles (DMV) regulates the issuance and retention of driver licenses and provides various revenue collection services. The DMV also issues licenses and regulates occupations and businesses related to the instruction of drivers, as well as the manufacture, transport, sale, and disposal of vehicles.

Budget Summary: The Governor proposes total expenditures of \$954 million (no General Fund) and 8,477 positions, an increase of \$61 million over the revised 2009-10 level and an increase of 35 positions. The year-over-year budget change is primarily explained by a \$67 million spending reduction in 2009-10 due to furloughs and other employee compensation / retirement adjustments.

Activity: (in millions):

Activity	2009-10	2010-11
Vehicle/vessel identification and compliance	\$502	\$529
Driver licensing and personal identification	233	254
Driver Safety	111	120
Occupational Lic. And Investigative Services	45	49
New Motor Vehicle Board	2	2
Administration (distributed)	(100)	(107)
TOTAL	\$893	\$954

Major Funding Sources (in millions):

Fund Source or Account	2009-10	2010-11
Motor Vehicle Account (MVA)	\$502	\$553
Motor Vehicle License Fee Account (MVLFA)*	319	325
Reimbursements	15	14
State Highway Account (SHA)	49	56
Federal funds	2	3
Other special funds (no General Funds)	6	3
TOTAL	\$893	\$954

Changes since the January 10, 2010, Governor's Proposed Budget: The Administration submitted three April 1, Finance Letters that would increase expenditures by \$4.9 million (no General Fund), with no change to authorized positions.

April 15, 2010, Hearing: The Subcommittee heard DMV issues on April 15 and left some issues open for further analysis and review. The issues in this agenda are those remaining April 15 issues.

1. Capital Outlay - Construction or Renovation of State-owned Facilities. The Subcommittee heard the below three capital outlay requests at the April 15, 2010, hearing, but left the issues open for further analysis.

- **Oakland Field Office Reconfiguration (Working Drawings and Construction):** \$2.2 million is requested for 2010-11 (\$155,000 is requested for working drawings and \$2.1 million is requested for construction). The Legislature previously approved \$145,000 for preliminary plans. This project is related to a 2008-09 BCP to consolidate the Oakland telephone service center into a new Central Valley facility. With the space opened up in the existing Oakland facility, the DMV would then reconfigure the second floor of the existing Oakland field office to house a DMV Business Service Center.
- **Fresno DMV Field Office Replacement Project (Working Drawings and Construction):** \$19.9 million is requested for 2010-11 (\$1.2 million for working drawings and \$18.7 million for construction). The Legislature previously approved \$912,000 for preliminary plans. This project will replace the existing facility at 655 West Olive Avenue that is 46 years old and is deficient in size and does not comply with current safety and accessibility codes. The DMV intends to meet a Leadership in Energy & Environmental Design (LEED) silver certification.
- **Redding Field Office Reconfiguration (Working Drawings and Construction Phase):** \$3.1 million is requested for 2010-11 (\$237,000 for working drawings and \$2.9 million for construction). The Legislature previously approved \$258,000 for preliminary plans. This project would add capacity to the existing office by adding additional production terminals and lobby space.

Staff Comment: At the time of the April 15, 2010, hearing, the LAO was recommending approval of funding for working drawings, but recommending that approval of funding of construction be deferred until the 2011-12 budget process. The LAO did not believe that deferring the construction funding would delay the projects, but the Administration testified at the hearing that deferring construction funding could slow the project down by two or three months. The Subcommittee held the issue open and asked for further review.

Revised LAO Recommendation: The Legislative Analyst has withdrawn its recommendation to defer approval of construction funding until 2011-12, and now raises no concerns with the construction requests. Further discussions with the Administration suggest the projects should be ready for construction funding in the later part of 2010-11.

Staff Recommendation: Approve these requests.

Action: *Approved requests on a 2 – 0 vote.*

- 2. Budget Bill Language for Radio Frequency Identification (RFID).** The DMV testified at the April 15, 2010, hearing that the department has no plans to utilize RFID technology. However, no statutory provisions prevent the department from going forward with the technology. Similar to action adopted by the Subcommittee last year for facial-recognition biometric software, the Subcommittee may want to add budget bill language for RFID to prohibit use of the technology now or in the future without legislative authorization.

Staff Comment: Departments sometimes adopt new technologies or new processes by redirecting already-budgeted resources. In these cases, the Legislature and the public may not be aware of these changes. The language adopted last year for biometric software would not preclude further review of the benefits of this technology, but it would require use of the technology to first be reviewed by the Legislature via a budget request or policy process. Either avenue would allow for public participation and comment.

Draft RFID Budget Bill Language

Provision X

No funding is included in the department's budget to purchase, install, or use radio frequency identification (RFID) technology. For the purpose of this provision, RFID technology is the use of an object applied to or incorporated into a product, such as a driver license or identification card, for the purpose of identification and tracking using radio waves. Any purchase or use by the department, in the 2010-11 fiscal year and thereafter, of RFID technology shall be permitted only upon enactment of subsequent legislation that authorizes such technology and use of such technology.

Staff Recommendation: Approve the above budget bill language.

Action: *Approved budget bill language on a 2 – 0 vote.*

SUBCOMMITTEE NO. 2

Agenda

S. Joseph Simitian, Chair
Dave Cogdill
Alan Lowenthal



Hearing Outcomes (see Subcommittee actions under individual issues)

AGENDA – Part B

Thursday, May 6, 2010
9:30 a.m. or Upon Adjournment of Session
Rose Ann Vuich Hearing Room (2040)

Consultant: Bryan Ehlers

Resources & Environmental Protection

OPEN ISSUES

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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 916-324-9335. Requests should be made one week in advance whenever possible.

Items Proposed for Vote-Only

California Conservation Corps

1. BCP-6: Fleet Replacement. The Governor requests a one-time \$2.9 million augmentation to Collins Dugan Reimbursement Account in 2010-11 and \$1.4 million in 2011-12 to fund replacement of 54 crew carrying vehicles (CCVs) and 20 vans.

Staff Comments. This item was originally heard on March 4, and held open in order for the Administration to provide additional detail to demonstrate that the request would be cost-effective (i.e., the cost of new vehicles would be less than the maintenance and repair costs to keep existing vehicles running). The CCC provided additional back-up and staff no longer has concerns.

2. FL-1: Increase Collins Dugan Reimbursement Account Authority. The Governor requests a \$1.4 million increase in Collins Dugan Reimbursement Account authority so that the CCC can carry out additional work it anticipates receiving from several federal and state agencies.

Department of Resources Recycling and Recovery

3. FL-3: Technical Adjustment to Add Transfer Language to the Budget Bill. The Governor requests a technical adjustment to correct an oversight that left the annual \$5 million transfer from the Integrated Waste Management Account to the Solid Waste Disposal Site Cleanup Trust Fund out of the Budget Bill.

Department of Boating and Waterways

4. FL-COBCP-4: Substitute Folsom Point Project for Rattlesnake Bar Project. The Governor requests the substitution of the one Folsom Lake State Recreation Area project (Folsom Point) for another (Rattlesnake Bar) that was previously included in the Governor's Budget (and approved by the Committee in a prior hearing) as part of a \$5.4 million minor capital outlay package. The Department of Parks and Recreation has raised concerns with the increased staffing costs that would stem from the Rattlesnake Bar project improvements and the associated extension in facilities operations (three to four months).

State Coastal Conservancy

5. FL-COBCP-2: Waukell Creek Habitat Restoration Program. The Governor requests \$325,000 (special fund) to implement the Waukell Creek Habitat Restoration Project in Del Norte County.

Department of Food and Agriculture

6. FL-1: Farm Bill 2008 – Federal Fiscal Year (FFY) 2011 Spending Plan. The Governor requests ~~eleven permanent positions and 28 temporary help positions and~~ \$12.7 million (federal funds), which is the amount that the CDFA received for FFY 2010.

Staff Recommendation (for Items 1-6): APPROVE Items 1-6 as proposed.

Action: Approved Items 1-6 on a 2-0 vote (Cogdill absent).

Bond Requests Proposed for Vote-Only

Throughout the Spring, the Committee has held open requests for bond funding in order to obtain more information about the state's bond cashflow status and to better understand the degree to which the anticipated availability of bond proceeds (supply) would be sufficient to meet demand (both in terms of ongoing funding for existing projects, but also for proposed new appropriations and reappropriations).

The bond "picture" recently grew significantly clearer with the release of Budget Letter (BL) 10-09 by the Department of Finance (DOF), which provided a Bond Sale Plan (Plan) based on: (1) bond project cashflow needs reported by departments in February 2010; and (2) anticipated 2010 bond sales (up to \$7 billion in the spring, and another \$7 billion in the fall). The BL authorized departments and agencies to start planning to fund bond expenditures (e.g., projects) up to the amounts identified in the Plan in anticipation that the bonds will be issued as proposed. While the DOF indicated that the Plan was subject to change based on new information, the BL was largely geared to provide departments with the certainty of bond funding (cash) necessary to move forward with existing projects that were put on hold with the late 2008 bond freeze, and with new projects that have generally not received authorization over the past year and a half.

Staff Comments. While, the Legislature will undoubtedly need to continue to monitor the situation, based on the aforementioned Plan (see Appendix A) and the additional transparency of process provided by the BL, staff recommends approving bond proposals where there are/were no other outstanding concerns, including, but not limited to, the following items:

Natural Resources Agency

1. FL-2: Proposition 40 Reappropriation (BBL). The Governor requests the period of availability for the Proposition 40 California River Parkways reappropriation item (for funds originally appropriated in 2005) be extended until 2013.

California Conservation Corps

2. BCP-1: CCC Prop 84 Funding (BBL). The Governor requests the following adjustments to CCC Prop 84 funding:

- Reappropriate approximately \$3 million (the unencumbered balance of Item 3340-001-6051 of the Budget Act of 2008).
- Revert \$3 million over-appropriated in Item 3340-001-6051 of the Budget Act of 2009.
- Reappropriate the unencumbered balance of Item 3340-001-6051 of the Budget Act of 2009.
- Approve BBL extending the encumbrance period for the above reappropriations from one year to three years (i.e., make them available until June 30, 2013).

3. BCP-3: Local Corps Prop 84 Project Funds (BBL). The Governor requests reappropriation of the balance of FY 2009-10 Prop 84 funding for the local corps. Additionally, the Governor requests BBL to extend the period of use for these funds to five years (three years to encumber and two to liquidate).

4. FL-2: Local Corps Prop 84 Project Fund Reappropriation (BBL). The Governor requests reappropriation of the balance of FY 2008-09 Prop 84 funding for the local corps. Additionally, the Governor requests BBL to extend the period of use for these funds to five years (three years to encumber and two to liquidate).

5. FL-COBCP: Reappropriation of Delta Service District Center Funding (BBL). The Governor requests reappropriation of working drawings and construction phase funding for the Delta Service District Center.

California Tahoe Conservancy

6. BCP-2: Fund Shift to Maintain Baseline Support Budget. The Governor requests \$49,000 in Proposition 50 (Prop 50) funding to replace exhausted Proposition 12 program delivery funds that historically supported CTC baseline activities.

7. BCP-3: Implementation of the Environmental Improvement Program (EIP) for the Lake Tahoe Basin. The Governor requests \$50,000 in Prop 50 local assistance funding to support ongoing implementation of the EIP.

8. COBCP-1: Implementation of the EIP for the Lake Tahoe Basin—Reappropriation Only (BBL). The Governor requests an extension of the encumbrance period for frozen bond funds originally appropriated in the 2007 Budget Act (estimated at \$9.2 million from Prop 84) and the 2008 Budget Act (estimated at \$1.4 million from Proposition 12 and \$4.2 million from Prop 84).

Wildlife Conservation Board (see also San Joaquin River Conservancy)

9. COBCP-4: Rangeland, Grazing, and Grassland Protection—Prop 84 Reappropriation. The Governor requests reappropriation of the unencumbered balance (approximately \$12.1 million) of the original 2007 Prop 84 appropriation (which was \$14.3 million) to fund conservation easements that preserve and protect valuable rangeland, and grasslands that ensure continued wildlife, water quality, watershed, and open space benefits to the people of California.

10. COBCP-5: Oak Woodlands Conservation Program—Prop 84 Reappropriation. The Governor requests reappropriation of the unencumbered balance (approximately \$13 million) of the original 2007 Prop 84 appropriation (which was \$14.3 million) to fund long-term private and public stewardship and conservation of oak woodlands.

11.COBCP-6: Colorado River Acquisition, Protection, and Restoration Program—Prop 50 Reappropriation. The Governor requests reappropriation of the unencumbered balance (approximately \$9.9 million) of the original 2003 Prop 50 appropriation (which was \$32.5 million) to fund ongoing efforts in acquiring lands to preserve and protect valuable wildlife resources and working to fulfill the state obligation for regulatory requirements related to California’s allocation of water supplies from the Colorado River, including restoration of the Salton Sea and related activities.

12.COBCP-7: Proposition 12 Reappropriation. The Governor requests reappropriation of the unencumbered balance (approximately \$2.4 million) of the original 2006 Proposition 12 (Prop 12) appropriation (which was \$15.2 million) to fund various activities, including: (1) restoration or acquisition of habitat for threatened and endangered species; (2) restoration, acquisition, or protection of habitat or habitat corridors for threatened, endangered, or fully protected species; and (3) acquisition of certain real property subject to a natural community conservation plan (NCCP).

13.COBCP-8: NCCP Implementation—Prop 84 Reappropriation. The Governor requests reappropriation of the unencumbered balance (approximately \$11.3 million) of the original 2007 Prop 84 appropriation (which was \$25 million) to fund acquisitions of key habitat lands that would contribute to the successful implementation of regional NCCPs.

14.FL-1: Ecosystem Restoration on Agricultural Lands Projects—Prop 84 Reappropriation. The Governor requests reappropriation of the unencumbered balance (approximately \$3.4 million) of the original 2007 Prop 84 appropriation (which was \$4.8 million) to provide grants to farmers to assist them in integrating agricultural activities with ecosystem restoration and wildlife protection.

State Coastal Conservancy

15.COBCP-2: Resources Enhancement and Development—Prop 84. The Governor requests \$32.8 million for various SCC programs that improve various coastal water bodies and promote public access and enjoyment of these areas, including the following: (1) \$10.2 million to the San Francisco Bay Area Conservancy; (2) \$6.3 million to Monterey Bay watersheds; (3) \$5.7 million to San Diego Bay and watersheds; and (4) \$10.6 million to statewide conservancy programs.

16.COBCP-3: Prop 40 Appropriation and Reappropriations. The Governor requests: (1) \$2.1 million in Prop 40 funding to acquire, protect, and enhance coastal watershed resources and to grant funds for this purpose to public agencies and nonprofit organizations; and (2) multiple reappropriations of Prop 40 unencumbered balances (totaling approximately \$1.8 million) and associated anticipated reimbursements (totaling approximately \$5.2 million) for various projects.

17.COBCP-4: Prop 50 Reappropriations. The Governor requests reappropriation of unencumbered balances (approximately \$1.8 million total) of the \$120 million originally allocated to the Coastal Conservancy in Prop 50 for the purposes of watershed protection and for the acquisition and development of facilities to promote public access to, and participation in, the conservation of land, water, and wildlife resources.

18.COBCP-5: Prop 12 Appropriation and Reappropriations. The Governor requests: (1) \$5.5 million in Prop 12 funding to implement restoration projects in Santa Monica Bay; and (2) multiple reappropriations of Prop 12 unencumbered balances for projects up and down the California coast.

19.FL-COBCP-1: Reappropriation of Proposition 50. The Governor requests reappropriation of approximately \$5.5 million in Proposition 50 funding that was originally appropriated in 2005, but has not been encumbered due to delays from the bond freeze.

20.FL-COBCP-2: Revise Proposition 40 Reappropriations—San Francisco Bay Conservancy Program. The Governor requests reversion of \$2 million Proposition 40 that was originally appropriated in 2002 in order to ensure ample funding is available to meet the Conservancy's FY 2010-11 baseline support budget. Additionally, it is requested that a reappropriation included in the Governor's budget be deleted as a technical correction.

Santa Monica Mountains Conservancy

21.COBCP-1: Acquisition & Local Assistance Grants – Upper Los Angeles River Watershed and Santa Monica Bay and Ventura County Coastal Watersheds. The Governor requests \$4 million in Prop 84 funding for protection and restoration of rivers, lakes and streams, their watersheds and associated land, water, and other natural resources; and the protection of beaches, bays and coastal waters, and watersheds.

San Joaquin River Conservancy (SJRC)

22.COBCP-1: SJRC Acquisitions. The Governor requests \$2.7 million in Prop 84 funding (the balance of unappropriated authorized funds for this purpose), as an appropriation to the Wildlife Conservation Board (WCB) who will administer grants and projects, to develop the San Joaquin River Parkway, to preserve and enhance its biological diversity, protect the cultural and natural resources, and provide educational and recreational opportunities to the public, through acquisitions and conservation easements.

23. COBCP-2: SJRC Environmental Restoration, Public Access, and Recreation. The Governor requests \$676,000 in Prop 84 funding (the balance of unappropriated authorized funds for this purpose) and \$2 million in reimbursement authority to

implement public access, recreation, and environmental restoration projects along the San Joaquin River Parkway. As with the request above, the SJRC will work through the WCB to enhance priority habitat, update the Master Plan, build new trailhead staging facilities and partially fund the River West and Riverbottom Park projects. The proposal would allow expenditure of other state and non-state funds of up to \$2 million for these purposes (if received).

24. Wildlife Conservation Board (WCB) COBCP-3: SJRC—Proposition 40 Reappropriation. The Governor requests reappropriation of the unencumbered balance (approximately \$11.6 million) of the SJRC's original 2004 Prop 40 appropriation (which was \$11 million Prop 40 and \$1 million reimbursement authority) to fund complex land acquisitions and public access and recreation improvement projects that have been in progress for many years, but were recently delayed by the 2008 bond freeze and employee furloughs.

25. WCB COBCP-9: SJRC Proposition 84 Reappropriation. The Governor requests reappropriation of the unencumbered balance (approximately \$11 million) of the original 2007 Prop 84 appropriation (which was \$10 million Proposition 84 and \$1 million reimbursement authority) to fund complex land acquisitions and public access and recreation improvement projects that were recently delayed by the 2008 bond freeze and employee furloughs.

Baldwin Hills Conservancy

26. COBCP-1: Proposition 40 Reappropriation for Acquisition & Improvement Program. The Governor requests reappropriation of approximately \$4.8 million in Proposition 40 funding (originally appropriated in 2003) to acquire and develop open space in the Baldwin Hills area and further the expansion of the Kenneth Hahn State Recreation Area.

27. FL-COBCP-1: Acquisitions and Improvements—Proposition 40 and 84 Reappropriations. The Governor requests reappropriation of the unencumbered balances of: (1) \$3 million from a 2002 Prop 40 appropriation; and (2) \$3 million from a 2007 Prop 84 appropriation. The combined amount would be used to acquire and develop open space in the Baldwin Hills area.

28. FL-1: Prop 84 Program Delivery Staff. The Governor requests limited-term re-authorization for one limited-term bond program support position that is set to expire at the end of the current fiscal year. The position would continue to help the conservancy implement watershed protection projects.

Coachella Valley Mountains Conservancy

29. COBCP-1: Land Acquisition. The Governor requests reappropriation of \$5.5 million in Proposition 84 funding (the balance of unappropriated authorized funds for this purpose) to acquire and protect mountainous and natural community conservation plan lands.

Staff Recommendation (for Items 1-29): APPROVE bond funding in Items 1-29 as proposed.

<i>Action: Approved Items 1-29 on a 2-0 vote (Cogdill absent).</i>

3600 Department of Fish and Game

The Department of Fish and Game (DFG) administers programs and enforces laws pertaining to the fish, wildlife, and natural resources of the state. The Fish and Game Commission sets policies to guide the department in its activities and regulates fishing and hunting. The DFG currently manages about 850,000 acres including ecological reserves, wildlife management areas, hatcheries, and public access areas throughout the state.

Governor's Budget. The Governor's Budget includes \$385 million for support of the DFG, a reduction of \$25 million, or 6 percent, over current year expenditures. This reduction is primarily due to reduction in GF support.

ITEMS PROPOSED FOR VOTE-ONLY

1. BCP-1: Replace Major Stockton Facility. The Governor requests \$1.6 million in FY 2010-11 and \$525,000 ongoing to move 130 staff out of the current, overcrowded facility and into one that meets fire, life, and safety requirements. Moving costs, new workstations, and other one-time costs would be covered by \$550,000 (FGPF-ND) and \$550,000 in federal funds. The anticipated increase in ongoing costs for facilities operations (\$525,000) would be covered by federal funds (\$263,000) and reimbursements from the Department of Water Resources (\$262,000).

Staff Comments. The DFG has adequately addressed staff concerns previously raised in the March 4 agenda regarding the work stations contained in this request; however, a number of questions remain regarding the standard compliment of costs (for example, computers) used by the DFG in building their budget change proposals, and it has come to staff's attention that these costs have not been reviewed by the Department of Finance (DOF) in a number of years. Therefore, staff recommends that budget bill language (BBL) be adopted to require the DOF to revisit the standard compliment of costs to determine whether or not they are reasonable. If they are found to be unreasonable, the new costs will be used to develop future budgets.

2. BCP-3: Game Warden Increase. The Governor requests \$2 million (FGPF-ND), and seven Game Warden positions to focus on marine issues.

Staff Comments. This request should be reduced by \$5,000 per position (\$3,000 one-time, and \$2,000 ongoing) due to over-budgeting of technology costs (e.g., computers and software).

3. BCP-17: Regulatory Review and Permitting. The Governor requests three positions and \$580,000 (reimbursement authority) to expand the South Coast and

Central Regions' capacity to address large-scale and long-term projects requiring regulatory review and permitting.

Staff Comments. This request should be reduced by \$5,000 per position (\$3,000 one-time, and \$2,000 ongoing) due to over-budgeting of technology costs (e.g., computers and software).

4. BCP-18: Klamath River Fish Tagging and Monitoring. The Governor requests \$1.9 million (reimbursement authority), one permanent position, and six Temporary Help positions to implement Iron Gate Hatchery (IGH) responsibilities under the Klamath Hydroelectric Settlement Agreement (Agreement).

Staff Comments. This request should be reduced by \$5,000 per position (\$3,000 one-time, and \$2,000 ongoing) due to over-budgeting of technology costs (e.g., computers and software).

5. BCP-19: Coastal Wetland Management. The Governor requests \$275,000 (reimbursement authority) and 2.5 positions (including one 2-year limited-term) to implement two coastal wetland programs: (1) Managing property recently restored at Bolsa Chica Lowlands and operating Upper Newport Bay pursuant to mitigation and partnership agreements (1.5 permanent positions); and (2) actively participating and planning permitting processes of wetlands restoration projects in the South Coast Region from their inception through construction (one limited-term position).

Staff Comments. This request should be reduced by \$5,000 per position (\$3,000 one-time, and \$2,000 ongoing) due to over-budgeting of technology costs (e.g., computers and software).

6. BCP-12: San Joaquin River Restoration. The Governor requests ongoing authority for 10 existing positions and \$8.8 million in one-time funding from Prop 84 (via reimbursements from the Natural Resources Agency) in order to support year four of San Joaquin River restoration efforts. This request consists of \$3.7 million in new funding and \$5.1 million in unspent funds from FY 2008-09 that will be reappropriated by the Natural Resources Agency.

7. BCP-16: Wildlife Corridor Mapping. The Governor requests one 2-year limited-term position and \$340,000 (Prop 84 funds provided via reimbursement from the Wildlife Conservation Board—WCB) in order to produce a spatial data system identifying wildlife corridors and habitat linkages that is consistent with the intent of Chapter 333, Statutes of 2008 (AB 2785).

8. FL-1: Federal Recovery and Restoration Funds. The Governor requests \$17.2 million federal funds (of which \$6 million is one-time) to: (1) conserve and recover federally listed anadromous fishes, green sturgeon, and marine invertebrates; and (2) recover endangered salmonid species in coastal California.

9. FL-2: Bond Fund Realignment (BBL). The Governor requests reappropriation of various Prop 13, 50, and 84 amounts for the San Joaquin Restoration and Ecosystem Restoration Programs, and reversion of Prop 50 funds that were inadvertently over-allocated.

10.FL-3: Fish and Game Warden Stamp. The Governor requests the establishment of permanent baseline spending authority of \$50,000 for the newly created Dedicated Fish and Game Warden Stamp Account (Chapter 294, Statutes of 2009; [AB 1442]). The funds would be used to purchase equipment and training for wardens.

11.BCP-20: Due Diligence Review for Land and Endowment Holders. The Governor requests \$387,000 (reimbursement authority) and 1.5 two-year limited-term positions to review the qualifications of nonprofit organizations applying to hold mitigation lands, and conduct ongoing oversight of these organizations in their management and stewardship capacities.

Staff Comments: The Administration has opted to withdraw this request.

Staff Recommendation for Vote-Only Items (1-11): APPROVE Items 1-10, with the adjustments noted in the staff comments (including placeholder BBL associated with DFG standard compliment of costs), and DENY Item 11 without prejudice (the Administration has indicated its intent to withdraw the request).

Action: Approved Items 1-10 with adjustments and placeholder BBL per the staff comments/recommendation on a 2-0 vote (Cogdill absent).

Denied Item 11 without prejudice on a 2-0 vote (Cogdill absent).

DISCUSSION ITEM

1. BCP-5: Law Enforcement Safety Gear (Tasers). The Governor requests \$378,000 (FGPF-ND), to provide 350 tasers to game wardens. The DFG purchased 25 tasers in FY 2008-09 in order to develop a pilot program. Currently 12 officers are trained to carry the tasers while 13 more were scheduled to receive training in March 2010.

Staff Comments. Staff notes that this item was previously heard on March 4 and held open due to Committee concerns about: (1) the need for game wardens to carry tasers in the first place; and (2) public safety given any number of high profile incidents in which law enforcement officers have used tasers in an unsafe and/or an inappropriate manner.

The DFG believes the acquisition and implementation of tasers would reduce the use of force by wardens and increase the safety of both wardens and subjects. However, the mere presence of a taser does not alone increase safety, and thus proper training is necessary (indeed, essential if a taser is not to actually *decrease* safety).

The DFG has provided staff with information regarding its taser pilot project training program and its departmental policy manual taser guidelines. The following are excerpts from those documents:

Taser Pilot Project

The initial training consists of eight hours of training by a certified Taser instructor. The training follows an outline provided by Taser International for initial training of officers. The training consists of classroom instruction, viewing training videos, review of policy and use of force laws, muscle memory drills, deployment of the Taser and first aid considerations. All wardens carrying Tasers are required to be recertified by a certified Taser instructor annually and participate in a minimum of six hours of Taser training per year.

All wardens carrying Tasers are required to follow Department of Fish and Game Law Enforcement Division Policy Manual Section 309 Taser Guidelines. All other Sections in the policy manual regarding use of force must also be followed. (See attached DFG Policy)(See Taser Policy Section 309)

When the pilot project ends, Taser training for wardens will become integrated into academy training, quarterly training, and perishable skill training. This will allow Department instructors to continuously provide feedback and training to wardens regarding all levels of force available to them.

Taser (Draft) Guidelines

VERBAL AND VISUAL WARNINGS

Unless it would otherwise endanger officer safety or is impractical due to circumstances, a verbal announcement of the intended use of the TASER shall precede the application of a TASER in order to:

- (a) Provide the individual with a reasonable opportunity to voluntarily comply.
- (b) Provide other officers and individuals with warning that a TASER may be deployed.

If, after a verbal warning, an individual continues to express an unwillingness to voluntarily comply with an officer's lawful orders and it appears both reasonable and practical under the circumstances, the officer may, but is not required to display the electrical arc (provided there is not a cartridge loaded into the TASER) or laser in a further attempt to gain compliance prior to the application of the TASER. The aiming laser should never be intentionally directed into the eyes of another as it may permanently impair their vision. The fact that a verbal and/or other warning was given or reasons it was not given shall be documented in any related reports.

309.4 USE OF THE TASER

Authorized personnel may use the TASER when circumstances known to the individual officer at the time indicate that the application of the TASER is reasonable to subdue or control:

- (a) A violent or physically resisting subject, or
- (b) A potentially violent or physically resisting subject if:
 1. The subject has verbally or physically demonstrated an intention to resist; and
 2. The officer has given the subject a verbal warning of the intended use of the TASER followed by a reasonable opportunity to voluntarily comply; and
 3. Other available options reasonably appear ineffective or would present a greater danger to the officer, the subject or others.
- (c) Although not absolutely prohibited, officers should give additional consideration to the unique circumstances involved prior to applying the TASER to any of the following individuals:
 1. Pregnant females.
 2. Elderly individuals or obvious juveniles.
 3. Individuals who are handcuffed or otherwise restrained.
 4. Individuals who have been recently sprayed with alcohol based Pepper Spray or who are otherwise in close proximity to any combustible material.
 5. Passively resisting subjects.
 6. Individuals whose position or activity may result in collateral injury (e.g. falls from height, operating vehicles).
- (d) While manufacturers have generally recommended that reasonable efforts should be made to target lower center mass and avoid intentionally targeting the head, neck, chest and groin, it is recognized that the dynamics of each situation and officer safety may not permit the officer to limit the application of the TASER darts to a precise target area. As such, officers should take prompt and ongoing care to monitor the condition of the subject if one or more darts strikes the head, neck, chest or groin.

(e) Persons suspected of being under the influence of drugs, alcohol or who exhibit extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond physical characteristics, unusually high tolerance to pain (sometimes called excited delirium) or who require a protracted physical encounter with multiple officers to bring under control may be at an increased risk of sudden death and should be examined by qualified medical personnel as soon as practicable. Any individual exhibiting signs of distress after such an encounter shall be medically cleared prior to booking.

(f) Because the application of the TASER in the Drive Stun mode (i.e. direct contact without darts) relies primarily on pain compliance and requires close proximity to the subject, additional caution should be exercised and the controlling effects may be limited. The TASER shall not be used to torture, psychologically torment, elicit statements or inflict undue pain on any individual.

Staff notes that, while the DFG appears to have adopted various policies and training guidelines expressly intended to ensure the proper and safe use of the taser, the Committee may wish to inquire further regarding the compatibility of these practices with current case law. Finally, should the DFG responses prove satisfactory, and the Committee is prepared to approve the request, the members may wish to adopt uncodified TBL requiring the DFG to evaluate its use of tasers and report annually to the Joint Legislative Budget Committee (JLBC) on various outcomes, including, but not limited to, incidents involving taser use, injuries, if any, suffered by those who are “tased,” and legal impacts (e.g., lawsuits filed against the DFG and/or the state associated with the use of a taser, and costs to defend such lawsuits, including any judgments or settlements). In addition to requiring that the above information be provided no later than January 10 annually, the Committee may wish to prohibit any future funding of tasers for the DFG until such time as the above evaluation and report has been submitted and been deemed adequate by the JLBC.

Staff Recommendation: APPROVE the request and ADOPT placeholder TBL as described in the staff comments.

Action: Held Open. The Chair indicated his intent to make any funding for tasers contingent upon legislative review of a final (adopted) departmental policy regarding taser use and training. The Committee requested the DFG to continue to work with staff regarding member concerns.

3790 Department of Parks and Recreation

The Department of Parks and Recreation (Parks) acquires, develops, and manages the natural, cultural, and recreational resources in the state park system and the off-highway vehicle trail system. In addition, the department administers state and federal grants to local entities that help provide parks and open-space areas throughout the state.

The state park system consists of 278 units, including 31 units administered by local and regional agencies. The system contains approximately 1.4 million acres, which includes 3,800 miles of trails, 300 miles of coastline, 800 miles of lake and river frontage, and about 14,800 campsites. Over 80 million visitors travel to state parks each year.

Governor's Budget. The Governor's Budget includes \$579 million for Parks. This is a decrease of nearly 41 percent from current year due primarily to a decrease in bond fund expenditures.

ITEMS PROPOSED FOR VOTE-ONLY

1. FL-1: Quagga Mussel Prevention/Inspection Program and Technical Correction. The Governor requests \$303,000 (Harbors and Watercraft Revolving Fund), and \$750,000 ongoing, to continue the Quagga Mussel Prevention and Inspection Program at Lake Perris and Silverwood Lake.

2. FL-3: Americans with Disabilities Act (ADA) Program Augmentation—*Tucker Lawsuit* (BBL). The Governor requests \$9 million in Prop 12 and \$4 million in Prop 40 funds to comply with ADA barrier-removal work mandated by the federal court in *Tucker v. California Department of Parks and Recreation*. The Governor additionally requests reversion of balances from various completed minor Prop 12 projects in order to ensure the availability of funds for the above need.

3. FL-7: Reappropriation for Support Bond Funds and Off-Highway Vehicle Trust Funds (BBL). The Governor requests reappropriation of several bond appropriations (from Prop 12 and Prop 84) for projects that were delayed by the late 2008 bond freeze.

4. FL-9: Availability Language for One-Year Support Planning and Project Funds (BBL). The Governor requests two-years of availability (rather than one) for support funding of two programs funded by bonds: (1) Natural Stewardship (Prop 12); and (2) General Plans (Prop 84).

5. FL-LA1: Reappropriate Prop 40 Grants and Appropriate Anew Prop 12 Grants under the Local Assistance Program. The Governor requests: (1) reappropriation of Prop 40 local assistance funds set to revert in 2010; and (2) a new appropriation for Prop 12 local assistance that reverts in 2010.

6. FL-COBCP: Reappropriate Oceano Dunes Wash Rack Project Funding. The Governor requests reappropriation of minor capital outlay project funds to allow this project to be completed in Fall 2010.

7. BCP-2: Prop 84 – California Museum Collection Center (Museum) Infrastructure and Tenant Improvements (BBL). The Governor requests \$14.2 million (Prop 84) to provide tenant improvements and the necessary infrastructure to effectively and efficiently preserve and protect the state's cultural artifacts. Additionally, the Governor requests BBL to make these funds available only upon approval of new facilities for the Museum (whether through a lease or acquisition).

8. BCP-3: Prop 84 – Cultural Stewardship Program (BBL). The Governor requests \$1.3 million (Prop 84) to fund projects that preserve and restore critical cultural resources in the State Park System. Additionally, the Governor requests BBL to make these funds available for encumbrance or expenditure until June 30, 2012.

9. BCP-5: Prop 84 – Interpretive Exhibit Program (BBL). The Governor requests \$1.6 million (Prop 84) to fund projects that communicate the unique natural, historic, and recreation resources of the State Park System. Additionally, the Governor requests BBL to make these funds available for encumbrance or expenditure until June 30, 2012.

10. BCP-6: Prop 84 – Large Natural Resources Restoration Program (BBL). The Governor requests \$1.4 million (Prop 84) to fund natural resource restoration projects in the State Park System. Additionally, the Governor requests BBL to make these funds available for encumbrance or expenditure until June 30, 2012.

11. COBCP-S-1: Statewide Budget Development. The Governor requests \$300,000 (Prop 84) to: (1) fund initial investigation and studies for future projects to provide a better definition of project scope; and (2) pay for costs to prepare budget cost estimates, schematic drawings, and other information for projects.

12. COBCP-D-880: Marshall Gold Discovery State Historic Park Improvements. The Governor requests \$3.4 million (Prop 84) to conduct the construction phase of this project to enhance the visitor's educational and interpretive experience. Among other things, the project will replace the existing historic sawmill replica with a new heavy timber structure and make improvements to museum buildings. Plans and working drawings were funded in FY 2008-09 and 2009-10, respectively.

13. COBCP-D-856: Angel Island State Park—Immigration Station Hospital Rehabilitation. The Governor requests \$424,000 (Prop 84) to rehabilitate the Immigration Station Hospital at Angel Island State Park.

14. COBCP-D-857: Fort Ord Dunes State Park—New Campground and Beach Access. The Governor requests \$2 million (Prop 84) to conduct the working drawings

phase of a project to develop initial permanent public facilities, including camping and day use beach access, at the Fort Ord Dunes State Park in Monterey County. Construction phase costs, projected for inclusion in the 2011-12 budget, are currently estimated at \$19 million and would be paid for out of Prop 84 funds.

15. COBCP-D-705: El Capitan State Beach—Construct New Lifeguard Headquarters. The Governor requests \$612,000 (Prop 84) to demolish the existing lifeguard headquarters in the campground loop and construct a new one near the existing concession building in the day use beach area.

16. COBCP-D-862: Silverwood Lake State Recreation Area—Nature Center Exhibits. The Governor requests \$827,000 (Prop 84) to provide new interpretive, educational, and informational exhibits for the recently constructed Nature/Visitor Center building and surrounding site at Silverwood Lake State Recreation Area.

17. COBCP-A-1: Statewide State Park System Opportunity Inholding Acquisitions. The Governor requests \$1.5 million (Prop 84) to provide funds to be used statewide to acquire variously sized parcels that are either adjacent to or substantially enclosed within adjoining State Park property; or are parcels that are surrounded at least 50 percent by State Park property and where Parks' ownership would improve operations of the existing state park unit.

18. Various Minor Capital Outlay Projects. The Governor requests Prop 84 funding for various statewide minor capital outlay projects, including \$2.5 million for statewide park system projects, \$430,000 for the recreational trails program, and \$586,000 for the volunteer enhancement program.

Staff Recommendation for Vote-Only Items (1-18): APPROVE Items 1-18 as proposed.

Action: Approved Items 1-18 on a 2-0 vote (Cogdill absent).

DISCUSSION ITEMS

1. BCP-8: Orange Coast District Special Events Program. The Governor requests \$232,000 (reimbursement authority) and three positions to augment the Special Events Program in the Orange Coast District.

Staff Comments. This item was originally heard on March 4 and held open due to Committee concerns regarding the distribution (or lack thereof) of increased revenues from the increased special events programming planned at various Orange Coast District state parks. The Committee expressed its desire not to crush the entrepreneurial impulse of the District leadership, but did not want to see the state parks become a system of “haves and have nots,” with park upkeep and amenities greatly affected by the ability of some, more affluent, communities to better support their local state parks than other, less affluent communities.

Given ongoing fiscal constraints facing state parks, staff recommends the Committee approve the request at this time, but adopt placeholder Supplemental Report Language (SRL) requiring the Orange Coast District of Parks to report annually, beginning with the 2011-12 Governor’s Budget, on the revenues generated in its special events program. This will enable the Legislature to continue to monitor the aforementioned equity concern and address the issue at a later date should the need arise.

Staff Recommendation: APPROVE the request with placeholder SRL as described in the staff comments.

Action: Approved staff recommendation on a 2-0 vote (Cogdill absent).

2. BCP-10: Increased Proposition 99 (PRA) Authority. The Governor requests \$2.8 million (Proposition 99, PRA) to supplant on a one-time basis \$2.8 million in SPRF support for the Resources Management Program.

Staff Comments. This item was previously heard on March 4 and held open awaiting resolution of other Parks support issues (namely, the Tranquillon Ridge oil lease revenue proposal). As previously noted, the proposed one-time increase in PRA expenditures “frees up” \$2.8 million in State Parks and Recreation Funds (SPRF) that could be used to offset a like amount of GF expenditures that will be required in the absence of an alternative to the oil lease revenues.

Given the short-fall in April revenue collections and the Governor’s recent disavowal of the Tranquillon Ridge proposal (which would have supplanted Parks GF expenditures in the budget year), staff recommends the Committee adopt this request, but additionally redirect \$2.8 million SPRF to supplant what would otherwise be GF activities (but are currently proposed for funding from oil lease revenues).

Staff Recommendation: APPROVE the Governor’s request and an equal shift of \$2.8 million SPRF to offset the need for GF to support core Parks activities (as described above).

Action: Approved the Governor’s request (not the staff recommendation) a 2-0 vote (Cogdill absent).

3. FL-2: Office of Historic Preservation (OHP)—Expedited Review. Federal regulation (“Section 106”) requires certain projects to receive historic review—work performed by the OHP—and the number of projects requiring this review has increased significantly under ARRA. As was noted in front of the full Budget Committee on January 21, the Administration had responded to this development by borrowing staff from other departments, increasing part-time help, and placing OHP employees on “self-directed” furlough (meaning days-off would be deferred until a later date).

Governor’s Request. The Governor requests \$880,000 (federal fund authority) to support eight existing positions (currently funded from other resources) to address increased workload in the OHP.

Staff Comments. Given the documented increase in workload, the availability of a non-state fund source, and the need to prevent bottlenecks in the timely dispersal of stimulus funding, staff raises no concerns with this request. However, given the state’s vested interest in ensuring the latter, the Committee may wish to have the OHP provide an update on: (1) the resources (e.g., staff) currently allocated to the aforementioned reviews; (2) current workload status (e.g., the existence of any backlog); and (3) projected workload for the coming year and the prospects for processing that workload in a timely fashion.

Staff Recommendation: APPROVE the request.

Action: Approved on a 2-0 vote (Cogdill absent).

3940 State Water Resources Control Board

The State Water Resources Control Board (State Water Board) 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 Budget includes \$825.6 million (including \$34.3 million) for support of the State Water Board in FY 2010-11. This is a 10.3 percent increase over current year expenditures due primarily to a proposed one-time augmentation of \$158 million from the Underground Storage Tank Cleanup Fund (see more detail below). The \$34.3 million in proposed GF reflects a decrease of approximately \$2.4 million in expenditures that are the net result of the Governor's requests to shift various GF expenses to fee-supported special funds.

ITEMS PROPOSED FOR VOTE-ONLY

1. BCP-12: Continuing Program Implementation for Propositions 13, 40, 50, & 84 (BBL). The Governor requests various reappropriations of Prop 13 and 50 funds, reversions of various Prop 50 and Prop 84 amounts, and various new appropriations, including the following totals for local assistance: Prop 13 – \$2.3 million; Prop 40 – \$17.9 million; and Prop 50 – \$36.5 million. Additionally, the Governor requests BBL to extend the encumbrance period for the above amounts from one year to three years (i.e., make them available until June 30, 2013).

2. BCP-6: Expedite 401 Water Quality Certifications for Federal Energy Regulatory Commission (FERC) Hydroelectric Projects. The Governor requests five positions and \$603,000 (Water Right Fund), supported by a fee increase, to augment the State Water Board's Water Quality Certification Program which is responsible for issuing water quality certification pursuant to the Clean Water Act as well as the more stringent CEQA requirements. Currently, 23 projects are undergoing FERC relicensing, one project is undergoing initial FERC licensing, and one is undergoing FERC decommissioning. Additionally, there are 11 existing projects that will begin the relicensing process during the next decade, and six new pumped storage projects that may undergo FERC licensing.

Staff Comments. This item was originally heard on March 18 and held open in order to further clarify the justification for the requested new positions. Based on additional information provided by the SWRCB, staff is satisfied that the benefits of providing more timely certification to hydroelectric projects (including improved water quality and greater regulatory certainty leading to more efficient planning and spending) are significant enough, particularly in light of the long-life of these projects, that this proposal should be approved.

3. FL-2: Technical Adjustment to Administration/Distributed Administration. The Governor requests a technical adjustment of \$173,000 to the SWRCB budget to reflect the impact of Chapter 2, Statutes of 2009, Seventh Extraordinary Session [SBx7 8] on the Administration and Distributed Administration totals.

4. FL-3: Aboveground Petroleum Storage Act (APSA) Oversight. The Governor requests the remaining balance of \$577,000 from the Environmental Protection Trust Fund be appropriated so that the fund can be liquidated per the provisions of Chapter 626, Statutes of 2007 [AB 1130].

Staff Recommendation for Vote-Only Items (1-4): APPROVE Items 1-4.

<i>Action: Approved Items 1-4 on a 2-0 vote (Cogdill absent).</i>
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DISCUSSION ITEMS**Proposals to Shift GF Expenditures to Fee-Supported Special Funds (Items 1-3):**

According to the Administration, the following three items are proposals to help address the state's fiscal crisis by reducing GF expenditures for activities that, based on the "polluter pays" principle, arguably should be supported by fees.

1. BCP-1: National Pollutant Discharge Elimination System (NPDES) Wastewater Program Fund Shift.

Background. In FY 2006-07 the State Water Board redirected \$4 million in NPDES federal funds to a different program and fee payers prevailed upon the Legislature and Governor to offset their fee burden by partially backfilling the \$4 million with \$1.4 million in GF. This proposal would remove the GF and increase fees to replace it.

The NPDES program is authorized by the Clean Water Act and administered by the Water Boards under an agreement with the United States Environmental Protection Agency that requires the Water Boards to help protect water quality by reviewing and renewing discharge permits, monitoring discharge reports, and issuing enforcement actions on permit violations.

2010-11 Governor's Budget. The Governor proposes to remove \$1.4 million GF from the NPDES program and replace it with an equal amount from the fee-supported Waste Discharge Permit Fund (WDPF) so that the program would be entirely funded by the WDPF.

Staff Comments. This item was previously heard on March 18 and held open until such time as there was a voting quorum present.

The State Water Board is statutorily required to adjust fees annually to conform to the revenue levels set forth in the Budget Act. According to State Water Board staff, based on current NPDES fee schedules, a proposed 9.3 percent fee increase would be needed to fund this request.

Given the magnitude of the current fiscal crisis, staff has no concerns with the proposed "polluter pays" approach.

Staff Recommendation: APPROVE the request.

Action: Approved on a 2-0 vote (Cogdill absent).

2. BCP-2: Irrigated Land Regulatory Program (ILRP) Fund Shift.

Background. When the ILRP fee schedule adopted by the State Water Board in June 2005, failed to raise the anticipated level of revenue, the Legislature allocated \$1.8 million GF in FY 2006-07 to make up the difference. This proposal would remove the GF and increase fees to replace it.

The ILRP regulates discharges from irrigated agricultural lands in order to prevent impairment of the waters that receive the discharges. For example, discharges can affect water quality by transporting pollutants including pesticides, sediment, nutrients, salts (including selenium and boron), pathogens, and heavy metals from cultivated fields into surface waters. Regional Water Boards issue conditional waivers of waste discharge requirements to growers that contain conditions requiring water quality monitoring of receiving waters and corrective actions when impairments are found.

2010-11 Governor's Budget. The Governor proposes to remove \$1.8 million GF from the ILRP and replace it with an equal amount from the fee-supported Waste Discharge Permit Fund (WDPF) so that the program would be entirely funded by the WDPF.

Staff Comments. This item was previously heard on March 18 and held open until such time as there was a voting quorum present.

The State Water Board is statutorily required to adjust fees annually to conform to the revenue levels set forth in the Budget Act. According to State Water Board staff, based on revenue estimates for the current agricultural waiver fee schedule, this proposal would require the current 12 cents per acre charge to be increased to approximately 42 cents per acre.

Given the magnitude of the current fiscal crisis, staff has no concerns with the proposed "polluter pays" approach.

Staff Recommendation: APPROVE the request.

Action: Approved on a 2-0 vote (Cogdill absent).

3. BCP-4: Water Rights Program (WRP) Fund Shift.

Background. The Court of Appeal previously found against the state for funding certain WRP workload from a fee-supported special fund—the Water Rights Fund (WRF). Those activities are currently supported by the GF. The Governor is proposing to shift the bulk of these expenditures back to the WRF.

From its inception in 1914 until FY 2003-04, the WRP was primarily supported by the GF (90 to 95 percent). However, due to an earlier fiscal crisis, program funding was cut and eventually shifted entirely onto a fee-supported special fund—the WRF. Subsequently, fee payers challenged the statutes authorizing the WRF and the fees that are deposited into it. While a superior court upheld the fee statutes and associated regulations in their entirety, the Court of Appeal found that in some specific instances (about 30 percent of activities associated with pre-1914 and riparian rights), the benefits accruing to the fee payers were not sufficiently proportional to the size of the fee, and the related regulations were overturned. An appeal of this decision is currently pending with the Supreme Court, which has not yet scheduled oral arguments.

2010-11 Governor's Budget. The Governor proposes to remove \$3.2 million GF from the WRF and replace it with an equal amount from the fee-supported WRF.

Staff Comments. This item was previously heard on March 18 and held open in order to better assess the legal risks of the proposal.

The State Water Board contends that the Court of Appeal missed the mark when it concluded that about 30 percent of WRP resources were used to conduct activities associated with pre-1914 and riparian rights (and therefore not to be funded by WRF fees). Instead, the State Water Board contends that this workload uses only about five percent of WRP resources. Therefore, the requested fund shift represents the difference between what the Court of Appeal's estimate and the State Water Board—about 25 percent of WRP funding.

Given that a Supreme Court decision is still months away and the state's fiscal outlook continues to look dire, staff recommends that the Committee adopt the proposal based on the arguments put forth by the SWRCB.

Staff Recommendation: APPROVE the request.

Action: *Approved on a 2-0 vote (Cogdill absent).*

4. BCP-5: Improve Efficiency of Water Rights Permitting. The Governor proposes to provide \$1 million (Water Right Fund) so that the State Water Board may hire environmental consultants directly for California Environmental Quality Act (CEQA) activities and seek cost recovery from applicants/petitioners.

Staff Comments. This item was previously heard on March 18 and held open in order to provide time for the SWRCB to: (1) clarify how it would ensure full payment from the applicant/petitioner; and (2) identify appropriate performance measures for determining the success of this pilot program.

With regard to ensuring full payment, the SWRCB indicates that it plans to require the applicant/petitioner to pay a deposit in advance of the work to be performed for CEQA activities. The SWRCB will work against the deposits until a pre-determined percentage remains and then require another deposits (and so on, until the work is completed). When the CEQA activities are completed, the SWRCB will return any unspent money to the applicant/petitioner. The SWRCB will guarantee compliance (full payment for the work) by holding project approval until the applicant/petitioner pays for all CEQA costs.

With regard to measuring performance of the proposed pilot program, the SWRCB has proposed the following trailer bill language (TBL):

On or before July 1, 2013, the board shall prepare and post on its internet website a report on the effectiveness of contracting with environmental consultants directly and recovering costs from water right applicants and petitioners for costs of preparing environmental documents in compliance with the Division 13 (commencing with section 21000) of the Public Resources Code. The report shall include information on the number and type of environmental documents completed, effects on application and petition processing times, staff resources devoted to the program, and effectiveness on obtaining reimbursement from applicants and petitioners.

Staff is supportive of the approach proposed above, and would only suggest that in approving this request as a two-year pilot project, the Committee adopt the TBL as “placeholder” in order to provide staff and LAO more time to review and potentially offer additional input (e.g., the language should probably specify reporting to the Joint Legislative Budget Committee and be timed to inform a potential permanent funding decision in the FY 2012-13 budget process).

Staff Recommendation: APPROVE the request for two-year limited-term as a “pilot” program and adopt placeholder TBL for evaluation and reporting.

Action: Approved the staff recommendation on a 2-0 vote (Cogdill absent).

5. BCP-7: Augment Basin Planning and Water Quality Standards Program. The Governor requests 8.9 positions and \$746,000 (reimbursement authority), in order to allow third parties to fund priority work.

Staff Comments. This item was previously heard on March 18 and held open due to concerns that the proposed approach, to allow third parties to pay SWRCB directly for their own projects, could create either the appearance, or the reality, of a “pay to play” system which could not only undermine public confidence in the state’s water quality standards, but could also lead to “regulatory capture” and a weakening of state water quality oversight. As noted in the March 18 agenda, a quick Google search turns up the fact that the Central Valley Water Board previously issued a cease and desist order (in 2001) to Meridian Beartrack Company (one of the entities interested in pursuing the proposed funding approach) requiring it to meet waste discharge requirements in association with closure of the Royal Mountain King Mine. This history simply highlights the fact that the Water Boards are required to take enforcement action on behalf of the public from time-to-time, and raises the question: Would the Central Valley Water Board, consciously or unconsciously treat a mining company differently if it was, to some degree, fiscally dependent upon that company?

In response to the Committee’s request for greater assurance regarding the SWRCB’s ability to maintain the integrity (independence and impartiality) of state oversight under this proposal, the SWRCB has again reiterated that: (1) the Water Boards would retain the final decision-making power over whether to carry out a given project (regardless of fund source); and (2) the Water Board would continue to make clear to third parties that the process is governed by peer-reviewed science and that a project could lead to more stringent standards (and accompanying permit limits).

Despite the assurances offered by the SWRCB, staff still harbors concerns that the proposal lacks robust, systemic safeguards to prevent regulatory capture. As noted in the March 18 agenda, current law does not allow the Waste Discharge Permit Fund to be used to support planning activities. However, given concerns with the Governor’s proposal, and the demonstrated, and compelling, need to better fund basin planning, staff recommends the Committee adopt placeholder TBL to clarify that the Waste Discharge Permit Fund may be used to support planning activities.

Staff Recommendation: DENY the Governor’s request and instead: (1) ADOPT placeholder TBL to clarify that basin planning activities are eligible for support from the Waste Discharge Permit Fund; and (2) APPROVE funding and positions equivalent to the Governor’s proposal, but to be supported from the Waste Discharge Permit Fund.

Action: Held Open in order to give the staff recommendation further consideration.

6. BCP-14: One-Time Augmentation for Underground Storage Tank Cleanup Fund (USTCF). The Governor requests a one-time augmentation of \$158 million to the USTCF in order to expend additional revenues generated by the temporary fee increase adopted pursuant to Chapter 649, Statutes of 2009 (Ruskin, AB 1188)

Staff Comments. This item was previously heard and held open on March 18 in order to provide more time for legislative staff to review the SWRCB's response to an independent audit of the USTCF.

Based on the USTCF Action Plan (contained in Appendix B), the SWRCB has taken some appropriate steps to rein in USTCF expenditures and install internal controls and adequate fiscal oversight going forward; however, the job is not complete. The Committee may wish to question the SWRCB regarding any number of issues that it should be looking at going forward—for example, the length of time claims are allowed to remain open (currently some span a decade), or the degree to which local boards are implementing programs in a fashion that is consistent with one another.

To the degree that the Committee does not wish to unduly hamper the clear intent of AB 1188—to rescue the USTCF in the near-term and continue funding underground storage tank cleanup efforts—it may wish to approve this request rather than withhold funds until the Action Plan is fully implemented. Staff supports this course of action, but would recommend ensuring that the Committee receives ongoing updates regarding implementation of the Action Plan.

Staff Recommendation: APPROVE the request and adopt placeholder SRL requiring the SWRCB to provide a status update on its USTCF Action Plan as part of the 2011-12 Governor's Budget.

Action: Approved the staff recommendation on a 2-0 vote (Cogdill absent).

7. FL-1: Pacific Lumber Company Litigation Defense. In December 2006, Pacific Lumber Company and Scotia Pacific Company filed a lawsuit in Fresno Superior Court against the State of California, the SWRCB, and the North Coast Regional Board claiming that the State Board and North Coast Regional Board breached the Headwaters Agreement through their regulation of discharges of sediment and other waste associated with forestry activities.

In the summer of 2009, Pacific Lumber and Scotia Pacific Company went through bankruptcy, were sold to the Mendocino Redwood Company, and reorganized into the Humboldt Redwood Company. Through this reorganization, the Humboldt Redwood Company assumed nearly all assets of the bankrupt companies while existing litigation assets from Scotia Pacific were acquired by the SPC Litigation Trust. SPC Litigation Trust will represent the interests of note holders that held various notes in which Scotia Pacific Company identified its land holdings as collateral.

Governor's Request. The SWRCB is requesting a \$2.7 million GF augmentation to fund the defense of litigation filed by Pacific Lumber Company alleging that the State of California had breached the Headwaters Agreement. The costs to defend the State in the on-going litigation concerning the Headwaters Agreement are expected to increase significantly as the case enters active discovery and is soon set for trial. The State's potential liability in this case is claimed to exceed \$671 million.

Staff Comments. The SWRCB and North Coast Regional Board have been the state's lead on this case since it was filed in 2009. During this time, the SWRCB has been funding its legal activities with Waste Discharge Permit funds as the lawsuit was tied directly to the regulation of water discharge on the Headwaters property. However, as this case moves forward to trial and costs for the defense of this case escalate, there is not enough funding in the Waste Discharge Permit Fund to support the ongoing defense costs. Staff feels that the proposed use of the General Fund is appropriate considering the potential liabilities that could result from this lawsuit as well as the fact that the case involves many departments that were party to the Headwaters Agreement. Additionally, staff notes that a recent section letter request for similar funding in the current fiscal year was (tacitly) approved by the Joint Legislative Budget Committee.

Staff Recommendation: APPROVE the request.

Action: Approved on a 2-0 vote (Cogdill absent).

APPENDIX A

[Unavailable in electronic form.]

APPENDIX B**State Water Resources Control Board
Underground Storage Tank Cleanup Fund
ACTION PLAN**

Since the Underground Storage Tank Cleanup Fund program began operations in 1991, the State Water Board has paid over \$2.2 billion to thousands of individuals and small businesses to help them cover the cost of cleaning up their gas stations and other leaking tank sites. Another \$500 million has been paid to local governments and large businesses. This financial assistance program is supported by fees paid by tank owners to the Board of Equalization.

During the course of the program, over 19,000 claims have been filed. Some 11,000 claims have been paid in part or in full, of which about 7,000 have been closed and about 4,000 remain active. Another 4,600 claims filed by major corporations and government agencies are on our priority list, awaiting activation. Individual payment transactions have numbered more than 66,000, for a long-term average payment of about \$40,000/claim/year.

During the late 1990s and most of the 2000s, the program was able to handle all eligible claims filed by small businesses and individuals. The cost of cleanups, however, has increased over the last few years as the annual cost per claim rose to \$50,000.

The cash reserve built up in the early years of the program fell below prudent reserves in 2008, and the program experienced a cash shortage. This shortage was made worse because of a concurrent dip in revenues due to the economy slow-down. We did not have sufficient cash to service all of the active claims, and payments were and remain delayed by many months. This created a sudden and severe hardship for our small business claimants and their consultants, who are also small businesses.

In response, the State Water Board held a public hearing on March 9, 2009, to receive testimony from stakeholders and directed staff to develop and implement actions to deal with the problem.

We confirmed that the problem was two pronged – First, there was a need to improve the business model and processes at the Fund and second we needed to address the lack of incentive to get cases cleaned up quickly and efficiently. The lack of closure incentive applied to all three major parties: 1) the responsible party or claimant, whose bills are paid by the Cleanup Fund, 2) the consultant, who bills hours so long as the case is active, and 3) the regulator, who would like to close cases with no risk whatsoever. As a result of these disincentives, over 43 percent of the active claims have been open for ten years or more.

The Board has taken numerous actions in response to the situation. They directed staff to undertake specific steps to attack both parts of the problem – making the Cleanup

Fund work better and getting cases to closure more quickly and efficiently. As part of the solution, the Board established two stakeholder task forces to review both the regulatory and payment side of the cleanup fund process and make suggestions for improvement or changes. The Board also directed staff to commission an independent audit of the program.

The work of the audit and task forces began in July 2009 and wrapped up in early 2010. The findings and recommendations of these efforts were consistent and can be organized around four topics: financial management, cost containment, processing efficiency and internal controls.

The audit found that the Fund reimbursement program has been and remains too reactive to what comes in the door. The program couldn't adequately plan expenditures, contain costs or work efficiently because it could not forecast how many payment requests would be received in a given time period, when, or for how much. The auditors recommended that the program convert to a more traditional grant-like program, by putting our small business claimants on a budget and establishing standard invoicing formats and regular invoicing periods. The audit also recommended that the program become more active in determining what activities are to be undertaken at funded sites. The ongoing and proposed actions by the program will be organized with the goal of implementing this core set of recommendations.

The following summarizes actions implemented and to be implemented to address these findings and recommendations.

Financial Management and Cost Containment

To bring long term demand into balance with revenue, we need to reduce the number of active claims and/or reduce the average cost per claim. The reduction in active claims will be accomplished by a continuous review of older cases with the aim of quickly moving them to closure when site conditions warrant. Cost savings for active sites will be achieved by having the Cleanup Fund participate in the development of budgets for our small business claims.

1. **Completed:** To immediately save an estimated \$30 million annually, the State Board directed that groundwater monitoring at sites be reduced to twice yearly instead of four times yearly, unless site conditions warrant otherwise.
2. **Underway:** We directed all Regional Board and Local Oversight Program agencies to complete reviews of all their cases by June 2010 and either close the case or determine what needs to be done to obtain case closure.
3. **Underway:** We accelerated the review of older cleanup fund cases by the State Board staff under existing Health and Safety Code authority. Staff will bring cases before the Board for consideration of closure where appropriate. The first sets of cases were heard by the Board in January and April 2010 and additional cases will be heard by the State Board every few months. The intent is to use this process to encourage regulators to close cases by demonstrating consistent application of State Board cleanup policy to underground storage tank cleanups.

All of this work is done with full consideration of the protection of water quality and the environment, and human health and safety.

4. **Underway:** We are implementing a systematic and rigorous cash flow projection/reporting process. We have created and filled a Cleanup Fund Financial Manager position. This person has the responsibility of conducting regular cash flow projections for the Cleanup Fund and will provide reports to the State Water Board, program staff, stakeholders and our claimants on these projections. This person is also responsible for determining the number of active claims the program can support.
5. **Underway:** We will require budgets be developed for all small business claims. This will enable development of program cash flow demand projections and establish cost limits for individual claims. Setting budgets for each of our claimants will also lead to faster and more efficient cleanups by focusing all work to be evaluated against the ultimate goal of case closure. We are implementing a pilot project now to develop and test this claim budget process.
6. **Planned:** We will analyze expenditures by types of costs and project phases to help develop better long-term cash-flow planning for the Fund. Budgeted claims will request payments organized around budget categories.
7. **Planned:** We will begin imposing a stay on any additional payments for claims determined ready for closure under the Five Year Review process, while the case is elevated to the State Water Board for formal consideration of closure.

Processing Efficiency

We need to process our payments more quickly through use of standardized invoices and simpler procedures. We have already implemented numerous changes in this area, but will continue to transition to a more effective budgeted-claim approach.

1. **Completed:** We formed a stakeholder advisory group that is meeting for the first time today (May 5, 2010) to provide feedback and suggestions for changes in the program business model.
2. **Completed:** We changed from an overall two step process to encumber and pay funds to a single step process. This has saved staff time, paper and reduced processing time by one week.
3. **Completed:** We reduced the number of steps and people involved in review of a given payment to reduce wait time.
4. **Completed:** We eliminated the requirement for submittal of hard-copy reports when posted on the Board's online cleanup program website – Geotracker.

5. **Completed:** We developed a vendor affidavit to provide proof of payment vs. requiring submittal of cancelled checks.
6. **Completed:** We eliminated the need for original wet signatures on some forms where legally defensible to facilitate submittal by email and FAX.
7. **Underway:** We are reviewing individual staff workloads and improving productivity tracking. We canceled all telework for Fund staff, while we develop our new business model.
8. **Underway:** We are creating more user-friendly forms for claimants.
9. **Underway:** We will continue to enhance the program web site so that claimants can more easily determine the status of their payments and otherwise be better informed, thereby improving service and reducing telephone call and email response demands.
10. **Planned:** We will standardize invoice formats and establish regular reimbursement schedules for budgeted small business claims. This will further improve processing speed and allow us to better manage cash flows and overall workloads.
11. **Planned:** We will temporarily redirect approximately ten staff from our claims processing unit to our payments processing workload to reduce the backlog of payment requests awaiting review.

Improve Internal Controls

We plan to implement all of the audit recommendations regarding internal control improvements, including:

1. **Completed:** We established an independent Cleanup Fund Fraud Team in our Enforcement Office to pursue allegations of fraud, waste and abuse. We will evaluate the results of this effort as it proceeds and consider making this a permanent unit in the Enforcement Office. While, the audit did not make any specific findings regarding fraud, it did identify weaknesses in the program that could result in waste and abuse. If nothing else, this effort will provide feedback to the program as it develops its new business model on how to better contain costs and reduce the risk of fraud, waste and abuse.
2. **Planned:** We will establish a real-time payment audit and review processes to ensure payment reviews are accurate.
3. **Planned:** We will also establish management-level quality control processes to evaluate overall payment procedures.

Next Steps

The cash infusion to the Fund from AB1188 will allow the program to make payments on the more than \$100 million outstanding payment requests now in-house. It also provides the Fund with a window of opportunity to implement changes necessary to prevent the cash shortages from being repeated. The Fund must develop and implement the changes discussed today in relatively short order. The State Board will be briefed on progress at its May 18, 2010 meeting. Staff will continue to aggressively develop, implement, and monitor these changes. Staff will continue to report progress back to the State Board at regular intervals during and after this implementation phase.

Challenges

With more than \$100 million in payment requests in-house and work of some type ongoing at most of the 4,000 active sites, the challenge will be to accomplish the transition in business model to a budgeted-claim approach while continuing to process payments submitted under the old model. Also, instilling change in a highly decentralized regulatory program that has been in existence for more than two decades remains a challenge.

Although these challenges will be significant and will require a major change in program and stakeholder/claimant operational procedures, the State Water Board is committed to streamlining our operations and bringing this program into a sustainable balance.

SUBCOMMITTEE NO. 2

Agenda

S. Joseph Simitian, Chair
Dave Cogdill
Alan Lowenthal



Hearing Outcomes
(see actions under each issue)

Agenda Part "A"

Day: Thursday, May 13, 2010
Time: 9:30 am or upon adjournment of session
Room: Rose Ann Vuich Hearing Room (2040)

Consultant: Brian Annis

Transportation

<u>Item</u>	<u>Department</u>	<u>Page</u>
2670	Board of Pilot Commissioners	1
2600	California Transportation Commission	3
2660	Department of Transportation	4

(The Department of Transportation issue on Proposition 1B bonds includes funding issues technically budgeted in State Transit Assistance (Item 2640) and Shared Revenues (Item 9350))

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 916-324-9335. Requests should be made one week in advance whenever possible.

2670 Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun

Department Overview: The Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun (Board) licenses and regulates maritime pilots who guide vessels entering or leaving those bays. The pilots, themselves, are not employees of the Board. However, the Board does pay stipends to pilot trainees.

January Governor's Budget Overview: The January Governor's Budget proposed expenditures of \$2.2 million (no General Fund) and 4.2 positions – a year-over-year decrease of \$876,000 and an increase of 0.2 positions. The Board is wholly funded through fees on shippers. The year-over-year budget change is primarily explained by the expiration of one-time funding related to legal defense of the November 2007 Cosco Busan collision with the San Francisco Oakland Bay Bridge, and expiration of one-time funding related to pilot training.

	2009-10		2010-11	
	Funding (\$1,000s)	Positions	Funding (\$1,000s)	Positions
Ongoing baseline funding	\$1,830	2.5	\$1,997	2.5
Limited-term funding related to the Cosco Busan incident	\$680	0.5	\$0	0
Limited-term funding for Pilot Training	\$438	0	\$0	0
2009-10 new permanent position	\$160	1.0	\$160	1.0
2010-11 Budget Request			\$75	1.0
TOTAL	\$3,108	4.0	\$2,232	4.5

March 11, 2010, Hearing and April Finance Letters: At the March hearing, the Subcommittee rejected a January budget request to add one clerical position to the Board. Subsequent to that hearing, the Administration submitted two April 1, Finance Letters (FLs), which are outlined below.

Issues proposed for Vote Only:

- 1. One-time Legal Costs (April FL #1):** The Administration requests one-time funding of \$233,000 (special fund) for costs associated with the legal defense of the Board in the various civil actions initiated after the Cosco Busan collision. As indicated on the prior page, one-time funding of \$680,000 for the Cosco Busan incident expires in 2009-10. At the March 11 hearing, the Board updated the Subcommittee on this litigation and indicated that costs would likely continue into 2010-11.

Staff Recommendation: Approve the request.

Action: *Approved on a 3 – 0 vote.*

- 2. One-time Pilot Training Costs (April FL #2):** The Administration requests one-time funding of \$162,000 (special fund) to provide pilot training in accordance within the regulatory safety interval. Due to retirements and other factors, the training cost in 2010-11 exceeds the baseline funding amount. As indicated on the prior page, limited-term funding of \$438,000 for pilot training expires in 2009-10.

Staff Recommendation: Approve the request.

Action: *Approved on a 3 – 0 vote.*

2600 California Transportation Commission

Department Overview: The California Transportation Commission (CTC) is responsible for the programming and allocating of funds for the construction of highway, passenger rail, and transit improvements throughout California. The CTC also advises and assists the Secretary of the Business, Transportation and Housing Agency and the Legislature in formulating and evaluating State policies and plans for California's transportation programs.

January Governor's Budget Overview: The January Governor's Budget proposes expenditures of \$3.9 million and 20.0 positions for the administration of the CTC (no General Fund) – an increase of \$569,000 and no change in positions. Additionally, the budget includes \$28.9 million in Clean Air and Transportation Improvement Bond Act funds (Proposition 116 of 1990) that are budgeted in the CTC and allocated to local governments. The Administration submitted one Budget Change Proposal, which is described below.

March 11, 2010 Hearing: The Subcommittee heard the CTC's budget on March 11 and left the below Budget Change Proposal (BCP) open for further review. The CTC did not submit any April Finance Letters.

Issues proposed for Discussion / Vote:

- 1. Design Build / Public Private Partnership Review (BCP #1):** The Administration requests a one-time increase of \$200,000 (State Highway Account) to contract out with a financial consultant to assist in the review of proposed projects under the design build contract method and the public private partnership (P3) program. This request is related to SB X2 4 (Statutes of 2009, Cogdill), which mandates that the CTC establish criteria and review projects for inclusion in these programs.

Staff Comment: In 2008, the Legislature approved two-year funding of \$100,000 per year for 2008-09 and 2009-10 for consultants to review High Occupancy Toll (HOT) projects associated with AB 1467 (Statutes of 2006, Nunez). Reviews in that program cost about \$50,000 per project; however, the scope of review was less broad because it only included the feasibility of toll revenues being sufficient to fund the cost of the project – not the contract terms of a P3. This year's BCP would include both the sufficiency of toll revenues (as applicable) and the terms of a P3 contract. Due to greater breadth of review, the cost is estimated to be closer to \$80,000 per project. So the budget funding would provide for two to three project reviews. Given the fiscal risk of these projects to the State, investing in a complete analysis of the proposed projects should be a prudent investment.

Staff Recommendation: Approve this request.

Action: *Held open. Staff directed to work with CTC to develop BBL to require CTC guidelines and review of P3 proposals to include privacy protection.*

2660 Department of Transportation

Department Overview: The Department of Transportation (Caltrans) constructs, operates, and maintains a comprehensive state system of 15,200 miles of highways and freeways and provides intercity passenger rail services under contract with Amtrak. The Department also has responsibilities for airport safety, land use, and noise standards. The Caltrans budget is divided into six primary programs: Aeronautics, Highway Transportation, Mass Transportation, Transportation Planning, Administration, and the Equipment Service Center.

January Governor's Budget Overview: The January Governor's Budget proposed total expenditures of \$13.9 billion (\$83 million General Fund) and 21,513 positions, an increase of about \$100 million and a decrease of 44 positions over the revised current-year budget. For comparison purposes, Administration is not distributed by program in 2010-11 as it is in the Governor's Budget.

Activity: (in millions):

Activity	2009-10	2010-11
Aeronautics	\$4	\$8
Highway: Capital Outlay Support	1,598	1,738
Highway: Capital Outlay Projects	6,820	6,180
Highway: Local Assistance	2,891	2,192
Highway: Program Development	82	75
Highway: Legal	113	126
Highway: Operations	187	201
Highway: Maintenance	1,233	1,303
Mass Transportation	223	587
Transportation Planning	151	164
Administration	457	1,293
Equipment Program (distributed costs)	(227)	(251)
TOTAL	\$13,759	\$13,867

Major Funding Sources (in millions):

Fund Source or Account	2009-10	2010-11
Federal Funds	\$5,172	\$4,797
State Highway Account (SHA)	3,085	3,597
Proposition 1B Bond Funds	2,560	2,937
Reimbursements	1,614	1,477
General Fund (Proposition 42 – Caltrans share)	531	0
Federal Revenue Bonds (GARVEEs)	498	496
Public Transportation Account	165	413
Other funds	134	150
TOTAL	\$13,759	\$13,867

March 11 and April 8 Hearings / April Finance Letters: The Subcommittee heard the Caltrans budget on March 11 and April 8, approving some requests, rejecting others, and keeping other issues open for further review. The Administration submitted a number of requests in April Finance Letters to revise January requests and to make new requests in other areas. Most of the April requests will be heard for the first time at the May 13 hearing.

Issues proposed for Vote Only:

(see also the summary table on page 7)

- 1. ARRA Oversight Positions – Mass Transit (April FL #3):** The Administration requests a shift of \$412,000 in federal funding to support 5.0 two-year limited-term positions for workload related to monitoring and reporting on American Recovery and Reinvestment Act (ARRA) projects administered at the local level. The positions would be funded by redirection of local-project money. Caltrans indicates these positions are necessary to fully comply with federal requirements.

Staff Recommendation: Approve the request.

Action: *Approved on a 3 – 0 vote.*

- 2. Pavement Management System Funding Amendment (April FL #6):** The Administration requests an amendment to the multi-year funding plan for the Pavement Management System approved in 2009-10. The project cost is still estimated at \$1.7 million; however, some expenditures are delayed until later years. This is an information technology (IT) project to obtain a commercial off-the-shelf software application and database that will allow the department to optimize the selection of future needed work to maintain highway pavement.

Staff Recommendation: Approve the request.

Action: *Approved on a 3 – 0 vote.*

- 3. Continuity of Operations Planning - Transfer (April FL #8):** The Administration requests a net-zero change in funding and positions, but a shift of three staff and \$321,000 (State Highway Account) from the Administration Program to the Maintenance Program to consolidate the Continuity of Operations / Continuity of Government (COOP/COG) functions. These positions are charged with planning and program development to respond to a catastrophic disaster.

Staff Recommendation: Approve the request.

Action: *Approved on a 3 – 0 vote.*

- 4. District 3 Marysville Office Building (April FL #10):** The Administration requests a permanent increase in operating expenses of \$2.4 million (State Highway Account) to pay debt service on the District 3 Office Building in Marysville and the Caltrans share of the Department of General Services (DGS) Central Plant in Sacramento. Both of these facilities were previously approved by the Legislature with the financing mechanism of lease revenue bonds.

Staff Recommendation: Approve the request.

Action: *Approved on a 3 – 0 vote.*

- 5. Various Appropriation Adjustments (April FL #12):** The Administration requests various changes to items of appropriation and some new reappropriations. Included are the following:

- A reduction of \$132,000 to reflect lease savings from a modular unit in District 1, (Eureka) due to the state exercising a contractual option to purchase the facility for \$1 at the end of the lease term.
- A reduction in the specialty facilities item of appropriation from \$39 million to \$18 million due to the California Transportation Commission reprogramming two projects to 2012-13. Budget bill language is also included to authorize the purchase of the modular unit in Eureka for \$1.
- Reappropriation for federal reimbursements. Budget bill amendments are requested to reappropriate expiring federal funds appropriations where projects are still active with unliquidated encumbrances.
- Various net-zero shifts in Proposition 1B items of appropriation – see the Prop 1B section of this agenda for further information.

Staff Recommendation: Approved this request, excluding the Prop 1B part which should be taken up in the Prop 1B agenda issue.

Action: *Approved staff recommendation on a 3 – 0 vote.*

- 6. May 1 Capital Outlay Request – Eureka Office (April FL #12):** The Administration requests \$687,000 (State Highway Account) to the working drawings phase of the Eureka District 1 Office renovation project. Future costs would include \$8.7 million for construction. The facility is 57-years old and the repairs would address fire-safety, heating and ventilation, and other deficiencies.

Staff Recommendation: Approved this request.

Action: *Approved on a 3 – 0 vote.*

Summary of Vote Only Issues:

Issue #	Issue Description	Action	Vote
1	ARRA Oversight Positions – Mass Transit	Approve	3 - 0
2	Pavement Management System Funding Amendment	Approve	3 - 0
3	Continuity of Operations Planning - Transfer	Approve	3 - 0
4	District 3 Marysville Office Building	Approve	3 - 0
5	Various Appropriation Adjustments	Approve, except exclude Prop 1B which should be taken up in the Prop 1B agenda issue	3 - 0
6	May 1 Capital Outlay Request – Eureka Office	Approve	3 - 0

Issues proposed for Discussion and Vote:

- 1. Update on Cash and Bid Savings (informational issue).** Recently, a Caltrans official was quoted indicating that the Great Recession has enabled Caltrans to save approximately \$2.4 billion in construction costs for major projects since 2006 due to competition and some bids coming in up to 40 percent less than estimates. Going forward, Caltrans and the CTC indicate bid savings may result in State Highway Operations and Protection Program (SHOPP) savings of \$600 million in the current year and \$1.0 billion over the next two fiscal years. Adding to cash balances, at the April 11, 2010, hearing, the Subcommittee took placeholder language to budget \$200 million in savings over 2009-10 and 2010-11 that is anticipated to result from continued operations savings such as reduced equipment purchases and reduced training and travel. Finally, the Administration indicates \$80 million in expected savings at Caltrans from the “Workforce Cap” executive order.

Bid Savings Allows for more Pay-go Financing and Less Bonding: Caltrans has indicated that due to bid savings and other factors, it does not intend to use the \$675 million in Grant Anticipation Vehicles (GARVEE) bonds (revenue bonds that use future federal revenue), which were authorized in the 2009 Budget Act, and will instead use cash. With the pay-go approach, \$175 million in interest costs are saved over the next 12 years. While the Administration’s “availability payment” proposal does not include state bonding, the future payments to the operator would include escalation for the time-value-of-money and the equivalent of interest costs to the state.

Transportation Loan Repayments: The 2008 Budget Act included a \$230 million Article XIX loan from transportation special funds to the General Fund and budget bill language requires repayment by June 30, 2011. The Constitution requires this loan be repaid in the third fiscal year from the date the loan was made, which would be 2011-12 instead of 2010-11. So the loan repayment could be deferred by one year for General Fund relief in 2010-11 of about \$250 million (including interest).

Major-Maintenance Contracts: Bid savings have been directed to accelerate SHOPP projects, but the shelf of SHOPP projects is being exhausted. Additional major maintenance contracts may be an option for consideration. Caltrans has found that additional maintenance activities provide out-year SHOPP cost avoidance of \$5 for every \$1 spent on maintenance today.

Staff Comment: The favorable bid environment has produced huge savings for the state, and is increasing the number of projects fundable from Prop 1B and federal stimulus funds. The LAO, the CTC, and Caltrans should comment on how the bid savings should be factored into the budget decisions related to GARVEE bonds, availability payments, and loan repayments. Additionally, should some savings go to augment major maintenance funding to produce cost avoidance in the future?

Action: No action – informational issue.

2. GARVEE Bonds (BCP #2). The Administration proposes an appropriation of \$680 million to fund the full multi-year debt repayment (generally over about 12 years) for Grant Anticipation Revenue Vehicles (GARVEE) bonds that Caltrans would like to issue in 2010-11. GARVEE bonds are revenue bonds backed by future federal transportation funding. The use of GARVEE bonds accelerates projects that would otherwise be delayed because of insufficient transportation funds – saving construction-inflation costs, and delivering the projects faster to travelers. The Administration identifies three State Highway Operations and Protection Program (SHOPP) projects for GARVEE funding in 2010-11: (1) the Sacramento I-5 Rehabilitation project; (2) the San Bernardino I-15 Rehabilitation project; and (3) the Los Angeles 710 Roadway Rehabilitation project. The Administration expects a 4.15 percent interest rate for GARVEE debt and a five percent construction inflation rate.

Background on past use of GARVEEs: Existing statute allows the California Transportation Commission to authorize GARVEE projects up to a level where GARVEE debt service reaches 15 percent of annual federal funding. The budget assumes GARVEE debt service of \$138 million in 2010, which is less than five percent of baseline federal funding. GARVEEs have been appropriated in three prior state budgets as indicated in the summary table below (in millions).

GARVEE Year	Amount Appropriated	Project amount	Interest amount	Unused GARVEE (Project amount)
2004-05	\$783	\$660	\$123	\$0
2008-09	\$181	\$141	\$40	\$43
2009-10	\$675	\$497	\$178	\$497
2010-11 proposed	\$680	\$495	\$185	?

The Administration does not currently anticipate using GARVEE bonds appropriated in the 2009 Budget Act; however, the January Governor’s Budget did assume the bonds would be used. The item of appropriation is specific to GARVEEs issued in the 2009-10 fiscal year, so the budget authority should not carry-over into 2009-10 if bonds are not issued.

Staff Comment: As discussed in the prior informational issue on cash, bid savings have augmented the department’s cash balances, and reduced the need for GARVEE financing. The Administration indicates it will not use 2009-10 GARVEE authority. While the Administration is still requesting new GARVEE authority for 2010-11, continued bid savings in the current year and budget year may result in the 2010-11 authority also being unnecessary. Accordingly, the Subcommittee may want to consider (1) reverting the 2009-10 GARVEE authority as technical conformity to the Administration’s updated plan, and (2) making any 2010-11 GARVEE authority contingent on Joint Legislative Budget Committee approval, to ensure that GARVEES are used only to the extent cash is unavailable (i.e., appropriate only \$1,000 for GARVEES, but add language to allow an augmentation up to \$680 million with JLBC approval).

Staff Recommendation: (1) Revert 2009-10 GARVEE authority; (2) Reduce 2010-11 GARVEE authority to \$1,000; and (3) add budget bill language to augment 2010-11 GARVEE authority up to \$680 million with JLBC reporting and demonstration by the Administration that cash resources are insufficient.

Action: *Approved staff recommendation on a 3 – 0 vote.*

3. Public Private Partnerships (P3s) / Availability Payments / Doyle Drive (BCP #13 as modified by April FL #17). The Administration proposes an appropriation of \$3.45 billion to fund multi-year “availability payments” (over about 30 years) for one designated highway project (a portion of Doyle Drive – about \$1.4 billion of the total) and other non-designated highway projects (about \$2.1 billion). “Availability payments” are a type of public private partnership (P3) where the private partner initially funds the project and then the state compensates the private partner with payments over many years – here, future federal funds are proposed with about \$115 million directed annually to this purpose over 30 years (for Doyle Drive, there would be a \$150 million payment upon completion of construction plus about \$38 million annually thereafter). The draft Doyle Drive lease agreement (available at: <http://www.catc.ca.gov/programs/DB-P3/P3/doyledrive.htm>) would provide the developer the right to impose tolls and user fees. If the developer exercises this right, it would have to be consistent with a November 26, 2008, MOU, which allows only “cordon tolling,” that would be a system of tolling on all vehicles entering San Francisco, but it is unclear if the MOU could be further revised.

April 1 Finance Letter Modifications to January Proposal (FL #17): The Administration requests to reduce the federal funds authority by \$495 million, and add State Highway Account (SHA) authority of \$495 million. This would respond to and LAO finding that the original proposal would not comply with federal rules that prohibit the use of federal highway funds for operations and maintenance.

Background on P3s: California has used P3s for past highway investments with mixed results – Route 91 linking Orange and Riverside counties and Route 125 in San Diego County are examples. Senate Bill X2 4 (Chapter 2, Statutes of 2009, Cogdill), revised the P3 process, by removing the statutory limit on the number of P3s and removing the Legislature from the approval process. The structure of this proposed P3 differs from prior P3s by using “availability payments.”

LAO Comments: Overall, the LAO finds the Governor’s proposal is “problematic” and recommends rejecting the proposal. However, the LAO also notes the Administration is reassessing its proposal and may submit an amended request in the spring (April Finance letter – see above). The full LAO March 2 report is available at: <http://www.lao.ca.gov>. The LAO makes the following findings and recommendations:

- SB X2 4 specifically requires that P3 project agreements include financing from toll or user fee revenues – the proposed agreement does not appear to be allowed under current law.
- The Doyle Drive proposal would fund the developers for project operations and maintenance out of federal funds – these costs are not eligible for federal funding.
- \$2.1 billion of the request is undesignated and budget bill language allows the Department of Finance open-ended authority to augment the \$3.45 billion. This provides little or no opportunity for legislative review and oversight.

- This proposal, as specified for Doyle Drive, may not reduce State costs. The Administration assumes the developer could reduce construction costs relative to the standard process, but the basis for this assumption is not identified.

Staff Comments:

- In addition to cash resources in the SHOPP program, the Administration could also utilize GARVEE bonds for the Doyle Drive project. So the Doyle Drive project will go forward in any case, the question is one of the best funding mechanism.
- The consultants' report does not include the option of GARVEE financing or other bonding options, which would likely show a lower cost to the state when net present value is considered.
- The consultants assume an 8.5 discount rate to calculate net present value (NPV) – for example, the NPV of a \$100 payment due in ten years is only \$40. Since this P3 makes payments over 30 years, the NPV is easily lower for this approach than for traditional pay-go financing. Any borrowing with an interest rate below 8.5 percent would seem prudent with this approach. This discount rate seems high due to a state's responsibility to preserve the quality of life for future generations. If the discount rate was lowered, the consultant's fiscal benefit of the proposal would quickly disappear.
- The consultants assume retained risk reserves of \$125 million in NPV for the traditional financing version versus \$47 million in NPV for this P3. This suggests that the State would achieve a \$78 million "saving" from shifting risk to the contractor in the P3. The risk premium savings seems too high, as the state is better able to absorb risk than a private contractor.
- A 30-year general obligation bond for \$500 million would typically cost about \$1.0 billion to pay off over thirty years. The 30-year cost of this P3 is estimated at \$1.4 billion.
- The uncertainty with respect to future tolling is troubling – if the State feels Doyle Drive is a good candidate for tolling, they should propose this, instead of leaving it to the discretion of the developer.
- The federal government recently awarded the project \$46 million in a discretionary Transportation Investment Generating Economic Recovery (TIGER) grant. This funding occurred after the Governor's budget was released.

Legislative Counsel Opinion: Subsequent to the March 11, 2010, Subcommittee hearing on this topic, the Legislative Counsel was asked to provide an opinion on two questions:

- Is a transportation project funded by a revenue stream of public agency availability payment, rather than toll or user fee revenues eligible to be undertaken under the provision of statute added by SB X2 4. Counsel believes SB X2 4 does not authorize availability payments.
- Is the Doyle Drive Replacement Project eligible to be undertaken as a transportation project under the provisions of statute added by SB X2 4. Counsel notes that SB X2 4 requires that only projects that are new or supplemental to existing facilities be considered for P3 financing – Doyle Drive would not

supplement the existing facility, but would rather *replace* existing lanes. Therefore, Counsel believes Doyle Drive fails this eligibility criterion to be considered for a P3.

Suggested questions / discussion:

- (a) The LAO should update the Subcommittee on developments since the March 11 hearing, including the April Finance Letter and the Legislative Counsel opinion.
- (b) The Administration should respond to the Legislative Counsel opinion.
- (c) The Administration should again explain why they are pursuing this project that does not produce new transportation dollars, is not authorized under current law, and would cost the state more money than traditional GARVEE bonds or other revenue bonds.

Staff Recommendation: Reject the BCP and related Finance Letter.

Action: *Rejected proposals on a 2 – 1 vote with Senator Cogdill voting no.*

- 4. Public Private Partnership (P3) Development Funding Reappropriation (April FL #16).** Last year, the Administration requested a total of \$9.4 million in State Highway Account (SHA) funding to develop a P3 program. The funding was split into three parts: (1) \$933,000 for 8.0 two-year limited-term positions; (2) \$1.6 million in onetime funding to develop the base P3 program with boilerplate contracts and analysis, etc.; and (3) \$6.9 million to develop five projects as P3 candidates (about \$1.4 million per project). The Legislature approved funding for staff and \$1.6 million for baseline P3 development. Funding for individual projects (\$6.9 million) was made contingent on approval by the Joint Legislative Budget Committee (JLBC) after Caltrans submitted a request with information on the projects and financing proposed. In this April FL, Caltrans requested to reappropriate the unspent balance of the \$6.9 million for expenditure in 2010-11.

April 15, 2010, JLBC Letter: In an April 15, letter, the Administration requests approval to expend \$500,000 of the \$6.9 million made available by Provision 12, of item 2660-001-0042 of the 2009 Budget Act. As this agenda was finalized, the JLBC had not acted on the request. Caltrans indicates that the \$500,000 would be spent in support of four projects. With one of the projects Doyle Drive (see the prior issue) and an additional two projects candidates for availability payments – only one of the four projects would consider tolls as the only financing option.

2009-10 Expenditures Inconsistent with Approved Budget: As indicated above, the Legislature approved \$1.6 million for general P3 development, with funding for specific P3 projects subject to JLBC approval. Caltrans indicates that instead of the budget plan, \$1.4 million has been spent on P3 work specific to Doyle Drive, with \$200,000 spent on general P3 work. Caltrans does note that some of the Doyle Drive documents, once complete, could be modified and used for other P3 projects. Given the legal and fiscal concerns with the Doyle Drive project, the state would have been better served if Caltrans had followed the budget direction to use the JLBC process to obtain project funding prior to embarking on costly analyses for that project.

Proposed Reappropriation Language is Flawed: The reappropriation language submitted with the April FL would appear to reappropriate any and all funds unexpended in item 2660-001-0042, not just those associated with P3 work. Additionally, the \$6.9 million was not technically appropriated, but rather allowable as an augmentation to the appropriation via the JLBC process. Staff recommends, as a technical matter, that new 2010-11 funding should be appropriated instead of a reappropriation of 2009-10 funds.

Staff Comment: SB X2 4 removes any numerical limits on the number of P3 projects that state and local sponsors may adopt. It does not speak to the Caltrans budget for hiring consultants to develop P3 candidates – that is dependent on the annual budget. The basic question for the subcommittee is how many P3 development projects should be funded in 2010-11. Given data from the Doyle Drive project, it might be expected to cost about \$1.5 million for consulting services

up to the point of CTC approval and an additional \$1 billion through contract implementation. Since Caltrans decided to pursue the availability payment approach to P3, which was not authorized with SB X2 4 (according to Legislative Counsel) and the future direction of the Administration in this regard is unclear, the Subcommittee may want to consider a robust reporting requirement that would again include JLBC notification prior to accessing project funding.

Staff Recommendation: Reject the reappropriation, but add budget bill language to allow a budget augmentation of up to \$3.0 million with JLBC reporting (this would fund about two P3 projects to be developed through the CTC approval process).

Action: *Approved funding of \$4.5 million to support P3 development on 3 toll-financed projects. Adopted budget bill language to specify the three projects that will receive this funding. Action on a 2 – 1 vote with Senator Cogdill voting no.*

5. Proposition 1B Summary: The January Governor’s Budget requests a total of \$4.0 billion for Proposition 1B in all categories for 2010-11. This issue was heard on March 11, 2010, and left open for further review. The third column below indicates the Governor’s January request (dollars in millions):

Proposition 1B Category	Total 1B Amount	2010-11 Gov Jan10 Requested Amount	2010-11 Suggested Adjustment	2010-11 Legislature Suggested Amount	Budget Entity
Transportation Categories appropriated within the Caltrans Budget:					
Corridor Mobility Improvement Account (CMIA)	\$4,500	\$1,148	(\$570)	\$578	Caltrans
State Transportation Improvement Program (STIP)	\$2,000	\$525	\$0	\$525	Caltrans
State Highway Operations and Preservation Program (SHOPP)	\$500	\$178	(\$159)	\$19	Caltrans
State Route 99 Improvements	\$1,000	\$311	(\$237)	\$74	Caltrans
Local Bridge Seismic Retrofit	\$125	\$23	(\$15)	\$8	Caltrans
Intercity Rail	\$400	\$72	(\$72)	(\$0)	Caltrans
Grade Separations	\$250	\$76	\$141	\$217	Caltrans
Traffic-Light Synchronization	\$250	\$80	\$102	\$182	Caltrans
Trade Infrastructure	\$2,000	\$674	(\$380)	\$294	Caltrans
State/Local Partnership	\$1,000	\$201	\$40	\$241	Caltrans
Transportation Categories appropriated in other Departments:					
Local Streets & Roads	\$2,000	\$0	\$0	\$0	Shared Revenues
Transit	\$3,600	\$350	\$1,150	\$1,500	State Transit Assistance
Air Quality and Transportation Security Categories appropriated in other Departments:					
School Bus Retrofit	\$200	\$0	\$0	\$0	Air Res. Board
Trade Infrastructure Air Quality	\$1,000	\$230	\$0	\$230	Air Res. Board
Port Security*	\$100	\$0	\$0	\$0	Emerg Mgt Agency
Transit Security*	\$1,000	\$103	\$0	\$103	Emerg Mgt Agency
TOTAL	\$19,925	\$3,971	(\$0)	\$3,971	

Additional JLBC authority if projects are delivered early

\$285

Total budget authority including JLBC

\$4,256

Prop 1B Budget Request Detail. While the Administration is requesting new appropriations totaling \$4.0 billion, the budget also reverts \$1.9 billion in unallocated Prop 1B appropriations from 2007-08 and 2008-09. None of the 2009-10 appropriation is proposed for reversion, but about \$800 million would be unallocated and carried over into 2010-11. The Administration also requests to extend 75 limited-term positions approved for Prop 1B workload in prior budgets. These positions are fully funded with Prop 1B funds. April Finance Letter 12 requests various net-zero shifts across items of appropriation to tie to the CTC's adopted program and project delivery.

Funding Adjustments to Reconcile to Project Delivery: The LAO indicated at the March hearing that the requested appropriation may exceed the number of projects ready-to-go in 2010-11, and recommended Caltrans reconcile the funding request to project lists. Caltrans has since provided that reconciliation and it indicates that, with the 2009-10 carryover considered, the January Budget request exceeds the project need for several categories. The adjustments indicated on the table on the prior page show the budget adjustments necessary to conform funding to the updated project delivery plan – staff understands that the Administration supports the funding adjustments to conform the budget to the project plan.

Funding Adjustment for State Local Partnership (SLP): The staff recommendation for SLP funding is higher than the Administration's numbers due to the unique nature of the program. SLP is intended as a five-year program with \$200 million allocated per year. The Administration proposes to revert \$40 million in unallocated SLP funding – staff recommends that \$40 million be added to the 2009-10 appropriation to keep pace with the five-year plan.

Funding Adjustment for Transit: The staff recommendation for transit funding is higher than the Administration's numbers due the unique nature of the program. Transit is allocated on a formulaic basis using the State Transit Assistance program in statute. Locals may swap allocations across years when mutually agreeable. The Administration proposes to fund at the level of \$350 million, although Caltrans indicates about \$700 million in projects are ready to go. Because of the formulaic nature of the program and limited ability of the locals to swap allocations, a higher level of appropriation – even higher than \$700 million – would be needed to move that level of projects. Staff recommends that the Legislature consider appropriating three years of expenditures (\$1.5 billion) for this Prop 1B program. Actual bond expenditures will likely be about \$700 million, more projects would get to advance, and the unallocated portion would carry-over to 2011-12.

Prop 1B Reappropriation - Transit and Local Streets and Roads (April Finance Letter Issues, Budget Items 2640-490 and 9350-490): The Administration requests to reappropriate 2007-08 and 2009-10 Prop 1B funds for transit and 2007-08 and 2009-10 funds for Local Streets and Roads. Due to the unique nature of these programs – these are formulaic grants – the reappropriation may be more appropriate than a reversion with a new appropriation.

Prop 1B Trailer Bill Issues: Two trailer bill issues have been brought to staff's attention that are not currently proposals of the Administration:

- Local Streets and Roads Use-or-Lose – current statute allows three years for cities and counties to expend their Prop 1B funding or they are required to return the funds. Due to deferrals of Highway User Tax Account (HUTA) and statutory allowance to use Prop 1B for local cashflow purposes, the California Association of Counties (CSAC) is requesting that the use-or-lose period be extended to four years for any year that the Prop 1B funds were originally received in a HUTA deferral year.
- Trade Corridors Improvement Fund - Current statute requires one-time reporting on or before February 18, 2009, on any memorandum of understanding (MOU) between a railroad company and state or local government concerning Prop 1B funds. Since new MOUs may be implemented going forward and there is continued interest in the railroad's expenditure of these funds, trailer bill language has been suggested by policy staff to require the California Transportation Commission to report to the Legislature on any new MOUs and to semiannually report to the Legislature on the status of the railroad projects.

Jobs, Jobs, Jobs: The infrastructure investments funded by general obligation bonds that voters approved in 2006 are a major tool for the state in job creation. As was indicated in issue #1, the favorable bid environment is resulting in huge costs savings for the state. Typically, every billion dollars in transportation spending is expected to create 15,000 jobs. So the amount of Prop 1B funding under the Legislature's consideration in this agenda, should result in approximately 60,000 jobs in the California economy.

Staff Comment: The Subcommittee may want the LAO to summarize all these Prop 1B issues and provide recommendations. Staff is not aware of any forthcoming May Revision Letters related to Proposition 1B, but should any be provided, the Subcommittee can consider those when submitted and reopen any Prop 1B action if warranted. While the level of Prop 1B appropriation in the staff recommendation matches that of the January Governor's Budget overall, the shifts across categories will result in more projects and more jobs because the funding is better directed to categories where projects are ready to go to construction.

Staff Recommendation:

- Approve the funding level for each Prop 1B category as indicated in the summary table – including conforming changes to budget bill language and technical adjustments as required.
- Approve the reappropriations for Transit and Local Streets and Roads as requested in April Finance Letters.
- Approve the continuation of limited-term Prop 1B staff resources as request in BCP # 5.
- Approve the placeholder trailer bill language fixes indicated above.

Action: Motion #1 – Staff recommendation excluding \$1.5 billion appropriation for transit, approved on a 3 – 0 vote.

Motion #2 – Staff recommendation to appropriate \$1.5 billion for transit, approved on a 2 – 1 vote with Senator Cogdill voting no.

- 6. Americans with Disabilities Act (ADA) Lawsuit (BCP #16 & April FL #9).** The Administration requests one-time funding of \$8.5 million (State Highway Account) to pay attorneys' fees in the ADA lawsuit that was settled in December 2009 (BCP #16). The request indicates that the exact amount of the payment is still undetermined, but the settlement agreement sets it between \$3.5 million and \$8.5 million. Final court approval of the settlement agreement is expected later this year. The Administration also requests \$3.6 million for three limited-term positions and contract resources to implement its ADA compliance program for 2010-11 and 2011-12 (April FL #9). The resources included in this request would provide staffing to develop and begin implementation of the department's new ADA compliance program, and contract resources to handle an increased number of complaints that the department expects under the new program.

Detail on ADA expenditures: While the budget requests only deal with the one-time attorneys' fees and program implementation resources, it should be noted the settlement includes agreement from the Administration to spend \$1.1 billion over 30 years to make sidewalks and other pedestrian facilities ADA-compliant. The settlement defines minimum expenditures per year as follows:

- Baseline funding is about \$10 million per year.
- Funding would increase to \$25 million per year beginning in 2010-11.
- Funding would increase to \$35 million per year beginning in 2015-16.
- Funding would increase to \$40 million per year beginning in 2025-26.
- Funding would increase to \$45 million per year beginning in 2035-36.

This funding would be accomplished within the State Highway Operations and Protection Program (SHOPP) funding. Since the funding for increased ADA construction investments is part of the SHOPP item, no separate action is necessary for that activity.

Staff Comment: For the attorneys' fees BCP, Caltrans indicates the final settlement is still pending. Absent a specific settlement figure, the Subcommittee may want to appropriate at the bottom of the range (at \$3.5 million) and add budget bill language (BBL) to allow for an augmentation of up to \$5.0 million with Joint Legislative Budget Committee (JLBC) reporting as needed to conform to the final settlement.

LAO Recommendation: The Analyst recommends approving the April Finance Letter for ADA settlement implementation by approving the \$3.6 million, but with the addition of the following Supplemental Report Language (SRL):

The California Department of Transportation (Caltrans) shall report annually for three years to the fiscal and policy committees of the Legislature, and the Legislative Analyst's Office, information about the department's American's with Disabilities Act (ADA) compliance program and efforts related to the settlement of lawsuits regarding violations of the act. The first report shall be provided no later than 12 months after the final settlement has been approved by the presiding court. Two

subsequent reports shall be provided annually thereafter. The reports shall provide the following:

- An overview of the department's ADA compliance program, and how the program fulfills each of the requirements of the lawsuit settlement.*
- A description of recent changes made to the department's ADA program that have been implemented due to requirements or recommendations from the ongoing implementation of the lawsuit settlement agreement.*
- The first report shall include total level of resources that the department has allocated to its ADA program for the preceding three fiscal years and the current year, including, (1) staff resources, (2) contract resources and, (3) capital outlay or other funds. The two subsequent reports shall include the current-year estimated and past-year actual level of these resources. All three reports shall include the total level of resources the department plans to allocate to the program in the budget year. Information should be broken down into major categories of work performed (such as program management, transition plan, complaints, and capital outlay). Approved and proposed budget changes should be referenced as applicable.*
- The first report shall include the number of ADA complaints received and investigated during the preceding three fiscal years, and the estimated number of complaints in the current year. The two subsequent reports shall include the current-year estimated and past-year actual numbers of complaints.*
- A summary of the capital outlay projects that have been completed, or are currently under development, to fix non-compliant facilities owned by the department, including the number of projects and their associated costs.*
- A summary of the capital outlay projects that are planned for future years in order to fix identified non-compliant facilities owned by the department, including the number of projects and their associated costs.*

Staff Recommendation:

- For BCP #16 for attorney fees: reduce funding from \$8.5 million to \$3.5 million, but add budget bill language to allow an augmentation of up to \$5.0 million with JLBC reporting and a 30-day review period.
- For April FL #9 for settlement implementation: Approve request plus LAO's supplemental reporting language.

Action: Approved staff recommendation on a 3 – 0 vote. Caltrans will update the Legislature once the court issues its final ruling, and the Legislature may consider reopening and adjusting this issue as warranted and as the budget timeline allows.

7. Project Initiation Documents – Workload & Funding (BCP #17 & April FL #2):

In the January Budget, the Administration requested to shift 96.5 positions and \$12.5 million from State funding (State Highway Account) to local reimbursement for department workload associated with Project Initiation Documents (PIDs), or initial planning documents, for locally-funded projects. In April FL #2, the Administration requests to modify the request by reducing the shift to reimbursements by 29.5 positions and \$5.0 million. The April letter additionally requests 14 new two-year limited-term positions and \$1.7 million in reimbursement authority to perform workload for the High Speed Rail Authority (HSRA) and the Natural Resources Agency. Finally, the April letter requests to shift two existing positions from Planning to Traffic Operations to better align the funding with the activity.

Updated Administration Proposal (through April Finance Letter)				
	Existing Staff Resources		New Staff for HSRA & Resources Agency	
	Positions	Funding (1,000s)	Positions	Funding (1,000s)
State Highway Account	-67.0 positions	-\$7,438		
Reimbursements	+67.0 positions	+\$7,438	14.0 positions	\$1,683
Net Change	0 positions	\$0 dollars	14.0 positions	\$1,683

Issue Background: This proposal is consistent with an LAO recommendation from last year to shift funding to local reimbursement for the preparation of PIDs by Caltrans on locally-funded projects on the state highway system. A primary criticism of the current approach is that locals request more PIDs than is optimal because they incur none of the cost. The shift was rejected last year and budget bill language required Caltrans to establish a workgroup with local agencies to identify cost sharing options. Staff understands this workgroup was unable to achieve consensus.

Staff Comment: The Subcommittee should hear from the LAO, the Administration, and the public, on this issue. Another option for consideration would be a cost-sharing option with locals – for example, 20-percent local cost sharing for PIDs. This would achieve the goal of locals internalizing the costs of PIDs before requesting a study, but also retaining the incentive to utilize Caltrans for PIDs work. Trailer bill language is necessary to implement the Administration’s proposal or any other level of reimbursement shift.

Staff Recommendation: Approve BCP #17 as modified by April FL #2. However, the positions related to HSRA should conform to the final action on the HSRA budget.

Action: *Left open pending responses by Caltrans to LAO questions.*

- 8. Advertising on Changeable Message Signs (January Governor's Budget).** The Administration requests budget trailer bill language to allow advertising on highway Changeable Message Signs (CMSs). No Budget Change Proposal was provided to explain or justify this request. No revenue is scored in the Governor's budget for this proposal, and no revenue estimate has been provided by the Administration.

Information from the Administration trailer bill language: According to the Administration trailer bill language, "the department would obtain private sponsors and advertisers who would provide additional transportation funding in return for the right to place advertisements on the updated emergency message signs in a manner that does not detract from the signs' public-service announcement function." The language indicates the proposal would require either a waiver from the Federal Highway Administration or a change in federal law. The language indicates the private sponsor and Caltrans would share advertising revenue, but the language does not specify what the state share would be. The language specifies Caltrans would not be required to adopt regulations, but would rather post guidelines on its website.

Staff Comment: The Administration should update the Subcommittee on this proposal and indicate if it has a revenue estimate, or if there has been any response from the federal government with regards to a waiver. There are traveler information and safety concerns with this proposal. Some CMSs are used to display travel times from one destination to another (which is not necessarily a safety issue, but is valuable information to travelers) – would this content be replaced with advertising? The signs would also pose concerns related to distracted driving and highway beautification. Finally, the Administration's proposal does not appear to provide any benefit to the state General Fund and would therefore not be a budget solution.

Staff Recommendation: Given the policy concerns and no General Fund benefit, reject this proposal.

Action: *Left open for further review.*

- 9. Roadway Design Software (RDS) IT Project (BCP #11):** The Administration requests an amendment to the multi-year funding plan for the RDS, which will replace the department's design software. This project was previously approved by the Legislature, but procurement issues have delayed the project. The total cost is \$10.1 million (State Highway Account). In the original Finance Letter for the 2008-09 budget, the department indicated: *"The selected RDS will replace the current software; Computer Aided Civil Engineering (CAiCE), which is antiquated in today's technology, will be discontinued, no longer enhanced, nor supported or updated by the vendor"*.

Issue Background: This issue was approved on the vote-only calendar at the March 11 hearing. Subsequent to that hearing, the vendor for the current system has indicated to Committee staff that they do have an enhanced product called "Civil 3D" that could be used by Caltrans as an upgrade under the current contract at no cost. However, the existing contract ends in early 2011, so some type of contract extension at an unknown cost would be necessary after that date to continue to use the updated product of the current vendor. Caltrans counters that the information from the vendor on upgrades has changed over time and that it would violate procurement statutes to continue to contract and substitute the Civil 3D product for CAiCE without competitively bidding the procurement because Civil 3D is a replacement product of CAiCE versus an upgraded version and, therefore, it is necessary to issue an request for proposal (RFP) which competitively bid the changed scope of work.

Suggested Questions: Given this new information and continued uncertainty over procurement options, the Subcommittee may want to hear from Caltrans, the Department of General Services (DGS) and the Office of the Chief Information Officer (OCIO) on the following issues:

- Could the existing system be upgraded for free by the vendor within the existing contract, and consistent with state contract law and regulation?
- Caltrans indicates a \$4 million cost of the switch to Civil 3D even if acquired for free due to training and other costs – what are the components of this cost?
- If the system is upgraded and Caltrans staff are trained for the upgrade, what would be the likely cost of the contract extension in early May 2011?
- Can the existing RFP process be used to evaluate the option of a contract extension with Civil 3D versus a new contract with other vendors?

Staff Comment: The Subcommittee should not be placed in the position of judging the quality of one vendor's product over another. However, the Subcommittee should have complete knowledge of the procurement constraints and options as it makes the funding decision.

Staff Recommendation: Contingent on testimony at the hearing.

Action: *No action taken (March 11, 2010, approval of BCP #11 remains the action).*

SUBCOMMITTEE NO. 2

Agenda

S. Joseph Simitian, Chair
Dave Cogdill
Alan Lowenthal



Hearing Outcomes (see Subcommittee actions under individual issues)

Thursday, May 13, 2010
9:30 a.m. or Upon Adjournment of Session
Rose Ann Vuich Hearing Room (2040)

Consultant: Bryan Ehlers

OPEN ISSUES

“B” AGENDA

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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 916-324-9335. Requests should be made one week in advance whenever possible.

Items Proposed for Vote-Only

Secretary for Environmental Protection (CalEPA)

1. FL-1: CalEPA Federal Trust Fund Appropriation. The Governor requests \$1.5 million in federal fund authority in order to receive and expend federal grant funds from the United States Environmental Protection Agency for the Secretary's Unified Program. The primary objective will be distribution of approximately \$1 million annually to rural Certified Unified Program Agencies (CUPA) to create a Rural CUPA Underground Storage Tank (UST) Inspection grant program, managed by the Secretary's Unified Program, and aimed at increasing the number of UST inspections in rural counties. The secondary objective would be to utilize \$500,000 annually in federal National Environmental Information Exchange Network (NEIEN) grant funds for the continued development and enhancement of the CalEPA's electronic reporting systems.

Integrated Waste Management Account (IWMA) Reductions

2. CalEPA – BCP-1: Waste Board Funding Reduction per SB 63. Reduces by \$954,000 various expenditures from special funds administered by the former Waste Board and now under the control of DRRR, including: (1) \$287,000 in salaries and wages associated with positions abolished in fiscal year (FY) 2009-10; and (2) \$667,000 in operating expenses and equipment (OE&E) that currently support major policy and program leadership by the Secretary for Environmental Protection. Of these amounts, \$771,000 is from the IWMA.

Staff Comments. The Administration has not clearly articulated what will happen to the policy and program leadership previously supported by these funds. Therefore, staff cannot support this reduction in its entirety at this time and recommends: (1) approving the \$287,000 reduction associated with previously abolished positions; and (2) denying the remaining OE&E reduction of \$667,000. Should the Administration provide additional, clarifying information in the future, then staff would support the Committee granting this item reconsideration.

3. State Water Resources Control Board (State Water Board) – BCP-3: Shift Land Disposal Program Funding for 13 Positions from the IWMA to the Waste Discharge Permit Fund (WDPF). Shifts \$2 million in State Water Board expenditures from the IWMA to the WDPF. The State Water Board has authority to raise fees annually to conform to the revenue levels assumed in the Budget Act.

Department of Food and Agriculture

4. FL—COBCP: Reappropriate Tulare/Fresno Animal Health and Safety Laboratory Consolidation and Replacement Funds (Budget Bill Language—BBL). The Governor requests reappropriation of project funding for working drawings,

construction, and equipment phases of the laboratory consolidation and replacement, and, additionally, requests Budget Bill Language (BBL) to: (1) clarify that the Department of Food and Agriculture, the State Public Works Board (SPWB), and the University of California (UC) are authorized to execute all necessary documents and agreements needed to sell lease-revenue bonds for the project; and (2) clarify that UC has the authority to design and manage the project, subject to Department of Finance (DOF) and SPWB oversight and review.

Staff Recommendation (for Vote-Only Items 1-4): APPROVE Items 1, 3, and 4; and DENY IN-PART Item 2 (per the staff comments).

<p><i>Action: Approved Items 1 and 4 on a 3-0 vote. Approved Item 3 on a 2-1 vote (Cogdill). Denied in-part Item 2 (per staff comments) on a 2-1 vote (Cogdill).</i></p>

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 includes \$75.8 million (\$4.8 million GF) for support of the DOC, a decrease of approximately \$635 million, due almost entirely to the transfer of the Division of Recycling (including the Beverage Container Recycling Program) to the new Department of Resources Recycling and Recovery.

ITEMS PROPOSED FOR VOTE-ONLY

1. BCP-6: California Farmland Conservancy Program (CFCP)—Local Assistance (BBL). The Governor requests a one-time appropriation of \$7.9 million for the CFCP and BBL to make these funds, which were originally appropriated in 2006 but were unable to be encumbered, available for three years.

2. FL-11: Information Technology (IT) Business Planning. The Governor requests a two-year appropriation of \$122,000 (Oil, Gas, and Geothermal Account) for support of IT project planning for the Division of Oil, Gas, and Geothermal Resources.

Staff Recommendation (for Vote-Only Items 1-2): APPROVE Items 1-2 as proposed.

<p><i>Action: Approved Item 1 on a 3-0 vote. Approved Item 2 on a 2-1 vote (Cogdill).</i></p>
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ITEM PROPOSED FOR DISCUSSION

Finance Letter (FL): Strategic Growth Council (SGC) – Sustainable Communities Planning Grants. Proposition 84 allocated \$90 million for planning grants and planning incentives, including revolving loan programs and other methods to encourage the development of regional and local use plans that are designed to promote water conservation, reduce automobile use and fuel consumption, encourage greater infill and compact development, protect natural resources and agricultural lands, and revitalize urban and community centers. Of this total amount, \$12 million was appropriated to the Natural Resources Agency in 2009 for data gathering and model development necessary to comply with Chapter 728, Statutes of 2008 [SB 375, Steinberg]. Proposition 84 also stipulated that implementing legislation was needed before funds could be appropriated for the Sustainable Communities Planning Grants and Incentives Program. Chapter 729, Statutes of 2008 [SB 732, Steinberg] created the SGC to, among other things, develop, manage, and award financial assistance for sustainable planning and urban greening projects (consistent with Proposition 84).

Governor's Request. The Governor requests a total of \$70 million over six years from Proposition 84 to provide funds to implement and administer the new Sustainable Communities Planning Grant and Incentives Program and to support planning projects and incentives awarded by the SGC. For the 2010-11 Fiscal Year (FY), the Administration is requesting \$575,000 for program support; \$859,000 for outreach (via a new Outreach and Education Program); \$830,000 to develop and provide data and information to applicants; and \$40 million for projects. As proposed, the request would support six existing positions.

Staff Comments. At first blush, this request raised concern because it had the appearance of placing the Department of Conservation in a lead role administering (developing, evaluating, and awarding) a new planning grant program with cross-cutting policy implications. Initial questions included: (1) What special expertise does Department of Conservation (DOC) have in planning? and (2) Why has the DOC been chosen over other state entities to head up this program (particularly since this may create "bad blood" or distrust among other agencies)?

However, Natural Resources Agency staff have since indicated that the intent of the request is merely to have DOC staff experienced in administering grants oversee the more objective aspects of the program, while the SGC manages the more subjective and policy-oriented aspects of the program. To help clarify this, the Agency has provided the program development timeline and description contained in Appendix A, which, should the Committee elect to approve this request, should be adopted as an addendum to the BCP.

Staff's main concern is whether or not the DOC has, or will have, adequate vacancies to fill the staffing needs identified in the proposal (six positions). Staff notes that most of the DOC's vacancies were transferred with the Division of Recycling to the new Department of Resources Recycling and Recovery as part of last year's reorganization

of the California Integrated Waste Management Board. According to information provided by the DOC at the request of staff, two positions are currently being redirected to the new Sustainable Communities Planning Grants program, but no vacancies currently exist within that division. The Department of Finance believes that, consistent with the department's proposal for achieving the Governor's workforce cap, the DOC should have adequate vacant positions arise over the course of the budget year (e.g., through attrition) to meet the needs identified in the BCP. Given the Committee's reluctance to approve new permanent positions amid the ongoing fiscal crisis, staff is inclined to agree with the Department of Finance and recommend approving the request as proposed (with no new positions); however, should the DOC offer compelling testimony that this course of action is likely to interfere with the implementation of the new program, then the Committee may wish to approve one-year limited-term positions to fill the interim need (until six vacant positions become available).

Staff Recommendation: APPROVE the request.

<i>Action: Approved on a 2-1 vote (Cogdill).</i>

0540 Natural Resources Agency

The Secretary for Natural Resources heads the Natural Resources Agency. The Secretary is responsible for overseeing and coordinating the activities of the boards, departments, and conservancies under the jurisdiction of the Natural Resources Agency.

Governor's Budget. The Governor's Budget includes \$35.7 million to support the Secretary for Natural Resources. This is a nearly \$100 million decrease over estimated expenditures in the current year primarily due to reduced bond fund expenditures, but also the transfer of CALFED resources to the new Delta Stewardship Council.

ITEM PROPOSED FOR VOTE-ONLY

1. FL-2: California River Parkways Grant Program—Proposition 40 Reappropriation. The Governor requests reappropriation of the unencumbered balance of \$56.2 million in Proposition 40 funds originally appropriated in 2002.

Staff Recommendation: APPROVE the item as proposed.

Action: Approved on a 3-0 vote.

ITEM PROPOSED FOR DISCUSSION

FL-1: Strategic Growth Council—Proposition 84 Urban Greening. Proposition 84 allocated \$90 million for urban greening projects that reduce energy consumption, conserve water, improve air and water quality, and provide other community benefits. Chapter 729, Statutes of 2008 [SB 732, Steinberg] established the Strategic Growth Council (SGC) and gave it the responsibility of managing and awarding financial assistance to cities, counties, or nonprofit organizations for the preparation, planning, and implementation of an urban greening program. Grant guidelines for this program were developed through a public process between October 2009 and February 2010, and they will be updated annually. The SCG Board approved the final guidelines on February 9, 2010, and projects will be solicited and evaluated during the spring and summer.

Governor's Request. The Governor requests: (1) an augmentation of \$286,000 (Proposition 84) and three positions to begin the first year of full implementation of the Urban Greening Program; and (2) \$21.1 million (Proposition 84) in grant funds to be appropriated to the Resources Agency ~~but administered by the Department of Conservation.~~

Staff Comments. Staff does not have any specific concerns with this proposal, as the proposed grants are consistent with the provisions of Proposition 84, which allocates up to \$70 million to this program. As proposed, the Agency would award \$63 million in local assistance over the next three years, with most of the remaining \$7 million going to administration and statewide bond costs.

The application deadline for the program recently passed and the Agency reports receipt of a considerable number of applications from statewide agencies. At the hearing, the Agency should be prepared to discuss with the Committee what types of projects are being proposed for funding and when they anticipate that funding will go out if this proposal is approved. Additionally, the Agency should be prepared to address concerns on the part of some stakeholders about the definition of “urban” in the program guidelines. (Staff understands that a change in the definition may be warranted in future solicitations.)

Staff Recommendation: APPROVE the request.

Action: Approved on a 2-1 vote (Cogdill).

3540 Department of Forestry and Fire Protection

The California Department of Forestry and Fire Protection (DFFP), under the policy direction of the Board of Forestry, provides fire protection services directly or through contracts for timberlands, rangelands, and brushlands owned privately or by state or local agencies. In addition, DFFP: (1) regulates timber harvesting on forestland owned privately or by the state and (2) provides a variety of resource management services for owners of forestlands, rangelands, and brushlands.

Governor's Budget. Excluding capital outlay, where the amount of carryover makes year-to-year comparisons less meaningful, the Governor's Budget includes \$1.091 billion for support of the DFFP in 2010-11. This is a 2.5 percent decrease over current year expenditures. The significant decrease in GF is due to the proposed backfill of \$200 million GF with revenues from the Emergency Response Initiative property insurance surcharge.

ITEMS PROPOSED FOR VOTE-ONLY

1. FL-3: Urban Forestry—Proposition 84 (BBL). The Governor requests fourth-year funding of \$3.2 million (Proposition 84) for urban forestry local assistance grants. Additionally, the Governor requests: (1) a decrease of \$642,000 to state operations; and (2) a reversion of \$6.3 million originally appropriated in 2008. The original Proposition 84 urban forestry request for the 2007-08 fiscal year (FY) included a ten-year spending plan worth \$45.9 million (or roughly half of the \$90 million contained in Proposition 84 for urban greening); however, subsequent creation of the Strategic Growth Council has led to a reallocation of the urban greening monies such that the DFFP's urban forestry program will now receive only \$21 million (necessitating the requested reversion). Based on the revised spending plan, FY 2011-12 will be the last year for Prop 84 grants under this program (approximately \$3.2 million).

2. FL-4: Integrated Pest Management Grant (American Recovery and Reinvestment Act—ARRA). The Governor requests \$41,000 (federal funds) to enable the DFFP to implement the Integrated Pest Management projects funded under ARRA.

3. BCP-13: Reappropriation of FY 2008-09 Prop 40 Bond Funds. The Governor requests reappropriation of approximately \$7.7 million in Prop 40 funding (\$1.8 million for urban forestry; and \$5.9 million for fuels management) that was originally appropriated in FY 2008-09.

4. BCP-8: Code Development – Green Building Standards. The Governor requests one position and \$169,000 special fund to develop building standards, with emphasis on development, adoption, publication, updating, and educational efforts associated with green building standards and efforts to reduce home loss due to wildland fires.

Staff Comments. This item was originally heard and held open on March 4 due to staff concerns with the apparent lack of a coordinated strategic plan for expenditure of Building Standards Administration Special Revolving Fund (BSASRF) dollars. The Administration has since provided additional clarification on the overall spending plan, such that staff is comfortable recommending approval of the position with the following stipulations: (1) DENY the requested vehicle (similar building standards positions funded from BSASRF at the Department of General Services and the Department of Housing and Community Development (HCD) do not receive new vehicles and the Governor has declared a freeze on new vehicle purchases to boot); and (2) APPROVE placeholder, uncodified trailer bill language requiring the Office of the State Fire Marshal to report to the Joint Legislative Budget Committee, no later than January 1, 2012, on steps taken to improve fire and panic safety with respect to green building standards. Specifically, the office will need to indicate steps, if any, it has taken, or plans to take, to better coordinate its efforts with the California Building Standards Commissions and the HCD.

Staff Recommendation: Consistent with the staff comments (above), APPROVE one position and \$139,000, and placeholder, uncodified trailer bill language.

5. BCP-7: State Fire Training. The Governor requests \$315,000 special fund and four positions (two temporary help; and two permanent) in the Office of the State Fire Marshal (OSFM) to: (1) develop a Feasibility Study Report (FSR) for a student records database; and (2) to address increased demand for fire service training.

Staff Comments. The Committee previously heard this item on March 4 and approved two temporary help positions and held open the remainder of the request in order for the DFFP to better substantiate the justification. Subsequently, the OSFM has indicated it will not pursue the additional two permanent positions. Therefore, staff recommends the Committee deny the two permanent positions (and the associated funding).

Staff Recommendation (for Vote-Only Items 1-5): APPROVE Items 1, 2, 3, and 4, but DENY the vehicle for Item 4 and ADOPT placeholder TBL as described in the staff comments. Additionally, DENY the two permanent positions requested in Item 5 (the remainder of the request was previously approved).

**Action: Approved Items 1, 2, and 3 on a 3-0 vote.
Approved Item 4 (less \$30,000 for a vehicle) on a 2-1 vote (Cogdill).
On a 3-0 vote, denied two permanent position requested in Item 5, but approved requested funding to supplant GF currently supporting two positions that will be redirected to state fire training activities.**

ITEMS PROPOSED FOR DISCUSSION

1. BCP-10: Watershed Fuels Management Program. The Governor requests \$40 million in Proposition 1E (Prop 1E) funds over seven years, including \$5.5 million in FY 2010-11, in order to continue a fuels management program currently funded by Proposition 40 (Prop 40). Notwithstanding the requested reappropriation of 2008-09 funding (see BCP-13 below) and any unencumbered balance from the current-year appropriation, Prop 40 funds for fuels management have been exhausted. Thus, the Governor is proposing to shift the program to an alternative fund source.

Staff Comments. Unfortunately, Prop 1E, the Disaster Preparedness and Flood Protection Bond Act of 2006, did not specifically allocate funding for fuels management. Rather, as was discussed on March 4 when this item was previously heard and held open, the DFFP is seeking to utilize Prop 1E funds designated for stormwater flood management by arguing that fuels management helps to reduce fires that can leave watersheds denuded and prone to impaired water quality under flood conditions. While the proposed activities might very well have this beneficial effect, staff cannot recommend approval of the request for funds for a purpose that does not appear to be consistent with the intent of the voters when they approved Prop 1E. That said, should the DFFP offer any alternative funding ideas for fuels management, staff would work closely with the Administration to try and address this critical need. Finally, staff notes that a \$5.5 million reappropriation of Prop 40 funds for fuels management is recommended for approval in this agenda.

Staff Recommendation: DENY the request.

Action: Held open until May 24 to allow the Administration to continue to pursue alternative funding sources for fuels management. Additionally, requested staff to obtain a Legislative Counsel opinion on the legality of using Proposition 1E funds for the requested purpose. [The Chair noted that regardless of Counsel's opinion, the Committee would retain the prerogative to determine whether the request was "appropriate" (even if entirely legal).]

2. Staff Issue: Funding and Fiscal Oversight of Fire Prevention and Fire Protection Expenditures. On April 29, the Committee heard discussion on the following issues associated with funding and fiscal oversight of fire prevention and fire protection: (1) the use and oversight of Emergency Fund (E-Fund) expenditures; (2) the balance between fire protection and fire prevention expenditures; (3) defensible space inspections; and (4) oversight of Schedule A agreements. In the hearing, the LAO provided a hand-out that contained a variety of recommendations and items for consideration.

Staff Comments: Based on discussions in the previous hearing and input from the LAO, staff offers the following observations and recommended actions to the Committee:

- **E-Fund** – As noted by the LAO, the E-Fund is currently used for various (mainly staffing) costs that have become regular, annual expenditures, such that they no longer meet any reasonable definition of “emergency.” Further, the Legislature lacks adequate fiscal oversight of E-Fund expenditures. Therefore, staff recommends the Committee move day-to-day expenditures currently budgeted in the E-Fund into the base budget for FY 2010-11 on a one-time basis, and re-align E-Fund and base budget expenditures in the Budget Year associated with reimbursements approved in FY 2009-10. Direct the Administration to return with budget proposals for FY 2011-12 for the items moved into the base budget for review during the annual budget process. Additionally, adopt [placeholder] statutory language that (1) explicitly specifies what expenditures are allowed from the E-Fund and (2) requires that any other expenditures be supported from the department’s base budget.
- **Fire Protection v. Fire Prevention** – In recent years, fire protection costs have increased rapidly, while fire prevention expenditures have lagged. The state could increase its return on investment and obtain greater “bang” (reduce fire threat to life and property) for its GF “buck” by allocating additional resources to fire prevention. Therefore, tied to the above recommendation to shift certain E-Fund expenditures into the base budget, staff recommends the Committee shift \$2 million of the above identified monies from Fire Protection to Resource Management (fire prevention). Staff additionally recommends the Committee adopt placeholder, trailer bill language directing the DFFP to use these funds for the express purpose of funding Foresters to conduct defensible space inspections. The intent would be to supplement, rather than supplant, existing defensible space inspections conducted by seasonal firefighters, and, by using Foresters, to ensure that the number of inspections is not compromised by the need to respond to non-fire emergencies (as is currently the case for firefighters). Further, since the DFFP has not yet released its plan under the Governor’s proposed workforce cap, staff recommends the Committee direct the department to use any existing Forester vacancies (along with reclassification of other positions that would otherwise be held vacant to meet the cap requirements) in order to fulfill this directive.

- **Fire Prevention Reporting** – Good data is essential to the DFFP’s ability to fulfill its mission to protect California wildlands and the life and property of the citizenry in these areas, as well as to the Legislature’s ability to adequately oversee DFFP expenditures. Given the recommended increase to fire prevention expenditures noted above and the fact that the DFFP has, to date, failed to provide the Legislature with the 2009 fire prevention report it is statutorily required to submit each year on January 1, staff recommends adoption of placeholder TBL to:
 - Amend the existing reporting requirement so that the data reported is synchronized to the fiscal year (to ensure data can be more easily correlated with funding levels and can be readily provided in time for consideration in the annual budget process).
 - Include specific tracking and reporting on the increased defensible space inspections proposed above.
 - Require the DFFP to utilize a standardized metric (e.g., inspections per Personnel Year) in its reporting that allows defensible space inspections and other fire prevention statistics to be compared year-to-year adjusted for changing levels of available resources (e.g., staff).
 - Include direction to the DFFP to submit in its annual report, as it sees fit, various qualitative data and/or qualifying statements that will better enable the Legislature to analyze and interpret the impact of DFFP fire prevention expenditures (particularly as they relate directly, or indirectly, to reduced fire threats, and, by extension, reduced need for fire protection expenditures).

- **Schedule A Agreements** – Given concerns over the continued expansion of the DFFP’s role in activities beyond wildland fire protection, and the authority given to the DFFP Director to enter into agreements to provide full-service emergency response outside of the State Responsibility Area, the Legislature should review all of these agreements prior to the expansion of the DFFP’s operations. Additionally, fiscal prudence and the state’s ongoing fiscal crisis dictate that the state should take all reasonable steps to ensure that it receives fair reimbursement for fire protection services provided to local governments through these Schedule A agreements. Therefore, staff recommends the Committee adopt placeholder TBL requiring the DFFP to submit to the Legislature, for review and approval, all new or renewed Schedule A agreements of a certain size (to be determined). The intent is to model this process after the Department of Parks and Recreation process for approval of park concessions (which are submitted in the annual budget process and approved via Supplemental Report Language).

Staff Recommendation: ADOPT the various LAO and staff recommendations detailed in the staff comments (above), most notably: (1) the shift of E-Fund to the base budget and the LAO-recommended placeholder TBL; (2) a \$2 million shift from Fire Protection to Resource Management of E-Fund expenditures identified by the LAO for inclusion in the FY 2010-11 base budget, for the express purpose of funding Foresters to carry out

increased defensible space inspections; (3) various pieces of placeholder TBL (as specified above) aimed at enhancing fire prevention and the adequacy and value of related data provided to the Legislature; and (4) additional placeholder TBL intended to increase legislative oversight of Schedule A agreements in order to check any unnecessary expansion of the DFFP's activities beyond wildland fire protection and to better ensure the state receives fair reimbursement for fire protection services provided to local governments.

Action: Held open in order to allow more time for staff, LAO, and the Administration to work out any technical difficulties with the staff recommendation. [The Chair noted support for the staff recommendation and indicated that the additional time was not to be used to "re-argue" the issues.]

3600 Department of Fish and Game

The Department of Fish and Game (DFG) administers programs and enforces laws pertaining to the fish, wildlife, and natural resources of the state. The Fish and Game Commission sets policies to guide the department in its activities and regulates fishing and hunting. The DFG currently manages about 850,000 acres including ecological reserves, wildlife management areas, hatcheries, and public access areas throughout the state.

Governor's Budget. The Governor's Budget includes \$385 million for support of the DFG, a reduction of \$25 million, or 6 percent, over current year expenditures. This reduction is primarily due to a reduction in GF support.

[See the following page for Items Proposed for Discussion.]

ITEM PROPOSED FOR DISCUSSION

Staff Issue: Coastal Salmon and Steelhead Fishery Restoration. There is an opportunity for the Committee to approve additional funding for coastal salmon and steelhead fishery restoration from Proposition 84 funds.

Background. The Fisheries Restoration Grant Program (FRGP) was established in 1981, in response to rapidly declining populations of wild salmon and steelhead trout and deteriorating fish habitat in California. This competitive grant program has invested over \$180 million to support projects from sediment reduction to watershed education throughout coastal California. Contributing partners include the DFG, federal and local governments; tribes, water districts, fisheries organizations, watershed restoration groups, the California Conservation Corps, AmeriCorps, and private landowners.

Restoring anadromous salmon and steelhead habitat is a commitment the program and partners have embraced and with population of some salmon at critically low levels, there are many opportunities for restoration projects that will directly benefit the salmon and steelhead trout in California.

Staff Comments. On May 6, the Committee approved a Governor's request for \$17.2 million in Federal Funds for 2010-11 for the Fisheries Restoration Grant Program. However, Public Resources Code Section 75050 (a) from Proposition 84 allocates a total of \$180 million for Bay Delta projects, Natural Conservation Community Planning development and *fisheries restoration*. Of this funding, up to \$45 million is specifically made available for *coastal salmon and steelhead fishery restoration* projects that support development and implementation of species recovery plans. In 2008-09 the DFG's budget request for Anadromous Fish Management indicated that funding from this section would be divided as follows: Coastal Salmonid Plan Implementation -- \$2.5 million; Coho Recovery Plan Implementation – \$25.6 million; and Coastal Steelhead and Chinook Recovery – \$16.8 million. The Committee may wish to inquire of the DFG: 1) how much funding in total will be available for local fisheries restoration grants; and 2) how much funding remains in this section for local grants. Based on the DFG's responses, the Committee may want to consider an additional appropriation of local grant funds to accelerate projects.

Staff Recommendation: APPROPRIATE the balance of Proposition 84 funds available for salmon and steelhead restoration grants over a three-year period with the following BBL:

The funds approved in this item for fisheries restoration grants shall be expended pursuant to section 6217.1 of the public resources code.

Action: Approved on a 2-1 vote (Cogdill).

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. Historically, the department was also a major implementing agency for the CALFED Bay-Delta Program, tasked with putting in place a long-term solution to water supply reliability, water quality, flood control, and fish and wildlife problems in the San Francisco Bay Delta. As noted above, that program was abolished with SBx7 1, and CALFED responsibilities were transferred to new entities, including the Delta Stewardship Council.

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). The CERS division continues to be financially responsible for the long-term contracts entered into by the department. (Funding for the contracts comes from ratepayer-supported bonds.) However, the IOUs manage receipt and delivery of the energy procured by the contracts. (More on the CERS division of DWR is included in the Energy and Utilities section of this report.)

Governor's Budget. The Governor's Budget includes \$1.5 billion (\$188 million GF) for support of the DWR, a decrease of approximately \$1.6 billion, due primarily to reduced bond fund expenditures. An additional \$3.7 billion in CERS funding is not subject to the Budget Act (these funds are primarily for energy payments related to the 2001 electricity crisis).

ITEMS PROPOSED FOR VOTE-ONLY

1. BCP: FloodSAFE Support (BBL). The Governor requests continued FloodSAFE funding of \$210.8 million (including \$173.8 million Proposition 1E; \$21 million Proposition 84 [continuously appropriated]; and \$16 million Proposition 13) and 37 positions (including 15 new, full-time positions; 13 new limited-term positions; and nine existing positions) to carry out activities across six functional areas.

2. BCP: Salton Sea Conservation Implementation. The Governor requests one-year funding of \$4 million (reimbursement authority) to carry out Salton Sea restoration activities. These funds will be provided through reimbursements from the Department of Fish and Game and the Natural Resources Agency and will be used to construct shallow habitat on the sea as is outlined in the 2007-08 Salton Sea Management Plan.

3. BCP: Multi-Benefit Water Planning and Feasibility Studies. The Governor requests \$30.6 million from Proposition 84 (including new appropriations totaling \$16 million over the next three years; and reappropriation of approximately \$14.6 million

originally appropriated in FY 2007-08), and three new positions to fund various multi-benefit water planning and feasibility studies activities,

4. BCP: San Joaquin River Restoration Program. The Governor requests \$33.8 million in reimbursement authority (\$13.8 million in FY 2010-11; and \$20 million in FY 2011-12) in order to receive Proposition 84 funds from the Natural Resources Agency for support of year four of San Joaquin River restoration efforts.

5. BCP: Water Use Efficiency Technical Assistance and Science Program (BBL). The Governor requests reversion of \$6 million (Proposition 50) originally appropriated in FY 2008-09 that has gone unused due to the 2008 bond freeze, and a new appropriation of \$6 million, including \$3 million for the Water Use Efficiency Technical Assistance Program and \$3 million for the Program Science Evaluation.

6. BCP: Water Supply Reliability and Urban Streams Restoration Program (BBL). The Governor requests \$794,000 (Proposition 50), to be reverted from funds originally appropriated in FY 2003-04, for water supply reliability projects; and \$9.1 million (Proposition 84) to continue the Urban Streams Restoration Program.

7. BCP: Sacramento Valley Water Management Program (BBL). The Governor requests \$8 million (Proposition 204) to be reverted from funds originally appropriated in FY 2008-09, for the Sacramento Valley Water Management and Habitat Protection Measures Program.

8. FL: Proposition 50 Water Supply Reliability, Reappropriation, Extension of Liquidation Period, and Various Other Technical Adjustments. The Governor requests \$11.8 million (Prop 50) for water supply reliability activities which can no longer be funded from existing funds due to a technical reversion error in the Budget Act of 2009. Additionally, the Governor requests various reappropriations, extensions of liquidation period, and technical adjustments for projects that cannot be completed by June 30, 2010. These include, but are not limited to, the following:

Reappropriations

- Item 3860-101-6023, Budget Act of 2009
- Item 3860-101-6026, Budget Act of 2004
- Item 3860-101-6026, Budget Act of 2005
- Item 3860-101-6026, Budget Act of 2006
- Item 3860-101-6026, Budget Act of 2007
- Item 3860-101-6031, Budget Act of 2006
- Item 3860-101-6031, Budget Act of 2007
- Item 3860-101-6031, Budget Act of 2009
- Section 6(b)(3)-(7), Chapter 1, Statutes of 2008
- Section 6(a)(1)-(2), Chapter 1, Statutes of 2008
- Item 3860-101-6051, Budget Act of 2009
- Item 3860-001-6052, Budget Act of 2009

- Item 3860-101-6052, Budget Act of 2009

9. FL: California/Nevada Water Allocation of the Truckee River. The Governor requests conversion of one limited-term position to permanent status and \$200,000 (federal funds) for five years to allow receipt and expenditure of Truckee River Operating Agreement grant funds.

10.COBCP: American River (Common Features) Project. The Governor requests \$7 million (\$5 million Proposition 1E; and \$2 million reimbursement authority) to continue the re-evaluation, design, and construction of the American River (Common Features) Project to improve the level of flood protection for Sacramento.

11.COBCP: Folsom Dam Modifications Project. The Governor requests \$38.2 million (\$26.9 million Proposition 1E; and \$11.3 million reimbursement authority) to continue design and construction of the Folsom Dam Modifications Project aimed at enhancing the flood release capability of the dam and increasing the level of flood protection to Sacramento.

12.COBCP: Mid-Valley Area Levee Reconstruction Project. The Governor requests \$2.7 million (\$1.9 million Proposition 1E; and \$750,000 reimbursement authority) to fund the Mid-Valley Area Levee Reconstruction Project which will restore levee sections of the Sacramento River Flood Control Project in reclamation districts between the Tisdale Bypass and the Sacramento Bypass.

13.COBCP: South Sacramento County Streams. The Governor requests \$6.2 million (\$4.4 million Proposition 1E; and \$1.8 million reimbursement authority) to continue construction of the South Sacramento County Streams Project to protect Sacramento from high water events in the Delta and from flooding associated with various local creeks.

14.COBCP: System-wide Levee Evaluations and Repairs. The Governor requests \$48 million (Proposition 1E) to continue: (1) system-wide evaluation of state/federal (project) levees; (2) evaluation of non-project levees that protect urban areas; and (3) repair of levees and erosion sites where deficiencies are found.

15.COBCP: West Sacramento Project. The Governor requests \$3.1 million, including: (1) \$1.2 million (\$625,000 Proposition 1E; and \$550,000 reimbursement authority) to fund the non-federal share of the development of the West Sacramento Project General Reevaluation Report; and (2) \$1.9 million (\$1.4 million Proposition 1E; and \$562,000 reimbursement authority) to fund the non-federal share of design and construction for the north and south slip repair sites of the West Sacramento Project.

16.COBCP: Yuba River Basin Project. The Governor requests \$2.7 million (\$2.2 million Proposition 1E; and \$510,000 reimbursement authority) for completion of the General Reevaluation Report and the design of the Marysville Ring Levee Reconstruction element for the Yuba River Basin Project.

17.COBCP: Butte Slough Outfall Gates Rehabilitation Project. The Governor requests \$15.1 million (Proposition 1E) to rehabilitate the Butte Slough Outfall Gates, and feature of the Sacramento River Flood Control Project that controls the passage of floodwaters from the Butte Basin to the Sacramento River.

18.COBCP: Lower Cache Creek, Yolo County, Woodland Area Flood Control Project. The Governor requests \$1.6 million (\$1.4 million Proposition 1E; and \$200,000 reimbursement authority) for a feasibility study of the Lower Cache Creek, Yolo County, Woodland Area Flood Control Project to improve the existing 10-year flood protection.

19.COBCP: Lower San Joaquin River Feasibility Study. The Governor requests \$1.7 million (Proposition 1E) for the Lower San Joaquin River Feasibility Study to reduce flood damage between the Mariposa Bypass and north of Stockton.

20.COBCP: Sutter County Feasibility Study. The Governor requests \$1.9 million (\$1 million Proposition 1E; and \$861,000 reimbursement authority) to investigate measures to improve the level of flood protection for the Yuba City Basin from a 100-year event to the maximum level feasible.

21.COBCP: Land Acquisitions for Mitigation Bank(s) to Support Delta Levee Repairs. The Governor requests \$1 million (Prop 84) to acquire approximately 100-150 acres of land in the Delta where habitat could be restored to provide mitigation for needed levee repairs in the Delta.

22.COBCP: Reappropriate and/or Extend Liquidation Period for Various Capital Outlay Projects. The Governor requests reappropriation and/or extension of the liquidation period for the follow capital outlay projects:

- a. Franks Tract Pilot Project
- b. Marysville/Yuba Levee Reconstruction
- c. 1997 Flood Damage Repair Projects
- d. West Sacramento Project
- e. Mid-Valley Levee Reconstruction
- f. Magpie Creek
- g. 1997 Flood Damage Repair Projects — San Joaquin Valley
- h. Yuba River Basin Project
- i. South Sacramento County Streams
- j. American River Watershed – Folsom Dam Raise Project
- k. American River Watershed – Folsom Dam Raise Project, Bridge Element
- l. Sutter Bypass Pumping Plants Control systems
- m. Sutter Bypass East Water Control Structures

23.COBCP: Feather River Early Implementation Program Project. The Governor requests \$9.6 million (Prop 1E) to support two existing positions for the state cost-share

funding for the design and environmental review of the Sutter Buttes Flood Control Agency's Feather River Levee Strengthening Early Implementation Program Project.

24.COBCP: Sutter Bypass East Borrow Canal Water Control Structures Project.

The Governor requests \$1.5 million (Prop 1E) to support 9.9 existing positions to complete the replacement of two hydraulic control structures on the East Borrow Canal of the Sutter Bypass.

25.COBCP: Terminus Dam—Lake Kaweah. The Governor requests \$1.4 million (Prop 1E) and \$200,000 (reimbursement authority) to support 2.5 existing positions to continue the Terminus Dam, Lake Kaweah Enlargement Project.

Staff Recommendation (for Vote-Only Items 1-25): APPROVE Items 1-25 as proposed.

**Action: Approved Items 1 and 4-25 on a 3-0 vote.
Approved Items 2 and 3 on a 2-1 vote (Cogdill).**

ITEMS PROPOSED FOR DISCUSSION

1. BCP: Create Flood Emergency Fund (BBL). The Governor requests a shift of \$1 million in baseline GF to a new Emergency Fund (“E-Fund”) for exclusive use in responding to imminent flood threats with duration of no more than seven days. The Administration would be provided authority to redirect the existing GF support for flood management (currently totaling \$40 million GF). The Director of DWR could access this new fund, at his or her discretion, to support emergency response activities. Proposed budget bill language (BBL) would further allow the DOF to immediately transfer additional funds (GF) to the E-Fund without legislative notification whenever the \$1 million appropriation was exhausted.

Staff Comments. This item was previously heard on April 22 and held open to provide the DWR with more time to work with legislative staff to develop a modified proposal that would address LAO and staff concerns. Specifically, the Committee asked the Administration to: (1) more clearly define the purposes for which the E-Fund could be used; and (2) provide the Legislature with adequate fiscal oversight to ensure funds are used appropriately.

In the interim, the Administration has demonstrated a willingness to work with the Legislature to refine this proposal. Currently the DWR has agreed to report any E-Fund expenditure to the Joint Legislative Budget Committee within 30 days. Additionally, the DWR has agreed to specify in Budget Bill Language (BBL) that E-Fund monies are only to be expended for flood events that are consistent with the criteria identified in the department’s internal “Water Resources Engineering Memorandum Process.” Staff notes that this memorandum has not been finalized by the DWR (and any approval of the E-Fund request would need to be made contingent upon legislative review of the final version); however, the following are examples of the criteria to be included:

- High water conditions are forecasted within the next five days, flood stage is forecasted to occur at one or more locations, and the Flood Operations Director determines that an imminent flood risk exists (imminent meaning potential system failure within five days).
- Hydraulic models suggest that one or more levees will be over-topped or that water surface elevations will exceed flood stage for three or more days.
- Inspection(s) finds that water flow through a levee is carrying sediment.
- An inspection finds active erosion of a levee or flood control structure.
- An inspection of a levee or flood control structure, performed at the request of an Operational Area (County) or Levee Maintaining Agency, finds conditions represent an imminent threat to the levee or structure.
- An inspection by a Geotechnical Engineer or a Flood Fight Specialist finds that levee conditions require immediate repair to stabilize the levee section and prevent failure.

Finally, the DWR has agreed to include BBL to require that the funds be spent only during an event, defined by the above memorandum process, for a period not to exceed seven days. While staff agrees that the period of time during which the Director may authorize E-Fund expenditures should be limited, seven days still seems too long. If the E-Fund is needed, in part, because response to impending flood emergencies should not be unnecessarily delayed by the day or two that it might take to get approval for release of emergency (or pre-emergency funds) from a higher authority (e.g., the Governor, or the Legislature), then the Director's discretion to spend funds beyond this initial period of time (perhaps as long as three days) should be limited. After that point in time, unless the Administration can make a very compelling reason why it should not, the responsibility for authorizing additional expenditure of taxpayer money should rest with elected officials (either the Governor or the Legislature).

At this time, staff believes a mutually acceptable compromise with the Administration on the E-Fund is still possible, but the Committee may wish to provide additional direction to staff and the LAO in fashioning a final proposal for adoption at the May 24 hearing.

Staff Recommendation: Continue to HOLD OPEN.

Action: Held open. The Chair noted overall satisfaction with the direction of the current compromise, but requested staff to work with the Administration to develop language specifying that the Governor's approval would be needed to expend E-Fund after the initial (3-4 days, approximately) of a pre-emergency action.

2. Davis-Dolwig Act—State Water Project Facilities Fish and Wildlife Enhancement and Recreation (TBL). Similar to last year, the Governor has proposed to provide ongoing funding for State Water Project recreation costs, and various changes to existing statute (the Davis-Dolwig Act).

Davis-Dolwig Act. Chapter 867, Statutes of 1961 (AB 261, Davis), also known as the Davis-Dolwig Act, states the broad intent of the Legislature that State Water Project (SWP) facilities be constructed “in a manner consistent with the full utilization of their potential for the enhancement of fish and wildlife and to meet recreational needs.” The DWR is charged with implementing the act as part of planning for construction of SWP facilities. The Davis-Dolwig Act does not provide criteria specifying what kinds of recreation facilities or fish and wildlife enhancements are to be developed, nor does it require legislative review or approval of such facilities or enhancements.

DWR has Authority to Determine Cost-Share. The DWR determines what share of the costs of SWP facilities relate to fish and wildlife enhancements and recreation and are Davis-Dolwig costs not subject to reimbursement by state water contractors. In practice, most Davis-Dolwig costs are related to recreation. Most fish and wildlife costs are classified as being related to “preservation” of these species, rather than the “enhancement” of fish and wildlife, and therefore are not usually attributed to Davis-Dolwig.

There are two primary costs under the Davis-Dolwig Act. First is the capital cost of the creation of recreation facilities when the SWP was constructed (such as the purchase of additional land for hiking trails and camping). The second is an allocation to recreation of the total annual budget of the overall SWP, based on an assessment of each facility’s value as a recreational asset. This is an indirect form of cost allocation, whereby a portion of the operation and capital cost at every SWP facility is allocated to recreation. These indirect recreation-related costs, on a statewide basis, average about three percent for operations and six percent for capital spending.

General Fund Role in Davis-Dolwig Act. The Davis-Dolwig Act states that the DWR is not to include costs of fish and wildlife enhancements and recreation in charges levied on the SWP contractors. The act states the intent of the Legislature that such costs be paid for by an annual appropriation from the General Fund (GF). The act, however, did not actually appropriate any GF monies to pay for Davis-Dolwig costs.

Since 1961, the DWR has allocated over \$464 million of SWP costs to Davis-Dolwig. Of this amount, \$107 million has been paid from a combination of tidelands oil revenue (\$90 million) and the GF (\$17 million). A further \$202 million in Davis-Dolwig costs fronted by SWP contractors was offset with monies owed by them to the state, which had fronted the costs for SWP construction projects. The remaining \$155 million allocated by DWR for Davis-Dolwig recreation costs has been paid for, on an interim basis, by SWP contractors.

Governor's Budget. The Governor requests an augmentation of \$15.6 million (Proposition 84) and an ongoing continuous appropriation (contained in TBL) of \$7.5 million annually from the Harbors and Watercraft Revolving Fund to pay for benefits to public recreation and fish and wildlife enhancements (R/F&WE) that are provided to the public as a result of the SWP. Additionally, the proposed TBL would clarify that, because the State Constitution prohibits the Legislature from creating certain debts or liabilities for future Legislatures without voter approval, if there is no appropriation in a certain budget year for R/F&WE costs, the State does not carry an obligation to repay those costs in future years.

LAO Recommendation. Similar to last year, the LAO recommends that the Legislature deny the request for Davis-Dolwig funding in the budget year and reject the proposed statutory change to provide an ongoing appropriation from the Harbors and Watercraft Revolving Fund to pay Davis-Dolwig costs. The LAO further recommends that the Legislature carefully evaluate the policy and legal implications for the state before adopting the administration's proposal to modify state law to declare that no historical state funding obligation exists for Davis-Dolwig costs. To this effect, the LAO makes a series of recommendations:

- The LAO recommends that Davis-Dolwig be amended to specify that only costs related to construction of recreation facilities at new SWP facilities are to be paid for by the state under Davis-Dolwig. The LAO advises the Legislature to specify that there is to be no allocation of total SWP costs to recreation. The recreation cost component of SWP capital projects would be removed, presumably allowing revenue bonds to be sold and construction to continue on pending SWP projects.
- The LAO recommends that the Legislature specify that SWP is no longer to incur operational and maintenance costs for state recreation areas, or use SWP funds for these purposes. These costs should be considered for funding alongside any other budget requests for the state park system, and be subject to legislative review and approval in the annual budget process. In particular, the LAO thinks that DWR should not incur any further costs related to the operation of the State Recreation Area at Lake Perris.
- The LAO also recommends that the Legislature specify that any SWP recreation facilities that are to be developed or improved under a regulatory requirement shall not be considered eligible state costs under Davis-Dolwig. This approach is consistent with legislative policy on how regulatory compliance costs are to be funded. If this recreation spending is required by a federal, state, or local regulatory agency as a condition of approving the construction or operation of an SWP facility, these regulatory costs should be considered a project cost and paid for by SWP contractors.

Staff Comments. Staff generally agrees with the concerns raised by the LAO, and notes that one of the fundamental problems with Davis-Dolwig and the funding of SWP benefits to public recreation is that the Legislature is being requested to appropriate funds for activities over which it has no input (because the SWP is "off-budget"). While there remains staunch opposition (from the Administration and others) to bringing the

SWP “on-budget” and subjecting its expenditures to the same review and oversight as most of the rest of the state budget, the Legislature will likely resist efforts to force payments for expenditures over which it has no input or oversight (e.g., dam construction at Lake Perris).

In the meantime, the DWR has raised concern about its continued ability to secure revenue bond financing of capital projects. The department needs to show prospective investors a secure revenue stream to back its debt obligations, and, in the absence of a state appropriation for the Davis-Dolwig share of costs, limited funds from other sources are available to fill in the financing formula. To date, the DWR has used “fourth priority” revenues to meet this need; however, the department notes concern that these funds are diminishing. Therefore, the Committee may wish the DWR to provide an update regarding the ongoing availability of these funds and the implications for revenue-bond financing in FY 2010-11.

Staff Recommendation: Consistent with the Legislature’s actions last year, again DENY the request (both the TBL and the related capital outlay proposal).

Action: Denied the TBL and capital outlay proposal on a 3-0 vote.

3. BCP: Agricultural Drainage Reduction. The Lower San Joaquin River (LSJR) is listed as an impaired water body under the California Clean Water Act, due in part to agricultural drainage that has resulted in elevated concentrations of salt, boron, and trace elements (arsenic, chromium, mercury, selenium, and molybdenum). This has led the local and state water boards to set objectives to improve water quality, and prompted creative efforts to reduce the deleterious impacts of agricultural drainage.

Governor's Budget. The Governor requests \$1 million (\$394,000 for 1.7 positions and 0.5 temporary help; and \$606,000 for grants from Proposition 84) in FY 2010-11 to begin implementation of a new five-year program to provide grants for projects that eliminate discharges of agricultural subsurface drainage water from the west side of the San Joaquin Valley into the San Joaquin River (SJR). The resources requested would develop their work plan, prepare, solicit, and evaluate the Request for Proposal. The total expected cost for this program is expected to be \$38.6 million over a five-year period.

Eligible grant entities will be farmers that drain into the west side of the SJR and types of projects will be divided into four categories:

- **Conservation measures:** Projects that reduce the volume of subsurface drainage effluent while at the same time saving water for other beneficial uses. These measures include source reduction, shallow groundwater table management, and groundwater management.
- **Reuse Measures:** Projects that reduce the amount of subsurface drainage effluent while at the same time making additional water available for irrigation and other beneficial purposes. This will involve measuring comprise reuse in salt tolerant crops, regional integrated drainage management systems, reuse in wildlife habitats, wetlands, and pastures.
- **Treatment Measures:** Physical, chemical, and/or biological processes that remove salts and/or harmful constituents from subsurface agricultural drainage water prior to discharging into the SJR.
- **Disposal Measures:** Enhanced evaporation systems that help to store the salts from concentrated agricultural subsurface drainage water.

Staff Comments. This item was on the April 22 agenda, but was not heard due to time constraints. This is a new program and the resources requested would generally be for developing local assistance program criteria to address West Side agricultural drainage. The DWR has requested \$606,000 in local assistance funds for the first year of this program with the funding level increasing annually to \$15.3 million in FY 2014-15 (for a total of \$36.6 million).

The proposed activities are consistent with the following bond section:

PRC 70529(a). Projects that reduce or eliminate discharges of salt, dissolved organic carbon, pesticides, pathogens and other pollutants to the San Joaquin River. Not less than forty million (\$40,000,000) shall be available to implement projects to reduce or eliminate discharges of subsurface agricultural drain water from the west side of the San Joaquin Valley for the purpose of improving water quality in the San Joaquin River and the Delta.

Notwithstanding the above authorization, however, staff notes concern that the state is footing the bill for activities for which the federal government is really responsible. The federal Central Valley Project delivers water to most of the farmers from whose land the drainage is occurring, and Congress has agreed decades ago to build a drainage system for the area. However, the project, which would have included a 188-mile concrete-lined canal designed to convey saline drainage water to the Delta, became mired in controversy and resulted only in an 85-mile canal “portion” that discharged into the Kesterson reservoir. The discovery of bird deformities due to high concentrations of selenium led to the shutdown of the reservoir, and, subsequently, to the plan to reroute drainage flows into the SJR (and, ultimately, to the problem driving this BCP). The Committee may wish to ask the DWR for an update on the role (or the lack thereof) on the part of the federal government to solve these ongoing drainage problems.

Additionally, the Committee may want to ask the department: (1) how it came up with the various grant categories sited above and the \$606,000 level of initial program funding; and (2) when it anticipates that it will be ready to begin awarding grants in the budget year. Because this is a new program, staff recommends that the Committee approve the staffing as ongoing but only approve the local assistance funds for one year in order to give the Legislature an opportunity to assess the program design in next year’s budget process before approving ongoing funding.

Staff Recommendation: APPROVE the request, but with local assistance for only one-year so that the program may be reviewed and assessed next year before ongoing funding is approved.

Action: Approved on a 2-0 vote (Simitian absent).

4. Staff Issue: Williams Settlement—San Francisco Turbine Sales. Unanticipated revenues to a state fund may be available to assist in addressing the current GF shortfall.

Background. Following the 2001 “energy crisis,” the state settled claims against several energy corporations, enabling it to renegotiate long-term energy contracts (at lower prices) and obtain cash and assets. As part of one of these agreements, the Williams Settlement (with Williams Energy), the state received \$101 million in cash and \$90 million in assets, including six gas-fired turbine generators that the Attorney General allocated to two local districts (four of the turbines were allocated to the San Francisco Public Utilities Commission and two to the Kings River Conservation District for use in the Fresno area). It was anticipated that the turbines would be used to build new “peaker” plants to provide energy generation to meet peak load requirements. However, by the terms of the 2003 Williams Implementation Agreement, if the turbines were ever to be sold, then the state was to receive a portion of the assets.

Staff Comments. As previously discussed on April 29, the City of San Francisco recently sold at public auction the four turbines it received from the state in the Williams Settlement. The sale grossed somewhere in excess of \$40 million. By the terms of the Implementation Agreement, San Francisco is entitled to \$2.5 million from the sale of each turbine (\$10 million total), plus some additional amount (including five percent of any amount above \$2.5 million per turbine). Meanwhile, any remaining proceeds are to be deposited into the Electric Power Fund (Fund), which is continuously appropriated to the DWR. Based on conversations with the DWR, staff has learned that approximately \$21 million has already been deposited into the Fund from the sale, and the DWR is currently in talks with the City of San Francisco about the disposition of roughly \$8 million in remaining sale proceeds. DWR staff have indicated that it is the department’s intent to use the sale proceeds deposited to the Fund to effectively credit ratepayers via the DWR’s next Revenue Requirement submittal to the California Public Utilities Commission.

On April 29, the Committee heard testimony from Legislative Counsel that, in its view, the state’s share of proceeds from the sale of the San Francisco turbines are the revenues from litigation and are therefore state funds which the Legislature may dispose of as it pleases. As such, given the state’s ongoing fiscal crisis, staff recommends the Committee adopt TBL to transfer the state’s share of the turbine-sale proceeds (including \$21 million currently in the Electric Power Fund and any additional balance from the sale of the turbines that is deposited into the fund) to the GF.

Staff Recommendation: ADOPT placeholder TBL as described in the staff comments, and preliminarily score \$21 million to the benefit of the GF. Additionally, in follow-up to earlier discussions with the department, DIRECT the DWR not to expend any proceeds received from the sale of the San Francisco turbines until the final disposition of these funds has been determined via the conclusion of the 2010-11 budget process (i.e., by the enactment of the 2010-11 Budget and accompanying trailer bills).

Action: Approved on a 2-1 vote (Cogdill voting no; and Simitian adding on upon his return).

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

The QSA

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

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

I-Bank Requirements

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

Under existing law, the I-Bank is required to maintain a reserve account requirement—as established by the Legislature—such that if the amount in the IID Guarantee Trust Account falls below the reserve account requirement, then the I-Bank would report a deficiency to the Legislature and request an appropriation to fulfill the reserve account

requirement. In the case of the IID's 2003 Preliminary Loan Guarantee Commitment, a reserve account requirement was never set and the preliminary commitment expired on December 31, 2009.

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

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

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

Action: Approved on a 2-0 vote (Simitian absent).

3900 Air Resources Board

The Air Resources Board (ARB), along with 35 local air pollution control and air quality management districts, protects the state's air quality. The local air districts regulate stationary sources of pollution and prepare local implementation plans to achieve compliance with federal and state standards. The ARB is responsible primarily for the regulation of mobile sources of pollution and for the review of local district programs and plans. The ARB also establishes air quality standards for certain pollutants, administers air pollution research studies, and identifies and controls toxic air pollutants.

Governor's Budget. The Governor's Budget includes \$601.9 million (no GF) for support of the ARB in FY 2010-11. This is a 30 percent decrease over current year expenditures due primarily to a reduction in Proposition 1B (Transportation Bond) expenditures.

ITEM PROPOSED FOR DISCUSSION

BCP-1: Support Additional Rulemaking Requirements (Implement AB 1085).

Background. Chapter 384, Statutes of 2009 (AB 1085, Mendoza) requires the ARB to make available to the public—prior to the start of a regulatory 45-day public comment period—any technical, theoretical, or empirical study, report, or similar document related to, but not limited to, air emissions, public health impacts, and economic impacts used in developing any proposed regulation.

Governor's Budget. The Governor requests four positions and \$559,000 (special funds) to support the ARB's new AB 1085 rulemaking responsibilities.

Staff Comments. This item was previously heard on March 18 and held open in order for the ARB to more clearly articulate the justification for these resources (which are greater than the legislative fiscal analysis produced when the bill was heard in Appropriations Committee). Based on that analysis, implementation of AB 1085 was expected to cost less than \$100,000. However, as previously noted, the ARB believes that AB 1085, particularly in view of the intent language contained in the bill, requires substantially more information than has historically been included in the Initial Statement of Reasons that ordinarily accompanies a package of proposed regulations.

Staff notes that the codified portion of AB 1085 essentially requires the ARB to provide the same level of public disclosure of information as is already mandated under the Administrative Procedures Act. However, the ARB reads the AB 1085 intent language as setting a much higher bar. That language is as follows:

*It is the intent of the Legislature in enacting this act to ensure that the public is provided sufficient information **so that interested parties may easily and without undue effort reproduce and verify all aspects of state board staff***

analysis, related to, but not limited to, air emissions, public health impacts, and economic impacts, performed during the development of a regulation [emphasis added].

Staff notes that, while the above language certainly creates unnecessary confusion insofar as it appears to set a higher bar for public disclosure of information than the codified portions of AB 1085, based on conversations with Legislative Counsel, the intent language would not be considered by a court of law unless the underlying code were deemed ambiguous. Since the codified requirements of AB 1085 are, by reference, essentially those of the long-standing Administrative Procedures Act (Government Code 11346, et seq.), staff believes that AB 1085 is largely unambiguous and that the above intent language on which the ARB relies to justify its proposal is immaterial. Furthermore, by rejecting the bulk of this request, the Committee can reaffirm the true intent of the Legislature in enacting AB 1085—to require the ARB to provide specified information *before* the comment period for any regulation proposed for adoption. Should the Committee wish to go a step further, then staff would recommend adopting amendments to the AB 1086 intent language in order to clarify the matter once and for all.

Staff Recommendation: Consistent with the legislative fiscal analysis of AB 1085, APPROVE one position and \$100,000, and DENY the remainder of the request.

Action: Approved on a 2-0 vote (Simitian absent). The Committee requested staff and LAO to work with the ARB and the author's office (Mendoza) to explore the possibility of adopting TBL to clarify the intent of AB 1085. [Staff requests the ARB make contact with Mendoza's office regarding the author's receptivity to such an amendment, and then advise staff on the outcome of that discussion.]

3360 California Energy Commission

The Energy Resources Conservation and Development Commission (commonly referred to as the California Energy Commission or CEC) is responsible for forecasting energy supply and demand; developing and implementing energy conservation measures; conducting energy-related research and development programs; and siting major power plants.

Governor's Budget. The Governor's Budget includes \$420 million (no GF) for support of the CEC, a decrease of approximately \$366 million, due primarily to reduced federal fund expenditures (after a one-time influx of ARRA dollars in FY 2009-10).

ITEMS PROPOSED FOR VOTE-ONLY

1. FL: Augment Siting Program and Renewable Energy Development Support (TBL). The Governor requests nine positions and a two-year total of \$8.7 million—\$6.2 million in FY 2010-11—from the Energy Facility License and Compliance Fund to process electricity generation siting applications and to ensure the more rapid development of the Desert Renewable Energy Conservation Plan (DRECP). Of the requested amount, \$5.2 million in FY 2010-11 and \$3.8 million in FY 2011-12 would go to continued funding of a peak siting workload contract (valued at \$6.2 million in the current fiscal year).

Additionally, the Governor requests trailer bill language (TBL) to increase existing licensing fees and expand them to include renewable generation. The proposed increases include raising: (1) the standard fee from \$100,000 to \$250,000; 2) the per-megawatt fee from \$250 to \$500; and 3) the fee cap from \$350,000 to \$750,000.

Staff Comments. This proposal was previously heard on April 29 and held open in order for the CEC to provide the Committee with assurances that the Siting Division has adequate managerial/supervisory staff to properly oversee contractors and insure against "bottlenecks" in the siting process. Additionally, the Committee raised the question as to whether the proposed elimination of the fee-waiver for renewable projects would create a disincentive to developers of those projects (thus, inhibiting the state's attainment of its Renewable Portfolio Standard goals).

In the first instance, the CEC indicates that the additional supervisory positions approved in the Budget Act of 2009, together with the Deputy Division Chief requested as part of this proposal, are sufficient to oversee all contract work and provide for timely authorization and sign-off within the certification process.

In the second instance, the LAO points out that the proposed fee increase is de minimis relative to the cost of most renewable projects, and therefore likely plays a comparatively small role in the decision to develop in the state. For example, the cost of Ivanpah is estimated at \$1.2 billion. The CEC estimated that the siting fee for the

project would have been \$235,000, which amounts to .02% of project costs. While anecdotal, developers have remarked that the greater cost burden is the length of time it takes to get their projects sited. If they were able to get projects sited in a more timely fashion then they would begin receiving a return on their investment more quickly.

Staff has no further concerns with this request.

2. BCP-3: Energy Efficiency Program for Existing Residential and Nonresidential Buildings (Implement AB 758). The Governor requests ten permanent positions and \$1.8 million (federal funds), including \$500,000 for contract expenses, to implement AB 758. The proposed federal funds would come from American Reinvestment and Recovery Act (ARRA) dollars for the State Energy Program (SEP) in FY 2010-11, but costs would begin to shift to the Energy Resources Program Account (ERPA) in FY 2011-12, and would be entirely borne by the ERPA beginning in FY 2012-13.

Chapter 470, Statutes of 2009 [AB 758, Skinner and Bass], requires the CEC to develop and implement (through regulations) a comprehensive program to achieve greater energy savings in existing residential and nonresidential building stock, including energy assessments, cost-effective energy efficiency improvements, financing options, public outreach, and education efforts.

Staff Comments. This item was originally heard on April 29 and held open in order to seek a Legislative Counsel opinion on the legality of funding AB 758 from state funds in future years (as proposed by the Governor). Based on Counsel's verbal opinion that such funding is indeed allowable, staff notes no concerns with the request (which is consistent with the legislative fiscal analysis of the bill).

Staff Recommendation (for Vote-Only Items 1-2): APPROVE Items 1-2 as proposed.

Action: Approved on a 2-1 vote (Cogdill voting no; and Simitian adding on upon his return).

ITEMS PROPOSED FOR DISCUSSION

1. BCP-2: Distribution System Infrastructure Analysis to Support Integration and Use of Low Carbon Resources. The Governor requests the 2 two-year limited-term positions and \$282,000 (Energy Resources Program Account—ERPA) originally authorized to support adoption of guidelines pursuant to Chapter 713, Statutes of 2007 [AB 1613, Blakeslee], the Waste Heat and Carbon Reduction Act, be made permanent. The positions would conduct ongoing oversight and management of the CHP program, but would also address distributed generation (DG) issues associated with developing a “smart grid” (e.g., determining where on the distribution system new generation provides value).

Staff Comments. This item was previously heard on April 29 and held open in order to provide the CEC with more time to clarify the justification for this request. In the interim, in addition to maintenance of program guidelines, the CEC has made a fairly compelling argument that ongoing monitoring and compliance verification of AB 1613 will likely be necessary (particularly in view of resistance to the measure from the Investor-Owned Utilities—IOUs). Therefore, staff is prepared to recommend approval of one of the requested positions.

However, with respect to the CEC’s stated intention to use the other position to model and plan how to best optimize the use of additional DG, the Legislature, as previously noted, has not directed the CEC to carry out these activities, and staff finds insufficient justification to implement these activities through the budget at this time.

Staff Recommendation: APPROVE one position (Elec Gen Sys Spec II). DENY one position (Elec Gen Sys Spec I).

Action: Approved the staff recommendation on a 2-0 vote (Simitian absent).

2. BCP-4: Smart Grid Development (Implement SB 17). The Governor requests two permanent positions and \$287,000 (ERPA), to provide the California Public Utilities Commission with consultation on defining and developing a smart grid in California, consistent with Chapter 327, Statutes of 2009 [SB 17, Padilla].

Staff Comments. This item was previously heard on April 29 and held open in order to provide the CEC additional opportunity to justify its request, which is significantly higher than the Senate's own SB 17 cost estimate of \$100,000. However, based on follow-up conversations it is not evident that the previous Senate fiscal analysis overlooked any relevant facts, and, therefore, in support of the integrity of the policy-bill process (including the fiscal analysis of the Appropriations Committee), staff recommends approval of only \$100,000 and one position.

Staff Recommendation: APPROVE one position. DENY one position.

Action: *Approved the staff recommendation on a 2-0 vote (Simitian absent).*

3. Staff Issue: Biosolids Renewable Energy Project. Biosolids are the end product of the processing of sewage and are often managed by transporting them to counties in- and out-of-state that allow their use for landfill cover or soil amendment. Due to health and safety concerns, local ordinances have reduced the number of counties and facilities that offer these management options, creating a statewide need to address a growing biosolid management problem.

As options for land-based management of biosolids decline due to local restrictions, sanitation districts are looking for new options for sustainable management of biosolids. In the San Francisco Bay Area, a coalition of 16 sanitation districts have proposed to develop a facility that would process biosolids waste into a state that can be easily converted into energy through combustion. The goals of this project, called the San Francisco Bay Area Biosolids to Energy (BAB2E) Project, are to: 1) find a sustainable management practice for biosolids; 2) generate enough energy to run the sanitation operations in the 16 districts and supply excess energy to the grid; and, 3) design the project in a way that makes it flexible enough to accept other types of biomass feed-stock.

Public Interest Energy Research Program

The California Energy Commission's Public Interest Energy Research (PIER) Program supports energy research, development, and demonstration (RD&D) projects that will help improve the quality of life in California by bringing environmentally safe, affordable and reliable energy services and products to the marketplace.

The PIER Program annually awards up to \$62 million to conduct the most promising public interest energy research by partnering with RD&D organizations including individuals, businesses, utilities, and public or private research institutions. Funding for this program is awarded via a stakeholder driven process.

Currently, research and development funding allocated to the development of biomass is allocated primarily to the following three biomass sectors: Landfill Gas To Energy; Anaerobic Digestion; and Ethanol/Electricity from Biomass. At the hearing, the CEC should be prepared to discuss with the Committee how traditional biomass as well as biosolid biomass combustion, fits into the Commission's renewable energy portfolio of research and development.

Staff Comments. Staff is aware that the coalition promoting BAB2E have been requesting \$1 million in PIER funding for project development work, site selection studies, and final project design and construction for this demonstration project. This request is made under the notion that there is an increasing statewide need for sustainable biomass management and this project and this pilot could serve as a model for other regions. The Committee may want to consider whether this is an appropriate allocation of PIER funds

Staff Recommendation: None at this time.

Action: Held open until May 24. As acting Chair, Senator Lowenthal indicated preference for allowing this request to proceed through the existing PIER review process, but requested that the CEC and the BAB2E discuss what project details could be provided in the very near-term in order to enable the CEC to assess for the Committee whether or not the project had a fair shot of obtaining funding if it re-applied through the PIER process.

8660 California Public Utilities Commission

The California Public Utilities Commission (PUC) is responsible for the regulation of privately owned "public utilities," such as gas, electric, telephone, and railroad corporations, as well as certain video providers and passenger and household goods carriers. The PUC's primary objective is to ensure adequate facilities and services for the public at equitable and reasonable rates. The PUC also promotes energy conservation through its various regulatory decisions.

Governor's Budget. The Governor's Budget includes \$1.4 billion (no GF) for support of the PUC, an increase of roughly \$200 million over current year expenditures, due primarily to an increase in the Universal Lifeline Telephone Service Trust Administrative Committee Fund.

ITEMS PROPOSED FOR VOTE-ONLY

1. BCP-13: Comprehensive Energy Efficiency Residential and Non-Residential Programs (Implement AB 758). The Governor requests one position and \$112,000 (PUCURA) to implement Chapter 470, Statutes of 2009 [AB 758, Skinner and Bass]. AB 758 requires the CEC, in consultation with the PUC, to develop and implement (through regulations) a comprehensive program to achieve greater energy savings in existing residential and nonresidential building stock, including energy assessments, cost-effective energy efficiency improvements, financing options, public outreach, and education efforts.

Staff Comments. This item was previously held open pending resolution of concerns about whether use of state funds is allowable under AB 758. Based on a verbal opinion from Legislative Counsel that state funds are indeed allowable, staff has no further concerns with this proposal.

Staff Recommendation: APPROVE the Vote-Only item.

Action: *Approved on a 2-1 vote (Cogdill).*

ITEM PROPOSED FOR DISCUSSION

BCP-3: Provide Staffing to Evaluate Advanced Energy Storage (AES). The Governor requests three positions and \$310,000 (Public Utilities Commission Utilities Reimbursement Account) to evaluate the cost effective use of AES in support of various California policy goals, but primarily the Renewable Portfolio Standard (RPS) and AB 32.

Staff Comments. This item was previously heard on April 29 and held open due to uncertainties about AES technology and the state's need for storage capacity. In the interim, the PUC has provided the following response to the Committee's concerns and questions:

The CPUC seeks to promote initial and early policy development around incorporating storage technologies into investor-owned utility procurement planning. Storage is likely to be increasingly important as a resource as more and more renewables are connected to the electricity grid, at either the transmission or distribution level, and we need to begin the planning process for incorporating this resource into IOU portfolios on a more standardized basis, similar to energy efficiency and renewables.

Currently, there are two projects being conducted by California IOUs that are funded by ARRA stimulus funds. The first is a 300 MW compressed air project by PG&E, funded at approximately \$50 million. The second is an 8 MW lithium ion battery project for wind integration by SCE, funded at approximately \$40 million. In addition, storage is an eligible application for small-scale projects under the Commission self-generation incentive program (SGIP). We expect to see more technologies applying for eligibility under SGIP in the near future.

Currently, there are policy activities and initiatives occurring at the California Independent System Operator, CEC, Federal Energy Regulatory Commission, and the federal Department of Energy. Storage is an emerging issue that has captured the attention of regulators at all levels, and there is a recognized need for policy development. Currently, the CPUC does not have any positions devoted to oversight and evaluation of storage as a resource.

The CPUC BCP had proposed 3 positions, to handle:

- 1. Policy Development*
- 2. Procurement Oversight*
- 3. Interagency Coordination*

If the Senate wishes to suggest a scaled-back effort, but allow the CPUC to move forward with some positions to begin to develop policies in this area, we would suggest removing the position dedicated to interagency coordination. Instead, for the startup phase, those liaison responsibilities could be handled

by the other two analysts with responsibility for policy development and procurement oversight. The first (policy) position would be mostly focused on designing the policy framework for IOU investment in storage, including designing the economic incentives, counting conventions, and the like, for storage. The second position would be more technical in nature, designed to be up-to-date on the most current technology developments, and to work with the utilities to target specific technologies that could provide benefits in their energy portfolios.

We also note that there is a current bill in the Assembly by Skinner that would create a storage portfolio standard requirement for California IOUs. If that bill were to pass in its current form, the CPUC would require closer to 15 positions to implement the program, because it is aggressive in scope and size and would require a level of effort similar to that expended currently to support the RPS program, the California Solar Initiative, or the energy efficiency programs.

In follow-up to the above, the LAO has requested, but has not received (as of the time of this writing—a week later), additional clarification regarding the number and anticipated timing of the AES projects identified, and additional detail on the two proposed projects. As previously noted, this request appears premature, and the PUC has failed thus far to convincingly demonstrate otherwise. Therefore, staff continues to recommend denial of the request.

Staff Recommendation. DENY the request.

Action: Held open. The Chair gave the PUC until May 24 hearing to respond to ongoing questions and concerns from LAO and staff. [Staff notes that all issues need to be fully resolved no later than COB May 21 in order to be considered for inclusion on the May 24 agenda.]

Appendix A – SGC Sustainable Communities Planning Grant Program Development Timeline

- **July 2009** – SGC Key Staff, representatives from each SGC Board member, inform the California Natural Resources Agency(CNRA) and Department of Conservation (DOC) that they will be the departments responsible for administering the SGC Sustainable Communities Urban Greening and the Sustainable Communities Planning Grant programs respectively.
- **Aug – Sept 2009** – DOC staff work with SGC key staff and CNRA staff to develop a shell of the guidelines, mainly the requirements from the bond, SB 732 and those that need to be included in all bond guidelines.
- **October 13, 2009** – SGC Board updated on the development of grant guidelines by John Amodio from the Department of Conservation. John was initially shepherding the development of the guidelines until he was moved into the new Department of Resources, Recycling and Recovery in January, 2010. Chelsea Haines worked alongside him until January and then took over his responsibilities. They both organized the Technical Advisory Committee(TAC) meetings where the guidelines were developed. Members of the TAC came from recommendations made by the SGC Key Staff who represent each of the board members, except for Bob Fisher. The members of this committee are:

Agency/Department	Representative
BTH: HCD - CalTrans -	Cathy Creswell Marilee Mortenson
CHHS: DPH	Jacquolyn Duerr
CALEMA	Julie Norris
OPR	Seth Litchney
Resources: DWR - DOC -	Christy Spector Bruce Gwynne
CEC	Bill Pfanner
CalEPA: SWRCB ARB	Barbara Evoy Terry Roberts
SGC Key Staff Reps: Resources CalEPA OPR	Luree Stetson Marian Ashe Anna Marie Young

- Also participating: John Amodio and Chelsea Haines DOC.
- **December 2, 2009** – Grant guidelines workshop with the SGC Board to hear public comments on the planning guidelines.
- **December 7, 2009** – Grant guidelines workshop with the SGC key staff and a board member (Bob Fisher) to hear public comments on the planning guidelines.
- **March 3, 2010** – Grant guidelines public meeting held by the SGC Key Staff and Board to receive comments on the draft guidelines.
- **March 17, 2010** – Planning Grant Guidelines Approved by the SGC Board.
- Workshops will be held throughout the state to educate potential applicants on the program, similar to how the Urban Greening program was introduced.
- Projects will be solicited during the summer and then evaluated by the TAC.
- Recommendations for funding will be brought before the SGC key staff and then before the SGC Board at a meeting this fall.

SUBCOMMITTEE NO. 2

Agenda

S. Joseph Simitian, Chair
Dave Cogdill
Alan Lowenthal



Hearing Outcomes (see Subcommittee actions under individual issues)

Monday, May 24, 2010
11:00 a.m.
Rose Ann Vuich Hearing Room (2040)
Consultant: Bryan Ehlers

MAY REVISE & OPEN ISSUES

“A” AGENDA

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Various	Funding & Implementing the 2009 Water Package	20
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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 916-324-9335. Requests should be made one week in advance whenever possible.

Items Proposed for Vote-Only

Department of Parks and Recreation

1. May Revise (MR): Reduce One-Time Public Resources Account (PRA) Augmentation Due to Lower Than Anticipated Revenues. The Governor requests a \$395,000 reduction to the Public Resources Account, Cigarette and Tobacco Products Surtax Fund due to lower than anticipated revenues. The Governor's Budget originally proposed a one-time increase of \$2.8 million.

2. Various Reappropriations for Projects Delayed Due to the Bond Freeze.

- **City of Encinitas**

0005 --- Safe Neighborhood Parks, Clean Water, Clean Air, and Coastal Protection Bond Fund

(1) Item 3790-101-0005, Budget Act of 2001 (Ch. 106, Stats. 2001), (1) 80.25-Recreational Grants, (a) Local Agencies Operating Park Units, as reappropriated by Item 3790-494-0005(1)((1)(a), Budget Act of 2009 (Ch. 1, Stats. 2009).

Provisions:

1. This reappropriation is limited to the \$2,482,845 grant to the City of Encinitas.

- **Door of Hope Community Center**

0005 – Safe Neighborhood Parks, Clean Water, Clean Air, and Coastal Protection Bond Fund

(1) Item 3790-101-0005, Budget Act of 2001 (Ch. 106, Stats. 2001), 80.25-Recreational Grants (c) Murray-Hayden Urban Parks and Youth Services Program

Provisions:

1. This reappropriation is limited to a \$1,100,500 grant to the Door of Hope Community Center for the Youth Center.

- **Hayward Area RPD for Holland Park**

6029—California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Bond Fund

(1) Item 3790-101-6029, Budget Act of 2002 (Ch. 379, Stats. 2002), (1) 80.28-Local Projects, (a) Urban Park Grants as reappropriated by Item 3790-490-6029(1), Budget Act of 2004 (Ch. 208, Stats. 2004)

Provisions:

1. This reappropriation is limited to a \$1,135,068 grant to the Hayward Area RPD for Holland Park.

- **YMCA of San Diego County**
6029—California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Bond Fund
(1) Item 3790-101-6029, Budget Act of 2002 (Ch. 379, Stats. 2002)
(a) Urban Park Grants as reappropriated by Item 3790-490-6029(1), Budget Act of 2004 (Ch. 208, Stats. 2004)

Provisions:

1. This reappropriation is limited to the \$901,000 grant to the YMCA of San Diego County.

Office of Environmental Education—Environmental Education Initiative

Due to a deteriorating fund condition, the Governor's Budget proposed various reductions to the Integrated Waste Management Account (IWMA). As one of the programs supported by the IWMA, the Environmental Education Initiative (EEI) in the Office of Environmental Education (OEE) was proposed for reduction. The Committee noted concern with this proposal when the item was heard on March 18, and the Governor subsequently proposed in the May Revise to shift EEI support for the 6.5 positions (that would have to be moved to the Department of Resources Recycling and Recovery [DRRR]) to alternative fund sources and keep them at the OEE. The two aforementioned requests are detailed below:

3. DRRR – BCP-3: Shift Funding for Ten Positions from the IWMA to the Waste Tire Management Fund (Tire Fund). Shifts ten positions, including 6.5 previously associated with the Office of Environmental Education (OEE)—see prior discussion on page 20—from IWMA funding to the Tire Fund. The request would result in no net increase in Tire Fund expenditures, as the proposal includes a shift of \$821,000 from Tire Fund local assistance—Reduction of Waste Tire Enforcement Grants (TEA)—to state operations.

4. California Environmental Protection Agency (CalEPA) – MR-2: Transfer the OEE, Including the EEI Program, from the California Integrated Waste Management Board (CIWMB) to the CalEPA. The Governor requests 6.5 positions and \$1.25 million (various special funds) to be transferred from the CIWMB. This request would effectively reverse the Governor's January 10 proposal to transfer 6.5 positions from the OEE to the Waste Tire Program (as described in the item above), and would maintain OEE staffing at 13 total positions.

Proposed Loans to the General Fund (GF)

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

Loans

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

Loan Extensions (through July 1, 2011)

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

Staff Comments. Staff has no concerns with the above proposed loans and loan extensions, which are necessary to help address the state's ongoing fiscal crisis.

State Water Resources Control Board (SWRCB) – Basin Planning and Water Quality Standards Program

The Governor's Budget contained a proposal to augment basin planning efforts by allowing third parties to reimburse the SWRCB for work performed. However, the May Revise contains a proposal to shift all GF support of basin planning to special fund—Waste Discharge Permit Fund. The two proposals (Items 5 and 6) are as follows:

5. BCP-7: Augment Basin Planning and Water Quality Standards Program. The Governor requests 8.9 positions and \$746,000 (reimbursement authority), in order to allow third parties to fund priority basin planning work.

6. MR-5: Basin Planning Fund Shift (TBL). The Governor requests all GF support for basin planning activities (\$6.1 million) be deleted and shifted instead to the Waste Discharge Permit Fund (WDPF). The Governor additionally requests TBL to clarify that basin planning is a permitted use of the WDPF.

Staff Comments. With respect to Item 5, on two previous occasions (March 18 and May 6), the Committee noted concern with the potential for this proposal to create either the perception or the reality of a "pay to play" basin planning program. Staff previously recommended funding the program from the Waste Discharge Permit Fund.

With respect to Item 6, the Administration notes that basin plans are required by the federal Clean Water Act and used by the SWRCB to develop discharge permits. Consequently, funding periodic updates from the WDPF is appropriate. Staff notes that this proposal is consistent with a prior LAO recommendation.

Staff recommends the Committee adopt the Governor's May Revise proposal (Item 6), including placeholder TBL, to convert basin planning to a fee-supported program, and further recommends this approach be applied to the Governor's proposed program augmentation (Item 5).

California Department of Food and Agriculture

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

Staff Recommendation (for Vote-Only Items 1-7): APPROVE Items 1-7 consistent with the Staff Comments.

Action: Approved Items 1 -7 consistent with the Staff Comments on a 2-0 vote (Cogdill absent). Please note that this action included approval of the Governor's proposed loans to the GF, which were inadvertently unnumbered in the published agenda. Additionally, for clarification's sake, the action on Item 5 included a fund shift from reimbursements to the WDPF.

Funding AB 32 Implementation

On April 29, the Committee heard discussion on the Governor's proposal to fund the California Global Warming Solutions Act of 2006 [AB 32, Nunez]. AB 32 requires the reduction of statewide greenhouse gas (GHG) emissions to 1990 levels by 2020—a 25 percent reduction over current levels, and designated the Air Resources Board (ARB) as the lead agency in addressing GHG emissions, including planning, regulatory, and enforcement efforts.

As was previously discussed, the Governor's Budget and April Finance Letters propose expenditures of \$39 million from a new AB 32 Cost of Implementation (COI) Fund to implement the bill's requirements. These include appropriations for eleven different departments (see Figure 1 on the next page), including \$32.9 million for the ARB, and new appropriations proposed for the Department of Housing and Community Development (HCD); Department of Resources Recycling and Recovery (DRRR), Department of Forestry and Fire Protection (DFFP), State Coastal Conservancy (Coastal Conservancy), Department of Water Resources (DWR), State Water Resources Control Board (SWRCB), Department of Public Health (DPH), and Department of Food and Agriculture (CDFA).

Overarching Staff Comments. As the lead agency, the bulk of AB 32 funding is, and should be, with the ARB. However, with the proposed establishment of the COI Fund, the budget exhibits a mass proliferation of departments suddenly involved in greenhouse gas reduction. This raises potential concern and cause to pause and consider whether, as AB 32 is poised to shift from primarily planning activities to implementation, the program risks losing focus even before its core components are well established. As discussed in greater detail below, after review of the various BCPs and Finance Letters, staff believes some of these concerns are well founded and finds reason to recommend denying various proposals (or, rather no compelling reason to approve them).

More broadly, at least one of the requests (seeking funding for the DPH to support health impact assessments), raises concern that the ARB is proceeding too quickly (perhaps even recklessly) with plans to adopt cap-and-trade regulations by the end of the current calendar year. Basic logic suggests that health impacts should be considered *before* development of cap-and-trade regulations in order to ensure that the regulations properly value ancillary benefits from emissions reductions. So, while the ARB indicates it is conducting a two-stage assessment (first, in-house, and then out-of-house), it is still concerning that it will have been at work for many months on (and, indeed, will be coming down the home-stretch toward adoption of) regulations, without a full assessment of health impacts on which to base its decisions. This should give the Legislature serious reason to consider whether the ARB should be asked to "pause" in its efforts until additional assessment data can be gathered.

Figure 1

AB 32–Related Activities in the 2010–11 Governor’s Budget*(Dollars in Thousands)*

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

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

Additionally, the LAO has noted concern that the ARB’s AB 32-related economic analysis efforts are under-resourced. The LAO and other peer reviewers have raised concerns about the timeliness and the comprehensiveness of the ARB’s economic analysis work connected with AB 32. A committee established to advise ARB on its analysis of the economic impacts of the AB 32 Scoping Plan voiced concern that insufficient ARB staff members and resources were available to analyze the potential economic impacts of AB 32. These concerns and the LAO recommendation to more closely review current ARB staffing levels for economic analysis were discussed on April 29, at which time the ARB indicated it felt its staffing was adequate, but would conduct a more thorough review of its needs.

Finally, as the program's initial stage of planning, regulation development, and regulation adoption is nearing completion, the LAO recommends a reassessment of the AB 32 "base budget" and recommends requiring the Administration to zero-base the AB 32 program in the 2011-12 Governor's Budget.

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

ITEMS PROPOSED FOR VOTE-ONLY

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

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

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

Action: Approved Vote-Only Items 1-5 on a 2-0 vote (Cogdill absent).

ITEMS PROPOSED FOR DISCUSSION

1. DFFP – FL-2: Climate Change. The Governor requests \$1.3 million COI Fund (including supplantation of \$642,000 Proposition 84 funds) to assist in implementing the Forest Sector greenhouse gas reduction measures.

Staff Comments. This request is intended to focus on actions the DFFP is directed to undertake by the Executive Order that established the Climate Action Team, as well as actions assigned to the department by the ARB Scoping Plan that implements AB 32.

Staff notes that the request generally adheres to the themes contained in the Scoping Plan and the Executive Order; however, except for PY costs, it is vague on specific expenditures, and it does not identify which of the proposed expenditures would create new programs, and which would be handled by existing staff (such as those at the Fire and Resource Assessment Program, the department's research arm). There also is no specific indication that any of these are expenditures are consistent with those recommended by the ARB pursuant to the ongoing inter-agency agreements between the ARB, the DFFP, the Board of Forestry, and other agencies. Finally, the BCP predominantly proposes activities involving voluntary actions, including carbon sequestration projects and best management practices in forestlands, and in the context of urban forests. While those activities may have merit, there is also a place for the department to fund those activities and other items such as the mitigation for climate change effects, wildfire reduction, avoiding forestland losses to conversion to other uses, and other objectives contained in the BCP as part of its core regulatory function in approving timber harvest plans and developing appropriate regulations. The request is silent on that important component of the department's workload.

Staff Recommendation: DENY the request.

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

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

Staff finds no compelling reason to approve this request at this time. Consistent with comments made at the outset of this AB 32 discussion, the proposed activities appear far-removed from "core" greenhouse gas reductions strategies, and it is unclear why the state should invest in these activities at this time (when a significant portion of COI Fund revenues are going to pay back special funds loans taken out for AB 32-implementation over the last several years). Additionally, development of policy on offsets is something

that, at a minimum, should be undertaken with the Legislature. There are significant issues with offsets including concerns that they result in verifiable and permanent emissions reductions and are not just empty commitments.

Staff Recommendation: DENY the request.

3. CDFA – BCP-4: Nitrous Oxide Emissions Research. The Governor requests one position and \$309,000 COI Fund to conduct research and analysis on nitrous oxide levels emitted from California farm lands.

Staff Comments. As previously discussed on April 29, the state is already supporting research on nitrous oxide through the CDFA Fertilizing Materials Research and Education Program. Additionally, it is unclear why the CDFA needs a permanent position to, among other things, carry out a literature review (a limited-term activity). Consistent with earlier recommendations to focus AB 32 implementation funding on core activities first, staff cannot support this request at this time.

Staff Recommendation: DENY the request.

Consolidated AB 32 Recommendation: Based on the prior discussion and staff comments: (1) DENY discussion items 1-3; (2) APPROVE the LAO recommendation and ADOPT placeholder TBL directing the Administration to zero-base all AB 32-related (mitigation) expenditures in the 2011-12 Governor's Budget and provide a workload justification for all proposed resources; and (3) ADOPT placeholder TBL to "pause" ARB's adoption of cap-and-trade regulations by mandating that all necessary impact assessments (health or otherwise) must be completed before proceeding.

Action: Approved the consolidated staff recommendation on 2-0 vote (Cogdill absent).

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 includes \$75.8 million (\$4.8 million GF) for support of the DOC, a decrease of approximately \$635 million, due almost entirely to the transfer of the Division of Recycling (including the Beverage Container Recycling Program) to the new Department of Resources Recycling and Recovery.

ITEM PROPOSED FOR DISCUSSION

MR-17: Augment Underground Injection Control (UIC) and Enhanced Oil Recovery (EOR) Program. Oil and gas production in California is a \$34 billion industry, and California is the fourth largest oil-producing state in the nation. There are approximately 90,000 active or idle production and injection wells in the state.

The DOC's Division of Oil, Gas, and Geothermal Resources (DOGGR) regulates oil, gas, and geothermal well operations throughout the state in order to prevent damage to life, health, property, and natural resources. The UIC Program within the DOGGR is responsible for preventing (as far as possible) damage to waters of the state and natural resources from injection operations, which consist primarily of EOR and water disposal.

With many aging oilfields, some more than 100 years old, much of the remaining oil in California is tar-like and requires EOR methods (injection) to extract—approximately 72 percent. For example, hot steam is pumped into the ground to turn the oil more viscous and force it to the surface.

Governor's Request. The Governor requests 17 positions and \$3.2 million (special fund) to enhance regulatory oversight for all UIC programs, including EOR projects, in order to better protect the public and the environment.

Staff Comments. This proposal raises several important issues for the Committee's consideration.

UIC Staffing Stagnant Since 1983.

With the release of this request (on May 14), it has come to staff's attention that the UIC Program has only 12 staff statewide for permitting and regulation of underground injection activities. The staff level has been stagnant since 1983. According to the DOC, this request is intended, in part, to address the disparity between the present level (lack) of resources and the workload that has increased over the past 27 years.

Serious Under-Regulation of Emerging Injection Technologies

In addition to addressing the general growth in UIC workload over the past 27 years, this request is intended to address the emergence of (or the DOC's growing awareness and attention to) new injection technologies. Noteworthy among these is shallow thermal injection diatomite. As described to staff, this process involves injection of hot steam (as described above) to turn oil more viscous and force it to the surface. However, the process does not guarantee that the oil is forced to the surface in one location (e.g., at a well head), rather it is not infrequent for shallow thermal injection diatomite to result in the oil being forced through various overlying geologic formations and rising to the surface (sometimes at significant distances from the wellhead), where it pools on the ground. Where this occurs, oils producers have resorted to creating French drains to collect the oil so that it can be contained before being vacuumed up by a truck and hauled away for processing.

According to a briefing from the DOC, these practices are currently largely unregulated, and thus this request seeks to address this issue.

Request for Resources Long Overdue and Level of Oversight Highly Concerning

As noted above, UIC staffing has not increased in 27 years, and the level of staffing—12 engineers/inspectors—is intended to cover thousands of wells. While it is somewhat shocking that a request has not come forward before now, it is all the more disconcerting that this request did not arrive until the May Revise (as opposed to in the Governor's Budget—ideally—or in an April Finance Letter). As a result legislative staff have had a single week to review this proposal.

Further, the revelations about lax (or non-existent) oversight of advanced injection techniques like shallow thermal injection diatomite were not identified in the BCP, and were not communicated to staff until May 20, four calendar days before the hearing date, and less than two working days prior. Considering the apparent serious threat to environmental and human health posed by these under-regulated practices, it is highly disconcerting that this information was not brought to the Legislature sooner, and that the Legislature is being asked to approve more than \$3 million dollars and 17 positions with virtually no time to conduct meaningful inquiry or oversight into these matters.

As such, staff is tempted to recommend outright rejection of this request solely on process grounds. However, this course of action would likely not well serve the interests of the state with regard to public health and safety and environmental protection. Therefore, staff proposes the Committee adopt a hybrid approach supported by the LAO. That approach is as follows: (1) appropriate, on a one-time basis, \$2 million from the Oil, Gas, and Geothermal Administrative Fund for the UIC program with no new position authority; (2) adopt placeholder BBL specifying that the \$2 million is to be used to develop policies and to design and implement program improvements to address the identified current deficiencies in the UIC program, and directing the Administration to submit, with the 2011-12 Governor's Budget, a request to implement the redesigned program, along with a detailed work plan justifying the requested level of resources.

Additionally, the Committee may wish to adopt placeholder TBL to require the DOC to report to the Legislature on its efforts to provide proper oversight of emerging underground injection technologies.

Staff Recommendation: APPROVE \$2 million, no positions, and BBL consistent with the staff comments above. Also, ADOPT placeholder TBL consistent with the staff comments.

Action: *Due to insufficient time to verify the justification for the request, approved \$2 million, eight permanent positions, and placeholder BBL on a 2-0 vote (Cogdill absent). Acknowledged that the DOC may administratively establish additional positions as needed in FY 2010-11, but BBL will require the department to justify/re-justify all positions deemed necessary for the requested purposes in FY 2011-12 (i.e. zero-base).*

3540 Department of Forestry and Fire Protection

The California Department of Forestry and Fire Protection (DFFP), under the policy direction of the Board of Forestry, provides fire protection services directly or through contracts for timberlands, rangelands, and brushlands owned privately or by state or local agencies. In addition, DFFP: (1) regulates timber harvesting on forestland owned privately or by the state and (2) provides a variety of resource management services for owners of forestlands, rangelands, and brushlands.

Governor's Budget. Excluding capital outlay, where the amount of carryover makes year-to-year comparisons less meaningful, the Governor's Budget includes \$1.091 billion for support of the DFFP in 2010-11. This is a 2.5 percent decrease over current year expenditures. The significant decrease in GF is due to the proposed backfill of \$200 million GF with revenues from the Emergency Response Initiative property insurance surcharge.

ITEMS PROPOSED FOR VOTE-ONLY

1. MR-1: Emergency Response Initiative (ERI) and BBL. The Governor requests a Fiscal Year (FY 2010-11) fund shift of \$76 GF to the Emergency Response Fund (ERF) rather than a \$200 million fund shift as proposed in the January budget. The Governor additionally proposes Budget Bill Language (BBL) to authorize the DFFP, with Joint Legislative Budget Committee approval, to receive a mid-year, short-term GF loan should the anticipated ERI revenues fail to materialize on time.

Staff Comments. The Governor's Budget assumed March 1, 2010, implementation of a 4.8-percent surcharge on all residential and commercial property insurance policies statewide. Since the Governor's ERI proposal was not approved in the 2010 Eighth Extraordinary Session, the Governor is recognizing revenue erosion of \$134 million. This proposal effectively restores an equal amount of GF in order to keep the DFFP's fire protection budget "whole," and continues to assume the ERI will be implemented and \$76 million in revenue to the ERF will be collected in FY 2010-11 as a result.

Given the current level of erosion to the Governor's proposed revenues, and the fact that the ERI has consistently failed to garner the two-thirds support required for passage in the Legislature, staff recommends the Committee deny the ERI proposal for the DFFP outright and restore all GF to the department's budget.

2. Capital Outlay BCPs (COBCPs-1; 2; and 3): Fire Station Rehabilitations and Replacement. The Governor requests the following capital outlay projects:

- Replace Baker Fire Station – \$10.4 million (Lease Revenue Bond) – Baker Fire Station, located in Northwestern Tehama County, was built in 1948 and includes five buildings, all in various states of disrepair. The current site is on a 50-year

lease from a private landowner and was renewed in 1994. The landowner is unwilling to sell to the state, but has been willing to provide favorable lease renewals. According to the DFFP, the rural development in the area does not justify reclassification of the properties from State Responsibility Area to Local Responsibility Area.

- Relocate Pine Mountain Fire Station – \$10 million (Lease Revenue Bond) – The DFFP selected a new location (near California Hot Springs) for its southeastern Tulare County fire suppression efforts after the Tulare County Board of Supervisors terminated the Cooperative Fire Protection Agreement with the DFFP in mid-2007. The new site, located near the community of Pine Flat was acquired (using funds appropriated in FY 2007-08 and augmented in December 2009), and the Administration is now requesting construction funds. The state owns this site.
- Replace Rincon Fire Station – \$13.2 million (Lease Revenue Bond) – Rincon Fire Station, located near Valley Center in San Diego County, was built in 1962 of unreinforced block with cement slab floor and does not meet seismic standards, current code requirements, and is not ADA compliant. Additionally, according to the DFFP, the facility is not large enough to accommodate existing staff and equipment. The state owns this site.

Staff Comments. These items were originally held open due to concerns about increasing out-year GF obligations. However, due to the compelling health and safety issues noted above and the fact that the GF “hit” would not occur until the bonds are sold in five years from, staff now recommends approval.

3. FL—Capital Outlay Reappropriations and BBL. The Governor requests BBL to provide the DFFP the authority to manage and construct certain forest fire station projects and to facilitate the sale of lease revenue bonds.

Staff Recommendation (for Vote-Only Items 1-3): APPROVE Items 2 and 3, and DENY the ERI proposal outright (including Item 1).

Action: Approved Vote-Only Items 2 and 3, and denied the Governor’s ERI on a 2-0 vote (Cogdill absent).

ITEMS PROPOSED FOR DISCUSSION

1. Staff Issue: Funding and Fiscal Oversight of Fire Prevention and Fire Protection Expenditures. On April 29, the Committee heard discussion on the following issues associated with funding and fiscal oversight of fire prevention and fire protection: (1) the use and oversight of Emergency Fund (E-Fund) expenditures; (2) the balance between fire protection and fire prevention expenditures; (3) defensible space inspections; and (4) oversight of Schedule A agreements. In the hearing, the LAO provided a hand-out that contained a variety of recommendations and items for consideration.

Staff Comments: This item, including a staff recommendation addressing each of the areas identified above was discussed on May 19 and held open to allow staff to work with the DFFP to address technical concerns with the staff recommendation. At that time, the Chair made clear that the Committee's intent was not to provide the DFFP with an opportunity to "re-argue" issues that had already been thoroughly discussed in Committee.

In the interim, the DFFP met with budget committee, as well as policy committee, staff and LAO to go over outstanding concerns. In those discussions, legislative staff repeatedly stressed their willingness to make every reasonable accommodation for the department as long as the basic intent of the actions (primarily increased inspections and fiscal oversight) was unimpaired. For their part, DFFP staff were responsive and cooperative and committed to providing information requested and taking new, or clarified, understandings of the staff recommendation to higher-ups. However, staff notes that, due to the fact that the DFFP did not send department officials capable of making executive decisions (negotiations) to the aforementioned discussions, as of the time of this writing, staff has been provided no formal confirmation that the department is prepared to remove its concerns to the proposed action and to work with staff in good faith fully flesh out the final details in TBL.

The following reflects the ongoing staff recommendation with refinements (in bold) per discussions since the last hearing:

- **E-Fund** – As noted by the LAO, the E-Fund is currently used for various (mainly staffing) costs that have become regular, annual expenditures, such that they no longer meet any reasonable definition of "emergency." Further, the Legislature lacks adequate fiscal oversight of E-Fund expenditures. Therefore, staff recommends the Committee move day-to-day expenditures currently budgeted in the E-Fund into the base budget for FY 2010-11 on a one-time basis, and re-align E-Fund and base budget expenditures in the Budget Year associated with reimbursements approved in FY 2009-10. Direct the Administration to return with budget proposals for FY 2011-12 for the items moved into the base budget for review during the annual budget process. Additionally, adopt [placeholder] statutory language that (1) explicitly specifies what expenditures are allowed from the E-Fund and (2) requires that any other expenditures be supported from the department's base budget. **Legislative staff requested, but have not yet**

received, information regarding the distribution (variance) of E-Fund expenditures so that the final language can set a reasonable reporting threshold.

- **Fire Protection v. Fire Prevention** – In recent years, fire protection costs have increased rapidly, while fire prevention expenditures have lagged. The state could increase its return on investment and obtain greater “bang” (reduce fire threat to life and property) for its GF “buck” by allocating additional resources to fire prevention. Therefore, tied to the above recommendation to shift certain E-Fund expenditures into the base budget, staff recommends the Committee shift \$2 million of the above identified monies from Fire Protection to Resource Management (fire prevention). Staff additionally recommends the Committee adopt placeholder, trailer bill language directing the DFFP to use these funds for the express purpose of funding Foresters to conduct defensible space inspections. The intent would be to supplement, rather than supplant, existing defensible space inspections conducted by seasonal firefighters, and, by using Foresters, to ensure that the number of inspections is not compromised by the need to respond to non-fire emergencies (as is currently the case for firefighters). Further, since the DFFP has not yet released its plan under the Governor’s proposed workforce cap, staff recommends the Committee direct the department to use any existing Forester vacancies (along with reclassification of other positions that would otherwise be held vacant to meet the cap requirements) in order to fulfill this directive. **The DFFP has indicated that it is working on identifying a classification that could meet the legislative intent to essentially staff inspections year-round (except when fire disasters require “all hands on deck”). Legislative staff and the DFFP have agreed that, should the DFFP fail to identify an appropriate classification, the proposed funding could be used to achieve the desired goals via private contracts or local assistance grants.**
- **Fire Prevention Reporting** – Good data is essential to the DFFP’s ability to fulfill its mission to protect California wildlands and the life and property of the citizenry in these areas, as well as to the Legislature’s ability to adequately oversee DFFP expenditures. Given the recommended increase to fire prevention expenditures noted above and the fact that the DFFP has, to date, failed to provide the Legislature with the 2009 fire prevention report it is statutorily required to submit each year on January 1, staff recommends adoption of placeholder TBL to:
 - Amend the existing reporting requirement so that the data reported is synchronized to the fiscal year (to ensure data can be more easily correlated with funding levels and can be readily provided in time for consideration in the annual budget process).
 - Include specific tracking and reporting on the increased defensible space inspections proposed above.
 - Require the DFFP to utilize a standardized metric (e.g., inspections per Personnel Year) in its reporting that allows defensible space inspections

and other fire prevention statistics to be compared year-to-year adjusted for changing levels of available resources (e.g., staff).

- Include direction to the DFFP to submit in its annual report, as it sees fit, various qualitative data and/or qualifying statements that will better enable the Legislature to analyze and interpret the impact of DFFP fire prevention expenditures (particularly as they relate directly, or indirectly, to reduced fire threats, and, by extension, reduced need for fire protection expenditures).
- **Schedule A Agreements** – Given concerns over the continued expansion of the DFFP's role in activities beyond wildland fire protection, and the authority given to the DFFP Director to enter into agreements to provide full-service emergency response outside of the State Responsibility Area, the Legislature should review all of these agreements prior to the expansion of the DFFP's operations. Additionally, fiscal prudence and the state's ongoing fiscal crisis dictate that the state should take all reasonable steps to ensure that it receives fair reimbursement for fire protection services provided to local governments through these Schedule A agreements. Therefore, staff recommends the Committee adopt placeholder TBL requiring the DFFP to submit to the Legislature, for review and approval, all new or renewed Schedule A agreements of a certain size (to be determined). The intent is to model this process after the Department of Parks and Recreation process for approval of park concessions (which are submitted in the annual budget process and approved via Supplemental Report Language). **Based on information provided by the DFFG regarding the number and dollar amounts of existing contracts, legislative staff have proposed a \$10 million threshold for submitting Schedule A agreements to the Legislature. Currently, this would include six existing agreements (should they come up for renewal). Additionally, legislative staff have indicated that a fairly simple summary of the agreements (based upon the "14-point criteria") would be all the more that was required of DFFP staff in preparing the submissions for the Legislature.**

Based on the above, the staff recommendation remains the same as on May 19.

Staff Recommendation: ADOPT the various LAO and staff recommendations detailed in the staff comments (above), most notably: (1) the shift of E-Fund to the base budget and the LAO-recommended placeholder TBL; (2) a \$2 million shift from Fire Protection to Resource Management of E-Fund expenditures identified by the LAO for inclusion in the FY 2010-11 base budget, for the express purpose of funding Foresters to carry out increased defensible space inspections; (3) various pieces of placeholder TBL (as specified above) aimed at enhancing fire prevention and the adequacy and value of related data provided to the Legislature; and (4) additional placeholder TBL intended to increase legislative oversight of Schedule A agreements in order to check any unnecessary expansion of the DFFP's activities beyond wildland fire protection and to better ensure the state receives fair reimbursement for fire protection services provided to local governments.

Action: Approved the staff recommendation on a 2-0 vote (Cogdill absent), except that the Schedule A language will: (1) not require legislative approval of the agreements; (2) apply to all agreements of at least \$5 million; and (3) require a cost-recovery analysis (intended to demonstrate that all state costs will be fully reimbursed through the agreement).

2. BCP-10: Watershed Fuels Management Program. The Governor requests \$40 million in Proposition 1E (Prop 1E) funds over seven years, including \$5.5 million in FY 2010-11, in order to continue a fuels management program currently funded by Proposition 40 (Prop 40). Notwithstanding the requested reappropriation of 2008-09 funding (see BCP-13 below) and any unencumbered balance from the current-year appropriation, Prop 40 funds for fuels management have been exhausted. Thus, the Governor is proposing to shift the program to an alternative fund source.

Staff Comments. Unfortunately, Prop 1E, the Disaster Preparedness and Flood Protection Bond Act of 2006, did not specifically allocate funding for fuels management. Rather, as was discussed on March 4 and again on May 13, when this item was previously heard and held open, the DFFP is seeking to utilize Prop 1E funds designated for stormwater flood management by arguing that fuels management helps to reduce fires that can leave watersheds denuded and prone to impaired water quality under flood conditions. While the proposed activities might very well have this beneficial effect, staff cannot recommend approval of the request for funds for a purpose that does not appear to be entirely consistent with the intent of the voters when they approved Prop 1E. That said, should the DFFP offer any alternative funding ideas for fuels management, staff would work closely with the Administration to try and address this critical need. Finally, staff notes that a \$5.5 million reappropriation of Prop 40 funds for fuels management is recommended for approval in this agenda.

At the May 13 hearing, the requested an opinion on the legality of the proposed use of Prop 1E funds from Legislative Counsel. Although there was insufficient time to obtain a formal opinion, in consultation, Legislative Counsel did indicate that is believed the proposed use of Prop 1E to be legally permissible. As previously noted by the Chair, notwithstanding this legal advice, staff still has concerns with the proposal on a policy basis.

Staff Recommendation: DENY all but \$1,000 of the request to send the item to Conference and allow the department more time to explore an alternative.

Action: Denied all but \$1,000 on a 2-0 vote (Cogdill absent) in order to send the item to Conference.

Funding and Implementing the 2009 Water Package

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

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

Figure 4

The Major Components of the 2009 Water Package

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

Governor's Water Package Proposals. As discussed previously, the Governor's Budget contains a number of requests associated with implementation of the Water Package, with the bulk of the proposed spending aimed at assembling the new Delta Governance structure pursuant to Chapter 5 (SBx7 1, Simitian and Steinberg). The following summary table contains the various BCPs before the Committee and an

abbreviated staff recommendation (AAB = Approve as Budgeted; AWM = Approve with Modifications):

Governor's Water Package Proposals and Staff Recommendations

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

For a fuller description of these proposals please see the Committee agendas from March 4, March 18, and April 22 (available online at: http://www.senate.ca.gov/ftp/SEN/COMMITTEE/STANDING/BFR/_home/NEWAGENDA.HTML#two).

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

ITEMS PROPOSED FOR VOTE-ONLY

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

Item 2 – Delta Conservancy

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

Item 7 – State Water Resources Control Board – Water Conservation

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

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

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

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

Action: Approved Vote-Only Items 2 and 6-10 on a 2-0 vote (Cogdill absent).

ITEMS PROPOSED FOR DISCUSSION

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

Staff Comments/Recommendation. As was noted when this item was originally heard on April 22, the bulk of the requested resources are to be transferred from the CALFED program, and the LAO recommends approving this proposal for one year only, and directing the Administration to zero-base all Water Package expenditures in the 2011-12 Governor's Budget that are proposed to be supported from "old" CALFED monies. The intent is to have each entity (council, conservancy, etc.) conduct its own re-justification of the resources it is receiving in the 2010-11 fiscal year. **Staff supports this approach and recommends the Committee adopt placeholder TBL to require the Council and other entities (see more below) to submit zero-based budgets next year.**

Additionally, as noted previously, there is no long-term financing plan for many Water Package activities, in particular Delta Governance. Therefore, as was discussed in Committee on April 22, in the absence of new policy legislation in the interim, **staff recommends the Committee adopt placeholder TBL instructing the Administration to propose, as part of the 2010-11 Governor's Budget, a financing plan.** In concept, the TBL would require the Administration to identify a non-GF source of support for the various Delta Governance entities, and any other on-going administrative activities (e.g., groundwater monitoring at the Department of Water Resources) for which there is not currently identified a permanent funding source. (For the purposes of this recommendation, bond funds are not a "permanent funding source.") The TBL would specify that the financing plan is to take into account the new zero-based budgets of the affected entities (see above), use/re-purpose non-GF "CALFED" resources where appropriate, and develop any proposed fee in a manner consistent with the "Beneficiary Pays" principle.

Given the Committee's concurrence with concerns raised by the LAO in regard to the independence (or lack thereof) of Council contractors, **staff recommends the Committee adopt placeholder TBL specifying that any contract for developing the Delta Plan must include provisions ensuring that the contractor's work on the Delta Plan be conducted independently from any work that a contractor may do associated with developing the Bay Delta Conservation Plan.** Additionally, **staff recommends the Committee require the Council to designate a single staff person to oversee all Bay Delta Protection Plan contracts.**

Finally, as discussed in more detail below (see Item 3), the Delta Protection Commission requires additional resources. Since the resources requested for the Council are not consistent with a workload justification, but rather a wholesale shift of CALFED resources (less a small complement for the Delta Conservancy), **staff**

recommends reducing Council funding by \$2 million and shifting these monies to the Delta Protection Commission.

Consolidated Staff Recommendation for Item 1: APPROVE \$47 million for the Delta Stewardship Council and ADOPT placeholder TBL consistent with the staff comments above.

Action: Approved one consolidated action on Item 1 and Item 3, on a 2-0 vote (Cogdill absent), to: (1) approve \$47.6 million for the Council; (2) adopt placeholder TBL consistent with the staff comments (and including the Commission in next year's zero-base budget); (3) approve a \$1.4 million augmentation to the Commission; and (4) adopt placeholder BBL requiring the \$1.4 million to be expended on specified activities. Until the most suitable fund source has been identified for the funds to be shifted to the Commission, staff requests the DOF to temporarily reflect this action in Change Book as a \$1.4 million GF reduction to the Council (and a corresponding increase in the Commission). Staff notes that the \$2 million recommended shift to the Commission was reduced by the Committee consistent with testimony indicating that the Commission has requested approximately \$600,000 in the current year from the Council for near-term work on the Delta economic sustainability plan and the Delta Protection Commission Land Use and Resource Management Plan.

3. BCP: Augment Delta Protection Commission. The Governor requests six positions (three permanent and three one-year, limited-term) and \$2 million (Environmental License Plate Fund--ELPF) to:

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

Staff Comments. As previously discussed on April 22, representatives of the Commission and several Delta counties have raised concern that the Commission's ongoing budget may not be adequate to support its role in supporting the Delta Conservancy and serving as a major forum for Delta counties to participate in major Delta policy decisions in the coming years. Specifically, the Commission would like an augmentation for contract funding to ensure that it can timely respond to the workload identified above, specifically, preparation of the Delta Economic Sustainability Plan by July 1, 2011; and preparation of the report on recommendations for potential expansion of the primary zone of the Delta, required to be submitted to the Legislature by July 1 of this year.

Staff Recommendation: APPROVE a \$2 million shift from the Council to the Commission.

Action: See Item 1 action on previous page.

4. BCP: Staff California Water Commission (DWR). The Governor requests six positions and \$817,000 (various funds, but primarily State Water Project—SWP) for support of the nine-member Water Commission (which currently has no staff or appointed members) and its implementation of activities specified in SBx7 2 (Water Bond Act of 2010; or Water Bond). The DWR notes that this request would result in a net budget increase of only \$71,000 because the balance of the requested funding would be shifted from other existing sources, including \$111,000 GF and \$550,000 from the SWP which is continuously appropriated (off-budget).

Staff Comments. As discussed previously on April 22, the Water Commission has been inactive (and without staff) for many years. The DWR indicates that when the Water Commission went inactive, most staff were redirected elsewhere in the department. Presumably, some of these redirections offset the need for position requests through the budget process.

While the bulk of the Water Commission's responsibilities would only occur with the passage of the Water Bond Act of 2010, the DWR argues that the requested resources are still needed to develop regulations required by SBx7 7. Staff notes that these concerns could be addressed by waiving the requirement that the regulations go before the Water Commission (much as was done with the model landscape ordinance).

Furthermore, given that most of the requested funding is from off-budget resources in the State Water Project, the Committee could deny the requested positions, and the DWR would still be able to address any potential workload by administratively establishing positions if and when the Water Bond passed. In that instance, the DWR could return next year with a request to make the positions permanent.

Staff Recommendation: DENY the request.

Action: Denied the request on a 2-0 vote (Cogdill absent).

5. BCP: Groundwater Monitoring Program (DWR). The Governor requests five positions and \$5.3 million (\$1.3 annually for four years from Proposition 50) for the DWR to carry out the following activities required pursuant to SBx7 6:

- Determine the responsible groundwater monitoring entities in all basins and sub-basins;
- Develop standards for reporting of groundwater elevation data;
- Establish a priority schedule for the monitoring of groundwater basins and the review of groundwater elevation reports;
- Make recommendations to local entities to improve the monitoring program and assist them in complying with the program's requirements; and
- Conduct an investigation of the state's groundwater basins and report findings to the Governor and the Legislature.

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

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

Staff Recommendation: APPROVE funding for one-year only.

Action: Approved the request, on a 2-0 vote (Cogdill absent) and the Delta Protection Commission Land Use and Resource Management Plan.

Necessary Changes to SBx7 7 Appropriations

The following refinements to SBx7 7 of the 2009 Water Package are intended to maximize the impact of the bill.

- a. Broaden Prop 1E flood control project eligibility.** Public benefits resulting from this \$170 million appropriation should be maximized, beyond just protection of water conveyance. Bond language allows for construction/improvement of levees, weirs, bypasses, etc., as well as studies necessary to make future investments in flood control systems.
- In order to address the multiple objectives of new Delta governance structures and Delta policies, eligibility criteria should be expanded beyond protections for water conveyance to take full advantage of Prop 1E funding potential.
 - DWR has asked for the second section, below, to clarify expenditure authority for levee improvements beyond those required to protect water conveyance. [SBx7_8 specified that water conveyance protection was the sole project criteria]

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

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

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

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

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

- SB 790 established criteria for comprehensive stormwater planning, emphasizing components that address the use of stormwater for local supply.
- State funding for stormwater management should be consistent with these new planning standards.

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

c. Make IRWM appropriation language consistent with existing grant guidelines. Without this change, there is a significant risk that the DWR would have to draft and adopt new grant guidelines for this \$250 million appropriation. Current draft guidelines are good enough and should be allowed to govern this appropriation. Further IRWM funding delay unacceptable to water agencies, NGOs, others involved.

- According to DWR, current SBx7_8 language referencing Delta benefits would require a re-drafting of its long-overdue IRWM grant guidelines.
- Process is underway to finalize the guidelines for the entire Prop 84 \$1 billion; needs to be supported, not hindered.
- Many local IRWM projects that otherwise would achieve state watershed goals would be invalidated unnecessarily.

Of the funds made available by Section 75026 of the Public Resources Code, the sum of two hundred fifty million dollars (\$250,000,000) to the Department of Water Resources for integrated regional water management grants and expenditures. Grants shall be available only for projects included in an integrated regional water management plan that meets one of the following conditions:

(i) The plan complies with Part 2.2 (commencing with Section 10530) of Division 6 of the Water Code.

(ii) If the integrated regional water management plan was adopted before March 1, 2009, the regional water management group that prepared the plan entered into a binding agreement with the Department of Water Resources,

within one year of the agreement to, update the plan to comply with Part 2.2 (commencing with Section 10530) of Division 6 of the Water Code and undertake all reasonable and feasible efforts to take into account the water-related needs of disadvantaged communities in the area within the boundaries of the plan.

At least 10 percent of the funds made available pursuant to subparagraph (A) for implementation and planning grants shall be available to facilitate and support the participation of disadvantaged communities in integrated regional water management planning and for projects that address critical water supply or water quality needs for disadvantaged communities.

d. Broaden Prop 84 flood control project eligibility. See 'a.', above.

- Eligibility criteria should be expanded to take full advantage of Prop 1E funding potential and to better support objectives of new Delta governance entities.
- DWR has asked for the second section, below, to clarify expenditure authority beyond those required to protect water conveyance. [SBx7_8 specified that water conveyance protection was the sole project criteria]

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

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

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

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

e. Match Delta NCCP local assistance to local needs. Preserves statewide NCCP funding; and helps solve Delta Counties' issues with BDCP.

- SBx7_8 appropriated \$24 million for local Delta NCCPs, leaving essentially no funds for other NCCPs across the state.
- A reduced and focused appropriation would both address local Delta needs while preserving remaining funds for other critical NCCP efforts.

Of the funds made available by subdivision (c) of Section 75055 of the Public Resources Code, the sum of ten million dollars (\$10,000,000) to the Wildlife Conservation Board for grants to local agencies to implement, or assist in the establishment of, natural community conservation plans pursuant to Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code, for areas in or around the Sacramento-San Joaquin Delta. Of this amount, one million dollars (\$1,000,000) shall be available for grants to local governments to coordinate conservation planning and to reduce conflicts between local conservation plans and the Bay Delta Conservation Plan.

f. Revert Prop 84 and Prop 1E appropriations made in SBx7_8 (Steinberg).

- Necessary to re-appropriate the funds with amended control language.

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

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

Staff Recommendation: APPROVE the TBL outlined above.

Action: Approved the TBL on a 2-0 vote (Cogdill absent) as outlined, except for (e), which was amended to increase the \$10 million specified by \$1,000 with the intent of ensuring this item goes to Conference.

Water Bond of 2010

The Governor's May Revision proposes \$1.1 billion in appropriations from the 2010 Water Bond that will go before the voters at the November 2010 General Election. The amounts and funded activities are as follows:

Chapter	Chapter Title	Department	Proposal	2010-11	2011-12
5	Drought Relief			213.7	132.5
		DWR	Drought Relief Grants	145.0	112.9
		DPH	Safe Drinking Water Revolving Loan Fund		12.3
		DPH	City of Maywood		7.3
		SWRCB	Small Community Wastewater Program	68.7	
6	Water Supply Reliability			32.4	28.7
		DWR	Integrated Regional Water Management	12.0	28.0
		DWR	Conveyance Projects	20.4	0.7
7	Delta Sustainability			72.4	122.0
		DFG	Ecosystem Restoration Projects	72.4	122.0
8	Statewide Water System Operational Improvement				
		California Water Commission	Continuous Appropriation	300.0	
9	Conservation and Watershed Protection			57.9	-
		NRA	Red Bluff Diversion Dam	57.9	
		DWR	Red Bluff Diversion Dam (Reimbursement)	(57.9)	
10	Groundwater Protection and Water Quality			103.5	194.0
		DPH	Goundwater projects and emergency grants	103.5	194.0
11	Water Recycling			645.2	220.0
		DWR	Recycling and conservation	295.0	45.0
		SWRCB	Water Recycling	350.2	175.0
Totals				1,125.1	697.2

DWR = Department of Water Resources; DPH = Department of Public Health; SWRCB = State Water Resources Control Board; DFG = Department of Fish and Game; and NRA = Natural Resources Agency

LAO Recommendation. The following is the partially redacted LAO analysis and recommendation for the Governor's 2010 Water Bond proposals in the May Revise.

Governor's Proposal. The Governor's budget proposes \$1.1 billion... With one noted exception, proposed funding is allocated at the broad program level, mainly to existing programs for which funding from existing bond measures is either low or has run out. The notable exception is the allocation of \$57.9 million for a specific project, the Red Bluff Diversion Dam fish passage project. This amount represents the state's share of a multi-agency cost-sharing program with the federal government to match 25 percent of the cost of the project (the state's cost-share). The project is currently under construction, with the majority of funding provided through an American Recovery and Reinvestment Act (ARRA) federal commitment.

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

Recommendations. We recommend the Legislature deny most of the funding for the implementation for the 2010 water bond, instead approving funding at a level mostly for planning purposes, with a direction to the administration to submit (1) a comprehensive, multiyear bond expenditure plan and (2) details of program expenditure criteria, to the Legislature in conjunction with the Governor's 2011-12 budget. With this additional information, the Legislature will have a better basis from which to evaluate the administration's bond expenditure proposals during the 2011-12 budget process. Second, we recommend approval of the proposed state share of funding for the "shovel- ready" Red Bluff Diversion Dam

project, as this specific project clearly fits within a provision of the bond allocating funds expressly for projects that improve salmonid fish passage in the Sacramento River watershed.

Staff Comments. Staff generally agrees with the LAO's assessment of the Governor's proposal, and concurs that funding should not be approved for programs that lack a comprehensive, multiyear bond expenditure plan and detailed expenditure criteria. However, staff concerns are further exacerbated by the limited precedence for appropriating as-yet-to-be-approved bond funds. Furthermore, there are significant amounts of bond funds already allocated in the Governor's Budget—that have been approved by this Committee—for the departments in question.

With specific respect to the Red Bluff Diversion Dam, staff notes that the dam is a federal facility, constructed as part of the federal Central Valley Project, and the fact that the dam may create an inappropriate barrier to fish passage is a federal responsibility. Staff notes that when the DWR entered into a 25-percent cost-share agreement with the federal government in 1994, it was thought that the project would require a relatively inexpensive re-operation (to better emulate the natural, seasonal flow of the Sacramento River). However, the project has grown tremendously in cost (to approximately \$230 million), and now includes construction of a pumping plant. So, in addition to the fact that the Governor is requesting bond funds the voters have not yet approved, staff notes concern that this proposal would further commit the state to funding a federal responsibility (\$5.5 million in Proposition 13 funds have already been provided to the project).

For the reasons stated above, staff recommends the Committee deny all of the Governor's proposed 2010 Water Bond appropriations for the DWR, DFG, SWRCB, and NRA. However, should the Committee wish to appropriate some funds, staff recommends the Committee follow the general criteria outlined by the LAO and seek to approve funds only where program funding criteria are in place and where a clear demand for funding is evident.

Staff Recommendation: DENY the requests consistent with the staff comments (above).

Action: Denied, on a 2-0 vote (Cogdill absent), the Governor's request for 2010 Water Bond funding in the area of resources and environmental protection, except for \$100,000 for the DWR to begin planning for Drought Relief programming (contingent upon voter approval of the bond).

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. Historically, the department was also a major implementing agency for the CALFED Bay-Delta Program, tasked with putting in place a long-term solution to water supply reliability, water quality, flood control, and fish and wildlife problems in the San Francisco Bay Delta. As noted above, that program was abolished with SBx7 1, and CALFED responsibilities were transferred to new entities, including the Delta Stewardship Council.

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). The CERS division continues to be financially responsible for the long-term contracts entered into by the department. (Funding for the contracts comes from ratepayer-supported bonds.) However, the IOUs manage receipt and delivery of the energy procured by the contracts. (More on the CERS division of DWR is included in the Energy and Utilities section of this report.)

Governor's Budget. The Governor's Budget includes \$1.5 billion (\$188 million GF) for support of the DWR, a decrease of approximately \$1.6 billion, due primarily to reduced bond fund expenditures. An additional \$3.7 billion in CERS funding is not subject to the Budget Act (these funds are primarily for energy payments related to the 2001 electricity crisis).

[See following page for discussion items.]

ITEMS PROPOSED FOR DISCUSSION

1. BCP: Create Flood Emergency Fund (BBL). The Governor requests a shift of \$1 million in baseline GF to a new Emergency Fund (“E-Fund”) for exclusive use in responding to imminent flood threats with duration of no more than seven days. The Administration would be provided authority to redirect the existing GF support for flood management (currently totaling \$40 million GF). The Director of DWR could access this new fund, at his or her discretion, to support emergency response activities. Proposed budget bill language (BBL) would further allow the DOF to immediately transfer additional funds (GF) to the E-Fund without legislative notification whenever the \$1 million appropriation was exhausted.

Staff Comments. This item was heard previously on April 22 and May 19. It was most recently held open to allow the Administration to work with staff on language specifying that the Governor’s approval would be needed to expend E-Fund after the initial (3-4 days, approximately) of a pre-emergency action. Based on subsequent discussions with the DWR, staff believes there is agreement on the staff recommended action.

Staff Recommendation: APPROVE the request as proposed with the following modifications to BBL: (1) require 30-day notification of any E-Fund expenditure to the Joint Legislative Budget Committee (JLBC); (2) specify E-Fund monies are only to be expended for flood events that are consistent with the criteria identified in the department’s internal “Water Resources Engineering Memorandum Process;” (3) require the Governor’s approval for any E-Fund expenditures after the initial four days of a “pre-emergency” action; and (4) JLBC approval of the final “Water Resources Engineering Memorandum Process” criteria.

Action: Approved the staff recommendation on a 2-0 vote (Cogdill absent).

2. Staff Issue: Use of Agricultural Easements in Flood Corridors. The state has the opportunity to use unappropriated bond funds to achieve two important goals simultaneously—reduce flood threats to public health and safety, and conserve farmlands that are subject to the development pressures of population growth.

Staff Comments. As previously discussed on April 22, Proposition 1E provided (pursuant to Public Resources Code Section 5096.825) \$290 million in bond funding for the protection, creation, and enhancement of flood protection corridors and bypasses through various means, including:

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

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

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

Action: Approved the staff recommendation on a 2-0 vote (Cogdill absent). The Committee clarified that the funding is to be targeted at easements (as opposed to the other “incentives” permitted by Public Resources Code Section 5096.825 Proposition 1E).

3600 Department of Fish and Game

The Department of Fish and Game (DFG) administers programs and enforces laws pertaining to the fish, wildlife, and natural resources of the state. The Fish and Game Commission sets policies to guide the department in its activities and regulates fishing and hunting. The DFG currently manages about 850,000 acres including ecological reserves, wildlife management areas, hatcheries, and public access areas throughout the state.

Governor's Budget. The Governor's Budget includes \$385 million for support of the DFG, a reduction of \$25 million, or 6 percent, over current year expenditures. This reduction is primarily due to a reduction in GF support.

ITEMS PROPOSED FOR VOTE-ONLY

1. BCP-11: Delta Environmental Review. The Governor requests six positions and \$807,000 (Prop 84, with Prop 84 and Prop 1E as reimbursements from the Department of Water Resources—DWR) to support the increase in both Delta Levee Program workload (three positions) and the number of Permitting and Restoration Program projects in the Sacramento-San Joaquin River Delta (three positions).

Staff Comments. This item was previously held open due to its nexus with both Committee bond concerns and Water Package issues. However, with those issues resolved, staff recommends approval of this item.

2. BCP-5: Law Enforcement Safety Gear (Tasers). The Governor requests \$378,000 (FGPF-ND), to provide 350 tasers to game wardens. The DFG purchased 25 tasers in FY 2008-09 in order to develop a pilot program. Currently 12 officers are trained to carry the tasers while 13 more were scheduled to receive training in March 2010.

Staff Comments. This item was heard on two previous occasions and held open due to concerns about the adequacy of the DFG's taser training and use policy. On May 6, the Chair stated his intent to make approval of the requested tasers contingent upon legislative review of a final (adopted) departmental policy on taser training and use.

Following additional conversations with the DFG, staff now recommends approval of the request, contingent (per BBL) upon legislative review of a final adopted departmental policy regarding the use of tasers and the training of wardens. The departmental policy shall take into account three core factors: (1) severity of the crime; (2) immediate threat to the safety of the officers or other members of the public; (3) and whether the suspect is actively resisting arrest or attempting to evade arrest. Additionally, the DFG is to report to the Legislature on the use of the tasers by department personnel describing all incidents of use, the result of the use, whether or not it resulted in injury, the type and severity of the injury, any lawsuits, settlements and liabilities to the state as a result of

the use of tasers. Finally, there will be no additional appropriations for the purchase and use of tasers until the report is received by the Legislature.

Staff Recommendation for Vote-Only Items 1-2: APPROVE Item 1 as budgeted, and Item 2 with the changes detailed in the staff comments.

Action: Approved Vote-Only Items 1 and 2, consistent with the staff comments, on a 2-0 vote (Cogdill absent).

ITEM PROPOSED FOR DISCUSSION

- 1. MR-1: GF Reduction Backfill for Hunting & Fishing Programs.
MR-3: GF Reduction for Habitat Conservation Programs.**

The Governor's May Revision includes the following GF proposals:

1) Backfill \$2.4 million (\$1.9 million federal funds; \$200,000 Fish and Game Preservation Fund-Ocean Resources Enhancement and Hatchery Program Account; and \$325,000 reimbursements) to partially backfill a GF reduction proposed in the 2010-11 budget (and adopted in the Eighth Extraordinary Session).

2) Cut \$5 million GF from the DFG's Habitat Conservation and Restoration Programs. Specifically, these cuts will be allocated as follows:

Description	Reduction
Marine Life Protection Act (MLPA). Cut would result in fewer resources for statewide monitoring and implementation of statewide marine protected areas. Department would prioritize remaining resources (\$2.9 million) on highest priority Marine Protections Areas.	\$1.5 M
Timber Harvest Plan (THP) Review. Would cut funding for review of THP plans, reducing the program from \$2.8 million to \$1.3 million.	\$1.5 M
Fisheries Restoration Grant Program. This cut is proposed to be backfilled with Proposition 84 funds.	\$1.5 M
CALFED Ecosystem Restoration Program. This cut is proposed to be backfilled with Proposition 84 funds.	\$500,000

Staff Comments. The state faces a budget gap of nearly \$20 billion GF and many painful reductions will be necessary to solve the problem—including those noted above.

In the first instance above, the Governor proposes to use various special and federal funds to backfill GF reductions in the Hunting and Fishing Programs that were approved by the Legislature in February. Staff recommends the Committee approve this proposal to reduce the programmatic impacts of the loss of GF.

In the second instance, the cuts to the MLPA and THP Review would have particularly significant impacts because they are not proposed to be backfilled by bond funds (as with the other two parts of the proposal). In both instances the Committee should ask the DFG to provide additional detail about how the cuts would be distributed statewide.

In terms of mitigating the MLPA cuts, the Legislature previously approved a one-year transfer of Ocean Protection Council Proposition 84 funds to support MLPA activities at

the DFG, and the Committee may want to explore this again as an option. As for the THP Reviews, the Committee may want to backfill the cuts with increased timber harvest fees.

In either case, staff recommends adopting the additional \$5 million GF reduction in order to help solve the state's yawning deficit. However, if the desire is to buy time to explore additional opportunities to mitigate these cuts, the Committee could reduce the reduction by \$1,000 to send the item to Conference.

Staff Recommendation: APPROVE both of the Governor's May Revise proposals.

Action: Approved, on a 2-0 vote (Cogdill absent), the Governor's May Revise proposals (enumerated above), except for \$3 million in GF reductions to MLPA and THP activities (which were denied).

3690 Department of Toxic Substances Control

The Department of Toxic Substances Control (DTSC) regulates hazardous waste management, cleans up or oversees the cleanup of contaminated hazardous waste sites, and promotes the reduction of hazardous waste generation. The department is funded by fees paid by persons that generate, transport, store, treat, or dispose of hazardous wastes; environmental fees levied on most corporations; federal funds; and GF.

Governor's Budget. The Governor's Budget includes \$197.7 million (including \$22 million GF) for support of the DTSC, an increase of \$11.3 million, or 6 percent, over current year expenditures. This increase is primarily in special funds (and there is no increase proposed in GF).

ITEM PROPOSED FOR DISCUSSION

MR-1: Green Chemistry Initiative –Toxics Clearinghouse. The Governor requests \$403,000 (special funds) to design, develop, test, and implement the Toxics Clearinghouse, consistent with Chapter 560, Statutes of 2008 (SB 509, Simitian).

Staff Comments. The DTSC indicates the funding would be used to establish an interagency agreement with the Office of the State Chief Information Officer who would perform the work specified in the approved project Feasibility Study Report (FSR). Staff notes that the LAO has raised no concerns with the FSR, and staff notes no concerns with this proposal.

However, the Committee may recollect that at the Green Chemistry joint oversight hearing (with Senate Environmental Quality) on March 18, the DTSC committed to providing at the May Revise a budget (spending) plan for both SB 509 and Chapter 559, Statutes of 2008 (AB 1879, Feuer), even if no formal augmentation was requested. Staff notes that, while the Administration submitted this request (with regard to SB 509) neither the DTSC, nor the Department of Finance, provided an AB 1879 spending plan. As such, given that this is the last subcommittee hearing of the year and no additional time remains to hold this item open to await further information from the department, the Committee may wish to send the item to Conference where it will await final disposition upon a suitable response to the Chair of the subcommittee.

Staff Recommendation: APPROVE the request, less \$1,000 to send the item to Conference. DIRECT the DTSC to provide an updated AB 1879 spending plan per the commitment made by the department on March 18.

Action: Approved the staff recommendation on a 2-0 vote (Cogdill absent), with the intent of sending the item to Conference, and allowing time for the department to complete the rule-making currently in-process (and provide the requested AB 1879 spending plan).

3360 California Energy Commission

The Energy Resources Conservation and Development Commission (commonly referred to as the California Energy Commission or CEC) is responsible for forecasting energy supply and demand; developing and implementing energy conservation measures; conducting energy-related research and development programs; and siting major power plants.

Governor's Budget. The Governor's Budget includes \$420 million (no GF) for support of the CEC, a decrease of approximately \$366 million, due primarily to reduced federal fund expenditures (after a one-time influx of ARRA dollars in FY 2009-10).

ITEM PROPOSED FOR VOTE-ONLY

MR-2: Establish the Clean and Renewable Energy Business Financing Revolving Loan Fund (TBL). The Governor requests the establishment of the Clean and Renewable Energy Business Financing Revolving Loan Fund, which would authorize the CEC to conduct and administer the Clean and Renewable Energy Business Financing Program.

Staff Comments. The CEC proposes to utilize \$30 million in federal funds from the American Recovery and Reinvestment Act of 2009 in order to operate the revolving loan program. The budget proposes TBL to establish this fund with continuous appropriation authority.

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

Staff Recommendation: ADOPT the proposed TBL as placeholder to allow further review by staff, and additionally APPROVE the LAO recommendation to ADOPT budget bill language tying the \$30 million for the Clean and Renewable Energy Business Financing Program to enactment of the proposed TBL.

Action: Approved the staff recommendation on a 2-0 vote (Cogdill absent).

ITEMS PROPOSED FOR DISCUSSION**AB 118 – Alternative and Renewable Fuel and Vehicle Technology Program**

As covered in more detail in the April 29 agenda, Chapter 750, Statutes of 2007 [AB 118, Nunez] which created the Alternative and Renewable Fuel and Vehicle Technology Program (Program, or AB 118), which provides financial support for projects that, among other things: (1) develop and improve alternative and renewable low-carbon fuels; (2) expand fuel infrastructure, fueling stations, and equipments; and (3) improve vehicle technologies. The Committee has before it two requests related to AB 118— one was previously discussed and one was introduced in the May Revise. These items are described individually and followed by a consolidated staff recommendation.

1. BCP-1: Augment Alternative and Renewable Fuel and Vehicle Technology Program. The Governor requests a baseline increase of \$2 million from the (Fund) for contracts and technical assistance, including seeking to establish formal relationships with several national laboratories (approximately \$1.2 million); and a one-time augmentation of \$5 million for various projects.

2. MR-1: Reappropriation for California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA). The Governor requests reappropriation of \$40 million (originally appropriated in 2008) to provide loans, loan guarantees, credit enhancements, bond funding, and sales tax rebates in the following solicitation areas:

- Advanced Biofuel Production Plants – \$15 million
- Vehicle Component Manufacturing – \$19 million
- California Ethanol Production Incentive Program – \$6 million

Consolidated Staff Comments (Items 1 and 2). As previously discussed on April 29, the Committee has concerns about several aspects of the AB 118 Draft Investment Plan. Staff acknowledges that the CEC has made a good faith effort to respond to these concerns; however, questions persist that will require additional time to solve. Therefore, with the addition of the Governor’s May Revision proposal to distribute AB 118 funds via the CAEATFA, staff recommends the Committee take an action to send these items to Conference Committee.

Staff Recommendation: APPROVE Item 1 less \$1,000; and APPROVE Item 2 with a superficial “change” to the proposed language in order to send the item to Conference.

Action: Approved the staff recommendation on a 2-0 vote (Cogdill absent).

3. Staff Issue: Biosolids Renewable Energy Project. A coalition of 16 sanitation districts have proposed to develop a facility that would process biosolids waste into a state that can be easily converted into energy through combustion. This project, called the San Francisco Bay Area Biosolids to Energy (BAB2E) Project seeks \$1 million Public Interest Energy Research (PIER) Program funding.

Staff Comments. This item was previously heard on May 19, when the Committee stated its preference for the BAB2E project to go through the CEC's normal PIER application process. To that end, the Committee asked the BAB2E to provide the CEC with sufficient detail about their project and its intentions in order for the CEC to tell the Committee whether the project had any hope of competing for PIER funding.

The Committee will expect the BAB2E and the CEC to report back on the content of their discussions. Based on the information provided, the Committee hopes to have a better sense as to whether the BAB2E should be asked to re-submit its application for PIER funding to the CEC, or whether other options are worth considering.

Staff notes that the Assembly approved the project's request for \$1 million in PIER funding. Therefore, if the Committee takes no action, this item will go to Conference.

Staff Recommendation: None at this time.

Action: No action. The CEC and BAB2E testified to the fact that they have met twice in the past week and are close to understanding whether the project might be competitive in the CEC's "unsolicited" PIER proposal process. The Committee, with the project's support, withheld action on the item (thus, sending it to Conference) in the interest of allowing conversations between the BAB2E and the CEC to continue in the hopes that the project would ultimately go through the CEC's PIER process.

8660 California Public Utilities Commission

The California Public Utilities Commission (PUC) is responsible for the regulation of privately owned "public utilities," such as gas, electric, telephone, and railroad corporations, as well as certain video providers and passenger and household goods carriers. The PUC's primary objective is to ensure adequate facilities and services for the public at equitable and reasonable rates. The PUC also promotes energy conservation through its various regulatory decisions.

Governor's Budget. The Governor's Budget includes \$1.4 billion (no GF) for support of the PUC, an increase of roughly \$200 million over current year expenditures, due primarily to an increase in the Universal Lifeline Telephone Service Trust Administrative Committee Fund.

ITEMS PROPOSED FOR VOTE-ONLY

1. BCP-7: Division of Ratepayer Advocate (DRA) – Energy Efficiency Programs and Activities. The Governor requests one position and \$96,000 (PUC Ratepayer Advocate Account) to ensure investor-owned utility energy efficiency programs are cost-effective for ratepayers. The DRA indicates that the approved 2010-12 energy efficiency program budget for the four largest energy utilities is \$3.1 billion, a 61 percent increase in ratepayer investments over the previous cycle. The requested position would augment the two DRA positions currently assigned to energy efficiency program monitoring.

2. BCP-8: DRA – Energy Low Income Assistance Programs & Activities. The Governor requests one position and \$95,000 (PUC Ratepayer Advocate Account) to address expanding workload on energy low income assistance programs and activities, including the California Alternative Rates for Energy (CARE) program, the Low Income Energy Efficiency (LIEE) program, and a new rulemaking on the adoption of regulation related to arrearage management and shut-off prevention for residential customers of electricity and natural gas utilities. With nearly five million California energy customers projected to be low income by 2012, and utility investments in the above programs growing (e.g., CARE expenditures by the four largest utilities increased from \$126 million to \$818 million from 2001 to 2008), the DRA indicates the one position currently assigned to monitor these activities is insufficient to adequately serve ratepayers.

Staff Recommendation (for Vote-Only Items 1 and 2): APPROVE Items 1 and 2, less \$1,000 each (with the intent of sending them to Conference).

Action: Approved the staff recommendation on a 2-0 vote (Cogdill absent.)

ITEMS PROPOSED FOR DISCUSSION

1. BCP-3: Provide Staffing to Evaluate Advanced Energy Storage (AES). The Governor requests three positions and \$310,000 (Public Utilities Commission Utilities Reimbursement Account) to evaluate the cost effective use of AES in support of various California policy goals, but primarily the Renewable Portfolio Standard (RPS) and AB 32.

Staff Comments. This item was previously heard on April 29 and again on May 19 in order to provide the PUC with additional opportunity to respond to LAO and staff concerns that the request is premature.

LAO Recommendation. Subsequent to the May 19 hearing, and following receipt of additional information from the PUC, the LAO published a recommendation on this item, which reads in-part:

Legislature Is Currently Evaluating Its Policy on AES. The Legislature is currently considering a bill (AB 2514, Skinner) which, in its current form, would require the CPUC to open a rulemaking proceeding to establish procurement targets for each investor-owned utility and require each publicly-owned utility to adopt energy storage system procurement targets.

LAO Recommendation. While many agree that AES may provide a means for integrating intermittent renewable energy sources onto the electricity grid, we find it is first necessary to determine the technological feasibility to which such technology can play a role in California's energy mix. This analysis is currently underway in various forms at both the CAISO and CEC. Until such work is complete, we find the CPUC budget proposal both premature and potentially inefficient. The budget proposal is also premature pending enactment of legislation that provides the Legislature's policy direction in this area. As noted above, the Legislature has expressed its policy interest in this subject and is currently developing its policy. We therefore recommend the Legislature deny CPUC's budget request for advanced energy storage activity in the budget year.

Staff Recommendation. Consistent with past staff recommendations and with the latest LAO recommendation, DENY the request.

Action: Approved as budgeted on a 2-0 vote (Cogdill absent).

2. Staff Issue: Teleconnect Fund Reappropriation. Members of the nonprofit community request reappropriation of the balance (approximately \$1.5 million) of an original \$2 million appropriation from the California Teleconnect Fund to support broadband installation for community nonprofits.

Staff Comments. The Legislature has shown repeated support for improving broadband availability, including this program that provides discounts so that community-based organizations can overcome potentially high-costs to connect to the internet. Although the funds identified in this issue have been somewhat slow to reach the intended recipients, they now appear ready to be used in far greater rates due to increased participation from broadband service providers.

Staff's primary reason for placing this item on discussion is the GF implications for the requested reappropriation. Due to large outstanding loans to the GF, the Teleconnect Fund is periodically faced with the potential need to raise rates. In fact, the Legislature received notification this spring that just such a rate increase would be required if the GF did not make a partial loan repayment. Thus, to the extent that this reappropriation would make approximately \$1.5 million available in the fund available for other uses, this could place additional pressure on the GF. However, notwithstanding this issue, the Committee may still wish to approve the reappropriation for the same policy reasons that the program was created in the first place—to increase broadband access and provide all of the associated benefits (economic and otherwise) to a greater number of Californians.

Staff Recommendation: None at this time.

Action: Approved reappropriation of \$500,000 on a 2-0 vote (Cogdill absent). The Chair expressed concern with obligating the remaining \$1 million given how slowly the funds have been expended since originally appropriated in 2003.

SUBCOMMITTEE NO. 2

Agenda

S. Joseph Simitian, Chair
Dave Cogdill
Alan Lowenthal



Hearing Outcomes

Senators in Attendance: Simitian and Lowenthal

Agenda – Part “B”

Day: Monday May 24, 2010

Time: 11:00 a.m.

Room: Rose Ann Vuich Hearing Room (2040)

Consultant: Brian Annis

Transportation

2700	Office of Traffic Safety	1
2600	California Transportation Commission	2
2660	Department of Transportation	4
2665	High Speed Rail Authority	17

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 916-324-9335. Requests should be made one week in advance whenever possible.

Issues Suggested for Vote Only

Office of Traffic Safety (2700)

- 1. Reappropriation of Federal Funds (May Finance Letter):** The Governor requests to reappropriate Federal Highways Safety Grant Funds from 2005-06 (\$51.1 million) 2006-07 (\$42.4 million), and 2007-08 (\$28,792) to extend the ability to encumber these funds until June, 30 2011. The Office of Traffic and Safety (OTS) is responsible for managing the Federal Highway Safety grant funds that are passed-through to local and state agencies. On average, the OTS receives nearly \$100 million per year for safety grants. The Federal government allows the state to rollover expenditure authority for funds that are not expended in the fiscal year to the next fiscal year. On average, there has been \$285 million of new and carried over funds available for grants. While the reappropriation is needed to allow expenditure of the federal funds, this request raises questions on the accounting practices at OTS, and also the speed at which the grant funds are expended. About half of the unexpended funds are related to safety grants awarded to the California Department of Transportation (Caltrans).

Staff Recommendation: Approve the reappropriation request, and direct staff to meet with the department in the fall to review their accounting practices and the speed at which state grantees – such as Caltrans – are expending the federal funds.

Action: *Approved request on a 2 – 0 vote.*

2600 California Transportation Commission

Department Overview: The California Transportation Commission (CTC) is responsible for the programming and allocating of funds for the construction of highway, passenger rail, and transit improvements throughout California. The CTC also advises and assists the Secretary of the Business, Transportation and Housing Agency and the Legislature in formulating and evaluating State policies and plans for California's transportation programs.

January Governor's Budget Overview: The January Governor's Budget proposes expenditures of \$3.9 million and 20.0 positions for the administration of the CTC (no General Fund) – an increase of \$569,000 and no change in positions. Additionally, the budget includes \$28.9 million in Clean Air and Transportation Improvement Bond Act funds (Proposition 116 of 1990) that are budgeted in the CTC and allocated to local governments. The Administration submitted one Budget Change Proposal, which is described below.

March 11 and May 13 Hearings: The Subcommittee heard the CTC's budget on March 11 and May 13 and left the below Budget Change Proposal (BCP) open for further review. The CTC did not submit any April or May Finance Letters.

Issues proposed for Discussion / Vote:

2. Design Build / Public Private Partnership Review (BCP #1): The Administration requests a one-time increase of \$200,000 (State Highway Account) to contract out with a financial consultant to assist in the review of proposed projects under the design build contract method and the public private partnership (P3) program. This request is related to SB X2 4 (Statutes of 2009, Cogdill), which mandates that the CTC establish criteria and review projects for inclusion in these programs.

Staff Comment: In 2008, the Legislature approved two-year funding of \$100,000 per year for 2008-09 and 2009-10 for consultants to review High Occupancy Toll (HOT) projects associated with AB 1467 (Statutes of 2006, Nunez). Reviews in that program cost about \$50,000 per project; however, the scope of review was less broad because it only included the feasibility of toll revenues being sufficient to fund the cost of the project – not the contract terms of a P3. This year's BCP would include both the sufficiency of toll revenues (as applicable) and the terms of a P3 contract. Due to greater breadth of review, the cost is estimated to be closer to \$80,000 per project. So the budget funding would provide for two to three project reviews. Given the fiscal risk of these projects to the State, investing in a complete analysis of the proposed projects should be a prudent investment.

Budget Bill Language: At the May 13 hearing, the Subcommittee asked the CTC to work with staff to draft budget bill language that would implement certain privacy protections for the users of toll facilities. The following language was developed by staff in cooperation with the CTC:

Add Provision 1 to Item 2600-001-0042

*Of the amount appropriated in this item, \$200,000 is for the California Transportation Commission to contract out with a financial consultant to assist in the review of proposed projects under the design build contract method and the public private partnership program. In the 2010-11 fiscal year, and thereafter, the California Transportation Commission shall include in its public private partnership guideline requirements to ensure the privacy of motorists. The guidelines shall prohibit a transportation agency or private operator from selling or providing personally identifiable information of a person obtained pursuant to the person's participation in an electronic toll collection system or use of a toll facility. The guidelines shall allow a transportation agency or private operator to store personally identifiable information of a person and would require it to discard information related to usage of the toll facility within six months after the closure date of a billing cycle, **except information may be retained for a period exceeding six months where required by a legal settlement or judicial decree in effect prior to July 1, 2010.** The California Transportation Commission shall also add privacy protection as a review criterion in evaluating public private partnership proposals.*

Staff Recommendation: Approve the request plus the budget bill language.

Action: Approved request plus budget bill language. The budget bill language suggested in the agenda was modified as indicated above in bold and underlined.

2660 Department of Transportation

Department Overview: The Department of Transportation (Caltrans) constructs, operates, and maintains a comprehensive state system of 15,200 miles of highways and freeways and provides intercity passenger rail services under contract with Amtrak. The Department also has responsibilities for airport safety, land use, and noise standards. The Caltrans budget is divided into six primary programs: Aeronautics, Highway Transportation, Mass Transportation, Transportation Planning, Administration, and the Equipment Service Center.

January Governor's Budget Overview: The January Governor's Budget proposed total expenditures of \$13.9 billion (\$83 million General Fund) and 21,513 positions, an increase of about \$100 million and a decrease of 44 positions over the revised current-year budget. For comparison purposes, Administration is not distributed by program in 2010-11 as it is in the Governor's Budget.

Activity: (in millions):

Activity	2009-10	2010-11
Aeronautics	\$4	\$8
Highway: Capital Outlay Support	1,598	1,738
Highway: Capital Outlay Projects	6,820	6,180
Highway: Local Assistance	2,891	2,192
Highway: Program Development	82	75
Highway: Legal	113	126
Highway: Operations	187	201
Highway: Maintenance	1,233	1,303
Mass Transportation	223	587
Transportation Planning	151	164
Administration	457	1,293
Equipment Program (distributed costs)	(227)	(251)
TOTAL	\$13,759	\$13,867

Major Funding Sources (in millions):

Fund Source or Account	2009-10	2010-11
Federal Funds	\$5,172	\$4,797
State Highway Account (SHA)	3,085	3,597
Proposition 1B Bond Funds	2,560	2,937
Reimbursements	1,614	1,477
General Fund (Proposition 42 – Caltrans share)	531	0
Federal Revenue Bonds (GARVEEs)	498	496
Public Transportation Account	165	413
Other funds	134	150
TOTAL	\$13,759	\$13,867

March 11, April 8, and May 13 Hearings / May Finance Letters: The Subcommittee heard the Caltrans budget on March 11, April 8, and May 13, approving some requests, rejecting others, and keeping other issues open for further review. The Administration submitted a number of new requests with the May Revision, which are before the Subcommittee today for the first time.

Defer Action on Loans to Full Budget Committee: In the May Revision, the Administration requests various new loans and loan-repayment deferrals in the transportation area to provide 2010-11 General Fund relief of about \$1.2 billion. Those loans are not on this agenda, but will be discussed in the Full Budget Committee in the context of other difficult budget choices.

Issues proposed for Vote Only:

(see the summary table on page 7 for actions)

1. Fleet Reduction (May FL #18): The Administration requests a decrease of \$1.6 million (State Highway Account) and a reduction of five positions to reflect budget savings from the Governor's Executive Order (EO) S-14-09. That Executive Order prohibited state agencies from ordering or purchasing any new vehicles for non-emergency use and required all state agencies and departments to reduce their overall light duty fleet by at least 15 percent. The question of budget savings from EO S-14-09 was discussed at the April 8, 2010, hearing and Caltrans indicated at that time that their fleet was being reduced by 426 vehicles, but that they would not expect any ongoing savings. With this May letter, the department is indicating ongoing savings of \$1.6 million and five positions due to the purchase of fewer replacement parts, as well less labor for repair and maintenance.

Staff Recommendation: Approve the request.

2. Federal Funds for Intercity Rail (May FL #22): The Administration requests \$99.5 million in American Recovery and Reinvestment Act (ARRA) funds granted to California under the High-speed Intercity Passenger Rail Program and four new positions to proceed with the 11 projects selected to receive the federal grants. The federal money would support investments in infrastructure, facilities, and equipment for the existing State-supported train services on the Capitol, San Joaquin, and Pacific Surfliner intercity rail corridors. Caltrans indicates the projects will improve travel times, increase on-time performance, enhance multi-modalism, and improve air quality on the corridors.

Staff Recommendation: Approve the request.

- 3. 2009-10 Proposition 42 Revenue Adjustment (May Revision Letter):** The Administration requests a technical adjustment to update the Proposition 42 allocation for 2009-10. Proposition 42 revenue (a portion of the sales tax on gasoline) is projected to be \$11.7 million higher than the \$1,422 million estimated at the time of the January budget. Pursuant to the allocation formula in the Constitution, the \$11.7 million will be directed: \$2.2 million to the Public Transportation Account, \$4.4 million to cities and counties for local streets and roads, and \$4.4 million to Caltrans in support of the State Transportation Improvement Program (STIP).

Staff Recommendation: Approve the forecast adjustments.

- 4. Caltrans Workload for High-Speed Rail Encroachment on State Highway System (Part of May Revision FL #20):** The Administration requests reimbursement authority of \$2.7 million (High-Speed Passenger Train Bond Funds) and 28 positions to perform oversight on the High Speed Rail Authority (HSRA) system along any segments where the train corridor would enter the right-of-way of the state highway system. Caltrans would provide oversight to the environmental work and design work being performed on these segments. This May request is distinct from an April FL for Caltrans where \$1.7 million and 14 positions were proposed also to do reimburseable work related to HSRA – in that request the positions would complete Project Initiation Documents, which are done by the Caltrans Planning Division. In this case, the positions and funding is requested for Capital Outlay Support activities.

Staff Recommendation: Conforms to action on High-Speed Rail.

- 5. San Francisco-Oakland Bay Bridge Replacement – Special Costs (Part of May Revision FL #20):** The Administration requests (1) \$1.1 million, one-time, for out-of-country travel for Caltrans staff to coordinate and monitor the fabrication of steel and cable in China, Japan, and Korea for the signature span of the new bridge, and (2) \$4.0 million to fund project-specific liability insurance to replace an expiring policy. For the out-of-country travel, the Legislature has approved this one-time funding in the past, and future funding requests are likely for a few more years. For the liability insurance, the department indicates the cost share is still under negotiation, but should range between \$2.8 million and \$4.0 million.

Staff Recommendation: Approve the request.

- 6. Consolidation of Pavement Functions (Part of May Revision FL #20):** The Administration requests a net-zero shift of \$3.9 million and 29 positions from the Capital Outlay Support (COS) Program to the Maintenance Program. The Administration indicates that the existing workload on pavement standards, policies, guidance, and testing are better placed in the Maintenance Program.

Staff Recommendation: Approve the request.

Summary of Vote Only Issues:

Issue #	Issue Description	Action	Vote
1	Fleet Reduction (May FL #18)	Approve	2 - 0
2	Federal Funds for Intercity Rail (May FL #22)	Approve	2 - 0
3	2009-10 Proposition 42 Revenue Adjustment (May Revision Letter)	Approve	2 - 0
4	Caltrans Workload for High-Speed Rail Encroachment on State Highway System (Part of May Revision FL #20)	Conforms to action on High-Speed Rail	2 - 0
5	San Francisco-Oakland Bay Bridge Replacement – Special Costs (Part of May Revision FL #20)	Approve	2 - 0
6	Consolidation of Pavement Functions (Part of May Revision FL #20)	Approve	2 - 0

- 1. Capital Outlay Support (COS) Workload (Part of May FL #20).** The Administration requests a net budget reduction of \$42.3 million (various funds), a *reduction* of 750 state staff positions (by the end of 2010-11), a *reduction* of 102 Full Time Equivalents (FTEs) in overtime, and an *increase* of 66 FTEs in contract resources. This request would result in a total COS budget of \$1.6 billion and 10,943 FTEs in state and contract resources (9,363 state staff positions, 348 overtime FTEs, and 1,232 FTEs of contract staff). Due to state positions being eliminated over the course of the 2010-11 fiscal year, funding is provided for partial-year positions and the funding cut is equivalent to 498 FTEs. The request includes an assumption of an 6.2 efficiency gain in staff output, which is not included in the base estimates in the letter, but which the Administration also characterizes as “achieved efficiencies.”

Non-Workload Adjustments in the May Letter: In addition to the staffing adjustments, the Administration requests other changes in the May Letter:

- **Funding Shift:** The Administration requests to augment federal funding for COS by \$115.6 million and decrease State Highway Account funding by \$102.9 million, and make changes to various other funds. The federal shift is part of an effort to accelerate federal funds received by the State and also relates to bid savings.
- **Flexibility Language:** The Administration requests expanded authority to shift COS budget authority across different fund types and different project categories.
- **Delete Contract Reversion Language:** The Administration requests to delete longstanding reversion language to return budget authority for contract staff that is not spent within the fiscal year.
- **Direction to Achieve 15-percent Contract Staff Cost Savings and Direct to Maintenance:** The Administration requests budget language to direct Caltrans, to the extent possible, to negotiate or renegotiate contracts for staff resources to achieve a 15-percent savings level. No savings is budgeted. Proposed budget bill language would allow the Administration to direct any savings to pavement maintenance.

Background on Annual COS Budget Request: Each year, Caltrans zero-bases its project workload based on the program of projects adopted by the California Transportation Commission. Relative to other areas of the budget, COS staffing sees large fluctuations in staffing as transportation funds ebb and flow – Proposition 1B and American Recovery and Reinvestment Funds being recent examples of new revenues that could not have been anticipated in the years prior to their enactment. The COS workload is addressed primarily by state staff (in regular time and overtime), who historically have performed 90 percent of the project work. The remainder of the workload is addressed by contract staff, who historically have performed 10 percent of the workload. While state staff is less expensive than contract staff (\$113,000 for state staff versus \$226,000 for contract staff in the Finance Letter), a contingent of contract staff has been seen as beneficial to perform specialty work, such as the Bay Bridge Replacement, and to provide more flexible staffing across districts and at times of large workload adjustments.

LAO March Report: In March, the LAO released a report critical of Caltrans' COS program. The report was discussed at the April 8 hearing. The LAO comments from that report include the following:

- The workload that is assumed in the department's annual COS budget request has not been justified.
- Although comparisons are difficult, Caltrans appears to be incurring significantly higher costs for COS activities than similar agencies.
- Comparisons of one Caltrans region to another suggest that COS staffing in at least some regions is excessive. There appears to be little relationship between the number of positions in a region and the size of its capital program.
- Caltrans lacks systems and processes to manage and control COS costs.

LAO Recommendations from March Report: The LAO made the following recommendations:

- Adopt statutory language to require Caltrans to provide additional COS workload information beginning with the 2011-12 budget.
- Caltrans should adopt cost controls for COS and report at the hearing the steps the department is taking to control costs.
- The Bureau of State Audits (BSA) should audit Caltrans staff charging of work hours to projects to determine if these records are accurately kept.
- Reduce COS by 1,500 position equivalents (state positions and contract resources). This LAO recommendation is subject to change if the Administration is able to provide workload justification for additional staff resources.

LAO Comments on the May FL Request: The LAO indicates that the Administration has provided substantially more data to support the COS budget request than in prior years. Furthermore, Caltrans staff indicates that the data compiled to support the budget request will be useful to the COS program managers, who are now also reviewing the data. While Caltrans has provided substantially more information to support its COS budget request for 2010-11, the information is incomplete and does not allow for a comprehensive review of the request. Thus, it is impossible to evaluate how the budget-year expenditures on these projects fit into the project's approved spending plan. The incomplete data also hinders the use of program performance measures, such as evaluating the support to capital ratio.

LAO Recommendations on May FL Request: The LAO made the following recommendations:

- Approve the May Revision request, but adopt budget bill language allowing Caltrans to spend three-fourths of the funding and requiring additional information be provided to the Legislature (through the JLBC process) before the remaining one-fourth of funds could be spent. The information in the report would depend on what information the Legislature has requested, but is still outstanding as of the close-out of this issue.

- Adopt trailer bill language requiring Caltrans to provide, on an ongoing basis, the supplemental information to support the annual COS budget request.
- Request that the Bureau of State Audits (BSA) perform an audit of the performance, management, and budgeting of the COS program.

Staff Comment: The table below highlights the base administration proposal and an alternative suggested by staff. The key changes to the Governor’s proposal are to (1) reject the augmentation in contract staff; (2) budget half the administration’s assumption of bid savings for staffing services; (3) restore 230 state staff resources to work on SHOPP shelf projects consistent with revised 2010 SHOPP and restore 66 state staff resources to backfill for rejections of contract augmentation; and (4) shift 50 workload units from contract resources to state staff to maintain the longstanding 90/10 split in workload. Overall, the staff adjustments would result in both additional budget savings \$9.2 million and an additional 230 FTE’s worth of workload accomplished to prepare SHOPP projects. The FTE reduction is 304 instead of 534 and the number of positions eliminated is 212 instead of 750. The May Revision staffing does not include workload related to the April 2010 CTC adoption of the revised 2010 SHOPP, which incorporates \$1.7 billion in additional resources due to bid savings. So the 230 FTEs for SHOPP “shelf” will likely be used and needed to advance the new SHOPP projects.

	Personal Services Regular Staff	Personal Service Cash Overtime	A&E Contract Staff	Dollar Adjustment
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Governor's May Revision Proposal

Full Time Equivalents (FTEs)	-498	-102	66	
Resulting Overall FTEs	9363	348	1232	
Percent FTEs by category	85.6%	3.2%	11.3%	
Dollar Adjustment				-\$42,276

Staff Recommended Adjustments to May Revision

Reject new Contract Staff			-66	-\$14,900
Budget half of Administration Contract Savings assumption (i.e. a reduction of 7.5 percent in costs)				-\$20,317
Retain 230 State Staff for additional "shelf" work consistent with revised SHOPP plus 66 FTE contract adj.	246	50		\$31,628
Adjustment to maintain 90/10 staffing split	50		-50	-\$5,650
Dollar Adjustment Staff Recos				-\$9,239

Staff Recommended COS Budget (May Revision plus Leg Adjustments)

Total FTEs Post Leg Adjustments	-202	-52	-50	
Resulting Overall FTEs	9659	398	1116	
Percent FTEs	86.4%	3.6%	10.0%	
Overall Dollar Adjustment to January Budget				-\$51,515

In terms of the non-workload adjustments requested, the federal funds shift is an appropriate mechanism to accelerate the receipt of federal funds. The ability to shift COS authority amount fund types also seems appropriate given that the May Letter is not fully adjusted to reflect the Administration's efficiency gains. The proposed revisions to budget bill language would appear to allow the Administration to encumber contract funds across fiscal years, which does not seem appropriate when each year's request is zero-based. Approve budget bill language to target 15 percent savings in staffing contracts. Staff presents an alternative way to augment pavement maintenance in issue #2 on the next page and suggests that budget bill language be rejected that would allow Finance to shift bid savings to maintenance.

Overall, the data presented by the Administration with the May Revision represents a positive step forward. As the LAO notes, the analysis and refinement of the information should continue beyond the budget actions for 2010-11. The Department should fully sunshine its workload estimates and its performance measures for achieving project work on time and on budget.

Staff Recommendation:

On Workload:

- Adopt the staffing adjustments recommended by staff and displayed on the table on the prior page with any necessary and conforming technical adjustments.
- Adopt the LAO recommendations with regard to budget bill language, trailer bill language, and a BSA audit to insure that performance management is fully incorporated into the COS program and budget.

On Non Workload:

- Approve the requested fund shifts to accelerate the receipt of federal funds.
- Approve the requested flexibility language on a one-time basis to allow shifts between fund times based on workload.
- Reject deletion of reversion language for staffing contracts.
- Approve bid savings target of 15 percent, but reject language to direct savings to pavement maintenance.

Action: Approved staff recommendation on a 2 – 0 vote, indicating that the audit should also include forward-looking advice to Caltrans for measuring performance, and Caltrans should improve periodic reporting and status reports on project delivery (beyond the reporting to be added to trailer bill language). As a technical note, the action to reject the shift from savings to pavement maintenance included both the base Finance Letter shift and any shifts due to contract savings – maintenance funding is augmented by \$50 million in issue #2 on the next page.

- 2. Budget Savings Measures.** The Governor issued Executive Order (EO) S-09-09 to direct departments to generate budget savings from reduced operating expenses and equipment (OE&E) expenditures. However, those savings for 2009-10 and 2010-11 are generally not built into department budgets. Caltrans OE&E for the adopted 2009-10 budget was about \$2.1 billion. The Executive Order required departments to submit a plan to reduce new contracts, extended contracts, or purchases from statewide master contracts in 2009-10 by at least 15 percent. Caltrans's adopted plan applied the 15 percent amount to the non-exempted amount of \$47 million to generate savings of \$7.1 million.

Other Caltrans Savings: Despite the relatively modest savings associated with these EOs, Caltrans indicates it has been aggressive in reducing travel, training, information technology purchases, and other such costs that have reduced OE&E costs by a full 10 percent. About \$220 million was saved in this manner in 2008-09, and is reflected in the January Governor's budget as savings in the past year. Many of these savings measures are still in place and Caltrans anticipates savings of over \$100 million in 2009-10 and significant additional savings in 2010-11. However, no savings is currently reflected in the Caltrans budget for 2009-10 and 2010-11.

Action at the April 8 Hearing: The Subcommittee adopted a placeholder action that would score savings of \$100 million in 2009-10 and \$100 million in 2010-11, and directed staff to continue working with Caltrans to refine the numbers.

Staff Comment: Caltrans should be commended for achieving significant savings in operating costs. The placeholder actions seems appropriate as final Subcommittee action given that Caltrans indicates it will achieve well over \$100 million in 2009-10 savings. As discussed at the May 13 hearing, Caltrans has also achieved great savings on recent project bids. The overall savings has been used to advance highway construction projects and most "shovel ready" projects have received funding allocations. Another area where the savings can be applied to further take advantage of bid savings and create jobs is major maintenance contracts in the Maintenance Program. These projects to seal pavement and other preventative maintenance are estimated to save \$5 in future State Highway Operations and Protection Program (SHOPP) costs for every \$1 spent today. The Subcommittee may want to consider an augmentation to base funding of \$214 million for major maintenance contracts as a use of the budget savings – the remainder would be available for SHOPP projects.

Staff Recommendation: (1) Adopt as final action, the placeholder action to score \$200 million over two years from Caltrans operations and equipment savings; (2) Augment major maintenance funding by \$50 million; and (3) make technical conforming changes as required.

Action: *Approved staff recommendation on a 2 – 0 vote. Technical conforming changes would include updating the funding amount for pavement maintenance in Provision 6 of item 2660-001-0042, and adding new provision to that item to indicate that unallocated reduction is from operating expenses and equipment savings.*

- 3. Project Initiation Documents – Workload & Funding (BCP #17 & April FL #2):** In the January Budget, the Administration requested to shift 96.5 positions and \$12.5 million from State funding (State Highway Account) to local reimbursement for department workload associated with Project Initiation Documents (PIDs), or initial planning documents, for locally-funded projects. In the April FL #2, the Administration requests to modify the request by reducing the shift to reimbursements by 29.5 positions and \$5.0 million. The April letter additionally requests 14 new two-year limited-term positions and \$1.7 million in reimbursement authority to perform workload for the High Speed Rail Authority (HSRA) and the Natural Resources Agency. Finally, the April letter requests to shift two existing positions from Planning to Traffic Operations to better align the funding with the activity.

Updated Administration Proposal (through April Finance Letter)				
	Existing Staff Resources		New Staff for HSRA & Resources Agency	
	Positions	Funding (1,000s)	Positions	Funding (1,000s)
State Highway Account	-67.0 positions	-\$7,438		
Reimbursements	+67.0 positions	+\$7,438	14.0 positions	\$1,683
Net Change	0 positions	\$0 dollars	14.0 positions	\$1,683

Issue Background: This proposal is consistent with an LAO recommendation from last year to shift funding to local reimbursement for the preparation of PIDs by Caltrans on locally-funded projects on the state highway system. A primary criticism of the current approach is that locals request more PIDs than is optimal because they incur none of the cost. The shift was rejected last year and budget bill language required Caltrans to establish a workgroup with local agencies to identify cost sharing options. Staff understands this workgroup was unable to achieve consensus.

Staff Comment: The Subcommittee should hear from the LAO, the Administration, and the public, on this issue. Another option for consideration would be a cost-sharing option with locals – for example, 20-percent local cost sharing for PIDs. This would achieve the goal of locals internalizing the costs of PIDs before requesting a study, but also retaining the incentive to utilize Caltrans for PID work. Trailer bill language is necessary to implement the Administration’s proposal or any other level of reimbursement shift.

Staff Recommendation: Approve BCP #17 as modified by April FL #2. However, the positions related to HSRA should conform to the final action on the HSRA budget.

Action: *Approved staff recommendation minus \$1,000 to put the issue into Conference Committee on a 2 – 0 vote.*

- 4. Advertising on Changeable Message Signs (January Governor's Budget).** The Administration requests budget trailer bill language to allow advertising on highway Changeable Message Signs (CMSs). No Budget Change Proposal was provided to explain or justify this request. No revenue is scored in the Governor's budget for this proposal, and no revenue estimate has been provided by the Administration.

Information from the Administration trailer bill language: According to the Administration trailer bill language, "the department would obtain private sponsors and advertisers who would provide additional transportation funding in return for the right to place advertisements on the updated emergency message signs in a manner that does not detract from the signs' public-service announcement function." The language indicates the proposal would require either a waiver from the Federal Highway Administration or a change in federal law. The language indicates the private sponsor and Caltrans would share advertising revenue, but the language does not specify what the state share would be. The language specifies Caltrans would not be required to adopt regulations, but would rather post guidelines on its website.

Staff Comment: The Administration should update the Subcommittee on this proposal and indicate if it has a revenue estimate, or if there has been any response from the federal government with regards to a waiver. There are traveler information and safety concerns with this proposal. Some CMSs are used to display travel times from one destination to another (which is not necessarily a safety issue, but is valuable information to travelers) – would this content be replaced with advertising? The signs would also pose concerns related to distracted driving and highway beautification. Finally, the Administration's proposal does not appear to provide any benefit to the state General Fund and would therefore not be a budget solution.

Staff Recommendation: Given the policy concerns and no General Fund benefit, reject this proposal.

Action: *Rejected the trailer bill language and adopted the following budget bill language:*

Provision __. *Any advertising on freeway changeable message signs in 2010-11 and thereafter, shall be permitted only upon enactment of subsequent legislation that authorizes such activity.*

- 5. Inspection and review of state bridges (BCP #16 & April FL #7).** In BCP #16, the Administration requests to absorb new workload for load rating of State bridges by: (1) redirecting 9 positions that provide engineering support for toll bridge traffic operations in the San Francisco Bay Area; and (2) shifting \$1.3 million from the litter pickup budget. The load rating determines the weight or load of vehicles that a bridge can safely carry. The 9 new bridge positions would complete a new load rating assessment of 6,800 State bridges over a ten-year period to comply with new federal requirements. In April FL # 7, the Administration requests 5 new positions and \$868,000 special funds and federal funds to add staff for physical inspection of bridges. This backfills for staff redirected to do the more-frequent review of the San Francisco-Oakland Bay Bridge, and to recognize new federal requirements and the state's aging infrastructure. The request also includes a redirection of about \$4.8 million in federal bridge funds from local apportionment to state inspections. State funds would be reduced by a net of \$1.2 million.

Detail on Request: For the 6,800 bridges in question, the existing load ratings were developed with older computer modeling that did not include all bridge design data and the base load rating cannot be verified or updated with the existing system. The requested positions in BCP #16 would review bridge records, perform a new load rating with new software, and write a summary report for each bridge.

LAO Recommendation: The Analyst recommends the Administration look at alternatives that would allow the load-rating work to be completed more expeditiously (instead of over 10 years). For instance, Caltrans could contract out some of the work, or assign more State staff to the task in order to complete the work sooner.

Assembly Action: The Assembly approved FL #7. For BCP #16 on load ratings, the Assembly noted the Administration's May Revision request to reduce staff in Capitol Outlay Support, and took action to add 19 positions instead of 9 positions which will allow the load ratings to be completed in 6 years instead of 10 years.

Staff Comment: This issue was discussed at the April 8 hearing and left open to explore options to accelerate the load-rating of state bridges, as recommended by the LAO. The Assembly action doubles staff assigned to this workload to complete the work twice as fast.

Staff Recommendation: Approve April FL #7 on physical bridge inspections and conform to Assembly on BCP #16 for bridge load ratings.

Action: *Approved staff recommendation, but rejected the redirection of \$1.3 million from the litter pickup budget, and instead augmented budget funding by \$1.3 million.*

6. **Proposition 1A funding for Intercity Rail (Staff Issue):** At the May 19, 2010, California Transportation Commission (CTC) meeting, the CTC adopted the Proposition 1A program of intercity rail projects for 2010-11 to 2012-13. Proposition 1A is the Safe, Reliable High-speed Passenger Train Bonds Act of 2008. Prop 1A is a \$9.95 billion bond measure that includes \$950 million for capital projects on other passenger rail lines to provide connectivity to the high-speed train system and for capacity enhancements and safety improvements to those lines. The adopted program of projects includes the intercity rail services run by Caltrans in cooperation with Amtrak, as well as regional-run rail services around the state. The Administration has not submitted any Prop 1A funding requests for the intercity rail.

Staff Comment: Staff understand the adopted program of projects is consistent with the provisions of statute and that about \$234 million in intercity rail capital projects will be ready for an allocation in 2010-11. The Administration should testify at the hearing why there is no Prop 1A funding in the Governor's Budget.

Staff Recommendation: Approve Prop 1A funding of \$234 million for 2010-11 so ready-to-go rail safety and service-improvement projects can move forward.

Action: *Approved the staff recommendation on a 2 – 0 vote. Clarified that the CTC list of projects includes both intercity rail and connector rail, and that the funding would be available for both types.*

2665 High-Speed Rail Authority

Department Overview: The California High-Speed Rail Authority (HSRA or Authority) was created by Chapter 796, Statutes of 1996, to direct development and implementation of inter-city high-speed rail service that is fully coordinated with other public transportation services. The cost to build the initial phase (from San Francisco to Anaheim) is currently estimated by the HSRA to cost \$43 billion (in year-of-expenditure dollars). Of the \$43 billion cost, about \$11.3 billion is currently “in hand” – \$9 billion from Proposition 1A of 2008 (Prop 1A) and \$2.3 billion in federal stimulus funds. The HSRA 2009 Budget Plan indicates the remainder of project funding will come from the federal government (~\$15.7 billion), local governments (~\$4.5 billion) and private funding through selling the concession (~\$11 billion). The work of the department is primarily performed by contractors. Even with the 29 new positions requested by the Governor this year, the HSRA state staff would only total 40.5 positions. The number of position-equivalents in contract staff in 2009-10 is 469 positions.

January Budget: The January Governor’s Budget proposed funding of \$958 million for the HSRA (\$583 million Prop 1A and \$375 million federal funds). This compares to 2009-10 funding of \$139 million (all Prop 1A funds). The 2009-10 budget included 11.5 authorized positions for HSRA and the January budget proposes 40.5 positions for 2010-11.

April Finance Letters: The Administration significantly modified its proposed HSRA budget on April 1 – the proposed funding was cut in half, from \$958 million to \$461 million. The largest budget adjustment was reducing acquisition (or right-of-way purchases) from \$750 million to \$250 million. The Administration also changed the funding split such that half of the capital outlay costs are Prop 1A and half are federal funds.

May Finance Letter: The Administration submitted one May Finance Letter, that would augment funding to reimburse Caltrans for Capital Outlay Support (COS) work where the state highway system and the high-speed rail corridor intersect or adjoin.

Prior Legislative Hearings: The Subcommittee heard the HSRA budget on April 15, and left all issues open, save a technical request.

Summary table of the Governor's HSRA budget (as modified with April and May Finance Letters (FLs)): The core permanent funding for the HSRA is only about \$2.0 million, which is the funding for the current staff of 11.5 positions and the related office lease and equipment. Therefore, 99 percent of the HSRA budget for 2010-11 is included in budget change proposals (only the \$2.0 million is baseline and not included in a BCP or April FL). The below table summarizes the HSRA budget by category.

Agenda Issue Number	Activity	BCPs or April FL	Positions or Contractor Equivalent	Funding Amount (in millions)
	Baseline funding for state staff and operations (April FL for technical correction)	April FL 5	11.5	\$2.0
1	New HSRA state staff	BCPs 2, 6, 8, April FL 1&6	29.0	\$3.8
2	Program Management Contracts (including oversight contract)	BCPs 1&7	75.6	\$39.0
3	Contracts with other governmental units	BCP 12 April FL 2&3 May FL 7	na	\$7.7
4	Specialty contracts (for forecasts, communications, etc.)	BCPs 3, 4, 5, & 11	25.2	\$4.2
5	Engineering Contracts for design and environmental	COBCP 1&2 April CO 1	368.2	\$157.3
6	Acquisition of land / right of way	COBCP 1 April CO 1	na	\$250.0
	TOTAL Budget Request		509.5	\$464

* Position data is state "positions" for 2010-11 and the contractor equivalent is "personnel year equivalents" for 2009-10 (contractor position information for 2010-11 was not available).

The remainder of this agenda is generally organized consistent with the grouping and sequence of issues in this table.

Crosscutting Issue for Discussion and Vote:

Reporting Language for the 2010-11 Budget (Staff Issue): Last year, the Subcommittee adopted budget bill language that required the HSRA to report to the Legislature with updates and additional analysis on how the Authority plans to implement the high-speed rail system. The reporting was helpful in bringing new information to light and also raising new concerns that have been discussed in legislative oversight hearings. An April 2010 audit by the Bureau of State Audits (BSA) has raised new concerns about the HSRA planning, oversight, and management. Like last year, there are issues where further analysis and reporting are warranted. The Subcommittee may want to consider a reporting mechanism for the 2010-11 budget that is similar to that in the 2009 Budget Act.

Staff Comment: The structure of last year's language, and that suggested by staff for this year, fully allows the HSRA to move forward with project implementation. Since the reporting issues relate to multiple budget requests, the suggested language is outlined in this cross-cutting agenda item.

Outline for Budget Bill Language Reporting: An outline of some suggested reporting issues and mechanisms follows:

Provision X - August Reporting

Make \$1M for Ridership / Revenue Study contingent on submittal and Joint Legislative Budget Committee (JLBC) review of the following report:

- Completion of the UC Berkeley Institute of Transportation Studies (ITS) review of the ridership model - submittal of a report by HSRA on how the recommendations of the ITS will or will not be incorporated into future forecasts. Additionally, a report on the changes to the model development by the contractor and UC Davis ITS, and how that specifically relates to the UC Berkeley ITS recommendations.

Report due within 30 days of budget enactment – 60-day JLBC review.

Provision Y – January Reporting

Make ~\$17 million (1/3 of State Ops appropriation) contingent on submittal and JLBC review of the following report:

- Revenue Guarantee – lay out legal reasoning for why a revenue guarantee is consistent with Prop 1A. Assuming a revenue guarantee is inconsistent with Prop 1A, estimate the revised amount of funding that would be provided by the private partner, and alternative financing approaches to make up for any lost revenue.
- Performance of Community Outreach – report on contract expenditures for community outreach including detail by type of expenditure and activity. Detail on

meetings by community, and summary of correspondence, email, media, website, and other outreach efforts.

- Financial Plan update with alternative funding scenarios – report on alternative funding options if no significant federal funds are received beyond ARRA and no revenue guarantee is allowable – alternative with constrained funding (such as what gets built with only Prop 1A plus ARRA), and discussion of alternative new revenues.
- Strategic Plan – Provide a copy of the strategic plan that is being developed pursuant to the requirements of the State Administrative Manual.
- Auditor Finding on the Program Manager – an April 2010 Bureau of State Auditor (BSA) report raised issues with the fiscal controls and reporting of the Program Manager. Report detail on performance measures for the Program Manager to ensure issues include review of invoices another other contractor accountability as cited by the Auditor have been resolved.
- Other BSA Recommendations and Finding – Reporting on resolution to audit issues not included in the above bullets.

Report to be submitted January 3 – 60-day JLBC review.

Staff Recommendation: Approve the outline budget bill language (formal budget bill language will be provided later by staff to the Department of Finance).

Vote: Approved the staff recommendation, on a 2 – 0 vote, with the following changes and additions:

- ***January reporting was changed to February 1 reporting, and contingent budget funding was changed from one-third of the state operations budget to one-quarter of all budget funding.***
- ***Added budget bill changes and trailer bill language to do the following in the area of the peer review committee:***
 - ***Designated \$250,000 of budget funding as available for the costs of the peer review group.***
 - ***Require the HSRA to designate a specific position as a liaison to the peer review group and require HSRA to provide staff support and other requested information and assistance to the peer review group.***
 - ***Require the peer review group to meet by August 1, 2010, and provide a report to the Legislature by January 1, 2011.***
 - ***Require the peer review group to select a chairperson.***
 - ***Specify the peer review members are entitled to standard per diem (\$100 per day), plus reimbursement for travel costs, pursuant to standard practices.***
 - ***Clarify in statute that the peer review group is responsible for reviewing the systemwide plans as well as the segment plans.***
 - ***Specify the peer review group can request legal advice from the Legislative Counsel via a request made through the Assembly or Senate Chairs of the transportation policy committees or the transportation budget subcommittees.***

Issues Proposed for Discussion:

1. **New HSRA State Staff:** The updated Administration budget request (including April Finance Letters) in the area of state staff totals of \$3.8 million from Prop 1A bond funds and adds 29 state positions. The HSRA hired the firm KPMG to perform an organizational assessment of future staffing needs and organization. The function organization chart from that study is the last page of this agenda.

Detail: The six requests are as follows:

- BCP #2 – Staff for Preliminary Engineering and Design/Project Environmental Review: The Administration requests \$1.4 million for 12 positions to review engineering and design work of the consultants to ensure that state and federal laws, regulation, and processes are followed. Included in the 12 positions, is a Chief Financial Officer and a Chief Program Manger.
- BCP #6 – Right-of-Way Preservation and Acquisition: The Administration requests \$190,000 for two Right-of-Way Agent positions to identify at-risk properties and begin the preservation and procurement process.
- BCP #8 – Management and Administrative Staff: The Administration requests \$2.0 million for 13 positions. Included in the funding is \$254,000 for interdepartmental service to augment funding for Department of Justice services. The new positions will fill the following roles: regional directors, information officer, senior/associate management auditor, staff/associate information systems analyst, staff services manager, and support staff.
- April FL #1 – Accounting Positions: The Administration requests \$217,000 and two accounting positions to implement the California State Accounting and Reporting System (CALSTARS) at the HSRA. The HSRA accounting functions are currently performed through an interagency agreement by the Department of General Services (DGS). CALSTARS is the accounting system used by most state departments.
- BCP #6 – Pay increase for Executive Director: The Administration requests \$392,000 to augment the compensation of the existing Executive Director position. Of this amount, \$150,000 would be one-time for recruitment incentives and moving expenses, the remainder would be ongoing. According to the Administration's *Salaries and Wages*, the base pay for the Executive Director is \$140,000. Current statute allows the HSRA Board to set the salary for the Executive Director, and the Board has set a salary range of \$250,000 to \$375,000.

Impact of Workforce Cap: The HSRA indicates that the Governor's Workforce Cap Executive Order position reduction would result in the HSRA keeping two of the requested positions vacant – an Associate Engineer from BCP #2 and a Legal Secretary from BCP #8. So the real increase in positions would be 27 instead of 29.

KPMG Organizational Assessment. The State paid KPMG to perform an organizational assessment of the HSRA, and a functional organizational chart is attached on the final page of this agenda. Comparing the budget requests to the

KPMG chart suggests the HSRA is filling some of the suggested functions, for example BCP #2 includes a Chief Program Manger and a Chief Financial Officer, and BCP #8 includes three Regional Directors. However some functions remain excluded, such as a General Counsel or Senior Counsel.

Additional Exempt Staff: AB 289, as amended January 25, 2010, by Assemblymember Galgiani, would allow the Governor to make five appointments to the HSRA who would be exempt from civil service. So, like the Executive Director, these positions could have salaries exceeding the civil service ranges. According to HSRA, the Administration supports this bill. The HSRA indicates that if AB 289 passes, they would likely convert the Chief Program Manager, three Regional Directors, and the Chief Financial Officer to these exempt positions.

Staff Comment: Staff growth at the HSRA seems justified giving the increasing workload of the department, along with the need to bring expertise in-house. It also seems reasonable to set the pay for the Executive Director position at a parity level with similar governmental positions across the country to attract a quality and experienced individual. However, the HSRA should justify the need for the level of compensation requested for the Executive Director.

The January Budget assumed the new positions would be established on July 1, 2010, and budget documents reflect this. However, the Administration indicates that the establishment date has been accelerated and that the Administration went ahead and administratively established 27 new positions on March 1, 2010.

LAO Recommendation: The LAO withholds recommendation on these staffing requests pending more information from the HSRA on the short-term and long-term staffing needs of the organization.

With regard to the right-of-way positions in BCP #6, the LAO indicates that the authority has procured a contractor, with experience in right-of-way assessment and the state process for land acquisition, to develop a plan for the authority to proceed with the purchase of rights of way for the proposed high speed rail system. Without this plan, the authority's staffing needs for this function are unknown. It is expected the plans will be completed in time for budget review.

With regard to the accounting positions in April FL #1, the LAO indicates the funding need is overstated because it does not recognize the base funding that HSRA has currently has to pay DGS.

Staff Recommendation: Approve new positions, but recognizing the Executive Director will be on board in the current fiscal year, reduce the budget year amount by \$150,000 to reflect moving costs funded in the 2009-10 budget. Reduce funding for accountants to recognize base funding in the budget for accounting services.

Action: Approved staff recommendation on a 2 – 0 vote.

2. Program Management Contracts: The Administration requests a total of \$39 million from Prop 1A bond funds for the 2010-11 cost of two program-management service contracts.

Detail: The two requests are as follows:

- BCP #1 – Program Management Services: The Administration requests \$37 million to continue funding for the program management team that is hired to assist the HSRA in the implementation of the high-speed train system. The BCP breaks the services into eight tasks as outlined in the table below (in whole dollars)

Program Management Team	Total
Task 1 Project Mgmt. & Controls	3,154,706
Task 2 Public Education & Comms	216,000
Task 3 Eng. Criteria & Design Mgmt.	17,500,000
Task 4 Environmental Review	1,948,421
Task 5 Reg'l Consultant Oversight	
A) LA - Palmdale	1,228,444
B) LA-Orange Co.	1,098,067
C) LA-San Diego	1,232,377
D) Palmdale- Fresno	1,000,420
E) Fresno - Sacramento	976,603
F) Altamont Pass	814,666
G) Merced - San Jose	1,052,354
H) San Jose - San Francisco	1,172,068
Task 6 ROW Assm't & Acquisit'n	1,000,000
Task 7 Operations Mgt & Revenue	2,692,720
Task 8 Construction / Procurement	1,913,156
<u>Total Authority Cost</u>	<u>37,000,000</u>

- BCP #7 – Program Management Oversight: The Administration requests \$2 million to continue funding for the program management oversight team that is hired to assist the HSRA in the oversight and review of the program management team's work products and schedule.

Program Management Oversight	Total
Task 1 Implementation Plan	-
Task 2 Project/Program Monitoring	1,398,765
Task 3 Technical Review	601,235
<u>Total Authority Cost</u>	<u>2,000,000</u>

Contract costs exceed initial expectations: These contracts are in place to support the project through completion of preliminary engineering and completion of

environmental work. In May of 2007, the HSRA estimated the total cost of the Program Management Contract would be \$55 million and the total cost of the Program Management Oversight would be \$2 million. The HSRA now indicates the total cost of the Management Contract will be \$129 million and the total cost of the Management Oversight contract will be \$7 million. These new costs are more than double what the HSRA estimated in May 2007 documents. The HSRA should explain these cost overruns.

LAO Recommendation: The LAO withholds recommendation on these contract requests because there is no basis for the Legislature to determine the appropriate level of contract funding that should be provided to the HSRA for 2010-11. The LAO believes supplemental information is needed for each request that would describe the amount of work to be accomplished in the budget year and describe how each contract fits into the overall development of the system.

Staff Recommendation: Approve the request. (Note full-year funding for these contracts is contingent on the reporting suggested in the crosscutting HSRA agenda issue on page 19).

Action: *Approved staff recommendation on a 2 – 0 vote.*

- 3. Contracts with other governmental units:** The Administration requests a total of \$7.7 million from Prop 1A bond funds for the 2010-11 cost of workload performed by other state departments, local governments, and the federal government.

Detail: The three requests are as follows:

- BCP #12 – Resource Agency Staffing Agreements: The Administration requests \$1.8 million to fund the environmental review workload of five resource agencies who must approve the HSRA environmental documents. The agencies are: the U.S. Army Corps of Engineers; the U.S. Fish and Wildlife Service; the U.S. Environmental Protection Agency; the California Department of Fish and Game; and the State Historic Preservation Office. Caltrans has similarly funded staff at resource agencies to ensure a timely review of environmental documents.
- April FL #2 – Peninsula Corridor Joint Powers Board (Caltrain) Coordination: The Administration requests \$1.6 million to fund the provisions of a Memorandum of Understanding (MOU) with Caltrain, whereby the HSRA will fund the Caltrain cost of cooperative planning activities on the HSRA/Caltrans corridor
- April FL #3 and May FL #7– California Department of Transportation (Caltrans) Coordination: The Administration requests \$4.3 million to fund the provisions of a Memorandum of Understanding (MOU) with Caltrans, whereby Caltrans will perform new workload related to project coordination and oversight where the high-speed rail project interfaces with state highway.

Staff Comment: The resources agencies and Caltrans requests seem consistent with current state practice in other areas. The Peninsula Corridor request would seem to set a precedent for further HSRA MOUs with other local governments along the HSRA route. If the HSRA is intending to reimburse all local governments along the route for local governments' participation in planning activities, this would seem to add tens of millions of dollars in new costs to the project. The 2009 Business Plan assumes local governments will step up and fund \$4.5 billion of project costs. If local governments have to be compensated to participate in planning and coordination activities, this would seem to suggest that the \$4.5 billion future contribution from local governments is unlikely.

LAO Recommendation: The LAO withholds recommendation on these contract requests because there is no basis for the Legislature to determine the appropriate level of contract funding that should be provided to the HSRA for 2010-11. The LAO believes supplemental information is needed for each request. The LAO notes the Caltrain workload should be accomplished in 2010-11 so the authority should be one-time.

Staff Recommendation: Approve request.

Action: *Approved staff recommendation on a 2 – 0 vote.*

- 4. Specialty Contracts.** The Administration requests a total of \$4.2 million from Prop 1A bond funds for the 2010-11 cost of specialty contracts with private vendors in the areas of communications and ridership/revenue and fiscal studies.

Detail: The two requests are as follows:

- BCP #3 – Visual Simulation Plan Development: The Administration requests \$375,000 to continue funding for the development of visual simulation programs. The HSRA indicates these simulations would be used to educate the public on the potential impacts high-speed trains may have on their communities.
- BCP #4 – Ridership/Revenue Forecasts: The Administration requests \$1 million to continue to refine the ridership/revenue model and testing various operational and fee scenarios to develop the range of options available. According to HSRA, the ridership and revenue data the HSRA currently has was developed by the Metropolitan Transportation Commission (MTC), in consultation with the HSRA, for the Program Level Environmental work, which is geared more towards the worst case scenario (largest number of riders, based on lower ticket costs, resulting in greater impacts to the physical environment). The HSRA indicates new forecasts are needed to provide investment grade information to private investment interests.
- BCP #5 – Financial Plan and Public Private Partnership Program (P3): The Administration requests \$1 million for continued funding of the Financing Plan consultants and the commencement of the P3 Program for the financing of the high-speed train program.

Staff Comment: Staff understands that HSRA has contracted with the Institute of Transportation Studies (ITS) at the University of California, Berkeley, to review the existing ridership forecast. However, the HSRA is moving forward concurrently with revisions to the existing ridership model. The HSRA should be prepared to explain how these efforts are being coordinated – it may make sense to fully complete the ITS review, prior to continuing with new use of the ridership model.

LAO Recommendation: The LAO withholds recommendation on these contract requests because there is no basis for the Legislature to determine the appropriate level of contract funding that should be provided to the HSRA for 2010-11. The LAO believes supplemental information is needed for each request that would describe the amount of work to be accomplished in the budget year and describe how each contract fits into the overall development of the system.

Staff Recommendation: Approve request. (Note funding for the Ridership and Revenue contracts is contingent on the reporting suggested in the crosscutting HSRA agenda issue on page 19).

Action: *Approved staff recommendation on a 2 – 0 vote.*

- 5. Engineering contracts for preliminary design and environmental impact reports:** The Administration requests a total of \$157.3 million for the 2010-11 cost of multiple contracts to continue work on the project-level environmental impact reports and preliminary design. For work on the Phase I, San Francisco to Anaheim corridor, the cost would be 50-percent Prop 1A funds and 50-percent federal stimulus funds. Work on the “various successive phases” would be funded all from Prop 1A funds.

Detail: The two requests are as follows:

- CO BCP #1 as amended by April CO FL #1 – Phase I Corridor: The Administration requests \$148 million (\$74 million Prop 1A and \$74 million federal stimulus funds) to continue funding for the engineering and environmental work on the six segments in the Phase I HSRA corridor.
- CO BCP #2 – Various Successive Phases Corridors: The Administration requests \$9.3 million in Prop 1A funds to continue funding for the engineering and environmental work on the three segments in the later-phases corridors (Sacramento to Merced, Los Angeles to San Diego, and Altamont Pass).

Staff Comments: Since the 2009 Business Plan includes no information on how to finance successive phases of the HSRA (Sacramento to Merced, Los Angeles to San Diego, and Altamont Pass), it is unclear that the requested \$9.3 million is a prudent expenditure. While there is already a sunk investment in these corridors, the HSRA plans to spend \$163 million through 2013-14 on these corridors. If there is no plan to proceed with these phases, then the environmental and design plans will eventually go out-of-date and may have to be redone. The HSRA should explain the benefit of the successive phase environmental and design work if there is no plan to construct those segments. The HSRA should also disclose the cost estimate to complete those other segments.

LAO Recommendation: The LAO withholds recommendation on these contract requests because there is no basis for the Legislature to determine the appropriate level of contract funding that should be provided to the HSRA for 2010-11. The LAO believes supplemental information is needed for each request that would describe the amount of work to be accomplished in the budget year and describe how each contract fits into the overall development of the system.

Staff Recommendation: Approve requests.

Action: *Approved staff recommendation on a 2 – 0 vote.*

- 6. Acquisition of land / right-of-way:** The Administration requests a total of \$250 million for the 2010-11 cost of right-of-way acquisition in the Phase I, San Francisco to Anaheim corridor. The cost would be 50-percent Prop 1A funds and 50-percent federal stimulus funds.

Detail: The modified request is as follows:

- CO BCP #1 as amended by April CO FL #1 – Phase I Corridor: The Administration requests \$250 million (\$125 million Prop 1A and \$125 million federal stimulus funds) to continue funding for the engineering and environmental work on the six segments in the Phase I HSRA corridor. The April 1 Finance Letter reduced the Governor's January budget request which was \$750 million (\$375 million Prop 1A and \$375 million federal stimulus funds).

Staff Comment: It is unclear if even the reduced funding level of \$250 million is necessary for 2010-11, because the timeline does not suggest the HSRA will be ready to purchase right-of-way in the budget year. Environmental documents must be "completed" (a Record of Decision/Notice of Decision [ROD/NOD] must be adopted by the Board) and that is not scheduled to occur in 2010-11. At the April 8, 2010, HSRA Board meeting, part of the public information was a document titled *Briefing on Draft Business Plan Addendum* that indicates the first ROD/NOD to be completed would not occur until August 2011. The federal stimulus funds must be obligated by September 2011, but obligation is not expenditure. Rather, the HSRA must complete the environmental phase and enter a cooperative agreement with the Federal Railroad Administration by September 2011. According to the Department of Finance, there is nothing that precludes a HSRA from completing due diligence, appraising the land, performing tests, and negotiating with property owners in the absence of the portion of the appropriation necessary for the acquisition transaction.

LAO Recommendation: After reviewing the January budget proposal, the LAO recommended the funding level be reduced to \$250 million. Subsequent to that recommendation, the Administration provided April Capital Outlay Finance Letter #1 that reduced expenditures to \$250 million. The LAO recommends adding provisional language to specify that the funds are for negotiation for right-of-way, and that funds shall not be available for expenditure until after environmental documents are completed for the associated segments of the process.

Staff Recommendation: Provide funding of \$1,000 per segment with budget bill language that would allow for an augmentation of up to \$250 million total with JLBC reporting which would include a description of the right-of-way purchase and use, the status of environmental review for that segment, and the timeline for acquisition.

Action: *Approved funding of \$1,000,000 per segment with ability to augment up to a total of \$250 million with JLBC reporting for either pre-procurement activity or actual right-of-way purchase (on a 2 – 0 vote).*

7. Scheduling HSRA Expenditure in the Budget Act (Staff Issue): The Subcommittee may want to consider scheduling HSRA expenditures in the budget act at a more-detailed level than that proposed by the Administration. As proposed, the budget only specifies funding for two activities, state operations and capital outlay. As the HSRA grows in size and diversity of activity, more detailed scheduling of budget funds increases transparency and improves oversight. At the April 15 hearing, staff was directed to work with the Administration to develop a budget scheduling template.

Suggested Budget Bill Scheduling Template:

2665-004-6043—For support of High-Speed Rail Authority, payable in accordance with and from the proceeds of the Safe, Reliable High-Speed Train Bond Act for the 21st Century, payable from the High-Speed Passenger Train Bond Fund..... \$ _____

Schedule:

- (1) 10-Administration.....(\$____)
- (2) 20-Program Management and Oversight Contracts..... (\$____)
- (3) 30-Public Information and Communications Contracts....(\$____)
- (4) 40-Fiscal and other External Contracts...(\$____)

2665-304-6043—For capital outlay, High-Speed Rail Authority, payable from the High-Speed Passenger Train Bond Fund..... \$ _____

Schedule:

- (1) 20.10.010-Segment A: San Francisco to San Jose—Acquisition.....(\$____)
- (2) 20.20.010- Segment B: San Jose to Merced—Acquisition.....(\$____)
- (3) 20.30.010- Segment C: Merced to Fresno—Acquisition.....(\$____)
- (4) 20.40.010- Segment D: Fresno to Palmdale—Acquisition.....(\$____)
- (5) 20.50.010- Segment E: Palmdale to Los Angeles—Acquisition.....(\$____)
- (6) 20.60.010- Segment F: Los Angeles to Anaheim—Acquisition.....(\$____)
- (7) 20.70.010- Segment G: Los Angeles to San Diego—Acquisition.....(\$____)
- (8) 20.80.010- Segment H: Merced to Sacramento—Acquisition.....(\$____)
- (9) 20.90.010- Segment I: Altamont Pass —Acquisition.....(\$____)
- (10) Amount payable from the Federal Trust Fund (Item 2665-304-0890)..... (\$____)

2665-305-6043—For capital outlay, High-Speed Rail Authority, payable from the High-Speed Passenger Train Bond Fund..... \$ _____

Schedule:

- (1) 20.10.010-Segment A: San Francisco to San Jose—Design.....(\$____)
- (2) 20.20.010- Segment B: San Jose to Merced—Design.....(\$____)
- (3) 20.30.010- Segment C: Merced to Fresno—Design.....(\$____)
- (4) 20.40.010- Segment D: Fresno to Palmdale—Design.....(\$____)
- (5) 20.50.010- Segment E: Palmdale to Los Angeles—Design.....(\$____)
- (6) 20.60.010- Segment F: Los Angeles to Anaheim—Design.....(\$____)
- (7) 20.70.010- Segment G: Los Angeles to San Diego—Design.....(\$____)
- (8) 20.80.010- Segment H: Merced to Sacramento—Design.....(\$____)
- (9) 20.90.010- Segment I: Altamont Pass —Design.....(\$____)
- (10) Amount payable from the Federal Trust Fund (Item 2665-304-0890)..... (\$____)

Staff Comment: The above template language was developed in coordination with the LAO, HSRA, and Department of Finance. The scheduling will allow interested parties to know expenditures by segment and see different expenditures types for the operations appropriation. Note, the above template does not include the budget bill language which is separately discussed in this agenda.

Staff Recommendation: Adopt revised scheduling of expenditures.

Action: *Approved staff recommendation on a 2 – 0 vote, with technical changes as necessary.*

Motion by Senator Lowenthal related to Memorandums of Understanding (MOUs) between HSRA and local entities.

Action: *Adopted budget bill language (on a 2 – 0 vote) that would make implementation of an MOU contingent on: (1) future appropriation by the Legislature of funding for the activities covered by the MOU; (2) certification of environmental documents for the segment covered by the MOU; and (3) completion of review and Legislative reporting by the peer review group on the applicable segment.*

