

**Senate Budget and Fiscal Review—Senator Mark Leno, Chair  
SUBCOMMITTEE NO. 2**

**Agenda**

**Senator Jim Beall, Chair  
Senator Jim Nielsen  
Senator Hannah-Beth Jackson**



**Thursday, March 21, 2013  
9:30 a.m. or Upon Adjournment of Session  
Hearing Room 2040**

**Consultant: Catherine Freeman**

**Items Proposed for Vote-Only**

<b><u>Item</u></b>	<b><u>Department</u></b>	<b><u>Page</u></b>
3560	State Lands Commission.....	2
7300	Agriculture Labor Relations Board.....	2
8570	Department of Food and Agriculture.....	2

**Items Proposed for Discussion**

<b><u>Item</u></b>	<b><u>Department</u></b>	<b><u>Page</u></b>
3600	Department of Fish and Wildlife.....	3
3680	Department of Water Resources .....	8

---

**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.

**DEPARTMENTS PROPOSED FOR VOTE ONLY****3560 State Lands Commission**

- 1. Oil and Gas Review and Oversight.** Request for three permanent positions to review and monitor state oil and gas lease activities to ensure compliance with lease terms. Funding will be dedicated from existing reimbursement agreements. This proposal is consistent with legislative direction to increase oversight of oil and gas leases.
- 2. Selby Slag Site Remediation.** Request for \$396,000 (one-time, General Fund) to pay the proportional share of hazardous waste remediation costs at Selby, California. This funding is pursuant to a 1989 Consent Judgment requiring the State Lands Commission to pay 38 percent of costs for the site remediation.

**7300 Agriculture Labor Relations Board**

- 3. Funding for the Administration of the Board.** Request to appropriate \$502,000 (Labor and Workforce Development Fund) and four new positions to meet administrative requirements. This proposal will allow the board to fund location-specific personnel and travel as required by diverse California agriculture labor needs.

**8570 Department of Food and Agriculture**

- 4. California Special Interest License Plate – “CalAgPlate.”** Request for \$477,000 (Specialized License Plate Fund) to award grants to agricultural education organizations with funds already received from the sales and renewals of the legislatively and Department of Motor Vehicles authorized specialized agriculture license plate.

**Recommendation:** APPROVE Items 1-4

**Vote:**

## 3600 Department of Fish and Wildlife

The Department of Fish and Wildlife (DFW), formerly the Department of Fish and Game, 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 DFW in its activities and regulates fishing and hunting. The DFW 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 \$366.3 million and 2,527 positions for DFW. Decreases in federal and other special funds are the results of a concerted effort to realign reimbursements and annual funding with historical expenditures and current revenues. Reductions in bond expenditures are the result of the near-depletion of available bond funds.

### *Items Proposed for Vote-Only*

- 1. Proposition 99 Cleanup Language.** Per recommendation by the Bureau of State Audits, revise PRC 712.5 to eliminate outdated statute that was revised by subsequent statute in 2005. This allows funding from the Environmental License Plate Fund to be used for Fish and Wildlife activities as required by Proposition 99.
- 2. Interoperable Narrowband Radio and Infrastructure Modernization Project—Year Three.** In continuance of a proposal (\$1.5 million, Environmental License Plate Fund) approved in this subcommittee, this is the third year of a multi-year proposal to fund the timely implementation of a modernization of radio operations to improve the ability of wardens to communication within DFW and to its sister law enforcement agencies at the local, state and federal level.
- 3. Technical Funding Shift Adjustment to the Fisheries Restoration Grant Program.** Request to shift ongoing Federal reimbursement authority (\$20 million) from state operations to local assistance for grant funds awarded to nonprofit organizations, government agencies, and Indian tribes under the Fisheries Restoration Grant Program. This is a technical shift to properly characterize grant expenditures.
- 4. Dreissenid Mussel Prevention.** Request for \$126,000 and one position (Harbors and Watercraft Revolving Fund) to implement Chapter 485, Statutes of 2012 (AB 2443, Williams) that requires DFW to increase Quagga and Zebra (Dreissenid) muscle prevention efforts and control activities. The LAO recommends this be reduced to \$75,000 given that the statute allows for a half-year program in the budget year.

