

SUBCOMMITTEE NO. 2

Agenda

Senator Lois Wolk, Chair
Senator Jim Nielsen
Senator Fran Pavley



Thursday, March 3, 2016
9:30 a.m. or upon adjournment of session
State Capitol - Room 112

Consultant: Catherine Freeman

Presentations:

Overview of the Governor’s Budget

- Brian Brown, Legislative Analyst’s Office

Agency Secretaries

- John Laird, Secretary for Natural Resources
- Matt Rodriguez, Secretary for California Environmental Protection Agency
- Karen Ross, Secretary for Food and Agriculture

Issues Proposed for Discussion

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3210 Environmental Protection Program (Environmental License Plate Program)

Background—Environmental License Plate Fund

Personalized License Plates. The Legislature created the personalized license plate through the enactment of statute in 1970. Revenues from personalized license plates, purchased by individuals, are collected by the Department of Motor Vehicles (DMV), and, deposited into the Environmental License Plate Fund (ELPF). State law requires that for certain plates, such as the Yosemite Conservancy Plate and the California Coastal License Plate (Whale Tail), the DMV collect additional revenues that are deposited directly into separate funds (the Yosemite Fund and California Beach and Coastal Enhancement Account, respectively). The remaining funding supports the Environmental Protection Program (EPP), which addresses the preservation and protection of California’s environment, as prescribed by law.

In 2011-12, over 82,000 plates were purchased. Half of these were purchased for special programs (such as the Whale Tail and Yosemite plates), and half were generic environmental personalized license plates. Over one million plates have been purchased and are renewed annually. Revenues from the plates average \$41 to \$42 million per year from new purchases and renewals.

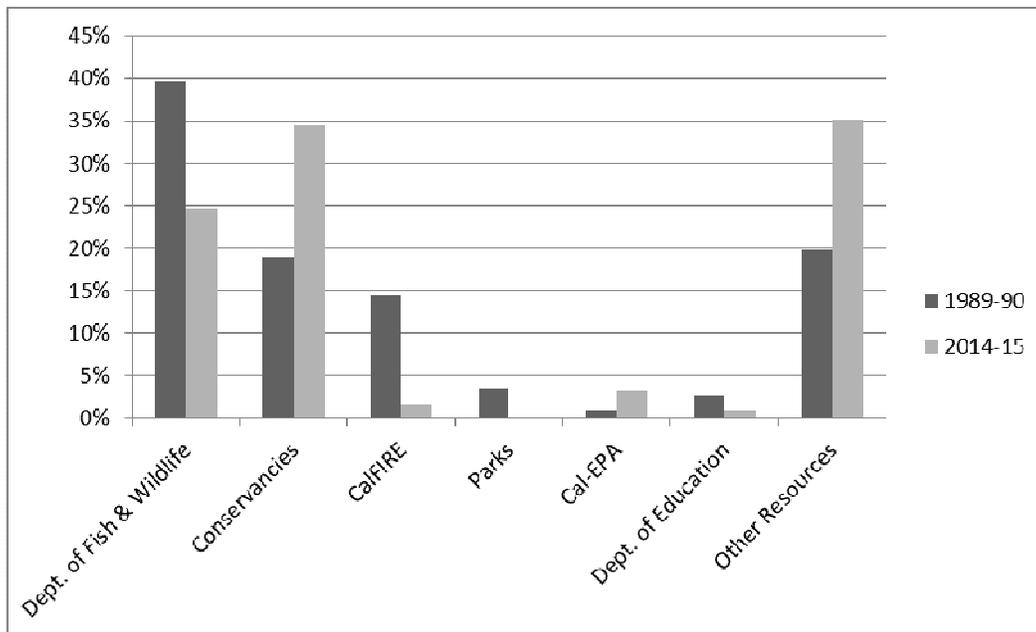
Environmental License Plate Fund. The ELPF was established to provide funding to various environmental programs through the EPP at the state and local level. The amount of funding available is dependent upon the number of certain specialty license plates sold and maintained in the state. Traditionally, the fund has been allocated to natural resource programs. The main priorities of the ELPF, as designated by Public Resources Code 21190, include:

1. The control and abatement of air pollution.
2. Acquisition, preservation, and restoration of ecological reserves.
3. Environmental education, including formal school programs and informal public education programs.
4. Protection of nongame species and threatened and endangered plants and animals.
5. Protection, enhancement, and restoration of fish and wildlife habitat.
6. Purchase of real property for state and local parks.
7. Reduction or minimization of soil erosion and sediment discharge into Lake Tahoe.
8. In addition to these, SB 861 (Committee on Budget), Chapter 35, Statutes of 2014, added climate assessment to the eligible list of priorities.

