

**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, April 11, 2013  
9:30 a.m. or Upon Adjournment of Session  
Hearing Room 2040**

**Consultant: Catherine Freeman**

**Items Proposed for Vote-Only**

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**Items Proposed for Discussion**

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

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**DEPARTMENTS PROPOSED FOR VOTE ONLY****3100 California Science Center**

1. **Reimbursement Authority Reduction.** Request for a \$413,000 reduction in reimbursement authority to reflect more accurately the reimbursement expenditure level realized in the Governor's Budget display. No impact to General Fund or position authority.

**3960 Department of Toxic Substances Control**

2. **Registered Environmental Assessor Program.** Request to eliminate position and expenditure authority pursuant to Chapter 39, Statutes of 2012 (SB 1018, Leno) for the Registered Environmental Assessor Program.

**3980 Office of Environmental Health Hazard Assessment**

3. **Renewable Energy Resources: Risk Assessment of Biomethane.** Request \$139,000 and one position from the Public Utilities Reimbursement Account to comply with Chapter 602, Statutes of 2012 (AB 1900, Gatto), and corresponding budget trailer bill language.
4. **Toxicologic Evaluation and Outreach to Combat Invasive Species.** Request for one position (reimbursement authority from the California Department of Food and Agriculture) to provide scientific support to combat Asian Citrus Psyllid and other invasive pest species.

**3810 Santa Monica Mountains Conservancy**

5. **Capital Outlay and Local Assistance Grants – Santa Monica Mountains Zone and Rim of the Valley Trail Corridor Projects.** Request for three separate extensions of liquidations from 2004 and 2006-2008 (Proposition 12 and 40 bond funds) as well as a new appropriation for the remainder of Proposition 12 funds in the amount of \$43,000 to continue the existing approved strategic plan for the Conservancy.
6. **Baseline Support Budget.** Request for reversion of previous year's Proposition 84 bond funds and reduction of existing allocations by \$55,000 to maintain existing baseline support budget.

**3825 San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy**

7. **Proposition 50 Reversion.** Request to revert \$273,000 from 2006 a capital outlay appropriation to provide funding for program delivery consistent with bond requirements. This would maintain existing staffing levels and operating budgets.

**3830 San Joaquin River Conservancy**

8. **Environmental Restoration, Public Access and Recreation.** Request \$1 million (reimbursement authority) to continue the Conservancy's capital improvement program for the benefit of the public. These Proposition 84 funds are appropriated to the Wildlife Conservation Board on behalf of the Conservancy.

**3850 Coachella Mountain Conservancy**

9. **Continued Land Acquisition Program (Spring Finance Letter).** Request for appropriation anew from expired appropriations to continue the mission of the Conservancy. Funds are intended to be used for the original purpose of the appropriations (which expired in 2009 and 2010). This includes \$343,000 (Proposition 12), \$456,000 (Proposition 40); \$3.3 million (Proposition 84); and, \$384,000 (Proposition 84).

**Recommendation:** APPROVE Items 1-9

**Vote:**

## 3940 Department of Forestry and Fire Protection (CalFIRE)

The California Department of Forestry and Fire Protection's (CalFIRE) mission is to serve and safeguard the people and protect the property and resources of California. CalFIRE provides all hazard emergency - fire, medical, rescue and disaster - response to the public. The Department provides resources management and wild land fire protection services covering over 31 million acres of the State. It operates 228 fire stations and, on average, responds to over 5,600 wildfires annually. The department also performs the functions of a local fire department through reimbursement agreements with local governments. The state contracts to provide fire protection and prevention services in six local areas.

**Governor's Budget.** The Governor's Budget includes \$1.3 billion (\$678.7 million General Fund) and 6,886 positions for the Department.

### *Items Proposed for Vote-Only*

- 1. Cooperative Forestry Assistance Renewal.** The Governor's Budget requests Federal Trust Fund (\$7,493,000 in the budget year and \$37,465,000 over the following five years) and ten limited-term position authority (through June 30, 2018) to provide grant administration and technical oversight for the department's Cooperative Forestry Assistance (CFA) programs. The requested funding is necessary to provide assistance to California's private forest landowners and urban community forests. Current funding expires on June 30, 2013.
- 2. AB 1566—Above Ground Petroleum Storage Act Oversight.** The Governor's Budget requests \$366,000 and two permanent positions from the Unified Program Account (UPA) and \$309,000 UPA ongoing to perform field evaluations, conduct necessary research, develop policy and guidance, and provide technical support to the Certified Unified Program Agencies who oversee the Aboveground Petroleum Storage Act Program, authorized by AB 1566, Statutes of 2012.
- 3. Baker Fire Station—Relocate Facility (Capital Outlay).** The Governor's Budget requests a supplemental appropriation (\$200,000, Public Buildings Construction Fund) to acquire a suitable parcel to relocate the two-engine Baker Fire Station. This request is a scope change to the design and construction appropriation included in the 2010-11 Budget Act (Lease Revenue Bonds, \$10,415,000). The current lease holder has not agreed to the terms of a lease required by Bond Counsel, driving the need to acquire a new site to build the fire station.
- 4. Parkfield Fire Station—Relocate Facility (Capital Outlay).** The Governor's Budget requests a supplemental appropriation (\$283,000, Public Buildings Construction Fund) to acquire a suitable parcel to relocate the one-engine Parkfield Fire Station. This request is a scope change to the design and construction appropriation included in the 2009-10 Budget Act (Lease Revenue Bonds, \$7,209,000). The property is no longer a viable site due to a major archaeological finding on the property.

- 5. Administrative Correction Advances.** The Governor's Budget requests a change in statutory responsibilities, pursuant to Budget Letter BL 11-18, to eliminate the non-critical functions and reduce the statutory responsibilities of the Department, which will allow CalFIRE to meet workload within its authorized spending levels. This is a no cost and no savings proposal because any unqualified marginal savings from eliminating this workload will be redirected back into core mission services and provides more complete internal customer services.

**Staff Comments:** Staff concurs with the necessity of the above proposals. However, in order to continue strong oversight of the department's activities, staff recommends the subcommittee approve Item 5 (Administrative Correction Advances) with the understanding that this will be modified to continue reporting of information related to: (1) internal accounting, administrative control and monitoring; and, (2) fire prevention activities (to the extent these are not included in other reports); and, (3) State Board of Forestry regulatory actions (to the extent another form of reporting is not available).

**Recommendation:**

**APPROVE** Items 1-4.  
Item 5, **APPROVE** modified proposal.

**Vote:**

*Items Proposed for Discussion***1. WiFITER FUND (Information Item)**

In late January 2013, CalFIRE disclosed that the Department of Finance was investigating a special account related to the settlement of claims against those who have negligently started fires. Since that time, questions have been raised about the legitimacy of this account and the Bureau of State Audits (BSA) has included this special account in its audit of 10 funds outside the state treasury. With the help of CalFIRE, pertinent details of the Fund, including what it was used for, when it was created, and who managed it follows.

**Background.** According to CalFIRE, the Wildland Fire Investigation Training and Equipment Fund, commonly referred to as the WiFITER Fund, was conceived as a way to better train, and equip the individuals responsible for conducting wildland fire investigations at both the State and local level. The WiFITER Fund was modeled on similar funds held by other public agencies. The Fund allowed for specialized training to further the purpose of CalFIRE's mandate to recover fire suppression costs. The account never contained more than \$1.7 million at one time and over its seven-years of existence, it totaled \$3.66 million.

In 2005, an initial Memorandum of Agreement (MOU) was signed between CalFIRE and the California District Attorneys' Association (CDAA) to establish the WiFITER Fund and to outline the duties of the various participants. CDAA was initially chosen because it manages similar funds.

CalFIRE argues that the Fund has been an instrumental tool in ensuring that the investigators, case managers, and staff who participate in the cost recovery process receive the training and equipment necessary to effectively perform their jobs. A few of the successes achieved, in part as a result of WiFITER Fund sponsored training and equipment are the following:

- Investigators involved in the Esperanza Fire investigation and subsequent capital murder conviction received arson investigation, surveillance, and origin and cause classes/training.
- Lead investigating officer for the Witch Fire received surveillance, origin and cause and fire scene documentation classes/training.
- Lead investigating officer for the Guejito Fire received origin and cause and fire scene documentation classes/training.

In August 2008, an internal audit was initiated as a result of questions regarding the consistency of expenditures between the northern and southern regions. The final audit report was posted on the State's transparency website. In addition, CalFIRE, through its Financial Integrity and State Managers Accountability Report, informed Department of Finance (DOF), Joint Legislative Audit Committee (JLAC), and Bureau of State Audits (BSA) of the existence of the WiFITER Fund.

In October 2011, CalFIRE and CDAA entered into a revised MOU to implement recommendations from CalFIRE's internal audit. In addition, the revised MOU reduced the expenditure fee paid to CDAA from 15 percent to 5 percent.

Discussions among CalFIRE's Executive Team regarding the proper place for CalFIRE's Law Enforcement Program began in Spring 2012. The Civil Cost Recovery Program is a part of CalFIRE's Law Enforcement Program. It was the CalFIRE Director's recommendation that supervision of the Law Enforcement Program be moved from the Office of the State Fire Marshall to the Deputy Director of Fire Protection. Pending the restructuring of the Law Enforcement Program, Director Pimlott ordered the WiFITER Fund frozen. This was also done to ensure that all intended beneficiaries of the WiFITER Fund were provided the ability to propose appropriate projects.

On December 10, 2012, CDAA notified CalFIRE that it intended to terminate the MOU. CalFIRE is presently working to ensure the monies currently in the WiFITER Fund (approximately \$800,000) are deposited into an appropriate account. In addition, CalFIRE is working to establish a method to fund the training and equipment paid for from the WiFITER Fund that was instrumental in the success of the Civil Cost Recovery Program.

**Staff Comments.** The department has expressed that the fund has been an invaluable tool in ensuring that the investigators, case managers and staff who participate in the cost recovery process receive the training and equipment necessary to effectively perform their jobs, and that they have never attempted to hide the existence of the fund.

Staff agrees that there is ample precedent in state government regarding the direction of lawsuit settlement funds to multiple uses. For example, the regional water boards may require funds to be used for supplemental environmental programs outside of state government in addition to a direct monetary payment to the state. The Attorney General similarly has authority to settle lawsuits in any number of creative manners. Staff also agrees that CalFIRE never attempted to hide the existence of this fund. On the contrary, the DOF, JLAC, and BSA were notified of the existence of the WiFITER Fund in 2009.

**Questions for the Agency.** The subcommittee may wish to ask the Department of Finance the following question:

- What would be the impact of trailer bill language requiring all state agencies to report to the Legislature within 30 days of settlement of funds that are not directed into state-managed accounts?

**Recommendation:** Due to (1) recent action by the Joint Legislative Audit Committee to order an audit of this fund, and (2) pending litigation impacting the fund, staff recommends this remain an informational item.

**Vote:**

**2. Local Government Cooperative Agreements**

**Budget Proposal.** The Governor's Budget requests \$41,254,000 in reimbursements and 283.5 positions starting in Fiscal Year (FY) 2013-14 related to providing fire protection services to the cities of Colton, Jurupa Valley, Morgan Hill, Norco, and Soledad; Towns of Paradise and Tiburon; San Miguel Fire Protection District; Groveland Community Services District; and County of Riverside for an expanded scope.

**Background.** Current law authorizes CalFIRE to enter into Cooperative Fire Protection Reimbursement Agreements (“Cooperative Agreements”) for the purpose of preventing and suppressing forest fires or other fires in any lands within any county, city, or district that makes an appropriation for that purpose. CalFIRE has entered into multiple cooperative agreements to provide fire protection services for the above named communities who reimburse CalFIRE for the cost of providing the service.

CalFIRE has entered into multiple cooperative agreements that have varying start dates. Based upon those start dates, CalFIRE requests \$31,812,000 reimbursements in the current year and \$41,254,000 reimbursements in the budget (ongoing) related to the cost of providing the service to the communities. CalFIRE has submitted a Section 28 application to the Department of Finance and to the Joint Legislative Budget Committee (JLBC) for the budget year.

**Staff Comments.** Staff have some concerns that the timing of these cooperative agreements makes oversight difficult. It would be helpful, moving forward, if the Department of Finance and CalFIRE work with staff to explore a process that aligns contract start times more closely with the legislative and budget calendars, including control language as needed.

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

- What would be the impact of shifting the cooperative agreements to mirror the state budget cycle in order to get more input on these important agreements?
- What would be the impact of informing either JLBC or individual legislators whose districts have a pending contract prior to finalizing those agreements to allow for more oversight of the contracts?

**Recommendation:**

**APPROVE** budget proposal.

**Vote:**

### 3. Vegetation Treatment Program

**Background.** The State Board of Forestry and Fire Protection (BOF) proposes to initiate a California Statewide Vegetation Treatment Program (VTP). The proposed program is intended to lower the risk of catastrophic wildfires on nonfederal lands by reducing hazardous fuels. The VTP goals include control of unwanted vegetation, including invasive species, improvement of rangeland for livestock grazing, improvement of fish and wildlife habitat, enhancement and protection of riparian areas and wetlands, and improvement of water quality in priority watersheds. The initiation of this program is a project, subject to California Environmental Quality Act (CEQA). As the CEQA lead agency, the BOF will provide policy direction for implementation of the VTP to CalFIRE, which administers a wide range of vegetation management programs.

According to the department, the purpose of the VTP is to modify vegetation on wildlands to reduce the costs and losses associated with wildfires and to enhance the condition of forests, rangelands, and watersheds. The need for the VTP is based on the fact that the wildlands of California are naturally fire prone. Past land and fire management practices have had the effect of increasing the intensity, rate of spread, as well as the annual acreage burned on these lands (BOF, 1996). Although the citizens of California expect these lands to provide a wide range of sustainable economic and non-economic benefits, the state's expanding population increases the risk of arson or unintentional fire starts that jeopardize these expectations. The natural communities of plants and animals on these lands are at risk from catastrophic wildfire. Also at risk are the communities that interface with these wildlands, including those within wildland-urban interface (WUI) and rural areas. Strategic management and control of wildland vegetation is essential to the safety, health, recreational, and economic well-being of California's citizens.

**Goals of Program.** The VTP has multiple goals which can be summarized below:

1. Maintain and enhance forest and range land resources including forest health to benefit present and future generations.
2. Modify wildland fire behavior to help reduce catastrophic losses to life and property consistent with public expectation for fire protection.
3. Reduce the severity and associated suppression costs of wildland fires by altering the volume and continuity of wildland fuels.
4. Reduce the risk of large, high intensity fires by restoring a natural range of fire-adapted plant communities through periodic low intensity vegetation treatments.
5. Maintain or improve long term air quality through vegetation treatments that reduce the severity of large, uncontrolled fires that release air pollutants and greenhouse gases.
6. Vary the spatial and temporal distribution of vegetation treatments within and across watersheds to reduce the detrimental effects of wildland fire on watershed health.

7. Reduce noxious weeds and non-native invasive plants to increase desirable plant species and improve browse for wildlife and domestic stock.
8. Improve wildlife habitat by spatially and temporally altering vegetation structure and composition, creating a mosaic of successional stages within various vegetation types.
9. Provide a CEQA-compliant programmatic review document process/mechanism for other state or local agencies, which have a vegetation management program/project consistent with the VTP, to utilize this guiding document to implement their vegetation treatment programs/project.

The VTP proposes to treat vegetation in order to meet the purposes established above. Vegetation management activities include the removal, rearrangement, or conversion of vegetation using various treatments. Treatment methods include prescribed fire, mechanical, manual, prescribed herbivory (such as use of goats or sheep to reduce vegetation), and herbicide. Vegetative treatments may be applied singly or in any combination needed for a particular vegetation type to meet specific resource management objectives. The method or methods used will be those that are most likely to achieve the desired objectives while protecting natural resource values.

The general suite of treatments likely to be initiated under the proposed VTP in any decade would comprise about 2.16 million acres and would include:

- Prescribed fire (underburn, jackpot burn, broadcast burn, pile burn, establishment of control lines) – about 53 percent of treatments.
- Mechanical (chaining, tilling, mowing, roller chopping, masticating, brushraking, skidding and removal, chipping, piling, pile burning) – about 18 percent of treatments.
- Manual (hand pull and grub, thin, prune, hand pile, lop and scatter, hand plant, pile burn) – about 10 percent of treatments.
- Prescribed herbivory (targeted grazing or browsing by cattle, horses, sheep, or goats) – about 10 percent of treatments.
- Herbicides (ground applications only, such as backpack spray, hypohatchet, pellet dispersal, etc.) – about nine percent of treatments.

The VTP would be limited by five landscape constraints that describe where the VTP could be applied, and by 15 minimum management requirements that limit how program practices would be modified to reduce impacts.

**Staff Comments.** Concerns have been raised about the extent of the VTP in the wildland interface, particularly in Southern California areas with sage scrub, chaparral, and other shrub-dominated communities. Additionally, concern has been raised about the focus of the Wildland-Urban Interface (WUI) components and the robustness of the program overall.

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

- What would be the impact of excluding all sage, chaparral, and other shrub-dominated communities and riparian areas from the VTP in most cases?
- Is it possible to tighten the language regarding the WUI to maintain defensible space around structures and maintain or create fuel breaks that meet very clear definitions (and eliminate those that do not)?
- Can the program be made more robust as a percentage of the overall budget for fire education and prevention programs?

**Recommendation:**

**Vote:**

## 3930 Department of Pesticide Regulation

The Department of Pesticide Regulation (DPR) administers programs to protect the public health and the environment from unsafe exposures to pesticides. The department: (1) evaluates the public health and environmental impact of pesticide use; (2) regulates, monitors, and controls the sale and use of pesticides in the state; and (3) develops and promotes the use of reduced-risk practices for pest management. The department is funded primarily by an assessment on the sale of pesticides in the state.

**Governor's Budget.** The Governor's Budget includes \$80.9 million (no GF) for support of the DPR, a decrease of approximately \$1.5 million, or two percent, under current year expenditures. This decrease is almost entirely in special funds.

### *Items Proposed for Vote-Only*

- 1. Structural Pest Control Board—Reimbursement Authority.** The Governor requests increased reimbursement authority of \$284,000 that was inadvertently excluded from the original Governor's Reorganization Plan No. 2 of 2012. This will enable the board by coordinating statutorily required training and investigation activities related to enforcement of structural pest control laws and regulations at the local level.

**Recommendation:** APPROVE Item 1.

**Vote:**

**Items Proposed for Discussion****1. Mitigating Pesticide Use to Protect Environment**

**Governor's Proposal.** The Governor requests \$788,000 (\$783,000 ongoing) from the Department of Pesticide Regulation Fund (DPR Fund) and five permanent positions to address workload issues associated with its continuous evaluation of pesticides. The focus of this work will have adverse effects on wildlife and the environment including pollinators (bees) impacted by neonicotinoid pesticides, wildlife impacted by rodenticides, and pesticides that impact water quality.

**LAO Recommendation.** The LAO recommends rejecting one position and the related funding of \$105,00 associated with enforcement because the department was unable to demonstrate increased workload for enforcement activities.

**Staff Comments.** Staff have reviewed this request and concur with its necessity along with the LAO recommendation. However, questions have come up regarding the department's timely completion of risk assessments for all pesticides. These statutorily required risk assessments provide the framework for the department to assess toxicity and exposure to pesticides in all environmental pathways.

According to the department's website, there are 82 high priority pesticides that are currently or are planned to be assessed by the department. Of these, ten have changed in the past two years. This raises the question of the capacity of the department to complete these critical risk assessments. While staff concurs with the need for this proposal, the department should address why there have not been more changes to the number and type of pesticides to be assessed, and what its improved process for risk assessment will be under this proposal.

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

- What is the current backlog of risk assessments at the department (if such a backlog were defined as a pesticide submitted to the department for review that has not had a completed risk assessment in over two years)?
- What would be the impact of requiring the department to complete five risk assessments on high priority pesticides per year?

**Recommendation:**

- (1) **APPROVE** LAO Recommendation (four positions and \$683,000).
- (2) **APPROVE** Budget Bill Language requiring the department to complete five risk assessments on high priority pesticides per year.

**Vote:**

## 3970 Department of Resources Recycling and Recovery

The Department of Resources Recycling and Recovery (CalRecycle) protects public health and safety and the environment through the regulation of solid waste facilities, including landfills, and promotes recycling of a variety of materials, including beverage containers, electronic waste, waste tires, used oil, and other materials. CalRecycle also promotes the following waste diversion practices: (1) source reduction, (2) recycling and composting, and (3) reuse. Additional departmental activities include research, permitting, inspection, enforcement, market development to promote recycling industries, and technical assistance to local agencies.

**Governor's Budget.** The Governor's Budget includes \$1.5 billion (no General Fund) and 687 positions for support of the department.

### *Items Proposed for Vote-Only*

- 1. Transfer of the Office of Education and the Environment (OEE) to CalRecycle.** Request to complete statutorily required transfer of OEE from Cal-EPA to CalRecycle. This is a net-zero shift in positions. A total of \$2.3 million (expenditure authority) and 10 positions are proposed to be shifted. This proposal includes trailer bill language.
- 2. Shift CalRecycle from Resources Agency to Cal-EPA.** Request to complete statutorily authorized transfer of CalRecycle to Cal-EPA. This proposal was approved and completes the Governor's Reorganization Plan No. 2 that was approved by the Little Hoover Commission in May 2012, and was subsequently not rejected by either house of the Legislature. There is no budget or position impact to this shift.
- 3. Cleanup Trailer Bill Language for Carpet and Paint.** Request for trailer bill language for both the Architectural Paint Recovery Program and Carpet Stewardship Program in order to change the payment of the administrative fees supporting these programs from yearly to quarterly in arrears in order to improve cash flow for the programs.
- 4. Captive Insurance: Solid Waste Facilities.** Request for \$260,000 in reimbursement authority to implement Chapter 713, Statutes of 2012 (AB 480, Solario). AB 480 temporarily revises the conditions under which the use of captive insurance as a financial assurance mechanism for solid waste landfills would be allowed.
- 5. Hazardous Waste Grant Authority.** Request for \$81,000 (Integrated Waste Management Fund) to supplement the Household Hazardous Waste Grant Program. This allocates the department's receipt of judgment funds from *People v. Costco*, which require the retail chain to pay for mishandling of hazardous waste material.

**Recommendation:** APPROVE Items 1-5.

**Vote:**

## 1. Beverage Container Recycling Program Reform

**Background.** The Beverage Container Recycling Program covers the majority of disposable beverage containers sold in the state. The program encourages the voluntary recycling of certain beverage containers by guaranteeing a minimum payment (termed California Redemption Value [CRV]) for each container returned to certified recyclers. In 2010-11, over 20 billion containers covered by the program were sold and about 17 billion were recycled, reflecting an 85 percent recycling rate.

The CRV is the primary source of funding for the Beverage Container Recycling Fund (BCRF). For each beverage container subject to the CRV sold to retailers, distributors make redemption payments that are collected by the department and deposited into the BCRF. This CRV cost is passed on to retailers who collect the CRV from consumers for each applicable beverage container sold. Consumers can recoup the cost of the CRV by redeeming empty recyclable beverage containers with a recycler. Recyclers are in turn reimbursed by the department for redeemed CRV.

The BCRF's expenditures fit into two main categories: (1) CRV reimbursements to recyclers and (2) program expenses (including for administration, grant programs, and education and outreach) that are funded from unredeemed CRV. Several budget and policy efforts over the past year have enabled the department to (1) reduce fraudulent recycling in the state, and (2) move to improve fiscal integrity of the program.

**Governor's Proposal.** The Governor requests to shift the balance of its efforts from primarily encouraging recycling to an increased emphasis on program fiscal integrity, quality control and better use of information resources consistent with administrative and legislative direction over the past few years. Specifically, the department requests appropriation authority and eight positions on a three-year limited-term basis, and trailer bill language, to implement the following first steps.

1. Introduce a new certification application review process that (a) is based on standards of performance and accountability, including a more significant effort to prepare program participants for success and (b) adequate certification review time to ensure that certified entities serve the public and the program.
2. Introduce a formal and ongoing training program (with staff presence in both northern and southern California) that is complemented by a robust technical assistance team which actively consults with industry regarding best practices that increase recycling while fostering the efficiency of operations.

3. Require program participants to adopt the Division of Recycling Integrated Information System (DORiis) that is currently used by 57 percent of participants collectively accounting for more than 72 percent of dollars paid out of the fund to processors and more than 50 percent of dollars paid in.
4. Simplify the payment rates for beverage containers and reduce potential losses to the program by eliminating the use of commingled rates at all recycling centers (does not impact curbside recycling programs).
5. Clarify statute regarding out-of-state fraud and regulations.

**Staff Comments.** Staff have reviewed this request and concur with its necessity. This represents the first phase of a multi-year effort to reform the BCRF and to re-establish consistency in the recycling programs.

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

- What is the department considering for future phases of the BCRF reform and how does this first phase fit into these plans?
- Will the funding provided be available after the first three years of the program and, if so, should we consider permanent positions?

**Recommendation:** **APPROVE** as proposed, including trailer bill language.

**Vote:**

## 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) 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 \$675 million (\$15 million General Fund) and 1,505 positions for support of the State Water Board. Decreases in funding are largely due to reductions in bond expenditures.

### *Items Proposed for Vote-Only*

- 1. Criteria for Indirect Potable Reuse of Recycled Water.** Request \$700,000 (Waste Discharge Permit Fund) to support efforts by the California Department of Public Health to adopt water recycling criteria for indirect potable use.
- 2. Augment Water Rights Program 20 Federal Authority for US Bureau of Reclamation Reimbursement.** Request for \$75,000 (reimbursement authority) for the cost of administering water rights held by the U.S. Bureau of Reclamation. The cost of the administering these water rights is covered through a reimbursement contract with the Bureau rather than traditional water rights fees.
- 3. Replacing, Removing, or Upgrading Underground Storage Tanks (RUST) Program Subaccount Consolidation.** The budget proposes to consolidate local assistance and funding authority to reflect the elimination of the Installed Underground Storage Tank Program.
- 4. Align Underground Storage Tank Cleanup Fund Authority.** The budget proposes a reduction of \$48 million in state operations authority as a planned phase down of funding for the program. This proposal aligns funding authority with statutory fee levels.
- 5. Underground Storage Tank Cleanup Fund Orphan Site Cleanup Fund Reappropriation.** The budget proposes a reappropriation of \$6.2 million of unspent local assistance funds from 2009-10. These funds are used to reduce groundwater pollution through the cleanup of petroleum contaminated sites.
- 6. Technical Bond Adjustments.** The budget requests a one-time reversion of specified amounts for various fiscal years of state operations funds for Propositions 13, 50, and 84, and the appropriation anew for funding of new projects under existing programs.

7. **Wastewater Operator Certification Fund Augmentation.** The budget requests an augmentation of \$586,000 for the Wastewater Operator Certification Fund to (1) support new workload of certifying operators for privately-owned treatment plants per revised regulations, and (2) maintain the current workload of certifying publicly-owned wastewater treatment plant operators.

**Staff Comments.** Staff concurs with the necessity of these proposals.

**Recommendation:** **APPROVE** Items 1-7.

**Vote:**

*Items Proposed for Discussion***1. Groundwater and Drinking Water Cleanup****BACKGROUND:**

**Funding for Groundwater and Drinking Water Cleanup.** Over the past several years, the Legislature has focused oversight efforts on the provision of safe drinking water throughout the state, and in particular to small, disadvantaged communities mainly in rural areas. The 1969 Porter-Cologne Water Quality Act established the state's role in the protection of water quality and was followed by various groundwater and drinking water protection laws throughout the following decades. The Legislature, starting in 2008, has held numerous oversight hearings discussing groundwater and drinking water legislation, with a focus on providing clean drinking water, and looking at the root causes of water quality degradation. The conclusion of these hearings, as well as various reports, is that the majority of water supply in California is safe and clean. However, where there are gaps in some areas, the provision of water is a challenge, particularly in small, disadvantaged and rural communities.

Chapter 1, Statutes of 2008 (SBx2 1, Perata), required the State Water Resources Control Board (State Board), in consultation with other agencies, to prepare a report to the Legislature to outlining the causes of groundwater contamination and identifying potential remediation solutions and funding sources to recover state costs of providing clean drinking water to all communities. This report, prepared by UC Davis researchers, provides the basis for much of the groundwater and drinking water discussion this year. In addition, Chapter 685, Statutes of 2012 (AB 685, Eng) declares that it is the established policy of the state that every human have the right to water for domestic uses. The bill requires state agencies to consider this as they move forward with water policies in the future. The Legislative Analyst's Office, Senate Office of Research and UC Davis all provide a good background for this budget discussion, which are summarized in this analysis.

**The Groundwater-Drinking Water Connection.** Throughout the state, groundwater supplies all or part of the water supply for public water systems. In any given year, groundwater may contribute between 20 and 40 percent of the state's water supply. However, in many communities where surface water (rivers and streams) are not accessible or economically feasible, groundwater provides 100 percent of a community's water supply. Nearly half of all Californian's obtain at least some of their water from groundwater.

**What is A Small, Disadvantaged Community?** For the purposes of state water programs, a small disadvantaged community (SDAC) is a community with a population of less than 20,000 persons and a median household income of less than 80 percent of the statewide median. The challenges SDACs face in implementing wastewater projects generally result from a lack of adequate local monetary resources, combined with insufficient access to technical expertise. Due to their small rate base, SDACs lack the economies of scale to build and maintain adequate water systems. They are also commonly located in rural, sparsely-populated areas, that require greater pipeline and pumping infrastructure. Many SDACs are on failing septic systems or have

old and undersized wastewater treatment plants that cannot meet current water quality standards. Some residents are even forced to discharge wash water directly onto their lawns and/or experience sewage overflowing into their houses and yards. Such systems can cause significant health and safety problems, endanger surface water uses, and pose a threat to groundwater supplies.

### State Agencies Involved with Groundwater/Drinking Water

Department	Key Water Quality Responsibilities
Department of Public Health	<ul style="list-style-type: none"> <li>Enforces the federal and state safe drinking-water acts.</li> <li>Ensures the quality of the state's drinking water from the point where water is pumped from a drinking water well or surface water intake point.</li> </ul>
California State Water Resources Control Board and Regional Water Quality Control Boards	<ul style="list-style-type: none"> <li>Protects the quality of surface water and groundwater to the point where the water enters a drinking water well or surface water intake point.</li> </ul>
California Department of Pesticide Regulation	<ul style="list-style-type: none"> <li>Develops mitigation measures to prevent pesticide contamination of groundwater and surface water.</li> </ul>
California Department of Toxic Substances Control	<ul style="list-style-type: none"> <li>Ensures that groundwater at toxic sites is monitored and remediated.</li> </ul>
Office of Environmental Health Hazard Assessment	<ul style="list-style-type: none"> <li>Performs health risk assessments related to setting drinking water standards.</li> </ul>
California Public Utilities Commission	<ul style="list-style-type: none"> <li>Ensures that customers of regulated water utilities receive reliable service.</li> </ul>
Delta Stewardship Council	<ul style="list-style-type: none"> <li>Improves Sacramento–San Joaquin Delta water quality for drinking, agriculture, the environment, and Delta species.</li> </ul>

Source: Senate Office of Research, 2011

**What Happens When Groundwater is Contaminated?** Groundwater can be an inexpensive water source. However, discovery of contamination in a drinking water well often leads to closure of the well. In areas where other sources of water or alternate groundwater resources are not available, bottled water may be the only available water supply. In 2007, approximately 1.5 million California residents – four percent of the population that gets water from public water systems, received water from a system that had a monitoring or reporting violation under the Safe Drinking Water Act. In the Tulare Lake Basin and Salinas Valley, both subject of an intensive analysis of water pollution, about 254,000 people are at risk for nitrate contamination of their drinking water. The Department of Public Health reported that nitrate

was detected in 921 public drinking water wells, mostly in agricultural areas, prior to a 2008 hearing.

According to a 2008 LAO report, cleaning up groundwater can be very expensive. For example, the Underground Storage Tank (UST) Cleanup Fund was established in 1989 to provide financial assistance to owners and operators of USTs containing petroleum to remediate conditions caused by leaking USTs—which include contamination of groundwater supplies. Annual expenditures have varied between \$180 million to \$289 million in the ten years prior to 2008, and individual site cleanups have reached as much as \$1.5 million. In some cases, where contamination is too severe, the groundwater supply is completely lost and the only solution is to either seal the groundwater basin or to “pump and treat”—meaning removing the water from the basin, treating it and discharging into another water system. Groundwater systems with this type of contamination generally remain out of service for drinking water purposes in perpetuity.

**Why Focus on Nitrates?** Groundwater use is prevalent throughout California but no more so than in the Central Valley and rural agricultural areas where more than 85 percent of community public water systems rely on groundwater for at least part of their drinking water supply. According to the UC Davis report, nitrate is one of California’s most widespread groundwater contaminants. This is, in part, because many rural areas get water from shallow wells. These wells in turn are contaminated by both household wastewater and agricultural runoff. While nitrogen is part of the natural environmental cycle, it is also key to food production and is a major component in commercial fertilizers. Because of this, nitrate concentrations have increased and continue to do so, particularly in rural areas. Too much nitrogen in drinking water can cause many human health problems, particularly in infants and children.

**Historical Funding of Groundwater and Drinking Water Programs.** Regulation of water quality, both drinking water and source water (such as groundwater) has historically been paid for by the general public, mainly through fees to public and private water and wastewater providers. A portion of these fees are used by the state to regulate, monitor and clean up water quality. The Federal government also provides between \$5 and \$10 million per year for water quality programs, mainly through federally authorized revolving loan funds that provide low or no-interest loans for infrastructure investments at the Department of Public Health (DPH) and the State Board. Funding for individual cleanups are generally ordered by a court and can reach millions of dollars paid either by responsible parties or by the government, where no responsible party can be found.

**Options for Funding Groundwater Cleanup in Small, Disadvantaged Communities.** The UC Davis study on nitrates in drinking water recommended several options for funding water quality improvements. Recognizing that nitrates are a primary source of ongoing and legacy contamination of water quality in these systems, the report provides a series of options to fund both groundwater cleanup and safe drinking water systems in areas with nitrate water contamination. These include fixed fees on drinking water, groundwater pumping fees, fertilizer taxes, property taxes and fees on bottled water. Each option has advantages and disadvantages, and each varies in the direct incentive to reduce nitrates.

**GOVERNOR'S PROPOSAL:**

**No Comprehensive Proposal.** The Governor's budget does not include a formal proposal for comprehensive funding for small, disadvantaged community water systems. The Administration intends to recommend efficiencies and alignments to ensure access to safer water. While no timetable has been set, the budget states that the State Water Board will recommend potential funding mechanisms to provide disadvantaged communities with safe, affordable, and reliable drinking water. Stakeholders will be consulted in the development of a proposal to improve the administration of water programs and implement sustainable funding mechanisms.

**Small Community Grant Program.** The budget also includes a proposal to augment \$7 million in local assistance authority for the State Water Pollution Control Revolving Fund Small Community Grant Fund (Grant Fund). This fund is designed to assist small disadvantaged communities with their wastewater infrastructure needs. The grant fund was established in 2008 through an annual charge on financial agreements in lieu of interest. These charges are anticipated to collect about \$7.1 million in the budget year and supplement bond funds that were appropriated by the Legislature in previous years. New bond funds designated for small disadvantaged community (SDAC) wastewater projects have not been approved since 2002.

In recognition of the repayment challenges facing SDACs, the Legislature and water boards allowed for principal forgiveness funds, which are similar to grant funds, within the Clean Water State Revolving Fund program in 2009. This was in conjunction with an influx of funds from the American Recovery and Reinvestment Act (ARRA) program. Principal forgiveness and grant funding for SDAC Wastewater project demand is mainly for upfront planning costs to get projects moving forward with construction. The state board encourages the use of the funds in order to prevent enforcement actions for non-compliance in these water systems, and to help SDACs develop long-term wastewater system development.

**ISSUES TO CONSIDER:**

**Action on Small Disadvantaged Communities.** Given the number of reports on SDACs and the comprehensive analysis provided by the UC Davis nitrate report, the Legislature should have enough information to begin a discussion of policy and funding options. The complexity of the issue will necessitate both a budget and policy response. Several issues to consider include:

- Should smaller community water and wastewater systems be required to combine in order to achieve greater efficiency of service?
- Should the Legislature further restrict nitrate contamination in rural areas, and if so, what would be the impact to these communities?
- If it is possible to treat nitrate contaminated water, what funding mechanism provides the most options for comprehensive water quality solutions with the least financial impact?
- What would be the impact on disadvantaged communities of making well logs public?

**Shifting Drinking Water to the Water Board.** Though the budget does not specifically address this issue, there are hints that the Administration is considering a shift that would place the Department of Public Health (DPH) drinking water programs under the State Water Board's jurisdiction. This would allow for the combination of the two federally funded infrastructure loan programs (drinking water and wastewater), and could bring efficiencies in the administration of water programs, particularly in rural areas. SB 117 (formerly authored by Senator Rubio), introduced this year, would transfer the various duties and responsibilities imposed on the DPH by the California Safe Drinking Water Act to the State Board and make conforming changes.

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

- What progress has been made on determining whether integration of the drinking water programs with water board programs makes sense?
- What are the current funding options available to the state to comprehensively address both ongoing monitoring of groundwater as well as cleanup and treatment of contaminated drinking water, particularly from nitrates?

**Recommendations:**

1. **APPROVE** the budget proposal for Revolving Loan Fund augmentation.
2. **REQUEST** the Administration to return at May Revision with a proposal to elevate the drinking water program by shifting it to Cal-EPA.
3. **APPROVE** placeholder TBL to require well logs to be made public.
4. **APPROVE** budget bill language requiring the department to include a budget proposal in January 2014 that addresses concerns raised by this subcommittee and its internal and contracted reports that indicate a need for ongoing and permanent solutions to nitrate groundwater contamination.

**Vote:**