**Recommendation:** APPROVE Items 1-3. Item 4, APPROVE \$75,000 per LAO.

**Vote:**

*Items Proposed for Discussion***1. Improper Use of Lease Proceeds**

**Lands Program Background.** The Lands Program is responsible for assisting Regional staff in the management of over 1,000,000 acres of fish and wildlife habitat. In total, the DFW manages 711 properties throughout the state. These properties provide habitat for a rich diversity of fish, wildlife, and plant species and comprise habitats from every major ecosystem in the state. In addition, the Lands Program also administers several private lands conservation programs designed to assist landowners with the management of wetlands, riparian habitats, native grasslands and wildlife-friendly farmlands.

**Bureau of State Audits Findings and Recommendations.** In December 2012, the Bureau of State Audits (BSA) found that a supervisor with DFW improperly implemented an agricultural lease agreement. The supervisor directed the lessee to use state funds derived from the lease to purchase \$53,813 in goods and services that did not provide the improvements and repairs the lease required. In addition, the supervisor required the lessee to provide the State with \$5,000 in Home Depot gift cards, but this supervisor could not demonstrate that the purchases he and other state employees made with the gift cards paid for improvements or any other identifiable state purpose. The BSA recommended DFW seek corrective and disciplinary action against the supervisor. The BSA also suggested a review of lease terms, tracking systems and reconciliation of payment records, among other things. The DFW agreed with the audit recommendations.

**Systematic Violations of Law Discovered by Department Leadership.** The DFW, having had a scathing view of its program through this supervisor's actions, undertook a broader review of the Lands Program and leasing activities. This was a comprehensive review of the entire leasing program which covers a million acres in public lands and about 700 separate leases and permits to graze. This Administration-driven review discovered new "systemic violations of law" with the department's grazing and agriculture lease program.

The review discovered numerous instances (over 50) where lease payments were made but never deposited in state coffers. These payments were used for other public and perhaps private purposes (for example property or building improvements, or agricultural equipment). The department also discovered widespread non-payment of monies owed to the state under lease arrangements that were never collected or even referred to Sacramento for further action.

**Statute Provides No Incentive to Manage Lands.** Fish and Game Code 1348, subdivision (c)(2) authorizes DFW to lease property and requires it to deposit proceeds in the Wildlife Restoration Fund. This fund, which receives revenues from several sources, is administered by the Wildlife Conservation Board. Moneys from the funds are used to acquire lands and construct facilities suitable for recreation and fish and wildlife purposes. None of the funds from the leased lands is used for management of these lands, creating a perverse incentive to find other means to fund ongoing costs on state leased lands.

**Staff Comments.** Staff have grave concerns about mismanagement in state agencies particularly related to special funds and fee revenues. From the Department of Parks and

Recreation's senior-level mismanagement, to systematic budgetary violations at the California Public Utilities Commission, and now the Department of Fish and Wildlife—staff are concerned that there is a clear missing link in fiscal management in state agencies. These agencies are entrusted with ratepayer, fee payer, and lease payer funds (special funds). While these are not General Fund, it seems very clear that the Administration and the Department of Finance has long-held that these funds are less critical for oversight than the General Fund. The recent scandals certainly have been a wake-up call to the Legislature and the Administration about the role of oversight and control agencies, such as the Department of Finance.

Staff and the members of this subcommittee have on numerous occasions vocally disagreed with the presumption that fees are less important or should have less oversight than general tax dollars. In fact, it is these funds that should have the most scrutiny since they are directed for a specific purpose, and under law, that purpose must be fulfilled by these fees (and no other purpose). Members of this budget subcommittee spend a great majority of their time reviewing these special funds and the use of these funds on behalf of the public fee payer. One cannot imagine that an individual who pays into a lease would approve of state employees misusing these funds, even if that misuse had a short term benefit for the lease site. This type of activity in a state agency reduces the ability of government to do its public-trust due diligence.

**Questions for the Agency.** The department should address these questions in their opening statement:

- Since this has effectively been going on for multiple years, how much money was directed to improper purposes?
- What happens to the agricultural leases today? For those who have not been paying, will they now be required to pay back their lease payments from past years?
- Clearly funding for land acquisition may not be the highest priority for a state that can barely manage the lands it currently owns. What should the state be directing lease funds towards?
- Have the individuals that were involved all been discovered and removed from state service? Have these violations been shifted for criminal prosecution to the Attorney General's office? Has the Fair Political Practices Commission been given the cases?
- How will this Legislature have any confidence in the DFW's programs? What specific actions will the Administration take to bring public confidence back?

**Recommendation:** Reduce Funding for Agriculture and Lease Program by \$1,000,000 until the Administration to return with specific proposals for how to rectify this situation. Direct committee staff to work with DFW to provide a proposed statutory amendment to allow lease revenues to be used directly for management of leased lands.