Allocation of Funds. The allocation of funds within the program is subjective. The Administration reviews revenues and provides the Legislature with a proposed funding package each January. As discussed in a 2012 audit of the program by the State Auditor, the California Natural Resources Agency (CNRA) is required to provide reports and programs recommended for funding, together with a statement of their purposes, the benefits to be realized, and the Secretary for Natural Resource’s commitment for inclusion in the Governor’s budget. This report is required to be submitted annually to the Governor with the request for funding. According to the 2012 audit, this information had not been provided; the agency argues that the report is duplicative of the budget change proposal process already occurring.

Shifting Priorities and New Programs. As shown in the figure below, shifting priorities have altered how ELPF funding been allocated. For example, in 1990, the Department of Fish and Wildlife (DFW) accounted for 40 percent of ELPF expenditures. The budget display reflected numerous ongoing and capital programs. Conservancies made up a relatively small proportion of the budget in 1990, but jumped to 35 percent in the 2015-16 budget. Over the years, new programs have been added to the ELPF budget. In 2015-16, the CNRA proposed to spend \$6.7 million of the overall allocation primarily for two relatively new programs—the Ocean Protection Council (formerly housed at the State Coastal Conservancy), and the Fourth Climate Assessment (first proposed in 2014-15).

**Environmental License Plate Fund
Expenditures (by percentage)
1989-90 versus 2014-15**



Stable Revenues. The ELPF revenues have hovered between \$39 and \$41 million for over eight years. However, in multiple years, the Governor’s budget has forecast higher revenues (as much as \$45 million). When a final reconciliation of the budget has been made, these higher forecasts

have never been realized. In 2014-15, the budget forecast revenues of \$44 million, and realized revenues of only \$41.8 million. A similar pattern has occurred over multiple years.

2015-16 ELPF Shortfall. In 2015-16, the Administration sought to address a shortfall in the ELPF. Revenues in the ELPF were not likely to meet budgeted projects by as much as \$3 million in both the previous year (2014-15) and in 2015-16. The shortfall occurred mainly because the Administration over-estimated revenues to the program. As discussed previously, revenues to the program historically averaged between \$39 to \$41 million per year. The Administration raised the revenue estimate in 2014 to \$45 million. Additional cost pressures to the program included salary adjustments required by the “like-pay for like-work” initiative.

2015 Budget Directs a Solution Be Made. The 2015-16 budget proposed by the Governor was largely adopted, with the exception of a proposal to increase the license plate fee. The budget directed the Administration to convene working group, comprised of both Administration and legislative staff, to work on a permanent solution. The implication was that, should the Administration address legislative concerns adequately, and only after concerns about the program funding were addressed, the Legislature would consider an increase to the license plate fee. The Administration convened the working group in fall and committed to working with staff and the Legislative Analyst’s Office (LAO) through the fall as it came up with solutions to the funding shortfall.

Governor’s Budget Proposal

The Governor’s budget proposes \$38.8 million in expenditures and \$42 million in revenues. After required transfers to the Motor Vehicle Account (\$2.4 million), the amount available for expenditure is \$39 million. The figure below outlines ELPF expenditure proposals for the current year and budget year.

**Environmental License Plate Fund Shortfall Solution
2016-17 Proposed Expenditures**
(Dollars in Thousands)

Function	2014-15 (Final)	2015-16 (Estimated)	2016-17 (Estimated)
Department of Fish and Wildlife	\$15,511	\$9,762	\$15,652
Conservancies	\$9,556	\$11,492	\$10,720
Secretary for Natural Resources	\$3,419	\$3,788	\$4,299
Natural Resource Agency Departments	\$4,651	\$5,429	\$4,396
Tahoe Regional Planning Agency	\$3,998	\$3,998	\$0
Department of Parks and Recreation	\$2,713	\$0	\$0
Cal-EPA boards and Departments	\$1,242	\$1,479	\$1,471
Department of Education	\$403	\$410	\$410
Total	\$41,493	\$36,358	\$36,948

Education and the Environment Initiative. In 2015-16, the subcommittee discussed concerns that Resources Code 21190, which guides the distribution of the ELPF, and clearly identifies environmental education as a priority, was not being met to the fullest extent. The education priorities received less than one percent of the funding allocated from the ELPF. At the same time, the state continues an initiative to bring environmental education into the core curriculum of all classrooms in the state through the Education and the Environment Initiative (EEI).

