

SUBCOMMITTEE NO. 2

Agenda

S. Joseph Simitian, Chair
Jean Fuller
Alan Lowenthal



PART B

May 12, 2011

9:30 am or upon adjournment of Budget and Fiscal Review
Rose Ann Vuich Hearing Room (2040)

Consultant: Catherine Freeman

Departments Proposed for Vote Only

3680	Department of Boating and Waterways	2
3540	Secretary for Cal-EPA	2
3940	State Water Resources Control Board	2

Departments Proposed for Discussion

3640	Wildlife Conservation Board	4
3760	State Coastal Conservancy	7
3790	Department of Parks and Recreation	10
3500	Department of Resources Recycling and Recovery	14
3540	Department of Forestry and Fire Protection	17
3860	Department of Water Resources	21
8570	California Department of Food and Agriculture	32
8660	California Public Utilities Commission	34
3600	Department of Fish and Game	39

Resources—Environmental Protection—Energy—Transportation

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DEPARTMENTS PROPOSED FOR VOTE-ONLY**0555 Secretary for Cal-EPA**

1. FL-1: Increase Federal Funding Reimbursement Authority to Support the Education and the Environment Initiative Curriculum. The governor requests \$388,000 in federal reimbursement authority from the National Oceanic and Atmospheric Administration. The federal competitively awarded grant will allow the Secretary to train teachers in the use of the Education and the Environment Initiative curriculum.

3680 Department of Boating and Waterways

2. BCP-1: Public Small Craft Harbor Loans and Boat Launching Grants. The department requests \$17.9 million (Harbors and Watercraft Revolving Fund) in local assistance public small craft loans and boat launching facilities. This item was denied without prejudice in February.

3. BCP-2: Department of Finance Recommendations—Boating and Facility Loans and Grants. The Governor requests \$100,000 (Harbors and Watercraft Revolving Fund) in ongoing state support to contract for the financial services required as recommended by an internal Department of Finance audit. This item was denied without prejudice in February.

4. FL-1: Channel Islands Boating Instruction and Safety Center (BISC). The Governor requests \$3.3 million (Harbors and Watercraft Revolving Fund) to fund the state's share of a continuing project to build multi-use public instructional, storage and dock facility with California State University, Channel Islands.

3940 State Water Resources Control Board

5. FL-1: Pacific Lumber Company Defense Litigation. The board requests \$3.4 million (\$2.4 million from the Waste Discharge Permit Fund, \$1 million from the General Fund) to continue reimbursing the Attorney General's office and outside counsel defending the State of California from a lawsuit filed by the Pacific Lumber Company. This request is consistent with a possible accelerated trial date presented with the Governor's January budget as required by the trial court.

6. FL-2: Operator Certification Fund. The Governor requests a technical amendment to the Water Code to ensure that money collected by the Wastewater Operator Certification Program are deposited into the Wastewater Operator Certification Fund.

7. FL-3: Continuing Implementation (Reappropriations) of Propositions 13, 40, 50, and 84. The Governor various technical adjustments for local assistance and state operations, reversion and re-appropriations for various bond funded programs.

Staff Comments. The administration and partner agencies have provided sufficient documentation to support the approval of these proposals.

Staff Recommendation: APPROVE ITEMS 1-7.

VOTE:

3640 Wildlife Conservation Board

The Wildlife Conservation Board (WCB) acquires property in order to protect and preserve wildlife and provide fishing, hunting, and recreational access facilities. The WCB's support funding comes from a number of fund sources, including the General Fund, the Wildlife Restoration Fund, the Habitat Conservation Fund (HCF), the Environmental License Plate Fund, and bond funds.

FINANCE LETTERS PROPOSED FOR VOTE-ONLY

Fund/Program	Technical Adjustment	Amount
1. Extension of Liquidation Period – Proposition 12	Request to extend the liquidation period for two projects due to the 2008 bond freeze for the San Joaquin River Conservancy. The original appropriation was \$14.6 million. \$145,000 of this has not been liquidated.	\$145,000
2. Habitat Conservation Fund	Request to extend the liquidation periods of the Habitat Conservation Fund and associated Proposition 50 transfer to implement the Wildlife Conservation Act. These extensions are necessary because of delays caused by permitting requirements that only allow restoration work to be completed in the summer.	various

Recommendation: APPROVE Technical Finance Letters 1-2

Items Proposed for Discussion**1. Reappropriations of Propositions 40 and 84 Bond Funds (Various)**

Background. The Governor's budget proposes a total of \$39 million in reappropriations for three budget proposals in the Wildlife Conservation Board:

- San Joaquin River Conservancy Acquisitions and Public Access, Recreation and Environmental Restoration—\$10 million Proposition 84 and \$1 million reimbursements. To date, no funding has been encumbered.
- San Joaquin River Conservancy—\$3 million of the original \$10.5 million appropriation in 2003.
- Proposition 84 Natural Communities Conservation Planning (NCCP) Reappropriation—\$24.9 million of the original \$25 million appropriation.

LAO Recommendation (Updated)

In the Governor's January budget proposal, the Wildlife Conservation Board (WCB) requested reappropriation of \$39 million in unexpended bond funds for San Joaquin River Restoration (SJRR) activities and Natural Communities Conservation Planning (NCCP). We had initially recommended that the Legislature withhold its approval of these reappropriations pending demonstration by the board that the re-appropriated funding would result in physical projects. The Legislature subsequently took action to deny the request without prejudice.

The WCB has since informally withdrawn its request for the SJRR reappropriation (\$11 million from Proposition 84 and \$3 million from Proposition 40), and we accordingly recommend that the Legislature deny the reappropriation of those funds.

In response to the Legislature's denial without prejudice of the remaining \$25 million reappropriation request for NCCP activities, WCB has completed an action plan that indicates WCB's intention to spend \$27.5 million on NCCP in 2011-12, including the number of acres to be acquired in specific counties, and the number of NCCPs that these expenditures will support. In light of this action plan and WCB's success at expending reappropriations requested in 2010-11, we now recommend approval of the request to re-appropriate \$25 million from Proposition 84 for NCCP.

Finally, we note that postponing the expenditure of some portion or all of the re-appropriation request that we recommend be approved could serve as a one-time budget solution. The postponement serves this purpose by restraining the growth of the associated debt service costs (which are funded from the General Fund). As with all budget requests for bond expenditures, the Legislature may wish to evaluate whether these bond expenditures, while justified, are of sufficiently high priority to warrant incurring the associated debt service costs at this time.

Previous Budget Actions. The subcommittee previously heard this item and denied the reappropriations without prejudice. The board was required to return with an action plan for expenditure of funds by April 1, 2011.

Staff Update. The board has fully complied with the subcommittee's direction to return with an action plan for expenditures of the funds. The plan outlines the department's progress in two areas: the San Joaquin River and the NCCP program. In both cases, the department's slow progress was in part due to the 2008 bond freeze among other issues.