**Vote:**

**2. Bay Delta Conservation—Interagency Ecological Program (IEP)**

**Budget Proposal.** The budget proposes \$1.1 million reimbursement authority from the Department of Water Resources (DWR) and 11 positions for monitoring and reporting related to the State and Federal Water Projects Operations Permits as part of the Fish Restoration Program Agreement. Seven of the positions are proposed to be funded with the reimbursement authority as mitigation for the operations of the state and federal water projects. Four positions are to continue the implementation of the Interagency Ecological Program (IEP), using existing resources, as part of the Bay Delta Conservation Plan (BDCP).

**Staff Comments.** The proposal for monitoring and reporting related to the water project proposals has merit; however, staff have concerns that the state is providing more than its share of the mitigation required by the permits. This proposal is funded by ratepayers of the State Water Project, not those of the federal projects. It would seem appropriate to consider what obligations the federal government has undertaken to mitigate its federal projects in recent years.

In addition, the proposal continues to increase staffing for the IEP, a program designed to provide research and monitoring for fisheries and water agencies. While the IEP has merit, without a final and approved Delta Plan, it is difficult to determine how this monitoring program will fit into the final version of the Delta Plan. The Subcommittee may wish to hold off on new BDCP proposals until the final Delta Plan is released.

**Questions for the Department.** The department should address the following questions in its opening statement:

- What is the status of federal funding for this program given that this is both a state and federal obligation?
- What is the consequence of approving only the seven positions that are directly required by the water project permits and holding off on new BDCP proposals until a final draft BDCP is approved.

**Recommendation:**

**APPROVE** \$1.1 million and seven positions.

**HOLD OPEN** four Interagency Ecological Program positions.

**Vote:**

**3. Salton Sea Restoration**

**Budget Proposal.** The budget requests \$12.1 million from Proposition 84 bond funds for the restoration of 800-1200 acres of habitat at the Salton Sea, which will include monitoring and pilot studies related to the habitat restoration. The DFW also requests reappropriation of funds in order to provide additional funding for the restoration project, which is estimated to cost approximately \$28 million to complete.

**Staff Comments.** In the 2012, the Legislature rejected a proposal to fund ongoing work at the Salton Sea but approved \$2 million from bond funds to produce a report detailing a cost-implementation plan for Salton Sea restoration efforts. This came after significant discussion of the cost of restoration options, and the state's required obligations per the decade-old Quantification Settlement Agreement. This proposal was vetoed by the Governor.

**Questions for the Department.** The department should address the following questions in its opening statement:

- What has changed in terms of local support for the state restoration efforts proposed here?
- How will the Resources Agency contain costs in a program that has been estimated to cost anywhere from \$100 million to several billions of dollars?
- What direct mitigation impacts will locals see with this funding and how does this match up with other projects locally funded?

**Recommendation: APPROVE**

**Vote:**

## 3680 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. The IOUs manage receipt and delivery of the energy procured by the contracts.

**Governor's Budget.** The Governor's Budget includes \$3.5 billion (including infrastructure expenditures) and 3,495 positions for support of DWR. The proposed budget represents an overall decrease of \$481 million and an increase of 18 positions from the 2012-13 budget. This decrease is mainly attributed to a decrease in bond funds (\$493 million) and a decrease in the CERS division (\$33 million). Increases are attributed to reimbursement authority, federal and other funds.

**Items Proposed for Vote-Only**

<b>Item</b>	<b>Issue</b>	<b>Funding</b>
<b>1</b>	<b>Central Valley Flood Protection Board – Legal Counsel.</b> The budget requests to shift legal counsel from Department of Justice to the DWR resulting in a savings of \$25,000 annually.	-\$25,000 (General Fund)
<b>2</b>	<b>Central Valley Flood Protection Board –Technical Implementation Support.</b> Request for \$650,000 ongoing to implement the recently adopted Flood Protection Plan.	\$650,000 (Proposition 1E bond funds)
<b>3</b>	<b>Low Intensity Chemical Dosing.</b> Request for \$550,000 over two years to complete a project designed to improve water quality related to agricultural drainage.	\$550,000 (Proposition 13 bond funds)
<b>4</b>	<b>Multi-Benefit Planning and Feasibility Studies.</b> Request for \$9.6 million over three years to support 13.3 existing positions from Chapter 4 of Proposition 84.	\$9.6 million (Proposition 84 bond funds)
<b>5</b>	<b>Salton Sea Restoration Program—Species Conservation Habitat Program.</b> Proposal for \$2 million in reimbursement authority over two years for baseline staff support activities associated with the Species Conservation Habitat Proposal.	\$2 million (reimbursement authority)
<b>6</b>	<b>Information Technology Consolidation—CERES.</b> Conforming action to previous issue under Secretary for Natural Resources (Agency). This proposal would consolidate IT functions throughout the Agency by transferring the California Environmental Resources Evaluation System from Agency to the department.	No cost
<b>7</b>	<b>Capital Outlay—American River Watershed, Folsom Dam Raise Project.</b> Request to continue the re-evaluation, design and construction phases of the project and provides the state matching funds for this joint state and federal project.	\$3.3 million (Proposition 1E bond funds)
<b>8</b>	<b>Capital Outlay—Feather River Urban Flood Risk Reduction Project.</b> Request for the three-year construction phase of the Sutter Butte Flood Control Agency’s Feather River West Levee Project. The project is designed for 200-year flood protection.	\$77 million (Proposition 1E bond funds)
<b>9</b>	<b>Capital Outlay—Folsom Dam Modifications Project.</b> Request for \$40.9 million to continue construction to increase the level of protection from flooding to Sacramento. This secures \$75 million in federal funds and \$12 million in local funding matches.	\$28.8 million (Proposition 1E bond funds); \$12.2 million (reimbursement authority)
<b>10</b>	<b>Capital Outlay—Lower Cache Creek, Yolo County, Woodland Area Project.</b> Request for the non-federal share of participation with local and federal agencies to evaluate feasible flood protection alternatives for 200-year flood protection.	\$374,000 (Proposition 1E bond funds); \$103,000 (reimbursement authority)

Item	Issue	Funding
11	<b>Capital Outlay—Lower San Joaquin River.</b> Proposal to evaluate feasible flood protection alternatives to provide at least 200-year flood protection including the areas of Stockton, Lathrop and Manteca.	\$572,000 (Proposition 1E bond funds)
12	<b>Capital Outlay—Marysville Ring Levee Reconstruction Project.</b> Request to fund the non-federal share with the US Army Corps of Engineers in the Yuba River Basin. This includes design and construction phases of the project.	\$8.7 million (Proposition 1E bond funds); \$3.7 million (reimbursement authority)
13	<b>Capital Outlay—Sacramento River Flood Control System Evaluation.</b> Request state support costs of the non-federal share of the project. Other local cost-share will be in the form of in-kind work. This proposal will assess protection by non-urban levees and prioritize deficiencies.	\$333,000 (Proposition 1E bond funds)
14	<b>Capital Outlay—Sutter Basin Feasibility Study.</b> Request to evaluate the feasible flood protection in the urban area within the Yuba City Basin in the State Plan of Flood Control.	\$790,000 (Proposition 1E bond funds); \$494,000 (reimbursement authority)
15	<b>Capital Outlay—West Sacramento Project.</b> Request for re-evaluation of alternatives to provide consistent flood protection to the City of West Sacramento. This will secure \$1 million in federal funds and \$500,000 local funds.	\$1.2 million (Proposition 1E bond funds); \$500,000 (reimbursement authority)
16	<b>Capital Outlay—West Stanislaus County, Orestimba Creek Project.</b> Request to fund completion of the feasibility phase of the project to protect the town of Newman, state transportation facilities, local infrastructure and nearby flood land.	\$204,000 (Proposition 84 bond funds)
17	<b>Capital Outlay—Yuba River Basin Project.</b> Request for non-federal share of funding to evaluate flood protection for Marysville, Linda, Olivehurst, and Arboga and the surrounding vicinity.	\$323,000 (Proposition 1E bond funds); \$322,000 (reimbursement authority)
18	<b>Capital Outlay—Salton Sea Species Conservation Habitat Project.</b> Request for construction phase of funding to shallow water, saline habitat per terms of the Quantification Settlement Agreement terms and state mitigation obligations. Conforms to a previous Department of Fish and Wildlife proposal.	\$22.6 million (Proposition 84 bonds funds); \$5.7 million (Proposition 50 bond funds)

**Recommendation:** APPROVE Items 1-18.

**Vote:**

**Items Proposed for Discussion****1. FloodSAFE California Program**

**Background.** Prior to the 1900s, the California Central Valley routinely flooded, transforming it into an inland sea. 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.

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. Subsequently, DWR proposed a multi-year funding plan including both increased General Fund support as well as bond funding to improve the state's levee systems and to decrease likelihood of future state liability for levee failures.

**Governor's Budget.** The Governor requests continued FloodSAFE funding of \$98.1 million as part of the multi-year approach to improving flood control.

**Staff Comments.** This request represents a continuation of activities funded in prior years. After multiple years, DWR has completed and the Central Valley Flood Protection Board adopted, the Central Valley Flood Protection Plan, a major flood planning document designed to bring the state forward both for Central Valley flood planning and to reduce the state's liability from flood events. The department is prepared to update this Subcommittee on its progress with the FloodSAFE program and how this proposal fits into the long-term flood protection plan statewide.

**Questions for the Agency.** The department should address these questions in their opening statement:

- What is the status of the implementation of the Central Valley Flood Protection Plan? How does this proposal fit in with the plan? What tangible objectives will be accomplished with this appropriation?
- Please update the Subcommittee on efforts to address flood risk, not only in the Central Valley, but the Statewide Plan of Flood Control (including areas outside the Central Valley)?

**Recommendation: APPROVE**

**Vote:**

## 2. San Joaquin River Restoration Program Implementation

**San Joaquin River Lawsuit Settlement.** Friant Dam is located on the San Joaquin River in Fresno County and is used to store water—primarily for agriculture. In 1988, the Natural Resources Defense Council sued the federal Bureau of Reclamation (the operator of Friant Dam) and the Friant Water Users Association (FUWA), alleging that the operation of Friant Dam violates the state’s Fish and Game Code with respect to historic fish populations in the river. In August 2006, the parties reached a settlement agreement, the goal of which is to “restore and maintain fish populations” in the San Joaquin River below Friant Dam. The settlement specifies actions that will be taken to restore the San Joaquin River over the next 20 years. Under the agreement, the federal government will provide funds to restore the river, while FUWA agreed to actions that will increase flows in the river. While the total cost of the restoration is unknown, early estimates indicate that the total cost could be over \$700 million over the next 20 years. The settlement agreement recognizes that Congressional action is necessary to authorize the federal funding contribution.

**State’s Role in the Restoration.** Proposition 84, passed by the voters in November 2006, includes \$100 million allocated to the Secretary for Resources for the restoration of the San Joaquin River, for the purpose of implementing the court settlement to restore flows and the salmon population to the river. While the state is not a party to the lawsuit, the Department of Fish and Game (DFG), the Department of Water Resources (DWR), the Resources Agency, and the California Environmental Protection Agency have entered into a memorandum of understanding (MOU) with the settling parties regarding the state’s role in the restoration. The MOU has been incorporated into the settlement agreement.

Pursuant to the MOU, the Administration is proposing to spend \$100 million of Proposition 84 funds over a period of five years on restoration activities. Proposition 84 funds are proposed for land and easement purchases, channel improvements, and research projects. Two specific priority areas identified by the Administration are the creation of a bypass around Mendota Pool (which would prevent fish from passing through Mendota Dam) and isolating an existing gravel pit located along the San Joaquin River in Fresno (to prevent migrating salmon from becoming trapped in the gravel pit during high river flows).

**Budget Proposal.** The budget proposes about \$10 million of Proposition 84 bond funds to the Secretary for Natural Resources for purposes of implementing the lawsuit settlement. (These funds would be used by DWR [\$12.7 million] for carrying out the actual restoration activities.)

**LAO Recommends Legislative Prerogative to Ensure Proposition 84 Funds Are Spent Wisely.** According to the LAO in its 2007-08 Analysis, Proposition 84 provides that before funds can be spent for the San Joaquin River restoration settlement, they must be appropriated by Legislature. While the Administration’s MOU references the availability of Proposition 84 funds for purposes of the settlement, the MOU cannot obligate the Legislature to take a particular action in exercising its appropriation authority. In exercising its authority, the Legislature should ensure not only that the proposed expenditures are consistent with the bond measure, but also that funds are spent wisely and effectively.

**Staff Comments.** This appropriation would bring the total allocated to this settlement agreement to \$57.9 million, a little over half of the funds available in the bond chapter. While there is a state interest in restoring the San Joaquin River and also in preserving the use of river water for agriculture, it is important to note that the state is not directly responsible for the condition of the San Joaquin River that led to the lawsuit. Staff are concerned that discussion at the federal level has stalled and that there is less interest in allocating the substantial funds necessary to pay for this federal obligation. The Federal Government has set aside revenues from farmers who benefit from water diverted from the San Joaquin River; however, a major appropriation for full restoration of the river has, to date, been elusive.

**Questions for the Department.** The department should address the following questions in its opening statement:

- What is the status of federal funding for this program, including funding for the full restoration of the river as is consistent with the settlement agreement?
- At the current rate, the state could exhaust its bond funds for this purpose within five years. If the federal government does not take over major restoration efforts by this time, what will the state have received for its commitment of \$100 million dollars?
- What is the status of HR 1837 (Nunes) that would repeal the San Joaquin River settlement?

**Recommendation: HOLD OPEN**

**Vote:**

**3. Proposition 84 Integrated Regional Water Management (IRWM)**

**Background.** The IRWM program within DWR is an effort to encourage disparate water interests to share ideas on ways to improve all aspects of water management and develop projects that provide multiple benefits. Under the IRWM program, DWR competitively awards both planning grants to help organizations develop IRWM plans and implementation grants to construct specific projects. For example, through this program, DWR funded a project in the Bay Area intended to improve water quality and reduce flooding by improving storm water management.

The Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002 (Proposition 50) established the IRWM program and allocated \$250 million to DWR and \$250 million to SWRCB. Proposition 84, approved by voters in 2006, allocated an additional \$1 billion to DWR to support additional IRWM grants. The DWR has awarded all of the Proposition 50 funds allocated for planning and implementation grants and is currently soliciting applications for the second round of Proposition 84 implementation grants. The department expects to award \$131 million in Proposition 84 funds for the second round of grants in late 2013. Afterwards, DWR intends to begin the process for making a third round of grants. These particular grant awards are anticipated to be made in 2014–15.

**Budget Proposal.** The Governor's budget for 2013–14 requests the following for the IRWM program:

- \$472.5 million in Proposition 84 funds for the third round of grant funding, exclusively for implementation grants.
- \$6 million in Proposition 84 funds over four years to fund existing positions to develop specific guidelines, solicit proposals, review technical details of IRWM plans and proposals, and manage award contracts.
- \$1.5 million in Proposition 50 funds over three years to fund existing positions to evaluate project performance and continue oversight of the outstanding awards.

**LAO Recommendation.** LAO Recommends that the Legislature deny the Governor's proposal to provide \$472.5 million in Proposition 84 funds for additional implementation grants. The requested funding is unnecessary in 2013–14 because DWR does not plan to award any of these implementation grants until 2014–15. However, the LAO recognizes the need to develop guidelines and review applications in the budget year. Therefore, the LAO recommends approving the \$7.5 million requested to support the positions that will manage the program.

**Recommendation:** **APPROVE** the LAO Recommendation (Deny \$472.5 million but approve \$7.5 million for support positions to manage the program.)

**Vote:**

#### 4. Lake Perris Dam and Recreation Area

**Background.** Lake Perris is a reservoir at the southern end of the SWP, which stores water for delivery to urban users in the Metropolitan Water District of Southern California, Coachella Valley Water District, and the Desert Water Agency. In addition, Lake Perris is a state park with roughly 600,000 visitors each year. In 2005, DWR identified potential seismic safety risks in a section of the foundation of Perris Dam and subsequently lowered the water level at the lake to ensure public safety. However, DWR indicates that the lake cannot remain at this lower level indefinitely because it is needed as an emergency supply storage facility for the SWP and serves as an important recreation area.

**Budget Proposal.** The DWR proposes to remediate the dam and return the lake to its historical operating level. The estimated total cost of this project is \$287 million, with the cost being split between the water agencies that contract with DWR to receive water from the SWP (contractors) and the state. The state's share of costs is based on Chapter 867, Statutes of 1961 (AB 261, Davis)—the Davis–Dolwig Act—which states that the contractors should not be charged for the costs incurred to enhance fish and wildlife or provide recreation on the SWP (Davis–Dolwig costs). A recent recalculation of Davis–Dolwig costs by DWR determined the state's share of Lake Perris repair costs would be about one-third of the total estimated cost, which amounts to \$92 million.

The Governor's budget for 2013–14 includes funding to begin the remediation of the Perris Dam as proposed by DWR. Specifically, the budget proposes \$11.3 million from Proposition 84 for DWR to fund 11 existing positions and various costs, such as for final design, real property acquisitions, and environmental fees. The remaining state cost of \$80 million would be partially supported by \$27 million from Proposition 84 upon appropriation by the Legislature.

**LAO Concerns with Proposal.** In reviewing the proposed project and funding requests, the LAO has identified three primary concerns that merit legislative consideration. Specifically, the LAO finds:

- ***Project Costs Uncertain.*** The cost estimate cited by DWR for the project in the budget proposal is roughly \$200 million lower than a previous study commissioned by the department in 2006, which estimated a total project cost of \$488 million. However, the department has not been able to explain what specific factors account for this significant difference in cost. Thus, the actual cost of the project is unclear at this time. If the cost ends up being much closer to the previous estimate, the state's share of the cost would be greater—\$157 million.
- ***Funding Source for State Share Not Fully Identified.*** As indicated above, DWR proposes to use Proposition 84 funds to support \$38 million of the total estimated state cost of \$92 million. At this time, DWR has not identified a funding source for the remainder of the state's share of the project costs. The Administration plans to submit a proposal to fund the remaining state costs prior to spring budget hearings. In the past, the General Fund or other state funds (such as tidelands oil revenues) have been used to pay Davis–Dolwig costs.

- *There May Be More Cost-Effective Alternatives to Achieve Same Objectives.* According to the EIR for the proposed project, several alternative approaches would also address the public safety concerns regarding the current condition of the dam. These alternatives include (1) reducing the lake's capacity, (2) making Lake Perris a recreation-only facility, and (3) decommissioning the dam. According to the EIR, reducing the lake's capacity and decommissioning the dam would also meet the objective of maintaining SWP water deliveries. While decommissioning the dam would limit recreational opportunities at Lake Perris, nearby facilities such as Lake Elsinore provide similar opportunities. The LAO notes that DWR did not estimate the cost of these other alternatives in analyzing each alternative, as part of the project's EIR. As a result, the Legislature is unable to weigh the cost of the various proposals against the objectives they meet.

### **LAO Recommendations.**

“In view of the substantial cost of the proposed project and the lack of an identified funding source for the project's total cost, we recommend that the Legislature deny the request to begin funding dam remediation at Lake Perris in the budget year. This is because the Legislature currently lacks sufficient information to determine the most effective approach to address the problems regarding Lake Perris. Specifically, the Legislature needs information about the state's cost for the project, likely funding sources, and a full vetting of the alternatives for Lake Perris. Thus, we also recommend that the Legislature direct DWR to provide the estimated total cost (including what the state's cost would be) of three of the alternatives identified in the project's EIR—making Lake Perris a recreation-only facility, fixing the dam with reduced capacity, and decommissioning the dam—prior to continuing work on its preferred alternative. The DWR should report on the cost estimates prior to January 1, 2014, in order to provide the Legislature appropriate information to consider as it decides how to move forward with addressing the concerns with Lake Perris. It will also be important for the Legislature to identify and prioritize its objectives for making changes to Lake Perris in order to decide what attributes, if any, of Lake Perris should be preserved and to weigh those objectives against the estimated cost of various alternatives.

In addition, we recommend that the Legislature direct DWR to report at budget hearings this spring on why the cost estimates for the proposed project have changed. We note that DWR has the authority to use contractor funds to pay for the continuation of design work on its preferred alternative project—remediation of the dam. Accordingly, pending delivery of the cost estimates for the other alternatives, we also recommend the Legislature direct DWR to stop work temporarily on the design of its preferred alternative so that any unnecessary expenditures are not made before the Legislature fully considers the project.”

**Staff Comments.** As part of the multi-year settlement of the Davis-Dolwig funding issues in the last budget cycle between the Administration and the Legislature, all parties agreed that the Lake Perris Dam remediation issue would be put over until this year for discussion. The LAO has raised a number of valid concerns with the proposal that are shared by staff. Of primary concern is the precedent of approving bond funding for this purpose that was never part of a legislatively approved budget proposal. While Lake Perris is part of the State Water Project, a bond and statutorily authorized project, it is difficult to conceive that a poorly engineered dam providing significant recreational benefits in relation to the water benefit, would be approved by the Legislature with general taxpayer dollars. Critical oversight and conservative use of ratepayer funds should be a primary concern.

The DWR has generally addressed the costs of the dam, at about \$92 million for state funded obligations. This proposal only allocates \$38 million of this in the budget. The Administration has said it will be prepared at spring budget hearings to address how it plans to pay for the remaining state-funded share of this proposal. At this point in time, however, the dam exists, the recreation is well-established so the Legislature is now faced with the following decision: *Should this dam continue to exist given the significant costs to remediate the engineering and structural defects and if so, is this the most fiscally prudent and water-sensitive use of scarce bond funds?*

**Questions for the Agency.** The department should address these questions in their opening statement:

- What is the position of the Metropolitan Water District and other water agencies on the remediation of Lake Perris Dam who will be the primary supporter of the project?
- What is the total state general taxpayer obligation for the rebuild of Lake Perris Dam and how does the department propose to fund this obligation for the full cost of the project?

**Recommendation:** Staff recommends the Subcommittee approve one of two outcomes:

1. **DENY BUDGET PROPOSAL**, thus agreeing that \$92 million is too much money to spend on essentially the redevelopment of a recreation project in Southern California, and direct the DWR to come up with a proposal that does not include recreation at Lake Perris Dam. This would, in-effect, require the de-watering of the remaining lake levels at Perris and would change the State Park at the site into a non-water based park. DWR would be required to return with a proposal for a non-lake terminus such as water towers requiring less treatment downstream.
2. **APPROVE BUDGET PROPOSAL**, thus agreeing that Lake Perris Dam should be rebuilt as the terminus for the State Water Project, and that 32 percent of its function should be recreation. This continues the status quo operation of the facility including recreation and downstream water treatment costs.

**Vote:**

**5. State Water Project (SWP) Hydropower Relicensing and Regulatory Management Consolidation**

**Budget Proposal.** The budget proposes a baseline increase of \$602,000 (SWP funds) and three new permanent positions to establish a core team to secure a new operating license for the South SWP Hydropower Facilities. These positions would join the Hydropower Licensing Planning and Compliance Office and the SWP Power and Risk office. Both of these offices collectively represent the state in negotiation over hydropower relicensing with federal and state agencies.

**Staff Comments.** In previous year discussions, this Subcommittee has raised concerns about the ability of state agencies to obligate the General Fund to future costs. The Davis-Dolwig Act generally allows for this practice, with the department building and negotiating recreation facilities at SWP locations, then billing the state for the portion it deems appropriate for recreation to the general taxpayer (either through tax dollars or bond funds). Management of a State Park or state-paid boating facility is not considered sufficient for cost-sharing under the Administration's interpretation. Last year a \$10 million per year appropriation was approved from the Harbors and Watercraft Revolving Fund to pay for state obligations for recreation at these water-based facilities. This funding pays the state-share of SWP operations costs throughout the system, not direct recreation benefits, per the Administration's interpretation of the statute.

The question of future obligations of the state for new and future recreation facilities at federally authorized hydropower sites is unanswered. The department is authorized to negotiate on behalf of the state, and to enter into binding agreements with the federal government obligating the state to recreation-related costs that its SWP partners do not need to pay. Rather, the state general taxpayer must pick up these costs. It would seem that the Legislature, whose role is to appropriate funding, should have some say in any obligations the department may wish to put on the General Fund, bond funds, or other taxes of the state.

**Questions for the Agency.** The department should address these questions in their opening statement:

- What is the impact of having legislative review of federal hydropower relicenses that require future general taxpayer funding for recreation facilities?

**Recommendation:** APPROVE proposal with trailer bill language requiring the department to submit any relicensing proposal to the Legislature for 30-day review prior to final approval in cases where future general taxpayer dollars may be required for appropriation.

**Vote:**

**6. Fish Passage Improvement Program**

**Budget Proposal.** The budget requests reversions and a new appropriation of the unused balances of funds in Proposition 50. The proposal includes \$349,000 to support 1.9 existing positions to continue management, administration, and implementation of the Fish Passage Improvement Program (FPIP). The FPIP is an element of the CALFED Ecosystem Restoration program.

**Staff Comments.** The Administration's proposal has merit. The FPIP and ERP programs have provided needed fish barrier assessments, design and construction over the past five years. Funding for these projects and positions has been shared between the Department of Fish and Wildlife and the DWR.

Several new projects have been identified that would meet the criteria of the FPIP and ERP programs including those with multiple-benefits (including flood control) in the Central Valley. It would seem a good time to discuss how final dollars from both Propositions 50 and 84 are proposed to be allocated, what reversions are likely to be seen by this subcommittee, and what project applicants should prepare as they seek state funding.

**Questions for the Agency.** The department should address these questions in their opening statement:

- What are the remaining fund balances for the FPIP and ERP chapters in all bond funds, and what reversions might we expect to see over the next years?
- What should project proponents be prepared for as they seek funding from the state for projects that fit the FPIP and ERP program criteria?

**Recommendation:** APPROVE

**Vote:**