The Governor's budget addresses the Legislature's priorities by adding \$700,000 (\$350,000 from the California Used Oil Recycling Fund and \$350,000 from the Tire Recycling Management Fund) in one-time funding to develop a sustainable funding strategy for the EEI program and address increased demand for the EEI curriculum. This proposal also includes budget bill language providing additional flexibility to the Environmental Education Account. Teacher demand for the state-created EEI curriculum has expanded and this proposal would help CalRecycle fulfill its mission.

Trailer Bill Proposals. Similar to last year, the Administration proposes trailer bill language to increase the ELPF fee by \$5 from \$38 to \$43 for the renewal, retention, transfer or duplication of an environmental license plate. This fee increase is intended, over a two year period, to increase revenues by \$1.5 million in the budget year, and \$2.5 million ongoing. In addition, the Governor proposes trailer bill language to require the department to collect a permit application fee for processing permits under the California Endangered Species Act (CESA). The proposal includes a graduated fee schedule based on the cost of the project. Fund would be deposited into a new account at the department, the "Endangered Species Permitting Account," to be used upon appropriation for the cost of processing the permit or to implement CESA.

LAO Recommendation. The LAO has reviewed the ELPF proposal and offers the following comments: "The Governor's budget provides one reasonable package of options to address the ELPF structural deficit, but the Legislature has other available options. We recommend that it approve a funding package based on its priorities for how spending reductions and/or fee increases should be borne." The LAO further discusses the available options of reducing expenditure authority in any of the programs, increasing the license plate fee, and shifting funding to other programs.

Staff Comments. The Natural Resources Agency was deliberative in how it undertook the reformation of the ELPF fund and the resulting product shows this effort. In particular, removing the regulatory agency, the Tahoe Regional Planning Agency, from ELPF funding went a long ways towards addressing the critical shortfall. While the Legislature may wish to address the competing priorities in statute in a future discussion, such as the future of outdoor education or the EEI, the Administration has met the letter of the law.

Staff Recommendation. Hold Open. Staff supports the Administration's proposal in concept. Staff recommends holding off final action on the budget and trailer bills for further review.

Vote:

Proposition 1: Statewide Obligations

Background

This measure provides a total of \$7.5 billion in general obligation bonds for various water-related programs. First, the measure allows the state to sell \$7.1 billion in additional bonds. Second, the measure redirects \$425 million in unsold bonds that voters previously approved for water and other environmental uses. The state repays these bonds, with interest, using the state's General Fund.

The bond measure provides funding to (1) increase water supplies, (2) protect and restore watersheds, (3) improve water quality, and (4) increase flood protection. The bond money would be available to state agencies for various projects and programs, as well as for loans and grants to local governments, private water companies, mutual water companies (where water users own the company), Indian tribes, and nonprofit organizations.

The bond specifically provides \$475 million to the Natural Resources Agency (CNRA) for a "Statewide Obligations and Agreements" pot to support projects that fulfill state obligations in state-federal partnerships. Specifically, the bond identifies the following projects, programs and priorities:

- Central Valley Project Improvement Act;
- Tahoe Regional Compact;
- San Joaquin River Restoration Agreement;
- Salton Sea Restoration Act; and,
- Any intrastate or multiparty settlement agreement related to water acted upon or before December 31, 2013. Priority shall be given to projects that meet one or more of the following criteria: (1) the project is of statewide significance; (2) the project restores natural aquatic or riparian functions, or wetlands habitat for birds and aquatic species; the project protects or promotes the restoration of endangered or threatened species; (4) the project enhances the reliability of water supplies on a regional or interregional basis; and, (5) the project provides significant regional or statewide economic benefits.

Governor's Budget Proposal

The Governor's budget proposes to allocate all of the Statewide Obligations pot in the budget. As shown in the following figure, the budget includes funding for four priority areas that cover the breadth of the state from the Klamath River at the Oregon border to the Salton Sea. The allocations total \$466 million, with the remaining \$9 million available for bond and administrative costs. Proposition 1 separately allocated \$15 million to the California Tahoe

Conservancy and \$24 million to the Lahontan Regional Water Board for broad activities within the region (of which about \$2 million would be allocated to Lake Tahoe).

Governor’s New Proposition 1 Proposals
2016-17 (Dollars in Millions)

Activity	Amount
Klamath River Hydroelectric Settlement	\$250
Central Valley Project Improvement Act	90
Salton Sea Restoration Act	80
San Joaquin River Restoration Agreement	45
Total	\$465

Klamath Hydroelectric Settlement Agreement. The state has, over three decades, participated in negotiations with Oregon, the federal government, the owner of hydroelectric dams (PacifiCorp), tribal delegations, and local farmers, and conservationists. The river basin includes four main dams—JC Boyle, Copco 1, Copco 2, and Iron Gate—all owned and operated by PacifiCorp. In recent year, both siltation and other challenges have reduced the hydroelectric output of the dams over time. The Klamath River basin faces unresolved problems resulting from over-drafted water supplies and significant water quality degradation. Problems in the basin have included:

- 2001 federal announcement of no water deliveries to address severe drought and the Federal Endangered Species Act.
- 2002 die-off of the adult fall-run Chinook salmon of at least 30,000 and up to 60,000 fish due to low water.
- 2005 toxic algae in the reservoirs behind the upper dams.
- 2006 severe restrictions enacted due to low abundance of Klamath basin chinook.
- 2010 reduction in water deliveries due to dry hydrologic conditions.
- 92 years without tribal access to salmon and 25 years of limited harvest of sucker fish.

The parties along the river agreed to a settlement to improve conditions basin-wide, that includes the removal of the four dams and restores the river below the dam. The agreement is a multi-party settlement signed by the two states, the federal government, and the owner of the dams. The agreement restoration goals are:

- Restore and sustain natural fish production and provide for full participation in ocean and river harvest opportunities of fish species throughout the basin;
- Establish reliable water and power supplies to sustain agricultural uses, communities and National Wildlife refuges; and,
- Contribute to the public welfare and the sustainability of all Klamath basin communities.

In order to move expeditiously, the parties requested congressional action to move forward. This attempt was not successful, however the agreement remains in place and will be implemented through the Federal Energy Regulatory Commission (FERC) process which deals with the removal of the four dams (which the private owner supports), and the associated restoration costs. The ratepayers of the dams have contributed at least \$200 million for the dam removal. The settlement allocates costs of up to \$250 million to California for restoration as many of the benefits are located in the state. The owner, PacifiCorp, has stated that it supports removal of the dams under the customer protections provided by the Klamath Hydroelectric Settlement Agreement.

On February 2, 2016, the Administration reported that the States of Oregon and California, PacifiCorp and the federal government, through the U.S. Departments of the Interior and Commerce, reached an agreement-in-principle to move forward with amending the Klamath Hydroelectric Settlement Agreement (KHSA) after a meet and confer process with the parties to that agreement. Under the agreement-in-principle, the signatories propose that the parties to the KHSA will pursue its implementation through the administrative process governed by the Federal Energy Regulatory Commission (FERC), using existing funding and on the same timeline. Members of the California and Oregon delegations introduced legislation in the past two congressional sessions to advance the hard-fought KHSA and two related Klamath agreements; however, the U.S. Congress adjourned last year without acting on legislation to authorize them.

Central Valley Project Improvement Act (CVPIA). The CVPIA is an ongoing state-federal-local program intended to provide a dedicated quantity and quality of water to support and enhance ten state, federal, and privately managed wetlands. The program includes three major components: (1) water acquisition; (2) water conveyance; and, (3) facilities construction. The overarching intent of the act is to provide habitat for wildlife, both fish and bird, for long-term conservation. The budget includes \$90 million for projects that meet the three main goals. A coalition of state, federal and private nonprofits maintain a list of project that will meet species needs. Funds will be allocated by a grant process similar to previous years.

San Joaquin River Restoration 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.

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 a court settlement to restore flows and the salmon population to the river. While the state is not a party to the lawsuit, the Department of Fish and Game (DFG), the Department of Water Resources (DWR), the Resources Agency, and the California Environmental Protection Agency have entered into a memorandum of understanding (MOU) with the settling parties regarding the state's role in the restoration. The MOU has been incorporated into the settlement agreement.

The budget includes \$45 million, for the next three years, to provide a match for federal funds. The settlement agreement provides a framework for construction of a hatchery, flood risk evaluations, fish passage designs, fish introductions, and ongoing research and monitoring.

Salton Sea. The Salton Sea (the sea) is a large inland lake in southeastern California. In the coming decades, a transfer of Colorado River water from Imperial Valley to San Diego County will reduce the amount of agricultural runoff that currently flows into the sea. Primarily due to this change in water use, the sea will begin to dry up—impairing air quality, reducing the availability of wildlife habitat, and increasing the salinity of the remaining sea, thereby killing off most aquatic life in the sea. Due to a series of statutes and contractual agreements regarding the use of Colorado River water in Southern California, the state has an obligation to restore the sea. The Administration completed a feasibility study to guide future investment in the sea in 2015.

The budget proposes \$80 million for the DWR to support development and permitting of a Salton Sea plan and the associated individual restoration projects to meet the short term goals of 9,000 to 12,000 acres of restoration. The Natural Resources Agency will maintain its oversight role and requests \$150,000 in reimbursement authority, and \$50,000 (General Fund) to continue to fund the Assistant Secretary for Salton Sea Policy. The Department of Fish and Wildlife proposes to continue its joint work with DWR and requests \$300,000 (General Fund) to continue three existing positions. Finally, the State Water Resources Control Board, whose mission includes water rights and water quality, requests \$138,000 (General Fund) and one position to provide legal counsel throughout the restoration process.

LAO Recommendation. The LAO analyzed the Governor's proposals and agreed that the alternative provided by the Administration is one of many alternatives available to the Legislature. They acknowledge the urgency of certain projects (Salton Sea and Klamath), and the relative role of the state versus the federal government. In the case of the CVPIA and San Joaquin River settlements, the federal government is the lead. In the case of Salton Sea and Klamath, the state is the lead. Tahoe is a shared responsibility between Nevada, California and the Federal Government. The bottom line suggested by the LAO is that the Legislature should determine its priorities and fund accordingly.

Staff Comments. The proposal before the subcommittee meets the requirements of the Proposition 1 bond law. Concerns have been raised that not all program areas listed in the bond, specifically the Tahoe region, were funded in the final selection process. The Administration should address this in their commentary.

Staff Recommendation. Hold open.

Marijuana Cultivation: Environmental and Agricultural Protection Implementation

Background

Legislative and Voter-Authorized Medical Marijuana Use. The statutorily authorized use of medical marijuana in California dates back to November 1996, when California voters passed Proposition 215, the Compassionate Use Act of 1996 (CUA). The CUA provides Californians deemed “serious ill” the right to obtain and use marijuana for medical purposes, as recommended by a physician, and prohibits criminal prosecution or sanction against physicians who make medical marijuana recommendations. In 2003, Senate Bill 420 (Vasconcellos) Chapter 875, Statutes of 2003, established the Medical Marijuana Program under the California Department of Public Health, and created a medical marijuana identification card and registry database to verify qualified patients and primary caregivers. Participation in this identification program is voluntary.

Production of Marijuana in California. California produces more marijuana from outdoor “grows” (crops planted) than any other state. There are two basic ways marijuana is grown outside in the state. The first is the legal cultivation of marijuana on private lands pursuant to Proposition 215 (1996). The second is illegal cartel use of public lands to grow marijuana. The environmental impacts of growing marijuana on both public and private lands are well-documented. The Administration estimates that private land marijuana cultivation has expanded so much on the North Coast that Coho salmon, a state and federally-listed species, may go extinct in the near future if the problem is not immediately addressed. The State Water Resources Control Board (State Water Board) has observed significant land clearing activities resulting in sediment discharges to many high-value surface waters in the north state, nutrient loading from fertilizers, and stream diversions that result in dangerously low water levels.

Whether on public or private land, the impact from marijuana cultivation is substantial. By 2014, the Department of Fish and Wildlife (DFW) had conducted approximately 249 marijuana eradication and reclamation missions. These missions led to the arrest of 228 illegal marijuana growers, seizure of 72 firearms and over 5,000 pounds of marijuana. The state has collected approximately 66,000 pounds of trash, 332,000 feet of poly pipe, 14,000 pounds of fertilizer, 113 containers of common pesticides, herbicides, and rodenticides, 15 hazmat containers, and removed 105 man-made dams from waterways feeding illegal grows. Costs to reclaim damaged lands and remediate impacts range from \$2,000 to \$14,000 per acre on public land and as high as \$30,000 to \$50,000 per acre on private land.

During a period of eight months in 2014, marijuana seized had consumed over two million gallons of stolen water per day for in-ground plants. After thirty days, plants could have consumed over 64 million gallons of water, and with a typical growing period of 120-150 days, total consumption is likely to be significantly greater.

Previous Budget Committee Actions and Oversight. In 2014, the Senate Budget Subcommittee No. 2 began a series of oversight hearings on the environmental impacts of the production of marijuana in California, both legal (pursuant to Proposition 215) and illegal. In 2014, the Legislature approved trailer bill language to allow civil penalties to be used for

marijuana enforcement by both the State Water Board and Department of Fish and Wildlife (DFW). The 2014 budget included \$1.5 million (\$500,000 General Fund, \$500,000 Timber Regulation and Forest Restoration Fund, and \$500,000 Waste Discharge Permit Fund) and seven positions to implement a task force and priority-driven approach to address natural resources damages from marijuana cultivation. The budget also included \$500,000 for the DFW from the general enforcement budget to the marijuana task force (activities that would have been funded by this money were backfilled by the Fish and Game Preservation Fund).

In 2015, the budget subcommittee continued its oversight role as well as addressed the increasingly critical statewide drought. Urgency actions in March authorized \$4 million (General Fund) for the State Water Board and DFW to enhance instream flows in at least five stream systems that support critical habitat for anadromous fish. While this action was not intended to solely address marijuana cultivation, the infusion of funding improved the board's ability to assess these streams.

The 2015 budget also included \$1.5 million (General Fund) and eleven, two-year limited-term positions to continue implementation of the task force and the priority-driven approach to address the natural resources damages from marijuana cultivation, primarily on private lands in northern California, but also through targeted in-partnerships with DFW on high conservation value state public lands.

2015 Legislative Package. Since 2003, advocates, patients, and local governments have recognized some deficiencies in oversight and called for additional safety regulations. In June 2015, Governor Brown signed the Medical Marijuana Regulation and Safety Act, comprised of three bills to address the multi-faceted regulatory and enforcement necessitated by the growth of this industry. These measures consist of:

- **Watershed Task Force.** AB 243 (Wood), Chapter 688, Statutes of 2015, provides for the permanent establishment of a multiagency task force to address the environmental impacts of marijuana cultivation in the watershed. The bill establishes guidelines and regulations for medical pot cultivators, but takes an environmental approach. It gives the State Water Board the explicit authority to regulate the discharge of water, chemicals and sediment into the environment.
- **AB 266 (Bonta), Chapter 689, Statutes of 2015.** AB 266 establishes a new agency within the Department of Consumer Affairs, the Bureau of Medical Marijuana Regulation, to oversee the licensing rules for medical pot growers, the makers of the products and retailers. The agency will be assisted by the California Department of Food and Agriculture, the Department of Public Health and other state agencies.
- **SB 643 (McGuire), Chapter 719, Statutes of 2015.** SB 643 focuses on clinics that capitalized on the lack of regulation by issuing medical marijuana prescriptions to patients who lacked valid health needs. It also creates licensing and other regulations to oversee the industry.

GOVERNOR’S PROPOSAL

The budget provides four major proposals in the resources, environmental protection and agricultural areas. While the proposals directly implement the legislation referenced in the 2015 medical marijuana legislative package, the heart of the package is to bring marijuana, both legal and illegal, under the umbrella of current state statutes. So, for example, where pesticides are used on medical marijuana, the Department of Pesticide Regulation has a duty to protect both consumers and cultivators from the impacts of pesticide use on the crop. So, too, the State Water Board and DFW must protect the state’s waterways, fish and wildlife from the impacts of both legal and illegal cultivation. Perhaps the true new program to be developed under this package is the California Department of Food and Agriculture (CDFA) proposals to establish management and tracking of marijuana as a new, and legal, crop—with greater reporting than other, established crops, due to its high profile.

In general, the proposals to protect fish and wildlife and instream flows constitute a slight change in the way the state has approached environmental protections. In keeping with legislative and executive changes over the previous years, and in particular related to ongoing drought and weather fluctuations, the approach focuses on maintaining clear and clean water in rivers and streams, at a level to sustain fish and wildlife and to meet other legal diverters’ needs. While this is the basis for water law in California, the Administration’s new approach focuses more intensely on the relationship between water rights and water diversions.

**Medical Marijuana
Governor’s Environmental Protection and Agriculture Proposals**
(Dollars in Millions)

Purpose	<u>2016-17</u> (Proposed)	<u>2016-17</u> (Proposed)	Fund Source
Department of Fish and Wildlife	\$7.6	\$5.8	General Fund
State Water Resources Control Board	5.2 0.5	6.0 0.7	General Fund WDPF ¹
Department of Pesticide Regulation	0.7	0.7	DPR Fund ²
Department of Food and Agriculture	<u>3.3</u>	<u>3.3</u>	MM Fund ³
Total	\$17.3	\$16.5	

¹ Waste Discharge Permit fund

² Department of Pesticide Regulation Fund

³ Medical Marijuana Regulation and Safety Act Fund

Department of Fish and Wildlife. The budget requests \$7.7 million (General Fund) and 31 positions to address two specific aspects of AB 243 (Wood). Specifically, the requests include:

- **Multi-Agency Task Force.** Fish and Game Code 12029(c) requires the department to establish a permanent multi-agency task force to address the general environmental impacts of marijuana cultivation. The requested funds will be used to expand enforcement efforts on a statewide level to ensure the reduction of adverse impacts on fish and wildlife and their habitats.
- **Water Diversions.** In coordination with the State Water Board, the department proposes to use resources to ensure that individual and cumulative effects of water diversion and discharge associated with cultivation do not affect the instream flows needed for fish spawning, migration, and rearing, and the flows needed to maintain natural flow variability.

State Water Resources Control Board. The budget has two distinct water quality requests:

- **Water Quality.** The State Water Board requests \$1.8 million (\$1.3 million General Fund and \$472,000 Waste Discharge Permit Fund) for 13 positions to extend the north-state focused marijuana regulation task force pilot project statewide. The pilot project is a task force directed by the Legislature to address the natural resources damages from marijuana cultivation, primarily on private lands in northern California as well as targeted state-managed lands. This request is in addition to the \$1.4 million the Legislature previously appropriated, including 11 limited term positions that are scheduled to end this in the budget year. The funding level proposed will allow the State Water Board to implement a more credible water quality protection and enforcement program in the three priority regions of the state where marijuana cultivation has the most adverse environmental impacts.

As with other major State Water Board actions, the joint water quality project will focus on the core functions mandated under general water quality laws including: (1) permitting; (2) enforcement; (3) education and outreach; and, (4) comprehensive planning. A significant amount of marijuana cultivation is occurring either illegally or quasi-illegally (non-permitted), and the board cannot charge WDPF fees until a legitimate, legal operation is identified. Thus, the General Fund has been proposed as the funding source at this time.

- **Water Rights and Instream Flow Request.** The budget requests \$3.9 million (General Fund) and 22 positions to comply with legislatively-mandated instream flow requirements so that individual and cumulative impacts of water diversion and discharge necessary for fish spawning, migration, rearing are addressed.

As with other water-rights mandates, the State Water Board will focus on: (1) establishment of interim flow requirements to provide immediate and minimal protection of fishery resources; (2) tailored regional policies for appropriation of water to limit further degradation of impacted streams; and, (3) permitting and registration of water diversions associated with legal and illegal marijuana cultivation activities. As with the previous request, the board cannot charge the Water Rights Fund fees until a legitimate, legal operation is identified. Thus, the General Fund has been proposed as the funding source at this time.

Department of Pesticide Regulation. The budget requests three positions and \$700,000 from the Department of Pesticide Regulation Fund to implement AB 243. AB 243 requires the department to develop new types of assessments for the risks associated with inhalation of pesticide use on marijuana, as well as the dietary (ingestion) risk associated with marijuana pesticide use. The department proposes to use contract funds to work with an external research program to assist with analyzing current marijuana cultivation and cultural practices, pests of concern, and treatments, including pesticide use. The department is also charged with developing guidelines and outreach to protect the cultivators of medical marijuana from pesticide exposure.

Department of Food and Agriculture. The budget requests \$3.3 million reimbursement authority and 18 positions to be funded by the Medical Marijuana Regulation and Safety Act Fund (MMF), ongoing. The series of bills passed in 2015 mandate that CDFA (1) establish a Medical Marijuana Cultivation Program (MCCP) to license the cultivation of indoor and outdoor medical marijuana, with consideration given to size and location of the operation; (2) establish a track and trace program that uniquely identifies medical marijuana plants; (3) work in consultation with other state agencies to adopt environmental remediation regulations, and consider and implement best practices, and to establish pesticide use standards; and (4) establish an electronic database that can be accessed by the Bureau of Medical Marijuana Regulation housed under the Department of Consumer Affairs (DCA). Under the recent legislative package, the department is given authority to conduct verification inspections, enforcement language, provisions to promulgate regulations, and is required to submit a report to the Legislature annually beginning in 2023.

Issues for Consideration

How will the Department of Food and Agriculture (CDFA) regulate the marijuana industry with respect to legal cultivation standards? As a basis for moving forward, it should be acknowledged that marijuana is one of the first crops to be moved from illegal to legal status, for the purposes of agricultural production. The CDFA budget proposal acknowledges that, until this point, mainly local regulations were focused on the cultivation of marijuana (mainly indoor). How will CDFA approach the licensing of the cultivation of both indoor and outdoor marijuana crops and coordinate with the Department of Pesticide Regulation, Local Agricultural Commissioners, and Department of Public Health, to ensure both the safe production and harvest of this product?

How should the state approach instream flows? The environmental and natural resources proposals focus on an instream flow approach. How will the Department of Fish and Wildlife and State Water Board coordinate water rights, fish needs and flow regimes? This is in keeping with the Legislature and Administration's more intense focus on water in recent years due to drought. The body of law protecting instream flows is robust, however it may be necessary to clarify statute, as has been done in the past with certain drought-related laws, in order to achieve a high degree of success with the instream flow approach. The Legislature may wish to consider whether: (1) the instream flow approach would take longer to implement than a more direct regulatory approach; and (2) legislation is necessary to improve the efficiency of the instream flow approach.

Do the departments anticipate shifting funding to the new medical marijuana fees, and should the Legislature consider a sales tax on marijuana? During the interim period as marijuana production is brought under the regulatory umbrella, the state is providing significant General Fund to manage the environmental and natural resources damages from legal and illegal cultivation. So, too, General Fund is necessary to continue the multi-agency task force. The Legislature should consider: (1) how and when should the state shift programs and activities to medical marijuana fees; and, (2) should fees not be appropriate, if a sales tax on marijuana would be appropriate to cover other program expenditures that are not eligible for fees?

How will the Department of Consumer Affairs (DCA) coordinate with the multitude of diverse departments regulating marijuana? A new bureau, established under the Department of Consumer Affairs, oversees the state's efforts on marijuana cultivation and manages the funding stream established by the 2015 legislative package. DCA has very little experience with environmental or natural resources activities, and health and food safety mandates. How will the departments coordinate with this new bureau and will the departments have access at appropriate times to the funding available through DCA?

How will the Administration continue to protect permitting personnel as they move toward registering more growers legally? As has been established by DFW wardens in their investigation of both legal and illegal growing operations, the permitting and enforcement of marijuana cultivation is a dangerous business. State permitting personnel are not law enforcement officers and their protection is critical to moving forward with the establishment of a normal and legal process for monitoring marijuana cultivation. How does, and will, the Administration continue to provide adequate protection to those monitoring marijuana cultivation and is the funding provided in the budget sufficient to the task?

Pesticide regulations and risk assessments can take multiple years. Can the departments develop emergency or interim regulations to maintain the public and environment's safety through the transition period? The budget provides funding to the Department of Pesticide Regulation through the DPR Fund for risk assessment on legal medical marijuana production. How will the department: (1) assess the fees on production of the product; (2) provide enforcement and testing for products that are sold in dispensaries that may have illegal pesticide residues; and (3) move in an expedited manner to establish clear risk assessments for production of this product given high number of consumers in the state?

Staff Recommendation: Hold Open

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