

# 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

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## 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.

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

<b><i>Action: Approved Items 1-4 on a 2-0 vote (Cogdill absent).</i></b>
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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.