The board's plan for the San Joaquin River Conservancy funding includes using an authorized position to catch up on previous backlogged projects. The Conservancy has approximately \$31 million (including the proposed \$14 million in the budget year) in prior year expenditure authority, and a separate proposed extension of liquidation, to fund project development, acquisition, and restoration efforts and approximately a \$6.2 million backlog. In light of previous year difficulties implementing the projects and current sufficient funding to address the backlog, the board now supports the LAO recommendation to not re-appropriate the proposed San Joaquin River funds.

The board described an action plan to allocate funding for the NCCP program that includes estimated project costs for various California regions including the Delta, Inland Empire, and Southern California. These projects are anticipated to match both federal and state funding. Withholding funding now would jeopardize the ability to leverage these non-state funds.

Recommendation.

- (1) APPROVE Natural Communities Conservation Planning program funding.
- (2) DENY San Joaquin River Conservancy and San Joaquin River parkway funding.

Vote:

3720 State Coastal Conservancy

The State Coastal Conservancy develops and implements programs to protect, restore, and enhance natural, recreational and economic resources along California's coast, coastal watersheds, the ocean, and within the San Francisco Bay Area. The Coastal Conservancy also serves as staff and fiscal agent for the California Ocean Protection Council.

ITEM PROPOSED FOR VOTE-ONLY

1. FL-1: Public Access Program. The Governor requests \$300,000 (Violations Remediation Account) for the Conservancy's public access program according to existing adopted criteria. The request will provide additional assistance to local partners to manage several public access ways along the coast. Such access ways include paths and stairways that provide access to the beach and other coastal locations, as well as portions of the California Coastal Trail.

Staff Recommendation: APPROVE Item 1

Vote:

ITEMS PROPOSED FOR DISCUSSION**2. FL-2: Shift Support Funding to Bond Funds.**

Background. The Governor requests to decrease funding from the State Coastal Conservancy Fund of 1976 (Fund 0565) by \$2.4 million and provide an equivalent increase from Proposition 84 bond funds (split between two accounts) for support funding. According to the administration, Fund 0565 has existed since 1976, however with fewer deposits in recent years, declining balances require less annual appropriations out of the account. The Governor proposes this shift as to the ongoing, base budget at the Conservancy for support and state operations activities.

Staff Comments. The department has been judicious with the use of the proportion of bond funds available for administrative functions. As such, this proposal should not violate the bond rules set forth for administrative and support functions. However, the use of bond funds to supplant support costs raises concerns about the long-term viability of the State Coastal Conservancy when bond funds inevitably run out. Without a long-term funding source, the Coastal Conservancy may not be able to support its current staffing levels and activities, including those related to the Ocean Protection Council.

Recommendation. (1) APPROVE PROPOSAL with the following SRL:

On or before January 10, 2013, the State Coastal Conservancy shall submit a long-term plan for the State Coastal Conservancy spanning a 10-year period starting in 2013-14. The plans shall include funding needs should no new bond funds be made available, staffing reduction plans, and options for continued support for core functions (including the Ocean Protection Council).

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.

Governor's Budget. The Governor's Budget includes \$682 million for Parks. This is a decrease of nearly 29 percent from current year due primarily to a decrease in bond fund expenditures. Of this amount, \$119 million is from the General Fund, a 2 percent decrease from current year estimates.

FINANCE LETTERS PROPOSED FOR VOTE-ONLY

Fund/Program	Technical Adjustment
1. Office of Historic Preservation Database	Extension of liquidation (\$163,000 GF) for database re-host project. Due to delays caused by the contractor, it is necessary to extend the liquidation period to complete the upgrade.
2. California State Railroad Museum Re-appropriation	Re-appropriation of \$11.6 million (\$6.6 million Proposition 40 bond funds and \$5 million reimbursements) to acquire former industrial buildings to comply with Chapter 689, Statutes of 2008 (AB 2945). This extension request will ensure the funds are available to complete the acquisition.
3. Technical Capital Outlay Amendments	Request for reappropriation and appropriation anew from bond funds and special funds for (1) Marshall Gold Discovery State Historic Park; (2) Oceano Dunes SVRA/Pismo Beach
4. Angel Island State Park	Approval of concession agreement for ferry service at Angel Island State Park.

Recommendation: APPROVE ITEMS 1-4

ITEMS PROPOSED FOR DISCUSSION**1. Subcommittee Issue—Local Bond Project Extensions**

Governor’s 2011-12 Budget. Proposition 40 provides funding for a specified list of grant programs and provides a total of eight years (until June 30, 2011) for grantees to complete their projects. Due to the 2008 bond freeze, the grantees have not completed their projects. This adjustment reflects an adjusted timeline.

Staff Comments. Staff concurs with the administration’s list of projects meriting extensions of liquidation. The bond freeze caused numerous projects to be suspended, resulting in a greater than expected number of these projects requesting extensions of liquidation. In order to be more equitable, this extension of liquidation should be given to all such projects on a one-time basis. This would reduce department and staff workload evaluating each local assistance project.

Recommendation.

- (1) Staff recommends Budget Bill Language to provide a 2-year extension of liquidation for all Proposition 40 local parks projects. Staff will work with the Department of Finance and the Department of Parks and Recreation to craft appropriate language. This language is not intended to duplicate nor supplant previous actions by the Legislature on bond fund extensions.
- (2) Approve Finance Letter

Vote:

2. BCP-10: Budget Reduction Plan Fiscal Year 2011-12 Through 2012-13.

Governor's 2011-12 Budget. The budget proposes to reduce Park's budget by \$11 million in 2011-12 and growing to \$22 million General Fund ongoing beginning in 2012-13. These reductions will be proportionately distributed between field units of the state park system and the State Parks headquarters' functions including administrative and managerial support functions.

Previous Budget Action. The budget reduced the overall Parks budget by \$11 million GF and \$22 million ongoing starting in 2012-13. The budget approved trailer bill language specifying criteria for reducing the state park system including selecting parks for closure, partial closure, or reduced service and language limiting liability for closed or partially closed parks.

- The department should update the subcommittee on its plan for park closures, and what the public should expect to see on July 1, 2011.

Staff Comments. The reductions in state parks have led to a number of questions about how the department budgets for park units, tracks revenues and visitor data, and uses employee assets. There are a number of legislative efforts underway to consider changes to the way the department manages the parks system, including proposals to allow more public-private partnerships.

In order for the Legislature to fully consider these proposals, the department should report on several issues, many of which the department will have considered as it created the current parks reduction plan.

Recommendation. Approve supplemental reporting language (below, in concept). No action is required on the state parks reduction plan.

- (1) The department shall, on January 10, 2012, report its budget to the Legislature on a park-unit basis. This includes an estimate of distributed shared costs on a pro-rata basis (personnel, materials, services) shared by sectors or across districts.
- (2) The department shall, on March 1, 2012, prepare a report on revenues by park unit and visitor data (by park unit, aggregated on a district basis) and compare to National Parks, other State Parks systems.
- (3) The department shall report, on March 1, 2012, statistics on peace officer's use of weapons in state parks to deter crime, or to respond to crimes in process; report on enforcement of non-Parks related crimes and for mutual aid as well as the number of park rangers not assigned to any park unit.

Vote:

3. Department of Parks and Recreation—Liability Language Cleanup

Background. Chapter 2, Statutes of 2011 included a provision to relieve liability to the Department of Parks and Recreation for closed or partially closed parks. There was concern that the language was overly-broad. The Senate agreed during public debate to review and revise the language to narrow the liability to only that needed by the department.

Staff Comments. Staff recommends the following Trailer Bill Language that will provide needed liability without impacting unnecessary provisions of law.

Recommendation. Approve the following Trailer Bill Language

SEC. 25. Section 5007 is added to the Public Resources Code, to read:

5007. (a) The department shall achieve any required budget reductions by closing, partially closing, and reducing services at selected units of the state park system. For purposes of this section, "required budget reductions" means the amount of funds appropriated in the annual Budget Act to the department that is less than the amount necessary to fully operate the 2010 level of 278 units of the state park system. The department shall select the units to be closed based solely on all of the following factors:

(1) The relative statewide significance of each park unit, preserving to the extent possible, parks identified in the department's documents including "Outstanding and Representative Parks," the "California State History Plan," and the "California State Parks Survey of 1928."

(2) The rate of visitation to each unit, to minimize impacts to visitation in the state park system.

(3) (A) The estimated net savings from closing each unit, to maximize savings to the state park system.

(B) For purposes of this subdivision, "net savings" means the estimated costs of operation for the unit less the unit's projected revenues and less the costs of maintaining the unit after it is closed.

(4) The feasibility of physically closing each unit.

(5) The existence of, or potential for, partnerships that can help support each unit, including concessions and both for-profit and nonprofit partners.

(6) Significant operational efficiencies to be gained from closing a unit based on its proximity to other closed units where the units typically share staff and other operating resources.

(7) Significant and costly infrastructure deficiencies affecting key systems at each unit so that continued operation of the unit is less cost effective relative to other units.

(8) Recent or funded infrastructure investments at a unit.

(9) Necessary but unfunded capital investments at a unit.

(10) Deed restrictions and grant requirements applicable to each unit.

(11) The extent to which there are substantial dedicated funds for the support of the unit that are not appropriated from the General Fund.

(b) A public entity or a public employee shall be limited from liability as provided in Division 3.6 (commencing with Section 810) of Title 1 of the Government Code for injury or damage caused by a condition of public property located in, or injury or damage otherwise occurring in, or arising out of an activity in, a state park system unit that is designated as closed, partially closed, or subject to service reduction by the department pursuant to subdivision.

Vote:

3500 Department of Resources Recycling and Recovery

The DRRR was created pursuant to Chapter 21, Statutes of 2009 (SB 63; Strickland) and is largely the merger of the Waste Board (minus the board members and associated support staff) and the Department of Conservation Division of Recycling. As such, the DRRR 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. The DRRR 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, public awareness, market development to promote recycling industries, and technical assistance to local agencies.

Governor's Budget. The Governor's Budget includes \$1.4 billion (no GF) for the DRRR, including \$1.2 billion for the Beverage Container Recycling and Litter Reduction Program, and \$200 million for the Waste Reduction and Management Program (the old Waste Board).

ITEMS FOR DISCUSSION

1. BCP-5: Improve Audit Coverage and Internal Controls.

Background. The Governor's budget requests to redirect \$1.1 million Beverage Container Recycling Fund from the Consulting and Professional line item to fund 11.0 permanent positions to address the findings and recommendations in the State Auditor's report from June 2010.

In June 2010, the Bureau of State Audits released its findings from an audit of the Beverage Container Recycling Fund (BCRF). The audit found the department failed to complete a three year audit plan and made findings regarding insufficient management controls. Internal fund audits are important to reduce fraud following reporting by the department of greater than 100 percent recycling rates (among other issues).

LAO Reorganization Analysis. The LAO has raised issues with the level of savings from the overall creation of DRRR as well as the best proposed reorganization model. The LAO recommends holding hearings to discuss the reorganization plan particularly as it impacts department programs (including the Beverage Container Recycling Fund). The LAO also recommends reporting language to require the department to report on the savings from the reorganization.

Staff Comments. Budget and policy staff have met with the department and administration several times to discuss issues related to the reorganization and BCRF. The department has agreed to the following measures:

1. Provide single points of contact for all currently mandated programs.
2. Withdraw proposed reorganization plan from the Department of Personnel Administration because this plan violates statute.

Staff remain concerned that the department is reluctant to return to a statutorily valid reorganization plan where the Division of Recycling (and Beverage Container Recycling Fund) is functionally separate from the program areas that were under the former Integrated Waste Management Board. It would be appropriate for some administrative functions to be co-mingled but statute is clear that these functional divisions should remain separate.

The department has indicated that it is awaiting a Governor's appointment for an Director to make any further changes. This is largely unsatisfactory given that there is no timeframe for this appointment, and this presumes the department may continue to act outside of statutory guidelines in the interim.

Staff Recommendation: Staff recommends the following:

- 1) The Department shall convene a monthly workgroup starting July 1, 2011 and concluding December 31, 2011 to include Legislative budget and policy staff and the LAO. This working group shall focus on correcting the following issues at the department:
 - a. Separating the Division of Recycling from the former waste board functions
 - b. Ensuring that funds are not co-mingled between the Beverage Container Recycling Fund and the waste divisions
 - c. Removing any unnecessary CEA positions that functionally duplicate any Governor's appointees
 - d. Determining a pathway to return functional programs by policy area to foster expertise in subject areas.
- 2) Request an audit by the Bureau of State Audits to for a programmatic review of the department and it's compliance with state law, including its organization and structure.
- 3) DENY BUDGET PROPOSAL

Vote:

2. BCP-6: Fraud Prevention Program, Strategic Priority Initiative—Beverage Container Recycling Program.

Background. The Governor's budget requests 7 permanent positions funded by redirecting \$681,000 Beverage Container Recycling Fund from Consulting and Professional Services to Personal Services. These positions are requested to prevent and investigate fraud in the Beverage Container Recycling Program.

As with the previous item, in June 2010, the Bureau of State Audits released its findings from an audit of the Beverage Container Recycling Fund (BCRF). The audit found the department failed to complete a three year audit plan and made findings regarding insufficient management controls. Internal fund audits are important to reduce fraud following reporting by the department of greater than 100 percent recycling rates (among other issues).

Staff Comments. As with the previous item, staff have been unable to get a clear picture regarding the state of the Beverage Container Recycling Fund. Staff recommends denying the proposal consistent with the previous action.

Staff Recommendation: DENY BUDGET PROPOSAL

Vote:

3540 Department of Forestry and Fire Protection

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

Governor’s Budget. Excluding capital outlay, where the amount of carryover makes year-to-year comparisons less meaningful, the Governor’s Budget includes \$1.05 billion for support of the DFFP in 2011-12. This is a \$39 million (3.7 percent) decrease under current year expenditures. This is mainly due to the proposal to reduce engine firefighter staffing.

ITEM PROPOSED FOR VOTE-ONLY

1. FI-1 Blanchard Forest Fire Station and Shasta-Trinity Unit Headquarters. The Governor requests for the following capital outlay proposals: (1) \$300,000 for acquisition of the Blanchard Forest Fire Station and adjacent property; and (2) \$200,000 for acquisition of a purchase option for relocation of the Shasta-Trinity headquarters due to urbanization within the City of Redding.

2. FI-2 Proposition 40 Reappropriation. The Governor requests reappropriation of Proposition 40 bond funds due to a technical error in the budget act that previously extended only the liquidation period of these funds, rather than a reappropriation anew.

3. Civil Cost-Recovery Program. The Governor requests \$1.7 million and 10 two-year limited-term positions to augment its current Statewide Fire Suppression Civil Cost-Recovery Program. The California Health and Safety Code authorize fire agencies to recover suppression, investigation, and related administrative costs from anyone who starts a fire negligently or in violation of certain laws. This item was denied without prejudice in the April budget for further review.

Staff Comments. Staff have reviewed the proposals and have met with the department to discuss their plans for fleet and vehicle purchases for the Civil Cost Recovery Program.

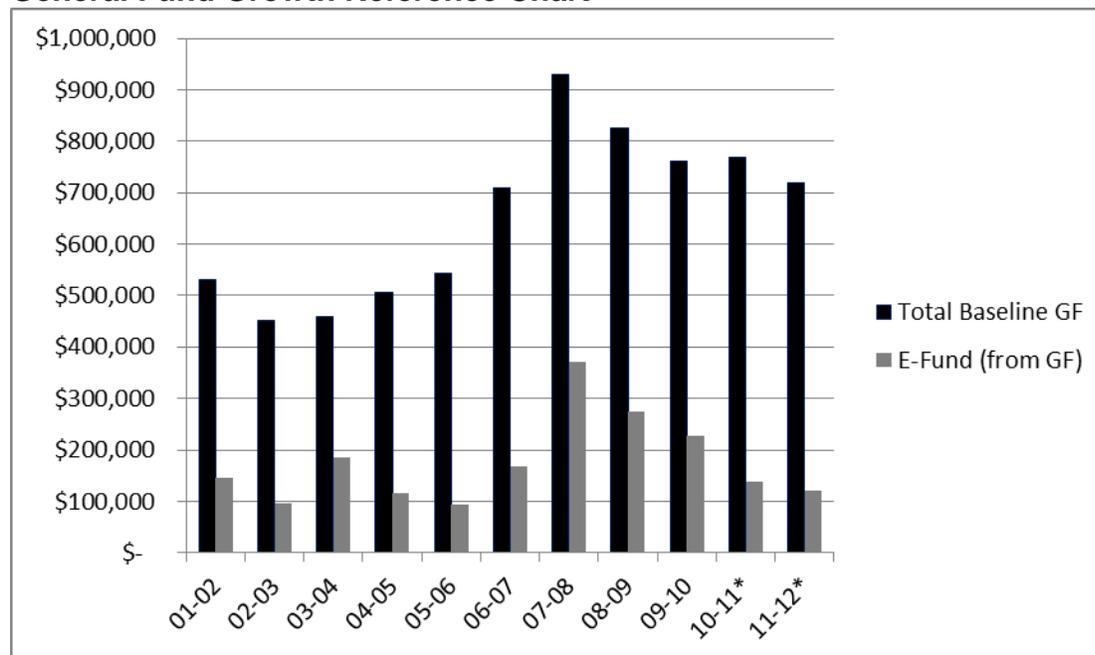
Recommendation: Approve Items 1-3

Vote:

ITEMS PROPOSED FOR DISCUSSION

4. Reducing Expenditures at CalFIRE

General Fund Growth Reference Chart**



* Estimated

** Capital outlay excluded (as well as certain related local assistance). Year-to-year carryover makes this figure meaningless for comparison.

Background

Expenditure Growth Unsustainable. Over the past several years, a number of proposals to adjust the way the state pays for, and is responsible for, wildland firefighting have been proposed. Factors including the rise in the number of homes in the urban-wildland interface, climate change, labor costs, and changes to the way local and federal agencies pay for firefighting have impacted how the department manages expenditures. One result is an increase of over 60 percent in firefighting costs from 2001-02 to 2011-12. Only two other Resources or Cal-EPA agencies increased General Fund costs over that time, Department of Water Resources and Department of Fish and Game.

Urban-Wildland Interface Should Be Explored. One of the primary targets for cost-saving discussions has been development in the urban-wildland interface. In this area, locals approve land use planning decisions while a combination of state, local and federal agencies provide firefighting services. Because of mutual aid agreements, this generally means that state firefighters respond to both wildfires as wells as local structural, vehicular and individual emergencies. In general, locals respond to wildland fires however, the federal government has some restrictions on its involvement with

local structural, vehicular and individual emergencies. A recent report by the Headwaters Economic group produced for the federal government ranked California high in the number of homes in the urban-wildland interface as compared to other western states.

Opportunity to Discuss Funding. Given the number of opportunities the Legislature and the administration have had to discuss funding for CalFIRE, it would seem a good time to bring people to the table for a focused discussion on future funding for the department.

Staff Recommendation: As the Governor's May Revision has not yet been released, staff recommends the subcommittee continue to hold open baseline budget items. However, in keeping with the desire to form a long-term solution to the cost of wildland firefighting in California, staff recommends:

- (1) The department convene a working group consisting (at a minimum) of legislative staff, department executive staff, the Legislative Analyst's Office, at least two fire chiefs (one from Northern California, one Southern and from both urban and rural districts) to discuss options for future funding, realignment and/or possible changes in the state's management of wildland firefighting. The group shall meet no less than 3 times between July 1, 2011 and December 1, 2011 to the extent possible in person, but at a minimum by telephone.
- (2) The department contract for an independent analysis of wildland firefighting costs as compared to other Western States, and to produce recommendations for funding solutions to the above working group.
- (3) The department shall report to the Legislature on the results of the working group's efforts in spring 2012 budget hearings, and shall work with the Legislature to implement any feasible changes to the budget at that time.

Vote:

ITEMS PROPOSED FOR DEFERRAL (Pending May Revision)

5. BCP-1: Fire Protection Permanent Funding. The Governor requests permanent General Fund and position authority following a legislative direction to shift permanent emergency-fund expenditures to the base budget, and to submit at a zero-based budget. The request includes authority related to the Aviation Management Unit, Very Large Air Tanker and Victorville Air Attack Base, San Diego Helitack, Aviation Asset Coordinator, Lake Tahoe Basin Fire Engine Station and Staffing, and Defensible Space, and CAL Card Support.

6. BCP-5: Hemet-Ryan Lease/Build to Suit with Purchase Option. The Governor requests Budget Bill Language to authorize a lease for an Air Attack Base at Hemet-Ryan Airport.

Staff Comments: Each of these items may be impacted by the Legislature and the Governor's negotiations on the realignment and budget reductions process. Therefore it may be premature to approve or deny these proposals.

Staff Recommendation: (1) HOLD OPEN Items 5-6

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 noted above, that program was abolished with SBx7 1, and CALFED responsibilities were transferred to new entities, including the Delta Stewardship Council.

Additionally, the department's California Energy Resources Scheduling (CERS) division manages billions of dollars of long-term electricity contracts. The CERS division was created in 2001 during the state's energy crisis to procure electricity on behalf of the state's three largest investor owned utilities (IOUs). The CERS division continues to be financially responsible for the long-term contracts entered into by the department. (Funding for the contracts comes from ratepayer-supported bonds.) However, the IOUs manage receipt and delivery of the energy procured by the contracts.

Governor's Budget. The Governor's Budget includes \$1.5 billion (\$115 million General Fund) for support of the DWR, a decrease of approximately \$1.6 billion, due primarily to reduced bond fund expenditures. An additional \$2.1 billion in CERS funding is not subject to the Budget Act (these funds are primarily for energy payments related to the 2001 electricity crisis).

ITEMS PROPOSED FOR VOTE-ONLY

1. Finance Letter: Re-appropriation and Extension of Liquidation Requests (Proposition 1E). Various reappropriations totaling \$151.2 million (bond funds) for continuing capital outlay projects including Feather River, West Sacramento, Upper Sacramento River, Lower Cache Creek, Merced County, Sutter Bypass, and System-wide Levee Evaluations and Repairs.

2. Finance Letter: Reappropriation and Extension of Liquidation Requests (Proposition 84, Proposition 50, Proposition 13 and other funds). Various reappropriations including Flood Protection Corridors, Urban Streams, Delta Fish Facility Improvement, Drinking Water, Water Use Efficiency, Water Supply Reliability Sediment Removal, and Agricultural Drainage, among others.

3. Finance Letter: Salton Sea Restoration. The administration requests \$4.2 million in reimbursement authority for the Salton Sea Restoration Program. The LAO recommends the Legislature deny the April Finance Letter request for \$4.2 million in

reimbursement authority for Department of Water Resources (DWR). Expenditures are not appropriate at this time because of a lack of a formally approved restoration plan and legal uncertainty surrounding the Quantification Settlement Agreement (QSA).

Staff Comments (Item 3). The subcommittee heard this issue on May 5 under the Department of Fish and Game. In that hearing, the subcommittee rejected a related proposal for funding. Staff recommendation is consistent with this previous action.

Staff Recommendation. APPROVE Items 1-2. REJECT Item 3.

ITEMS PROPOSED FOR DISCUSSION**4. FloodSAFE California Program (Open Items)**

Background. The subcommittee previously heard the Governor's request for FloodSAFE funding of \$64.9 million (Proposition 1E and Proposition 13), three new positions, and extension of three limited-term positions. The Legislature (SB 69) took the following actions:

Approved

- 1) **Floodplain Risk Management** – \$6 million (Proposition 1E) for Central Valley floodplain evaluation and delineation
- 2) **Flood Projects and Grants** – \$53.3 million (Propositions 1E and 13) for flood system modifications, floodway corridors, Yuba-Feather flood protection, and North Delta Flood control and ecological restoration.

Denied Without Prejudice

- 3) **Evaluation and Engineering** – \$2 million for Delta Risk Management Strategy and the Delta Knowledge Improvement Program
- 4) **Flood Management Planning** – \$3.5 million for Central Valley Protection Plan and FloodSAFE Conservation strategy.

Staff Comments. Staff have met with the department to discuss the two open items. The department was able to provide sufficient information to recommend approval of the Flood Management Planning proposal. This proposal would streamline permitting and approval in the Central Valley for flood-related projects.

The department did not provide sufficient information to recommend approval of the Engineering and Evaluation proposal. As stated in the previous hearing:

(1) **Delta Knowledge Improvement Strategy.** Staff have concerns about the Evaluation and Engineering request for \$2 million (Proposition 1E) for the Delta Risk Management Strategy (DRMS) and Delta Knowledge Improvement Program (DKIP). This proposal is a request for contract support to complete follow-up efforts to the DRMS Phase Two report. The DKIP is a multi-year project designed to fill in data gaps left by the DRMS Phase One and Phase Two, and to provide more comprehensive information than was provided in the initial two phases. The Phase Two report has not been released and therefore it is unclear how or what the DKIP will provide to inform the Legislature's decisions on Delta issues.

In 2010, the Legislature approved \$2 million to start the DKIP process. Because the DRMS Phase Two project ran longer than expected, the DKIP project has not begun and a contract solicitation has not been announced.

It would seem appropriate to allow the public and the Legislature to review the DRMS Phase Two report prior to funding any further efforts related to DRMS or DKIP. In addition, the release of the Delta Plan in 2012 will further direct scarce funding to fill in specific data gaps that are needed to implement the state's efforts in the Delta.

The subcommittee may wish to have the department report on:

- Has the department released Phase Two of the DRMS study?

Recommendation.

- (1) REJECT \$2 million proposed for Engineering and Evaluation.
- (2) APPROVE January Conservation Strategy proposal for FloodSAFE (including three positions)

Vote:

5. State Water Project Position Requests (Open Items)

Background. The Governor's January budget requests 145 positions (33 of which were proposed for future years). The subcommittee heard each proposal, with recommendations to hold open (Deny Without Prejudice) the majority of these positions to give the department, staff, and the Legislative Analyst's Office time to more fully review them.

Ultimately, the Legislature in SB 69 held open the requests for three proposals: (1) Implementation of the Biological Opinions; (2) Mercury and Methylmercury Monitoring and Control Studies; and (3) Critical Support for the California State Water Project.

Staff Comments: Staff met with the department, State Water Contractors, the LAO and others to determine which positions should be approved in the budget year. The LAO spent considerable time reviewing the department's request. The LAO has posted their recommendations to their website.

Staff continues to have concerns about the proposal to fully fund the Mercury and Methylmercury Monitoring and Control studies solely by the State Water Project. This request is for compliance with a regional water board order regarding mercury in several water bodies upstream of the Delta. However it is clear that the State Water Project is not the only responsible party. In the subcommittee hearing in February, the administration was requested to return with a proposal that spreads the costs to more responsible parties. Staff recommends holding open the item anticipation of May Revision.

Staff Recommendation:

- (1) ADOPT LAO Recommendation (except as follows).
 (2) HOLD OPEN Mercury and Methyl Mercury Monitoring and Control studies.

SWP Position Requests	DWR Request	Staff Recommendation	Comments
Implementation of Biological Opinions	18	13	Adopt LAO Recommendation
<i>Sacramento-San Joaquin Facilities</i>	13	9	
<i>Suisun Marsh Facilities</i>	2	2	
<i>Regulatory Compliance</i>	3	1	
Mercury and Methylmercury Monitoring and Control Studies	4	Hold Open for May Revision	Pending plan requested from administration to spread costs to responsible parties.
Critical Support for the California State Water Project	123	87	Adopt LAO Recommendation
<i>2011-12 Positions</i>	90	87	
<i>Future Year Positions</i>	33	0	

6. Davis-Dolwig Cost Allocation Study

Background. The Governor requests \$34,000 from the Harbors and Watercraft Revolving Loan Fund to provide a second evaluation of the department's cost-allocation methodology for determining recreation benefits at the State Water Project. The LAO has provided a thorough analysis of the issue.

LAO Analysis:

Proposal. In a letter dated April 13, 2011, the Department of Finance (DOF) requests a one-time transfer of \$34,000 from the Harbors and Watercraft Revolving Fund to the Department of Water Resources (DWR) to fund a portion of the cost of a new cost allocation study. The study would serve to re-estimate the benefits provided by the State Water Project (SWP) in terms of water supply and recreation to assist with the allocation of total SWP costs between these two purposes. This request follows from the recent conclusion of a previous statutorily required study that examined DWR's methodology to calculate the state's share of total SWP costs.

Davis-Dolwig History. As described in our earlier report, "Funding Recreation at the State Water Project," the Davis-Dolwig Act, passed in 1961, states the broad intent of the Legislature that SWP facilities be constructed "in a manner consistent with the full utilization of their potential for the enhancement of fish and wildlife and to meet recreational needs." The Act also specifies that the SWP contractors (water agencies contracting for the deliveries of SWP water) should not be charged for the costs incurred in meeting the requirements of the Act. The DWR has historically used a cost-allocation methodology called Separable Costs-Remaining Benefits (SCRB) to calculate the state's responsibility under Davis-Dolwig. This methodology allocates "joint costs"—those costs that cannot be attributed solely to water supply or recreational purposes—on the basis of the proportion of the benefits provided by the SWP overall that are estimated to accrue to each purpose.

LAO Policy Concerns and Recommendations Made in Past Years. We have raised concerns in the past (again, see "Funding Recreation at the State Water Project," as well as our analyses of the 2009-10 and 2010-2011 Governor's budgets) over DWR's practice of using SCRB to calculate the state's share of SWP costs. Most importantly, the practical implication of the use of this methodology (as implemented by DWR) is that DWR assigns cost responsibility to the state for aspects of SWP that lack any direct recreational component--to even including assigning to the state some of the costs of the study that is this subject of this budget request. Given the "off-budget" nature of SWP (the Legislature only approves SWP positions, not expenditures), the DWR has been able to pursue development of SWP projects without expressed legislative consent, later retroactively billing the Legislature and the state's purse for its estimate of the state's share of the costs of those projects. This runs up against, and potentially conflicts with, the Legislature's exclusive constitutional authority to set its expenditure priorities by making appropriations. As discussed below, we have made recommendations for policy reforms to the Davis-Dolwig Act to address this issue by providing a clearer, more limited definition of the state's funding obligation under the Act. A related issue concerns the department's practice of charging to the state's public purse some of the costs of meeting federal regulatory requirements at SWP facilities (specifically, requirements that mandate recreational improvements to be made at federally licensed hydroelectric

facilities). Given that the Legislature has expressed its intent, in various contexts, that regulatory compliance costs should be borne by the beneficiaries of the regulated activity, we think that these regulatory mandated recreation costs should be borne fully by the SWP contractors.

We have previously offered three recommendations to address these issues. First, we have recommended that the Davis-Dolwig Act be amended to specify that only costs related to construction of recreation facilities at new SWP facilities are to be paid for by the state under the Act. Second, we have recommended that the Legislature specify that SWP is no longer to incur operational and maintenance costs for state recreation areas, or use SWP funds for these purposes. Finally, we also have recommended that the Legislature specify that any SWP recreation facilities that are to be developed or improved under a regulatory requirement shall not give rise to a state funding obligation under the Act.

Making Policy Reforms Has Been Difficult. The above reforms have not been enacted by the Legislature, in part due to legal issues that have been raised by DWR and DOF. Specifically, the administration has maintained that SCRB is required by various contracts and bond covenants that are in place, and that these constraints limit the Legislature's ability to revise the Davis-Dolwig Act, as we have recommended, to set parameters for the state's funding obligation for recreational expenditures. While informal legal opinions provided to the Legislature on these legal issues suggest an alternative view, it is fair to say that these fundamental legal issues remain unresolved. Until resolved, it will likely be difficult to proceed with any meaningful Davis-Dolwig policy reform.

Previous Cost Allocation Study Did Not Address the Legal Issues. As noted above, the Finance Letter requests funds to perform a recalculation of the benefits that are inputs into the SCRB process used by DWR. The 2010-11 Budget Act required DWR to hire an independent consultant to evaluate the cost allocation methodology DWR uses to calculate the state's Davis-Dolwig funding obligation. The consultant's report recently concluded that while the manner in which DWR implemented the current methodology is acceptable, the estimates of water supply and recreational benefits from total project costs could be improved. We have since raised concerns that the scope of the report was too narrow. Being constrained by the task list developed by DWR and by the expertise of the authors, the report fails to address the larger legal questions discussed above. For example, the report appeared to assume the administration's position that the SCRB methodology is required, without having examined whether SCRB is in fact legally required, and if it is required, how to reconcile that requirement with the Legislature's constitutional authority to set its expenditure priorities and make appropriations.

Recommendation. In light of our concerns over the previous study, and given the unresolved legal issues that are impeding Davis-Dolwig policy reform, we consider the study as proposed in this budget request to be premature. The proposed effort may be worthwhile down the road, if some resolution can be reached on the legal issues surrounding SCRB. It is worth noting that the results from re-estimating water supply and recreation benefits are likely to be utilized only if it were ultimately determined that SCRB is legally required. Therefore, in order to facilitate resolution of the legal questions we pose above, we recommend that an alternative study by an independent third-party contractor be conducted that specifically examines the legal questions we raise. That

third party should consist of, at a minimum, an academic with legal expertise, such as a University of California law professor. Specifically, we recommend that existing SWP contracting authority be used fully to pay for the study, and that the proposed budget bill language be amended as follows:

“The Department of Water Resources shall allocate [an amount to be determined] in existing State Water Project (SWP) contracting authority for an independent third-party review to determine: (1) what legal constraints, if any, exist to proscribe the California Legislature’s ability to revise the Davis-Dolwig statute, with specific attention to the contracts signed by the department with the SWP contractors and to the SWP bond covenants; (2) whether such legal constraints conflict with the Legislature’s authority to make laws and to set its expenditure priorities through its constitutionally granted authority to make appropriations; (3) how any such legal conflicts can be reconciled; and (4) what options exist to resolve the issues. The Department of Water Resources shall submit the task list for the contractor to the Legislative Analyst’s Office for its approval. The contractor shall work in periodic consultation with the Legislative Analyst’s Office, the Department of Finance, and the Department of Water Resources when performing its analysis. The department shall submit this analysis to the budget committees, and relevant policy committees of both houses of the Legislature, no later than January 30, 2012.”

Staff Comments: Staff concurs with the LAO assessment of the Davis-Dolwig report. Staff further believes the department, should, in good faith, participate in a working group convened by the Secretary for Natural Resources and consisting of legislative staff, Department of Finance, LAO, and the department to determine a long-term viable solution that addresses concerns laid out in the LAO’s March 19, 2009 report on Funding Recreation in the State Water Project.

Staff Recommendation: Adopt LAO Proposal (including amended Budget Bill Language). Adopt additionally the following budget bill language:

The Secretary of Natural Resources shall convene a working group consisting of the Department of Water Resources, key legislative staff, Department of Finance, the Secretary for Natural Resources staff, LAO, and the State Water Contractors to determine a long-term viable solution that addresses concerns laid out in the LAO’s March 19, 2009 report on Funding Recreation in the State Water Project. The group shall meet a minimum of three times between July 1, 2011 and December 31, 2011. The department shall provide a report, in person, to the subcommittee in 2012 budget hearings on the working group’s proposals for long-term solutions for funding recreation in the State Water Project.

7. State Water Project—Fish and Wildlife Enhancements and Recreation: Lake Perris Seismic Retrofit

Background. The Governor requests \$757,000 from Proposition 84 bond funds to perform seismic safety upgrades to the foundation at Lake Perris, Riverside County as well as repairs to the pipelines transporting water to this lake. The LAO has provided a thorough analysis of the issue.

LAO Analysis:

Proposal. In a Finance Letter dated April 13, 2011, the Department of Finance (DOF) requests \$757,000 from Proposition 84 bond funds to fund a portion of the state's share of the cost of seismic repairs to the foundation of Perris Dam (part of the State Water Project [SWP]). The total cost of the repairs is projected to be as much as \$300 million, up to \$20 million of which could be allocated to the state under the Davis-Dolwig Act under the Department of Water Resources' (DWR's) calculation of the assumed recreational component of the project. (For details of our concerns over the current process by which such cost allocations are made, please see our 2011 April Finance letter recommendation and our report "Funding Recreation at the State Water Project".)

Lake Perris History and Current Status. At the time of construction, the Lake Perris SWP facility was envisioned to serve both water supply and recreational purposes. Recreational activities at Lake Perris have historically consisted of swimming, boating, fishing, and picnicking, but seismic concerns by DWR's Division of Dam Safety resulted in the lowering of the water level at Lake Perris in 2005, hindering recreation at that site. The repairs proposed by DWR that are the subject of this budget request would allow raising the water level at the dam and thereby restore recreational opportunities at Lake Perris to their former condition.

Some action must be taken to resolve the seismic concerns at the site. There are potentially significant consequences from an earthquake near the site of the dam even with the water level lowered as it is currently. However, there are several possible alternatives for approaching repairs at this site, and the choice of repair alternative depends in part on the extent to which this SWP facility should continue to serve both recreational and water supply purposes. For example, maintaining Lake Perris as a water supply-only project should eliminate the state's obligation under Davis-Dolwig, and may potentially be less expensive to the SWP contractors (who will be paying the bulk of the costs for the repairs) as well. Thus, the level of recreation can impact both the cost of the repairs and the cost attributed to the state.

What Purposes Should Lake Perris Serve? Determining the level, if any, of recreation at the site is an important policy decision that also affects the extent of the state's funding obligation at the site and should therefore involve the Legislature. (While DWR argues that there is a statutory requirement, approved by the voters, for recreation at this site, it is unclear to us whether such requirement exists.) In our view, an analysis should be conducted to determine whether the cost of having recreation at this site is justified by the recreational benefits provided.

Legislature Lacks Information Needed to Make an Informed Policy Decision. We think that the Legislature lacks the information it needs to make an informed policy decision on this budget request. Recognizing that there are various options for making

the repairs (depending on the level of recreation to be provided at the site), we think that the Legislature should be provided with a comprehensive analysis of the various repair alternatives and their associated costs (to the state and the SWP contractors) and benefits. With such information, the Legislature can evaluate which alternative most closely aligns with its policy priorities for the Lake Perris site. Such a comprehensive analysis, however, has not been conducted by the department and provided to the Legislature for its review.

Recommendation. We therefore recommend that this budget request be denied because taking action on it is premature until a more comprehensive analysis of the costs and benefits of various repair alternatives is conducted. Such analysis is required to afford the Legislature the opportunity to make an informed policy decision about the extent of recreation at the Lake Perris site.

Staff Comments. Staff share the concerns of the LAO, and as in the previous item would recommend holding off on the state share of funding for this project until a new proposal for funding recreation at the state water project is brought forward. The working group proposed in the previous item may wish to use Lake Perris as the example in their discussions.

Recommendation. DENY PROPOSAL. Request the department work in good faith to determine a mutually acceptable solution to funding recreation at the State Water Project through the previously proposed working group.

8570 Department of Food and Agriculture

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

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

Budget Actions. The Legislature approved two major actions in the budget (SB 69), implemented through Chapter 2, Statutes of 2011 (AB 95). These include:

- Approved a proposal to eliminate state support (including coordination and local assistance) for the California Network of Fairs (a reduction of \$32 million GF).
- Approved an unallocated reduction of \$15 million in the budget and \$30 million ongoing. The department is required to return in spring budget hearings with a proposal for the allocation of the program reduction.

Implementation of the Administration's Proposal to Reduce CDFA General Fund

Background. Per the subcommittee's request, the Administration has submitted a spring Finance Letter that implements the previously unallocated reduction to the department. The governor requests various changes to the budget act to implement the Administration's proposal to reduce CDFA's General Fund budget by \$15 million in the budget year.

The proposal lists 19 programs that will either be eliminate or reduced including several weed management programs, invasive species programs, local assistance, and state operations. Most programs will continue, though to a lesser degree, with either federal funds or continuation of local programs. In some cases, fees were proposed to stakeholders who decided to run the programs themselves rather than continue with state support. Each proposal was reviewed by a stakeholder group which consisted of individuals representing each major department program area.

Presentation. The department is prepared to present the reduction proposal. The diversity of the reductions requires several statutory changes, which are included in the Administration's finance letter proposal.

Staff Comments. The administration has met with staff of both houses and parties, including the LAO. The proposal appears to reduce several programs where alternative programs, funding or other stakeholder partners are willing to increase their participation.

Recommendation. APPROVE Finance Letter.

8660 California Public Utilities Commission

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

Governor's Budget. The Governor's Budget proposes \$1.4 billion to support the CPUC in the budget year. This is approximately \$170 million more than estimated expenditures in the current year. This is due to a large increase in the Universal Lifeline Telephone Service Trust Administrative Committee Fund, a special fund. The commission does not receive any General Fund support.

ITEMS PROPOSED FOR VOTE-ONLY

1. **Finance Letter: Division of Ratepayer Advocates: Natural Gas and Auditing Activities.** The administration requests \$173,000 from the PUC Ratepayer Advocate Account and redirection of 2 positions from the Workforce Cap Reduction to accommodate expanding workload related to natural gas safety and auditing activities.

Recommendation: APPROVE Item 1

Vote:

2. ITEMS FOR DISCUSSION

FL-1: Modernization of the Electric Grid (Advance Energy Storage “AES”).

Background. The Governor January budget requested two positions and \$229,000 to develop and implement advanced energy storage (AES) to serve the state’s peak demand more cost-effectively as part of the need to comply with the Federal Government’s Energy Independence and Security Act of 2007 (EISA). Title XIII of EISA requires state’s consideration of new standards and protocols for smart grid technologies including AES technologies. Implementing a Smart Grid system with energy storage will move the electric grid and customer service from a “static” to “dynamic” state to improve the efficiency and reliability of the electric delivery systems. AES technologies will support the modernization of the grid and the integration of renewable energy resources such as wind and solar into a Smart Grid Infrastructure to achieve the 33 percent renewables goal by 2020.

Previous Budget Actions. The Legislature denied this proposal without prejudice in order to give the CPUC an opportunity to rewrite the proposal to comply with Chapter 469, Statutes of 2010 (AB 2514, Skinner).

Finance Letter Proposal. The Governor requests \$452,000 from the PUC Utilities Reimbursement Account and a redirection of 4 positions pursuant to AB 2514. The proposal includes a workload analysis updated to current a statutory requirements.

Staff Comments. The Commission complied with the Subcommittee’s direction to return with a new proposal that: (1) appropriately addresses workload needs required by AB 2514; and (2) redirects positions rather than proposes positions anew in request.

Staff Recommendation: APPROVE

VOTE:

FL-1: Diablo Canyon Seismic Study Peer Review Panel.

Background. The Governor January budget requested an increase of \$500,000 in reimbursable consultant services, which will be reimbursed by PG&E. This will allow the CPUC to enter into a limited-term contract with a technical consultant to perform analysis of seismic studies at Diablo Canyon Power Plant per recommendations of Chapter 722 of 2006 (AB 1632, Blakeslee). In addition, the commission proposed to coordinate a peer review panel with other state agencies.

Previous Budget Actions. The Legislature denied this proposal without prejudice in order to give the CPUC an opportunity to return with (1) a revised lower-cost proposal that utilizes the services of the California Geological Survey; and (2) includes other state agencies in the peer review panel.

Finance Letter Proposal. The Governor requests \$393,000 (reimbursements) to fund an Independent Review Panel that will review seismic studies of the Diablo Canyon Power Plant (Diablo Canyon). This panel will be composed of several state agencies, including the California Geological Survey. The panel will review PG&E's seismic study and findings.

Staff Comments. The Commission complied with the Subcommittee's direction to return with a new proposal that: (1) reduces the cost of the proposal; and (2) utilizes other state agencies, including the California Geological Survey. This more closely matches the spirit of the statute and the Subcommittee's direction.

Staff Recommendation: APPROVE

VOTE:

CPUC Foundation – Information Item

Background. In January, the Subcommittee heard an issue related to the establishment of a new foundation, the “CPUC Foundation” that was to be the beneficiary of funds from the 100th Anniversary celebration of the California Public Utilities Commission. The Legislature adopted Trailer Bill Language requiring the Commission to report on interactions with the newly formed nonprofit, including any exchange of funding or endorsement of the nonprofit by CPUC staff or commissioners.

Staff Update. It is staff’s understanding that the CPUC Foundation members have decided not to continue pursuit of the foundation, and will not likely continue to exist.

Staff Comments. The Subcommittee may wish to get an update from the Commission on its understanding of the CPUC Foundation status, and the status of funds related to its 100th Anniversary event.

Staff Recommendation: NO ACTION—INFORMATION ITEM

VOTE:

3600 Department of Fish and Game

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

Governor's Budget. The Governor's Budget includes \$401 million for support of the DFG, a reduction of \$86 million, or 21 percent, under current year expenditures. This reduction is primarily due to reduction in bond funded expenditures.

1. Suction Dredging Budget

Background. Background: The Department of Fish and Game is responsible for administering Section 5653 of the Fish and Game Code which requires a permit from DFG to conduct recreational motorized suction dredge mining in state waters. The Department's existing suction dredge mining regulations, which were adopted in 1994, were the subject of a court order in 2006 which found that the regulations could result in environmental impacts harmful to coho salmon or other fish species listed as threatened or endangered under state or federal law, and ordered DFG to conduct a new environmental impact review and update the regulations as necessary. The Department was ordered by the court to complete the EIR by July of 2008.

After the Department failed to meet that deadline, the court in July 2009 prohibited DFG from issuing any suction dredge mining permits as long as the related litigation was pending. At the same time, the Legislature passed and the Governor signed into law SB 670 (Wiggins, c. 62, Statutes of 2009) on August 6, 2009. SB 670 imposed an immediate moratorium on suction dredge mining until three specified actions occur: 1) DFG completes the court-ordered environmental review of its permitting program; 2) DFG updates the existing regulations governing the program as necessary; and 3) The updated regulations take effect. DFG's draft EIR for suction dredge mining and new proposed revised regulations were released for public comment in February 2011. The draft EIR identifies a number of significant and unmitigated environmental impacts.

DFG has acknowledged in previous years that the current fees for suction dredge mining permits are inadequate to cover the full costs of the program. The current statutory base fee for a permit is \$25, which when adjusted for inflation equates to approximately \$40. The base fee is \$130 if an onsite inspection is required. Nonresident base fees are \$100 for a basic permit and \$220 for onsite inspection. The Senate policy committee analysis for SB 670 notes that DFG "has previously estimated that the permits cost an average of \$450 to process and to cover the costs of the program, which if extrapolated to the approximate 3,000 permits would result in an expenditure of about \$1.3 million."

Under the new proposed regulations DFG proposes to issue up to 4,000 permits. DFG's new estimate of revenue from 4,000 permits and onsite inspection fees is \$373,000. If the department's previous cost estimates are accurate, the program will cost \$1.8 million, not counting the additional costs of onsite inspections, potential legal defense costs if anticipated lawsuits challenging the regulations are filed, and costs for SWRCB permitting since the proposed regulations acknowledge that suction dredging in mercury impaired waters will cause significant unmitigated environmental impacts, but do not propose to limit suction dredging in such waters, leaving that problem to the SWRCB. The department has used 27 DFG employees in the development of the regulations so far. DFG wardens would also be required to enforce the regulations. The gap between the current fees and the costs of the program result in an estimated \$2 million subsidy of the program from the Fish and Game Preservation Fund and/or the General Fund.

Staff Recommendation: Approve the following:

- (1) Trailer bill language to continue the moratorium on issuance of suction dredge permits for an additional five years, or until such time as new regulations that fully mitigate all identified significant environmental impacts, and a proposed fee structure that will fully cover all program costs, are in place.
- (2) Approve Budget Bill Language prohibiting any funding at the department from being used for suction dredge mining regulation, permitting or other activities.

VOTE: