

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



Tuesday, May 21, 2013
10:00 a.m.
Hearing Room 112

Consultant: Catherine Freeman

Items Proposed for Vote-Only

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Resources—Environmental Protection—Energy—Transportation

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DEPARTMENTS PROPOSED FOR VOTE ONLY**3600 Department of Fish and Wildlife (DFW)**

- 1. Salton Sea Restoration.** The DFW requests \$12.1 million from Proposition 84 bond funds dedicated to Salton Sea Restoration programs for restoration of 800-1,200 acres of habitat at the Salton Sea, which will include monitoring and pilot studies related to the habitat project. The request also includes reappropriation of Proposition 84 and Salton Sea Restoration Funds in order to provide addition funding for the restoration project, which is estimated to cost approximately \$28 million. This compliments previous related subcommittee actions.
- 2. Dreissenid Mussel Prevention.** The DFW requests \$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) mussel 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 Item 1.
Approve Item 2 at reduced level (\$75,000 per LAO).

Vote:

3780 Native American Heritage Commission

- 3. Tribal Advisor to the Governor.** The Governor requests reclassification of two positions and a baseline increase of \$140,000 (General Fund) for increased activities related to the Tribal Advisor to the Governor. This position provides advice and is a liaison on tribal issues statewide.

Recommendation: Approve Item 3.

Vote:

3810 Santa Monica Mountains Conservancy (SMMC)

4. **Reversion and Reappropriation of Proposition 84 Bond Funds.** The Conservancy expects to fund roughly \$4-5 million in projects and grants during 2013-14. The Conservancy's Proposition 84 capital outlay appropriations will be unavailable for encumbrance after 6/30/13. Without reappropriation or a new appropriation, the SMMC will not be able to fund these projects during 2013-14 and the projects would be delayed a year.

Recommendation: **Revert** the unencumbered balances (\$6.6 million) in the 2007, 2008, and 2009 Proposition 84 appropriations. **Approve** a new appropriation for the same purposes. **Revert** \$25,000 of Proposition 50 appropriation.

Vote:

3885 Delta Stewardship Council

5. **Delta Plan Implementation.** The Council requests to replace existing and expiring bond funding with \$777,000 General Fund to maintain the existing level of positions at the Council. This would allow the positions to continue as the Council transitions into performing operation activities associated with the Delta Plan. The Council anticipates adopting the final draft of the plan in spring of 2013, and ongoing resources will be necessary for implementation.
6. **Reimbursement Authority—Delta Science Programs.** The Council requests an increase of \$6 million (Reimbursement Authority) to provide for an interagency agreement between the Department of Water Resources (DWR) and the Council. This action will conform to the DWR request to extend the liquidation period for Proposition 84 bond funds appropriated for research activities related to the Sacramento-San Joaquin Delta.

Recommendation: **Approve** Items 5-6.

Vote:

8570 Department of Food and Agriculture

- 7. Citrus Pest and Disease Prevention Program.** The May Revision requests an increase of \$2.5 million (Department of Food and Agriculture Fund) for two years to provide resources to enhance the Asian Citrus Psyllid and Huanglongbing Mitigation Project. The Asian Citrus Psyllid are the carriers for Huanglongbing disease which is fatal to citrus trees.

Recommendation: Approve Item 7.

Vote:

8660 California Public Utilities Commission (CPUC)

- 8. Extension of Liquidation—Funding for Outside Legal Counsel for Energy Crisis Litigation.** The May Revision requests a one-year extension of the liquidation period for continued assistance by outside legal counsel and economic consultants, as well as expert witnesses in litigation by the CPUC before the Federal Energy Regulatory Commission (FERC), which seeks refunds of several billion dollars for overcharges during the 2000-2001 energy crisis.
- 9. Conforming Action—Non-State Entities.** This subcommittee took action on April 25 to prohibit the CPUC from awarding contracts to non-profits in which a sitting commissioner serves as an employee, officer, or director and to prohibit CPUC commissioners from serving on commission-established non-state entities. The Assembly Budget subcommittee took a similar action but included executive staff, as well. Staff recommends a conforming action.
- 10. Conforming Action—Performance Budgeting.** The Assembly Budget Subcommittee took action to require the CPUC to address budgeting given recent concerns about proper budgeting and accountability. Staff recommends a conforming action to require the CPUC to conduct a zero-based budget and performance budgeting exercise.

Recommendation: Approve Items 8-10.

Vote:

3340 California Conservation Corps

Items Proposed for Discussion

1. Fire Prevention Activities in the State Responsibility Area

May Revise Proposal Summary. The Governor’s May Revision proposes \$5 million in Proposition 40 bond funds annually for the next three years to support fire prevention activities by the California Conservation Corps (CCC). Specifically, this proposal would: (1) fund the baseline program (\$2.4 million per year) to perform hazardous fuel reduction and watershed restoration projects to improve forests’ resistance to fire; (2) expand this program (\$2.2 million per year) to support an increase of 45 full-time equivalent corpsmember positions to perform additional activities and 7.5 associated administrative positions; and, (3) fund 5 positions for administration related to the existing and expanded program. These activities would be performed within the areas where the state is responsible for wildland fire protection—also known as the State Responsibility Area (SRA).

LAO Recommendation. “If the Legislature chooses to approve the Governor’s proposal, it may wish to consider a more appropriate funding source than Proposition 40. Specifically, the State Responsibility Area Fire Fund receives revenue from a fee that is generally used to support fire prevention activities within the SRA. Currently, there is adequate funding available from this fund to support these proposed activities. In contrast, the funds from Proposition 40 have a variety of potential uses, such as for projects to protect beaches, rivers, or lakes from sediment or other types of pollution. In addition, these expenditures from bond funds would be repaid with interest from the state’s General Fund and generally, bond funds are used for infrastructure projects, rather than funding positions at state departments.”

Staff Comments. Staff concurs with the LAO recommendation. This issue highlights a broader concern about the use of the SRA Fee. As this fee is established in law and the Board of Forestry has developed regulations for disbursement of the fund to locals for local grant programs, it would seem prudent to give fee payers as much of a direct benefit as is possible under this fund. Therefore staff recommends a further \$15 million be added to the budget to provide for the establishment of a local assistance grant program for fire prevention activities under the Department of Forestry and Fire Protection.

Recommendation. Approve LAO Recommendation to fund with SRA Fee. Approve additional \$15 million for a Fire Prevention local assistance program under the Department of Forestry and Fire Protection.

Vote:

3540 Department of Forestry and Fire Protection

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 wildland 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.

Items Proposed for Vote-Only

- 1. Aviation Management Unit Contract Increase.** The May Revision includes an increase of \$952,000 (General Fund) for CalFIRE's Aviation Management Unit. This proposal is intended to provide logistical support to coordinate acquisition of parts for the existing CalFIRE aviation fleet. This proposal does not purchase or include capital investments beyond logistical support and coordination of acquisitions.
- 2. CalFIRE Emergency Fund.** The May Revision proposes an increase of \$51 million General Fund to reflect historic expenditures for emergency wildfire suppression costs. This increases the Emergency Fund (E-Fund) to \$172 million annually. The E-Fund provides funding to CalFIRE for the state's emergency fire suppression efforts, above and beyond its base budget. This new funding level reflects the state's current five-year average cost for fighting major wildfires in the state.
- 3. Department of Justice Legal Services Reappropriation.** The May Revision proposes reappropriation and extension of liquidation related to ongoing litigation. This allows expenditures to be made to fund the costs of litigation when they are expected to occur.
- 4. Capital Outlay Reappropriations.** Consistent with its current strategic plan and past actions, the budget includes a reappropriation of funds for various phases of major capital outlay projects. These projects have previously been approved and are mainly for fire station and conservation camp construction projects.

Recommendation: APPROVE Items 1-4.

Vote:

*Items Proposed for Discussion***1. Fire Severity, Treatment, Education, Prevention and Planning (STEPP)**

Proposal Summary. The Department of Forestry and Fire Protection (CalFIRE) requests \$11.7 million (State Responsibility Area [SRA] Fee) and 65.1 positions to address fire severity, treatment, education, prevention and planning. The request is proposed to implement the provisions of Chapter 311, Statutes of 2012 (SB 1241, Kehoe) related to fire severity and planning. This proposal also includes fuel treatment through the Vegetation Management Program and education of homeowners on ways to prevent the ignition and spread of unwanted human-caused fires by hiring dedicated, seasonal Defensible Space Forestry Aid inspectors.

Background. To provide fire protection in the SRA, CalFire engages in various activities to address fire severity, treatment, education, prevention, and planning (STEPP). For example, CalFire's vegetation management program is a cost-sharing program between CalFIRE and local landowners that reduces the fuel that can potentially start fires by clearing brush, creating fuel breaks, and prescribed burns. The department also enforces defensible space requirements for structures within the SRA. Chapter 311, Statutes of 2012 (SB 1241, Kehoe), requires local agencies to address fire risks in SRAs and very high fire hazard severity zones (VHFHSZ) in the safety element of their general plan by identifying available fire protection and suppression services. About 10 percent of the VHFHSZ are located in local responsibility areas, in which local agencies are responsible for fire prevention and protection. The remaining zones are located in SRAs.

Trailer Bill Language. Under the Governor's plan, some of the requested funding and positions would be used to support activities outside of the SRA—specifically, lands adjacent to the SRA. As a result, the Governor also proposes budget trailer bill language to allow this type of activity.

Staff Comments. On the whole, this proposal has merit where the actions take place within the SRA. The proposal to support activities that are outside the SRA, but impacting lands and structures within the SRA is also a laudable goal. However, staff have concerns about the use of the SRA Fund in any area outside the SRA. Legislative Counsel has advised caution when applying the "beneficiary pays" principle, and Proposition 26 principles, to this proposal. Therefore staff recommends the funding and positions be approved but not the trailer bill language. This effectively requires CalFIRE to keep its activities within the SRA and adheres to advice from the Legislature's Counsel on this proposal.

Staff additionally recommends provisional language to limit proposed fire prevention activities to those under the current program guidelines, in order to allow further discussion of the Vegetation Management Program programmatic environmental impact report, and to allow the Board of Forestry to have a meeting in Southern California. Staff will work with CalFIRE on the language.

Recommendation. Approve budget proposal. Reject trailer bill language. Adopt provisional language regarding the Vegetation Management Program.

Vote:

2. Civil Cost Recovery Program

Background. The civil cost recovery program within CalFIRE seeks to recover the costs of state fire suppression activities, and related costs, from anyone who starts a fire through negligent or unlawful actions. The program has been in place for many years and has resulted in net recoveries to the state's General Fund in the millions of dollars, annually. As part of the 2011–12 budget, CalFire received an additional ten positions, on a two-year limited-term basis to increase the amount of civil costs recovered. Historically, activities related to the civil cost recovery program, including the additional ten limited-term positions, have been funded from the General Fund.

Governor's Proposal. The Governor's budget for 2013–14 requests permanent position authority for the ten positions initially provided in 2011–12 for the civil cost recovery program. The Governor proposes \$1.7 million from the SRA Fire Fund to support these positions.

LAO Recommendations. The civil cost recovery program has been successful and has resulted in returning millions of dollars to the state's General Fund. The LAO recommends the Legislature approve the ten positions requested on a permanent basis to further these efforts. However, based on an opinion from Legislative Counsel, using SRA Fire Funds for this purpose is not legally permissible unless legislation is passed to change the SRA fee into a tax. This is because civil cost recovery-related activities are not specified in Chapter 8 as a permissible use. While the civil cost recovery program's existence may deter future negligent behavior, thus reducing some fire risk, the program is not directly related to fire prevention and it is not limited to recovery within the SRA. Therefore, unless legislation is enacted changing the nature of the SRA charge, LAO recommends the Legislature fund these positions from the General Fund.

Staff Recommendation. Staff reviewed this proposal and several others over the past few years. Legislative Counsel testified before this subcommittee on this item, and clearly stated their concern about using SRA funds for Civil Cost Recovery. It was the understanding of most legislative staff that the proposals (including one last year) were to be funded by the General Fund. Therefore staff recommends the proposal be approved with General Fund.

Recommendation. Approve positions. Shift all program funding to General Fund.

Vote:

3. Fireworks Disposal and Management

Governor's Proposal. The Administration requests \$500,000 General Fund ongoing for the Office of the State Fire Marshal (OSFM) Fireworks Disposal Program, under the Fire Engineering Division. Funding would enable the OSFM to provide service in the statewide fireworks enforcement and disposal process. This augmentation is intended to resolve an issue related to seized illegal and dangerous fireworks stockpiled throughout the state. As part of this proposal, local fire agencies would be allowed to sell stockpiled fireworks back to licensed retailers or export them.

Background. Health and Safety Code (HSC) Section 12726 delegates to the OSFM the responsibility for the destruction of dangerous and illegal fireworks, once they are seized by local fire departments or law enforcement agencies. The State Fire Marshal Fireworks Enforcement and Disposal Fund (Fireworks Fund) was created to collect moneys from increased fines and penalties from the seizure of illegal fireworks. Monies deposited into the fund are available, upon appropriation, to the OSFM for exclusive use in statewide programs for the enforcement, prosecution related to, disposal, and management of seized dangerous fireworks, and for the education of public safety agencies in the proper handling and management of dangerous fireworks. According to the Administration, the funding source has not been adequate because local jurisdictions often opt to assess an administrative fine that is kept at the local level, rather than remitted to the state. Because of concerns about open burning of fireworks, which has been the long-time method of destroying the fireworks, seized materials need to be gathered and shipped to a destruction facility approved by the Department of Toxic Substances Control. This has increased the cost of fireworks disposal.

Alternatives Proposed. The budget proposes to increase General Fund expenditures by \$500,000 per year indefinitely as part of a compromise with stakeholders. The budget proposal also outlines two additional alternatives. The first would increase the already authorized licensing fee on fireworks importers and exporters, wholesalers and retailers. The second would change existing statute to remove the responsibility of OSFM for the disposal of seized fireworks.

Staff Recommendation. Staff have serious concerns with this proposal. This issue has not been before this subcommittee before and does not seem to provide a long-term solution to the problem at hand. First, the proposal simply allocates money for "an ever-increasing volume of illegal and dangerous fireworks." Second, the proposal seems allows locals to either sell these seized fireworks back to licensed retailers within the state or export them. This seems highly contradictory to the role of OSFM, the Department of Forestry and Fire Protection and local fire agencies.

Both alternative statutory proposals have merit and should be vetted in policy committee. Staff recommends this proposal be brought before the Legislature in the policy committees, and that those who have been working on the proposal seek an alternative that does not include allocating General Fund to a program that was not intended to be a General Fund supported program.

Recommendation. Reject proposal.

Vote:

3110 Special Resources Programs—Tahoe Regional Planning Agency

Regional Plan Update (TRPA). The TRPA recently finalized its 2012 Regional Plan Update, as required by both the interstate compact and state legislation in Nevada. The agency's efforts come amidst concern about whether or not the Tahoe Compact's environmental thresholds (such as water clarity) will be met by efforts in the basin. This plan update responds to budget bill language adopted by the Legislature requiring TRPA to adopt a strategy for a Regional Plan Update that, to the maximum extent practicable, provides for attainment of the environmental thresholds.

Interstate Negotiations. In a recently enacted law (SB 271, Lee), the state of Nevada has threatened to withdraw from the Tahoe Compact, unless the governing body of the TRPA adopts an updated Regional Plan and certain proposed amendments to the Compact including changes to the voting structure, considerations for the regional plan, and other items. The Nevada legislation demanded that the voting structure of TRPA be changed to accommodate more development in the Tahoe Basin and that an updated regional plan be adopted. An updated regional plan was adopted in December, 2012. The new regional plan was successfully developed through a formal bi-state consultation process. The changes in the voting structure would weaken conservation protections in the Tahoe Basin and, in any event, would require Congressional action to amend the Compact. Such measures are not possible through action of state legislatures.

Previous Subcommittee Actions. This subcommittee heard this item on March 7, where representatives of TRPA and the Tahoe Science Consortium provided an update on their progress implementing a monitoring program and with SB 271 in Nevada. The TRPA and representatives of the State of Nevada have largely come to agreement on the most difficult of issues.

Staff Comments. Many of the issues discussed at the March 7 hearing have been worked out with the Administration, TRPA, and the State of Nevada. However, there still remains a question about funding for continued independent monitoring of threshold attainment. Staff have reviewed the State's commitment to TRPA and finds California has the ability to direct funding to high priority uses, while maintaining TRPA's core functions. Discussions with both the Nevada and California representatives have shown the need for an independent science focus in the basin, one that might better be provided by a non-planning agency with a direct scientific mission. In addition, the budget should include a continued reference to the TRPA progress on the establishment targets as a condition of budget actions, and should include budget transparency necessary to both states in their deliberations of the agency.

Staff Recommendation: Approve trailer bill language to establish a Tahoe Science Trust as an independent, bi-state scientific agency to provide such functions as peer review, monitoring, and threshold evaluation. In order to establish this trust, (1) appropriate \$550,000 (one-time) from Tahoe pier lease revenues and \$170,000 annually (Environmental License Plate Fund) to the Tahoe Science Trust for continued scientific review of environmental threshold monitoring in the Basin. Reduce TRPA appropriation by \$170,000.

Staff recommends approving placeholder trailer bill language to establish the trust and budget bill language as specified below.

Budget Bill Language—Special Resources Programs (Tahoe Regional Planning Agency)

1. On or before January 31, 2014, establish revised targets for all of the key Regional Plan and Regional Plan Update implementation measures (in addition to the 14 targets adopted in May 2013) , and describe their expected contribution to threshold attainment. These targets will provide a basis for evaluating the effectiveness of the 2012 Regional Plan Update, for developing a comprehensive monitoring program by July 2014, and for developing amendments as part of the 2016 Regional Plan Update to maintain progress toward threshold attainment.
3. Provide complete budget transparency on a line-item basis so that California and Nevada can learn where each state's appropriations are spent.
4. Develop metrics and enforceable mechanisms to improve best management practice compliance for all structures including those that may be included in local area plans.

Recommendation: Approve staff recommendation to establish the Tahoe Science Trust, provide one-time initial funding from Tahoe pier leases (existing funding) in the amount of \$550,000, shift \$170,000 Environmental License Plate fund from TRPA to the Tahoe Science Trust, and provide trailer bill and budget bill language as specified.

Vote:

3790 Department of Parks and Recreation

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

The state park system consists of 277 units, including 31 units administered by local and regional agencies. The system contains approximately 1.4 million acres, which includes 3,800 miles of trails, 300 miles of coastline, 800 miles of lake and river frontage, and about 14,800 campsites. Over 80 million visitors travel to state parks each year.

Items Proposed for Vote-Only

- 1. Technical Correction to Parks Commission Trailer Bill Language.** Existing law provides for the appointment of members of the Legislature to various boards, commissions or similar multi-member bodies. This includes appointments of both Assembly and Senate appointees to the Parks Commission. A technical change is needed to allow for an appointed member of the Legislature to designate an alternative to serve on the commission.
- 2. Technical Correction to Previous Action.** On May 9, the subcommittee took action to fund both the Railroad Technology Museum with Proposition 40 bond funds and the Museum of Tolerance with General Fund. As a technical correction, staff recommends funding the Museum of Tolerance (\$2 million) with Proposition 40 bond funds, reducing the Railroad Technology Proposition 40 appropriation by a like amount and replacing this funding with eligible Proposition 84 bond funds.

Recommendation: APPROVE Items 1-2.

Vote:

*Items Proposed for Discussion***2. Reversions and Reappropriations—Capital Outlay**

Proposal Summary. The department annually includes in the budget a request for reversions, reappropriations and appropriations anew for projects that are currently underway. This year's proposal includes various projects, including the California Indian Heritage Center, California Indian Museum, Leo Carrillo State Park, Eastshore State Park, Fort Ord Dunes State Park, and Silverwood Lake State Recreation Area. Each project is underway and will continue with reappropriations.

Off-Highway Vehicle Park Acquisitions. The budget requests reappropriation of capital outlay funds from the Off-Highway Vehicle Trust Fund for two projects: (1) Southern California Opportunity Purchase; and (2) Carnegie State Vehicular Recreation Area (SVRA). As with any acquisition, these acquisitions and construction are subject to a high level of scrutiny. The SVRAs are often contentious in local areas with as many supporters as opponents. Funding is available specifically for the purpose of enhancing these SVRAs and for acquisitions that add to the off-highway park system.

Concerns about Mitigation for Off-Highway Vehicle Parks. Concerns have been raised regarding construction and acquisition related to Carnegie SVRA, including plans to expand the park and increase user experiences. The concept of construction and acquisition is well within the scope and mission of the Off-Highway division at State Parks. However, it is unclear whether the department is doing all it can to ensure that all impacts of the parks are mitigated fully prior to approval of a proposal. With funding available, this should not be an issue for these parks.

Staff Comments. Staff recognizes the need to enhance existing SVRAs and to provide funding for opportunity acquisitions in the Off-Highway Division, within the mission of the overall State Park system. However, there seems to be no reason that the Director of the State Parks should not be able to certify to the Legislature that these projects meet all mitigation requirements under law and ensure compliance with the California Environmental Quality Act, nor provide the Legislature and public the share the cost and progress of restoration efforts to meet fully mitigated criteria. Staff recommends the following Trailer Bill Language:

Prior to final approval of any new Off-Highway Vehicle land acquisitions or State Vehicular Area acquisitions, the Director of Parks and Recreation shall make a written finding that the acquisition cost includes adequate funding to fully mitigate all impacts of the acquisition and the operations of the park.

The Department of Parks and Recreation shall complete a full review pursuant to the California Environmental Quality Act (Division 13 [commencing with Section 21000] of the Public Resources Code) of all Off-Highway Vehicle land or State Vehicular Area acquisitions.

Recommendation. Approve as proposed with trailer bill language.

Vote:

3860 Department of Water Resources

The Department of Water Resources (DWR) protects and manages California's water resources. In this capacity, the department maintains the State Water Resources Development System, including the State Water Project (SWP). The department also maintains public safety and prevents damage through flood control operations, supervision of dams, and water projects. 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 previously noted, that program was abolished with SBx7 1, and CALFED responsibilities were transferred to new entities, including the Delta Stewardship Council.

Items Proposed for Vote-Only

- 1. American River Water Information System.** Request for \$653,000 each year, for three years, from Proposition 40 to support a real-time ground-based measurement network of snowpack, soil moisture, and vegetation state across watersheds. This practical research is intended to provide interpretation and integration of remote sensing data and information management to help DWR estimate runoff in critical watersheds.
- 2. Water Use Efficiency, Desalination and Recycling.** The budget proposes \$12.8 million (bond funds) to fund new and existing water use efficiency grants and desalination of brackish and ocean water grants, water recycling projects and administrative costs for water conservation projects.
- 3. Sacramento River Anadromous Fish Protection.** Request for \$5 million (Proposition 40 bond funds) to provide for the state's share of a state, local, and federal project on the Sacramento River. The project will include the installation of a fish screen for Anadromous fish protection and enhancement at the water intake project on the Sacramento River.

Recommendation: APPROVE Items 1-3.

Vote:

*Items Proposed for Discussion***1. 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 Wildlife (DFW), 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

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 the 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 that the proposed expenditures are consistent with the bond measure and that funds are spent wisely and effectively.

Staff Comments. This issue was heard in the subcommittee on March 21 of this year. At that time, federal funds were uncertain. The state's 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 consistent with the settlement agreement? Is this included in the legislation passed by the U.S. Senate last week?
- 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:

Vote:

2. 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 was \$287 million in January, 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 \$92 million, about one-third of the total estimated cost..

Updated Proposal. The estimated total cost of this project in the January Budget was \$287 million. In the intervening time period, and in consultation with the Division of Safety of Dams and representatives of the state water contractors, DWR has revised the costs of the retrofit down to \$141 million. With the overall reduced project cost, the total state share identified by DWR is \$46.9 million, with \$37.7 million requested for FYs 2013-14 and 2014-15. Water users have also invested substantially in an upgraded water treatment plan to handle the type of water coming from this full body contact reservoir.

Recommendation: Staff recommends approving the project as modified.

Vote:

3900 California Air Resources Board

The Air Resources Board has primary responsibility for protecting air quality in California, as well as implementation of the California Global Warming Solutions Act of 2006 (AB 32). This responsibility includes establishing ambient air quality standards for specific pollutants, administering air pollution research studies, evaluating standards adopted by the US Environmental Protection Agency and developing and implementing plans to attain and maintain these standards. These plans include emission limitations for vehicular and industrial sources established by the Board and local air pollution control districts.

Items Proposed for Vote Only

- 1. Clean Air Act—Ambient Air Quality.** The budget requests five permanent positions and a technical budget adjustment that realigns federal grant funds and respective state funding match. This realignment is needed to meet federal mandates tied to the grant funds. The mandates are focused on data quality. This is a net zero cost proposal to the state.
- 2. Clean School Buses—Children’s Health Initiative.** The budget requests authority to expend funds that have reverted from Proposition 40 (\$419,000) and Proposition 1B (\$700,000), and technical changes to allow for the disbursement of these funds. The requested funds will be used to replace pre-1987 model-year school buses with new lower-emitting models and retrofit existing buses with ARB-verified emission control equipment. The filters will reduce particulate matter emissions by 85 percent from each retrofitted bus.

Recommendation: APPROVE Items 1-2.

Vote:

*Items Proposed for Discussion***1. Cap and Trade Program—Loan to the General Fund**

Proposal Summary. The Governor's May Revision proposes to loan \$500 million from the Greenhouse Gas (GHG) Reduction Fund (Cap and Trade auction revenues) to the General Fund. While the Air Resources Board (ARB) submitted its three-year "Cap and Trade" Auction Proceeds Investment Plan (Investment Plan) with the May Revision, as required by Chapter 807, Statutes of 2012 (AB 1532, Pérez), the Governor's May Revision did not include the highly anticipated expenditure plan that was to accompany it.

Background. The goal of the State's climate plan is to reduce Green House Gas (GHG) emissions to 1990 levels by the end of this decade. The Cap and Trade program, a key element in this Administration's plan to achieve these goals, sets a statewide limit on the sources of greenhouse gases and establishes a financial incentive for long-term investments in cleaner fuels and more efficient energy use. As part of its program, the Air Resources Board (ARB) will give free allowances to the State's large industrial emitters, as well as the State's electric utilities, in order to reduce the economic impact of the Cap and Trade program.

The ARB has conducted two auctions of GHG emission allowances as part of a market-based compliance mechanism. These auctions resulted in an approximated \$139 million in proceeds to the state. One more auction for the fiscal year was scheduled on May 16, 2013. This is significantly less than the \$1 billion in cap and trade revenues anticipated in the Governor's proposed 2012-13 budget.

Staff Comments. The Governor's January 2013 Budget originally proposed offsetting a total of \$500 million General Fund spending associated with greenhouse gas mitigation (\$200 million in the current year and \$300 million in the budget year). The Governor's May Revision proposal now proposes loaning that amount to the General Fund.

According to the Governor, this short-term loan approach allows further time for agencies to design, develop, integrate, and/or modify their programs in a way that maximizes long-term greenhouse gas reductions. In addition, it is intended to provide ARB time to complete the statutorily required update of the AB 32 Scoping Plan, due at the end of 2013, in order to better inform investment decisions. The Governor has stated that this approach is also "fiscally prudent, particularly during this initial stage of program implementation, as the amount of auction proceeds that will be generated in 2013-14 is unknown." While the Governor contends that loaning these proceeds will not interfere with the objectives of the three year investment plan or AB 32, it is unclear when the loan will be repaid and how that will impact achieving the goals of AB 32.

The Governor's proposal took most of those working on the Cap and Trade program, including hundreds of stakeholders who have spent countless hours at meetings convened by the Administration, by surprise. In discussions with the Administration, those attending the meetings fully expected the administration to convert the broad work of the investment plan into a specific expenditure plan given the abundance of time the Administration had to work on these issues. Numerous proposals, with

specific expenditure details, have been submitted to the Administration that meet the criteria set forth in its investment plan.

Staff are concerned that the shift of funding away from the purposes for which the funds were received is not consistent with previous Administration statements, and confuses the issue of reduction of greenhouse gas emissions with Cap and Trade revenues by 2020. The lack of a repayment date for the General Fund loan, coupled with the lack of effort to identify current and ready-to-move projects does not seem in keeping with statements of the Air Resources Board and Governor in the past year.

Questions for the Department of Finance:

- Has the Administration ever loaned money to the General Fund prior to expenditure from that fund for the purpose of the fund?
- AB 1532 required the Administration to submit a proposal at May Revision for how auction revenues would be appropriated from the GHG Reduction Fund. How does the absence of such an expenditure plan comport with AB 1532? Does this loan reduce GHGs?
- Why did the Administration not consider using a portion of the funds as a loan and the remainder for emission reduction projects that are unambiguously defensible, such as for projects where ARB has an approved offset protocol?
- Why didn't the Administration provide a repayment date for the General Fund Loan?

Recommendation:**Vote:**

2. Cap and Trade Auction—Oversight and Budgetary Actions

Governor's Proposal. The May Revision includes an increase of \$1.3 million and two positions from the Cost of Implementation Account to enhance oversight of Cap and Trade auction activities and budgetary administration. This proposal includes \$1 million for contracts to audit the Air Resources Board's internal processes, procedures, and security protocols, as well as the the external contractors conducting the Cap and Trade auctions and collecting funds.

Staff Recommendation. Staff have concerns about increasing the Cost of Implementation Fee when the state has not begun the public work of the Cap and Trade program through expenditure of Cap and Trade auction funds for their intended benefit. In addition, concerns have been raised about the independence of an oversight or audit contractor hired by the department.

Recommendation. Approve with funding from the Greenhouse Gas Reduction Fund. Approve up to \$1 million to the Bureau of State Audits for the audit function proposed for contract.

Vote:

3. Western Climate Initiative, Inc.

Governor's Proposal. The Governor's May Revision proposes to provide a new Budget Act item to separately identify resources for the Western Climate Initiative (WCI), Inc., to provide greater transparency regarding expenditures for access to WCI services. This is a \$0 action item.

Staff Recommendation. This proposal has merit and is consistent with discussions between the Administration and Legislature.

Recommendation. Approve.

Vote:

4. Control Section 15.11 Elimination

Governor's Proposal. The May Revision proposes to eliminate Control Section 15.11 to conform with the Cap and Trade auction General Fund loan from the Greenhouse Gas Reduction loan.

Staff Recommendation. Staff concurs with the need to eliminate the current Control Section 15.11, however it may be necessary to return to this issue in the future should the Legislature reject the Governor's proposed General Fund loan.

Recommendation.

Vote:

5. Office of Environmental Health Hazard Assessment – SB 535 Implementation Fund Shift (Item 3980)

Governor's Proposal. The Governor's January budget included \$577,000 for the Office of Environmental Health Hazard Assessment from the Greenhouse Gas Reduction Fund to identify disadvantaged communities in California, as required by Chapter 830, Statutes of 2012 (SB 535, De León). The Governor's May Revision proposes to shift funding for SB 535 implementation from the Greenhouse Gas Reduction Fund to the Cost of Implementation Account in Air Pollution Control Fund. This action is necessary to conform with the proposal above, for a Cap and Trade Program one-time General Fund loan from the GHG Reduction Fund.

Staff Recommendation. Staff finds the proposal to be appropriate in its original form, with funding from the GHG Reduction Fund. At this time, an increase in the Cost of Implementation Fee for new programs does not seem warranted.

Recommendation. Approve \$577,000 from the Greenhouse Gas Reduction Fund.

Vote: