

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

Agenda

Senator Lois Wolk, Chair
Senator Jim Nielsen
Senator Fran Pavley



Wednesday, May 20, 2015

10:00 a.m.

Hearing Room 112

Consultant: Catherine Freeman

Resources, Environmental Protection and Energy

OUTCOMES

Items Proposed for Vote-Only

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Resources—Environmental Protection—Energy—Transportation

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ITEMS PROPOSED FOR VOTE ONLY**Spring Finance Letters, Open Issues and May Revision (Set 1)****0540 Secretary for Natural Resources**

1. **Lake Tahoe Science Advisory Council.** The May Revision requests to shift \$300,000 (Lake Tahoe Science and Lake Improvement Account) from the California Tahoe Conservancy to the Secretary for Natural Resources, to fund the operation of the new bi-state science advisory council established in 2014.

3540 Department of Forestry and Fire Protection

2. **May 1 Capital Outlay Proposals.** The department requests reappropriation of minor capital outlay for three projects: (1) High Rock Conservation Camp—water treatment system upgrade; (2) Trinidad fire station installation of water connect; and, (3) La Cima Conservation Camp wastewater treatment replacement. CalFIRE anticipates construction contracts for all three projects will be awarded within six to nine months. Delays were due to geotechnical design development issues.
3. **Public Education for Fire Prevention and Preparedness.** The May Revision requests \$1.2 million (State Responsibility Area [SRA] Fire Fee), ongoing, to provide for a public information campaign on fire prevention and preparation for wildland fires for residents and visitors to the SRA. The program is intended to decrease fire risk for the state and coordinates with existing drought activities.
4. **Air Tanker Replacement.** The May Revision requests \$6 million (General Fund) to provide for the replacement of the air tanker that was lost in 2014. The request also includes funding for a contracted large air tanker (through December 2015) to temporarily fill the service gap created by the lost tanker until the replacement is ready.
5. **Technical Adjustment for Minimum Wage Increase.** The May Revision includes a request to increase by \$1.6 million (General Fund) and \$67,000 (reimbursements), to maintain wage parity between CalFIRE and contract counties.

3600 Department of Fish and Wildlife

6. **Hatcheries and Inland Fisheries Capital Outlay.** The department requests \$1.1 million (Hatcheries and Inland Fisheries Fund), for three minor capital outlay projects. This request would provide employee housing, consistent with department policy of providing 24-hour care and nightly standby duty to prevent fish loss and unforeseen operation emergencies and to protect state infrastructure and property at the Silverado Fisheries Base, Mojave River Hatchery, and the Black Rock Hatchery.

3790 Department of Parks and Recreation

- 7. Border Field State Park: Renovation for Public Use.** Add \$1 million from the State Parks and Recreation Fund (SPRF) for preliminary plans, working drawings, and construction to improve the park entrance road and to develop the outdoor plaza at Monument Mesa. The Department of Parks and Recreation received \$5.9 million from the federal government as part of a settlement agreement to mitigate for the condemnation of land needed for a federal border infrastructure project. Funds were initially distributed to the overall parks system rather than to the park where the condemnation occurred. The funds shall be available until June 30, 2020.
- 8. Empire Mine Historic Park.** The May Revision requests \$1.8 million (Abandoned Mine Reclamation Fund) on a one-time basis for the continued evaluation, analysis and implementation of remediation actions required at Empire Mine. This request supports the ongoing program of removal of contaminated materials and/or facilities, conveyance corridor assessment, stormwater management, trail realignment, and dam stability analysis.
- 9. Concessions Program.** The May Revision requests authority to negotiate a new concession contract for services provided at Bolsa Chica State Beach, including the development, operation, and maintenance of four full-service concessions, retail, and food service facilities. The proposed contract is anticipated to realize gross sales in excess of \$500,000 and, therefore, requires legislative approval.
- 10. Parks Reappropriation.** It is requested that the following Prop 40 and Prop 12 projects be reappropriated as follows:
 - City of Pasadena Youth Soccer and Recreation Developments Program, Sycamore Grove Field/Muir Field, Prop 40, Current Balance: \$1,000,000.
 - City of Los Angeles, Urban Parks, East Wilmington Greenbelt Park, Prop 40, Current Balance: \$2,933,000.
 - City of San Jose Robert-Z'Berg-Harris Block Grant Program, Three Creeks Trail Bridge, Prop 40, Current Balance: \$1,773,000.
 - City of San Jose Per Capita Grant Program, Three Creeks Trail Bridge, Prop 40, Current Balance: \$30,000.
 - City of Los Angeles People Coordinated Services of Southern California, Youth and Family Center, Prop 12, Current Balance: \$1,850,000.

3825 San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy

- 11. Bond Fund Adjustments (May Revision).** The May Revision includes a proposal to revert funds from Propositions 40 and 84, and to appropriate these funds for acquisition and land and water improvement projects. The request includes \$2.5 million (Proposition 40), \$802,000 (Proposition 50), and \$3.1 million (Proposition 84) for continuing programs.

8570 California Department of Food and Agriculture (CDFA).

- 12. Yermo Agriculture Inspection Station.** The Governor's budget requests to reappropriate \$46.9 million in unspent lease-revenue bond authority to complete the necessary updates to the working drawings, as well as to construct the project. The department also requests provisional language to support the use of lease-revenue bond financing for the relocation project. The language clarifies the Department of Transportation's authorization and responsibilities for delivering the project on behalf of CDFA.
- 13. Organic Waste.** The Governor's budget requests an increase of \$211,000 (General Fund) and 1.5 permanent positions in 2015-16 and \$229,000 and two permanent positions, ongoing, to increase enforcement and licensing activities for the rendering program to implement AB 1826 (Chesbro), Chapter 727, Statutes of 2014. The requested funding will support one special investigator and one office technician (half of one position in 2015-16), to provide outreach and training to local jurisdictional authorities, to investigate unlicensed and uninspected businesses recycling inedible animal material and inedible kitchen grease, and to facilitate licensing and inauguration of inspection of these businesses.

Staff Recommendation: Staff recommends approval of Items 1-14.

VOTE (Items 1-13):

Items 1, 2, 5, 6, 8, 9, 10, 12: 3-0 to approve
Items 3, 7, 11: 2-1 (Nielsen, no) to approve
Item 13: 2-1 (Nielsen, no) to approve but reduce by \$1,000.

ITEMS PROPOSED FOR VOTE**May Revision Proposals (Set 2)****3360 California Energy Commission**

- 14. American Reinvestment and Recovery Act.** The May Revision proposes to shift \$11 million from Federal American Recovery and Reinvestment Act (ARRA) funds from third-party financing programs where the CEC believes they were underutilized, and to shift these funds to three existing programs: (1) the Local Government Challenge (a local jurisdiction grant program promoting energy efficiency improvements in existing publicly owned buildings; (2) the Small City Leadership Challenge (a technical assistance and grant program focusing on disadvantaged communities with populations under 15,000); and, (3) the Energy Innovation Challenge (a program focusing on new innovative deployment models).

Staff Comment: The CEC did not provide a workload justification for this proposal that compares the outcomes of the three programs to which the funds would be directed. The May Revision does not afford the Legislature time for a comparative review of the programs. The LAO recommends the subcommittee reject the proposal and revisit the issue as part of the 2016-17 budget process.

3540 Department of Forestry and Fire Protection

- 15. Automatic Extinguishing Systems Worker Certification.** The May Revision proposal requests \$888,000 (State Fire Marshal Licensing and Certification Fund) and five positions to create regulations and establish a certification program for fire sprinkler fitters. The proposal includes: (1) a new fee of \$125 per certification to cover the costs of the program; and, (2) a certification process to shorten and standardize the length of training increase the number of trained pipefitters.

Staff Comment: This proposal is a major change in policy that requires extensive review not afforded by the May Revision process. The department should seek a policy bill to establish this program and fee.

- 16. Re-Open Magalia Conservation Camp.** The May Revision requests \$3.1 million in 2015-16 and \$3.6 million in 2016-17, and \$3.1 million ongoing (General Fund), to provide for the renovation and use of Magalia Conservation Camp in Butte County. The Department of Forestry and Fire Protection plans to work with the California Conservation Corps (CCC) to perform fire protection. The proposal includes provisional language to be added to allow an additional year of encumbrance related to facilities updates.

Staff Comment: This proposal is premature. The CCC proposes to evaluate residential facilities expansion, which should include a discussion of conservation camps, and report back

to the Legislature in the January budget with a plan for expansion. This proposal should be included in that discussion.

- 17. Implementation of AB 52.** The May Revision requests \$56,000 (Timber Regulation and Forest Restoration Fund) and \$75,000 (State Responsibility Area [SRA] Fund) to support the archeological and cultural requirements in AB 52 (Gatto), Chapter 532, Statutes of 2014, which requires California Environmental Quality Act (CEQA) lead agencies to participate in a formal notification process with California tribes and expands the definition of cultural resources that require consideration.

Staff Comment: This proposal is premature and incorrectly allocates resources from an inappropriate funding source (SRA Fund). There are many lead agencies involved with CEQA, none of which submitted similar proposals. The department should develop a workload analysis prior to a request for funding and should not propose funding from fire prevention funds for CEQA archeological and cultural requirements. In addition, no other CEQA lead agency in Resources Agency has requested funding for this purpose.

3780 Native American Heritage Commission (NAHC)

- 18. Implementation of New California Environmental Quality Act Requirements.** The May Revision proposal requests \$1.6 million (General Fund) and eight positions in 2015-16, decreasing to \$602,000 and five positions ongoing to fund the implementation of AB 52 (Gatto), Chapter 532, Statutes of 2014. The commission requests funding to create a geographic database of cultural and historical Native American tribal territories and all potential lead California Environmental Quality Act agencies within each territory. The proposal includes provisional language to make the availability of funds contingent upon project approval by the Department of Technology.

Staff Comment: The project in question has not completed the normal information technology review process and therefore the Legislature does not have the information it needs to complete its review of the proposal. It is unclear whether or not the Department of Technology's internal geographic information system could be used to develop this system. The proposal seeks to meet a January 1, 2016, deadline but the timing of the development of the information technology system will not begin development by that time. The budget proposal identifies two lower cost proposals that may be more appropriate and timely. This proposal does not include sufficient workload nor alternatives analysis. The LAO recommends the Legislature review the Phase One documentation approved by the Department of Technology before approval of the proposal to ensure feasibility of the project.

- 19. Statutory Shift of Repatriation Responsibility.** The May Revision includes trailer bill language to place the responsibility of the Repatriation Oversight Commission within the Native American Heritage Commission. This would require the NAHC to oversee the repatriation of Native American remains and cultural burial items to California non-federally recognized tribes.

Staff Comment: The proposal in question may have merit, however raises various policy questions about state agency overall responsibilities. With such critical determinations such as repatriation of Native American remains and cultural burial items, the May Revision is not an appropriate policy process to determine the outcome of this proposal. This should be taken up in policy committees. There is no budget proposal or workload analysis accompanying this request. The LAO recommends this proposal be moved to a policy bill.

3790 Department of Parks and Recreation.

- 20. Trailer Bill Language—Donations and Gifts Limit.** The May Revision requests trailer bill language to accept gifts and donations with cash values under \$100,000 without the Department of Finance approval in order to streamline processes and reduce workload.

Staff Comment: The proposal in question may have merit, however is not appropriate for the May Revision trailer bill process. Consistent with the LAO recommendation, this item should be moved to a policy bill such as AB 549 (Levine).

3980 Office of Environmental Health Hazard Assessment (OEHHA)

- 21. Technical Change—Public Health Goal Statute.** The May Revision proposal requests trailer bill language to remove a duplicative provision that could result in OEHHA being required to perform two external scientific peer reviews for the same public health goal related to a contaminant in drinking water.

Staff Comment: The proposal in question may have merit, however is not appropriate for the May Revision trailer bill process. Consistent with the LAO recommendation, this item should be moved to a policy bill such as an omnibus cleanup bill put forth by the policy committee.

Staff Recommendation. Reject proposals. In addition to the staff comments on each proposal, the above requests require extensive review not afforded by the May Revision process. The departments should resubmit these proposals in January for full review by the Legislature, or in the case of policy proposals, should seek legislation through the policy process.

VOTE (Items 15-21):

Item #16: 3-0 to approve as proposed but reduce by \$1,000

Items 14-21: 3-0 to reject

0540 Secretary for Natural Resources

May Revision Proposals. The May Revision includes the following proposals for consideration:

1. **Creation of Planning for Sea Level Rise Database.** The May Revision requests \$155,000 (General Fund) and one position to provide funding for gathering and publicly distributing information about state and local activities related to sea level rise planning, to implement AB 2516 (Gordon), Chapter 522, Statutes of 2014.

Staff Comments. The fiscal analysis for this bill anticipates one-time funding for this item to develop the database consistent with the proposal. However, ongoing funding was anticipated at \$65,000 per year. Staff recommends reducing ongoing funding to \$65,000 (General Fund). Consistent with the subcommittee's previous actions on sea level rise, this item should be funded by Tidelands Oil Revenue.

2. **Marine Protected Area Monitoring.** The May Revision requests an amendment to its January budget proposal, to shift funding from Proposition 84 bond funding to the General Fund, for one year, to continue implementation of the marine protected area monitoring program.

Staff Comments. The subcommittee acted, on May 7, to enact this shift to the Tidelands Oil Revenue (funding would be allocated to certain marine-related programs prior to general deposit of these funds into the General Fund). Staff continues to recommend this action.

3. **Expansion of Timber Regulation and Forest Restoration Funds.** The May Revision requests \$2.1 million (Timber Regulation and Forest Restoration Fund [TRF]) to provide information technology services and data collection for timber harvest regulatory activities related to grant programs. Provision language requests \$1.3 million be made available for expenditure; contingent upon approval by the Department of Technology.

Staff Comments. The project in question has not completed the normal information technology review process and, therefore, the Legislature does not have the information it needs to complete its review of the proposal. It is unclear whether or not the Department of Technology's internal geographic information system could be used to develop this system.

Staff Recommendation: Staff recommends the following actions:

- Item 1: Approve as proposed with the following changes: (1) limit ongoing funding to \$65,000 per year; and, (2) shift funding to Tidelands Oil revenue.
- Item 2: Reject (retain subcommittee's May 7 action).
- Item 3: Approve \$800,000, one-time, and require the department to return with the remainder of the proposal upon completion of review by the Department of Technology.

Vote:

Items 1 and 3: 2-1 (Nielsen, no) to approve

Item 2: 3-0 to reject (this retains previous subcommittee action)

3110 Tahoe Regional Planning Agency

Background. The Tahoe Regional Planning Agency (TRPA) is charged with developing environmental thresholds in order to guide development within the Lake Tahoe Basin. These thresholds range from near-shore water quality to mid-lake water clarity. The TRPA is required to prepare a threshold evaluation report every four years under the bi-state Tahoe compact.

Budget Proposal. The May Revision proposes to allocate \$375,000 from funds dedicated to the California Tahoe Conservancy (Lake Tahoe Conservancy Account), to fund an independent evaluation of the Tahoe Regional Planning Agency's environmental thresholds.

Staff Comments. The Tahoe Regional Planning Agency, a regulatory and permitting entity, is not appropriately funded by environmental license plate funds (ELPF). The funds proposed are dedicated to the use of the Tahoe Conservancy, which sustained a \$200,000 reduction in funds after the miscalculation of fund balance by the Department of Finance in the final 2014 budget. This subcommittee heard a discussion of the ELPF at two hearings and took the following action on May 7:

Approve uncodified trailer bill language requiring the department, in conjunction with Senate and Assembly staff, to convene a working group in fall 2015, in order to adjust the priorities of the ELPF to: (1) update PRC 21190 priorities; (2) equalize conservancy funding; (3) prioritize funding from specialty plates to those areas purchasing those plates (such as Tahoe); (4) reduce staffing costs attributed to ELPF and focus funding on projects; and, (5) reduce reliance on the ELPF for regulatory programs that are more appropriately funded by the General Fund.

The May Revision proposal is not consistent with item (5), referenced above. In addition to this, the Vehicle Code Section 5075, requires that Tahoe license plate funds be allocated only to the Conservancy, and only for "preservation and restoration projects in the Lake Tahoe Area and for establishing and improving trails, pathways, and public access for non-motorized traffic in that area." The money in these funds is strictly controlled by Section 5060 of the Vehicle Code. In particular, Section 5060(h) states that no more than 25 percent of the funds can be used for marketing, and that every organization under Title 8.4 (the Special Interest License Plate Program) "shall prepare an accounting of all revenues and expenditures associated with the special interest license plate program." Failure to report or otherwise expend the funds appropriately may subject the organization to suspension of the program (5060 (h)). The proposed fund shift to TRPA appears to be inconsistent with all of these provisions.

Staff Recommendation: Reject proposal. Require the Department of Finance to return in January with a proposal that is consistent with the subcommittee's actions on the ELPF.

Vote: 3-0 to approve as proposed but change funding to the General Fund.

3340 California Conservation Corps

Background. The California Conservation Corps (CCC) provides people between the ages of 18 and 23 work experience and educational opportunities. Program participants, referred to as corpsmembers, work on projects that conserve and improve the environment. They also provide assistance during natural disasters. Work projects are sponsored by various governmental and nongovernmental agencies that reimburse CCC for the work performed by corpsmembers. Corpsmembers often live in residential facilities that serve as a hub of CCC service delivery.

May Revision Proposals. The May Revision proposes:

- (1) Augmentation of \$200,000 (General Fund) in 2015-16 and \$700,000 in 2016-17 to conduct a residential center site selection and search, in order to increase the CCC residential centers.
- (2) Allocate \$5 million (Greenhouse Gas Reduction Fund) from the Department of Forestry and Fire Protection to the Conservation Corps for forest health projects targeted in high fire risk areas of the state under the Forest Health Improvement Projects program.
- (3) Re-opening of the Magalia Conservation Camp in Butte County (to be heard under the Department of Forestry and Fire Protection).

Staff Comments. This subcommittee heard testimony from the CCC on May 5 of this year, and focused on (1) the challenge of managing changing funding sources and priorities at the CCC; (2) how to determine long-term funding programs; (3) the continuing model of residential facilities; and (4) employment opportunities within state service for graduating corpsmembers. The Governor's proposal is consistent with the subcommittee's discussion and has merit. However, the development of residential centers, and the opening of previously closed fire camps, poses a policy question that should be discussed at length—what is the best future program model for the CCC? This question should be answered before the CCC embarks on its proposal to evaluate the expansion of CCC residential centers.

Staff Recommendation. Staff recommends the following actions:

- Item 1: Approve \$200,000 (one-time, General Fund) with supplemental reporting language requiring the CCC to include in its January 10, 2016 proposal, an evaluation of the appropriate number of permanent residential facilities and including analysis of other methods of program delivery (such as non-permanent camps and co-located residential facilities with community colleges).
- Item 2: Approve as proposed but shift funds from the Greenhouse Gas Reduction Fund to State Responsibility Area Funds (\$5 million).
- Item 3: Action taken under vote-only.

Vote:

Item 1: 3-0 to approve staff recommendation.

Item 2: 2-1 (Nielsen, no) to approve staff recommendation.

3480 Department of Conservation

Underground Injection Program

Background. The federal Safe Drinking Water Act (Act) allows for injection of fluids from oil and gas operations into certain (potentially) good quality aquifers that meet specific requirements and conditions. These are exempt aquifers. Within the state, there are approximately 2,500 oil and gas injection wells that have been operating in aquifers that may not have been properly exempted from the Act. The state is reviewing and evaluating these wells to determine in which cases it would be justified to propose an aquifer exemption application to the U.S. Environmental Protection Agency, or whether the wells should be plugged. The state and federal responsible agencies have developed a work plan to bring the remaining injection wells into compliance with the Act within two years.

Since June 2014, when a set of oil and gas waste disposal wells were ordered “shut in” by DOGGR, there have been a number of news stories released, as well as acknowledgements made by DOGGR, that numerous oil and gas related injection wells are improperly sited and present a risk of contamination to good quality groundwater used for drinking water and agricultural irrigation processes. Investigations by the U.S. Environmental Protection Agency and State Water Resources Control Board concur with this assessment and have raised a number of concerns about the way in which DOGGR manages the program, and protects groundwater quality.

The Senate Natural Resource and Senate Environmental Quality Committees held a joint oversight hearing on March 10, 2015, titled “Ensuring Groundwater Protection: Is the Underground Injection Control (UIC) Program Working.” Following that hearing, this budget subcommittee held an informational oversight hearing on the Department of Conservation Division of Oil, Gas, and Geothermal Resources (DOGGR).

Budget Actions. Beginning in 2010-11, the department acknowledged deficiencies in its programs and requested, during the May Revision process (three years in row), major changes to program funding. The budget committees concurred with the need for funds, but, having been given only two weeks to review these major proposals on more than one occasion, split the funding, instead requesting the department return with a long-term and comprehensive proposal. Between 2011 and 2013, the budget added 53 positions and over \$7 million in annual ongoing funding. The budget also required the department to annually provide updates on its UIC program for five years. To date the department has filed only one report.

Budget Request. The Administration makes the following requests in its April 1, Spring Finance Letter:

1. **Department of Conservation.** The Administration requests \$3.5 million (Oil, Gas, and Geothermal Administration Fund [OGGAF]), and 23 positions, to conduct extensive evaluations of the engineering and geologic conditions of aquifers into which injection has been occurring to help determine whether specific aquifers should be proposed for exemption under the Act. These positions are also proposed to support ongoing assessment and evaluation of compliance with the Act for further injection projects proposed by the oil and gas industry.
2. **State Water Resources Control Board.** The Administration requests \$828,000 (Waste Discharge Permit Fund) and six positions, and \$2.9 million (OGGAF) and 13 positions to perform inventory and enforcement activities for oil and gas produced water ponds in the Central Valley area. The request also includes technical reviews of aquifer exemption submittals, hydrological reviews of injection well proposals submitted by well operators, and related activities. The Water Board will also receive information on injection wells that the Department of Conservation has identified as out of compliance with the Act, and will identify known water supply wells to assess potential health threats or impacts to water supplies.
3. **Department of Water Resources.** The Administration requests \$625,000, on a one-time basis, to provide public access to well completion reports. The proposal includes trailer bill language to make well completion reports available to the public in part in order to improve public and governmental evaluation of water quality risks identified by injection wells.

Staff Comments. Staff continues to be concerned about the department's lack of focus on water resources in the state. The Central Valley Water Quality Control Board is actively reviewing surface and groundwater resources near underground injection wells, and both public and private entities are questioning DOGGR's various water quality exemptions, its record keeping, and its ability to manage this program. These items were discussed during the oversight hearing on March 19.

Staff Recommendation: Staff recommends the following actions.

1. Reject the Department of Conservation's April 1 Spring Finance Letter and instead approve these positions and funding to the State Water Resources Control Board to support their regulatory efforts.
2. Approve the State Water Resources Control Board proposal as proposed, but shift the \$828,000 from the Waste Discharge Permit Fund to OGGAF.
3. Approve Department of Water Resources well completion report proposal and trailer bill language.
4. Request the State Auditor review funding and program requirements of UIC program.

(Recommendations continue on the following page.)

5. Approve trailer bill language to:

- a) Codify the Water Board's implicit veto power over any activities DOGGR permits that impact water quality (e.g. aquifer exemptions).
- b) Allow the Department of Fish and Wildlife to access to open pits and ponds for regulatory purposes.
- c) Require an independent review of DOGGR and its operations, particularly the UIC program, to determine if some of its activities are better suited at other regulators.

Vote: (Staff recommendations.)

Items 1, 2, 3 and 5: 2-1 (Nielsen, no) to approve plus supplemental reporting language recommendation from the LAO to provide workload analysis.

Item 4: 3-0 to approve

Oil and Gas Data Management System

May Revision Proposal. The May Revision requests \$10 million (Oil, Gas, and Geothermal Administration Fund [OGGAF]), for the first year of a two-year project to develop and implement comprehensive database system. The Oil and Gas Data Management System is intended to be a web-based system that allows for electronic processing to make the permitting of wells more efficient and to provide a web-based reporting system for operators to report required well information. The system is intended to make non-proprietary well information easily searchable and available to the public. Provisional language is requested that specifies that the availability of the funds for the system is subject to project approval by the Department of Technology.

Previous May Revision Requests. Over the past five years, the department has, on more than one occasion, requested significant funding and positions in the May Revision. Each time, the justification has been that the department was not ready or did not have the proposal complete by the time the January budget was prepared. In each instance, the Legislature took the position that these proposals should have been vetted through the normal budget process, but given the challenge of bringing the department up to speed on its statutory obligations, allowed half of the proposal to go forward, requesting information from the department in the January 10 budget. Consistently, by January, the department was not able to demonstrate that it had filled even half of the positions allowed by the Legislature.

Staff Comments. Staff continues to be concerned about the department's significant management issues, and the quality assurance and control issues that continue to arise, particularly related to its underground injection program, monitoring fracking, and regulation of the oil industry. Staff is concerned that this proposal, one in a series of major proposals delivered during the Spring Finance Letter and May Revision process where less scrutiny will be afforded the proposal, is not appropriately scoped, and therefore implementation is questionable. Over the last five years, DOGGR has been reactive—requiring the Legislature, other state agencies and the federal government to step in, time and time again, to ensure that it understands and begins to address the major issues facing the state—including contamination of aquifers, fracking, and underground injection. This record makes it unclear how to evaluate proposals from the department, particularly those delivered with less than one month before the budget must be passed.

Staff Recommendation: Approve \$250,000 (OGGAF). Staff recommends approval of only the amount necessary to complete a feasibility study (estimated at \$250,000 by the department) and to scope their information technology problem. The project in question has not completed the normal information technology review process and therefore the Legislature does not have the information it needs to complete its review of the proposal. The proposal may require extensive review not afforded by the May Revision process. The department should resubmit this proposal in January, when complete with all approvals, for full review by the Legislature. The LAO also recommends additional review prior to approval of the proposal.

Vote: 2-1 (Nielsen, no) to approve \$250,000 (OGGAF)

3540 Department of Forestry and Fire Protection

Helicopter Replacement

Background. When fighting wildland fires, CalFIRE uses helicopters to quickly deliver fire crews and to perform water or retardant drops that slow the fires' spread. Helicopters are also used for other firefighting and fire prevention operations, medical evacuations, cargo transport, mapping, rescues, and other missions. The department currently has 12 helicopters that were acquired in 1990 through the Federal Excess Personal Property Program at no cost to the state. These helicopters were originally owned by the U.S. Army from 1963 to 1975 for troop and cargo transport. Once acquired by CalFIRE, these helicopters were modified for wildland firefighting at a cost of about \$500,000 per aircraft.

Previous Subcommittee Action. On April 9, the subcommittee acted to reject the Governor's January budget proposal for budget bill language that would have allowed the department to proceed with helicopter procurement without adequate legislative review. The LAO provided testimony about the proposal including: (1) the proposal provided very limited information; (2) the proposal made it difficult for the Legislature to weight tradeoffs; and, (3) ultimately the LAO recommends withholding action. The subcommittee's action does not impact the department's ability to solicit proposals for helicopter replacement.

Staff Comments. Staff met with the LAO, legislative staff and the department to discuss options available to increase legislative review of the proposal. Staff recommends budget bill language requiring the department to provide three options to the Legislature in the 2016-17 budget cycle, along with estimates for capital outlay and personnel costs for each option. The budget bill language is outlined below:

Staff Recommendation: Approve the following budget bill language:

3540-001-0001

Provision X. No later than January 10, 2016, the Department of Forestry and Fire Protection shall report to the Senate Committee on Budget and Fiscal Review and the Assembly Committee on Budget on three different options for replacing the existing helicopter fleet. The first option shall be replacement with helicopters available on the market that most closely resemble current helicopter capabilities while meeting current safety guidelines. This option shall not require any changes to existing infrastructure or increases in staffing levels, and shall not include any significant changes in helicopter functionality. The second option shall be helicopters with increased capabilities over the current fleet and that might require infrastructure changes but will not require increases in staffing. The third option shall be helicopters with increased capabilities that might require both changes in infrastructure and staffing. For each option, the department shall report on (1) an estimate of the one-time and ongoing costs to procure the helicopters and for any significant ancillary costs including infrastructure and operations, (2) an expected timeline for fleet replacement, and (3) the expected benefits to the state in terms of wildland firefighting abilities.

Vote: 3-0 to approve provisional language (above).

Fireworks Disposal

Background. Under state law, the Office of the State Fire Marshal (OSFM) within CalFIRE is responsible for the management and disposal of seized illegal fireworks. Fireworks may be declared illegal by federal, state, or local governments. Federal regulations designate some types of fireworks as illegal to be sold in the U.S. State law allows only certain fireworks legal under federal law—those designated as “safe and sane” by the OSFM—to be sold in California. Many local jurisdictions in California choose to ban the sale or use of any fireworks within their borders. Consequently, illegal fireworks seized by law enforcement agencies include those that are illegally made in or transported into the U.S., as well as fireworks that are legally purchased in one jurisdiction (including parts of California, in some cases) and brought into another jurisdiction where they are illegal.

Possession of illegal fireworks in California is usually a misdemeanor and is punishable by penalties ranging from \$500 to \$50,000, as well as possible incarceration, with the size of the penalty depending on the quantity of fireworks. Law enforcement agencies, such as the California Highway Patrol and local police, are authorized to seize illegal fireworks. Local fire departments may also accept drop-offs of illegal fireworks. Once the fireworks are seized, state statute requires the OSFM to properly dispose of them. Because seized fireworks are considered hazardous waste and are explosive, proper disposal can be dangerous, labor intensive, and costly. Many of the fireworks must be shipped to an out-of-state disposal site, at a cost of roughly \$10 per pound. Fireworks that cannot be shipped because they are unpackaged or unstable are incinerated at a cost of about \$30,000 annually. The OSFM estimates that around 100,000 pounds of illegal fireworks are collected annually, and that it would cost approximately \$600,000 if the state were to dispose of all collected fireworks in the state each year.

SB 839 (Calderon), Chapter 563, Statutes of 2007, increased the penalty amounts to the levels described above in order to fund the disposal of seized fireworks. However, the revenue generated from these penalties has never been sufficient to cover more than a small fraction of the program’s costs. The most penalty revenue collected in any given year was around \$30,000, and in some years, it has been as little as a few thousand dollars. It is unclear why the penalty revenue collected is so low. According to OSFM, the lack of ongoing funding for proper disposal has caused a backlog of illegal fireworks needing proper disposal. The OSFM estimated that there was a backlog of 250,000 pounds of fireworks as of August 2013. In 2012, a working group made up of various stakeholders was convened to address the issues surrounding seized illegal fireworks, including funding for disposal. However, the group did not issue a formal proposal. The Legislature approved one-time funding of \$500,000 from the General Fund in the current year to help address the backlog.

Previous Legislative Actions. In 2014, the budget committee approved \$1.5 million in one-time funding from the Toxic Substances Control Account (TSCA) to properly dispose of the current backlog of seized fireworks and an assessment on legal safe and sane fireworks sold in California to cover the ongoing costs of fireworks disposal. The trailer bill language required to approve the assessment did not pass.

May Revision Proposal. The May Revision proposal requests \$5 million (TSCA) to dispose of stockpiles of dangerous and illegal fireworks seized in 2014 and anticipated to be seized in 2015. Provisional language is requested to both allow for the use of TSCA by CalFIRE for this purpose and to ship illegal fireworks out of state for disposal. The proposal includes a discussion of the hazardous nature of illegal fireworks and a determination by the Department of Toxic Substances Control and applicable local air districts, to stop allowing emergency permits for the disposals of these materials.

Staff Comments. Staff is concerned that the Office of the State Fire Marshall may not have disposed of the hazardous materials in a manner consistent with state law. The determination of the Department of Toxic Substances Control that fireworks are considered a hazardous waste when disposed of should not be a surprise given the toxicity of the ingredients within the fireworks. The Office of the State Fire Marshall determined these fireworks were illegal and dangerous, and therefore an analysis of the hazardous nature of these materials is necessary. According to the department, these fireworks are now being shipped out of state to Louisiana to be disposed of in a federally-authorized Resource Conservation and Recovery Act (RCRA) facility. RCRA, enacted in 1976, is the principal federal law in the United States governing the disposal of solid waste and hazardous waste.

Further, the use of TSCA is appropriate to investigate the disposal of items within the State of California, but is not appropriate for the disposal of categories of public or privately held waste outside the state.

Staff Recommendation: Reject proposal. Instead:

- (1) Approve \$3 million (General Fund) for shipment of fireworks to appropriate RCRA certified disposal sites (out of state).
- (2) Approve \$500,000 (TSCA) for the Department of Toxic Substances Control, in coordination with the State Water Resources Control Board, to contract with an outside source to produce a protocol for disposal of these materials within the State of California, and for locals to increase incentives to impose penalties on the sale of illegal and dangerous fireworks.

Vote: 3-0 to approve item 1 (above).

Items 2: 2-1 (Nielsen, no) to approve

3960 Department of Toxic Substances Control

Background. The subcommittee heard testimony from the department on several budget proposals, and the status of the department, at its March 12 hearing. All items were left open in order for the department to continue to work with the Legislature to ensure that it is capable of meeting its regulatory mandates

Governor's Budget, Spring Finance and Site-Specific Proposals. The following budget proposals are proposed by the department:

	Proposal	Positions	Fund Source	Cost
1	Biomonitoring (including spring finance letter with a technical adjustment to align program resources by reducing overall expenditures by \$350,000 in 2015-16).	2 limited-term	TSCA (\$520,000) BDMPPF (\$80,000)	\$600,000
2	Laboratory Equipment Supplemental Environmental Project (AT&T judgment directing \$1.5 million to laboratory equipment replacement).	(none)	HWCA	\$1.5 million (one-time)
3	SB 1249 (Hill), Metal Shredder Regulation	6 limited-term	HWCA	\$527,000, reducing to \$128,000 ongoing by year three
4	Golden Technology—Expedited Remediation. Proposal to reimburse claimants for the orphan share associated with cleanup activities at the Golden Technology Site in the City of Santa Rosa. This includes a technical shift to provide support for this appropriation and to revert an unencumbered fund balance.	(none)	Expedited Site Remediation Trust Fund	\$3.4
5	Permit and Enforcement Backlog Reduction	16 limited-term	HWCA	\$1.6 million
6	Exide 2014 Enforcement Order	5.5 permanent	HWCA	\$734,000
7	Hazardous Waste Reduction	6 limited-term	TSCA	\$840,000

TSCA: Toxic Substances Control Account

HWCA: Hazardous Waste Control Account

BDMPPF: Birth Defects Monitoring Program Fund

May Revision Proposals. The department requests a total of 17 new positions with limited-term funding, 11 permanent positions, and \$7.6 million (multiple funds) for the following in the May Revision:

- **Enhanced Enforcement Initiative.** The May Revision proposal requests \$2.1 million (\$222,000 HWCA and \$1.9 million TSCA) and 11 positions, to implement and evaluate approaches to address environmental violations in vulnerable communities. The proposal would focus inspection and enforcement resources on the metal recycling industry and the hazardous waste transportation industry. The proposal requests trailer bill language allowing the use of TSCA for these purposes.
- **Hazardous Waste Enforcement Program Improvements.** The May Revision proposal requests \$1.4 million (TSCA) for two years to conduct a review of its hazardous waste management enforcement program. Specifically, the department proposes an assessment of its enforcement program including evaluation of workload, inspections, investigations, policies and statutory mandates. The proposal requests trailer bill language allowing the use of TSCA for these purposes.
- **Federal Funding Loss and Position Redirection.** The May Revision requests to shift \$2.4 million from federal funds to TSCA, and shift of 18 positions, in the Site Mitigation and Brownfields Reuse Program, to support the mandatory state response and oversight of the National Priority List (NPL) site cleanup. This program requires the state to oversee active site cleanup programs, including federal military sites. The department anticipated federal funding for military site cleanup that has not materialized.
- **Safer Consumer Products.** The May Revision proposal requests six limited-term positions and \$643,000 (TSCA), to allow the department to expand research capabilities and accelerate the rate in which consumer products containing toxic chemicals can be evaluated and identified for inclusion in the Safer Consumer Products Program.

Staff Comments. The department has requested a total of 47 limited-term positions and 16.5 permanent positions, along with 18 positions that are sustained after losing federal funding. Funding requests are over \$10 million from multiple funds. Though staff will make recommendations on individual budget proposals, in sum, the package is a major change in the department's programs.

Staff concurs with the need to continue the Biomonitoring program, in order to continue to reduce permit and enforcement backlogs, to enforce the 2014 Exide order, and to fund the legislatively-mandated metal shredder regulation. Staff has the following concerns with the overall package:

- **Limited-Term Positions versus Permanent.** It is clear that the ongoing permitting positions requested as limited-term will not be sufficient given the increasing workload the department faces as it begins to manage its regulatory responsibilities. At the same time, the department must be measured by strong standards given its history of enforcement failures. Limited-term positions are not easy to fill, and once filled, the person in the position must be moved at the

end of the two-year term. This is not conducive to a long-term enforcement and management plan.

- **Funding Choices Unclear.** Both TSCA and HWCA are structurally imbalanced. They are not, however, interchangeable. It is unclear why the Administration has proposed TSCA for a number of the proposals before us. For example, the May Revision proposal to enhance enforcement on the hazardous waste transportation industry is paid for by TSCA, not the more appropriate HWCA, into which this industry pays. A number of the May proposals proposed by TSCA should be, at least in part, funded by HWCA.
- **May Revision Proposals Do Not Allow Time for Review.** The May Revision proposals, while somewhat in line with what the department has stated are its goals, require extensive review not afforded by the May Revision process. Staff do not believe there is sufficient time for review and will recommend the department resubmit these proposals in January for full review by the Legislature, after oversight and independent reviews are conducted (see below).
- **Major Policy Proposal—Hazardous Waste Reduction—Proposed Before Program has been Evaluated.** Item 7 (page 19): The Hazardous Waste Reduction proposal, should be rejected and sent to the policy committees. As discussed on March 12, the goal of reducing hazardous waste is laudable and consistent with legislative direction in previous years. However, this specific initiative has not been reviewed by legislative policy committees. Staff has concerns about setting such specific goals, such as the reduction of 50 percent of hazardous waste disposed of, without some form of legislative direction.
- **Oversight and Independent Review Necessary.** The department has not proposed actions that would provide overall oversight of activities the Legislature has raised as issues in the previous two years. For example, the department's "Fix the Foundation"—a solid effort that would result in greater prioritization of program actions, review of management and personnel, and a review of funding needs throughout the department—has, in part, been sidelined. At the same time, the Administration continues to limp the department along with limited-term positions and minor changes to programs. Oversight and independent review of the department is critical to moving forward, and will inform the Legislature prior to approval of additional positions and funding.

Staff Recommendation: Staff recommends the following actions:

- (1) Approve the following proposals as proposed: (1) Biomonitoring; (2) Laboratory Equipment Supplemental Environmental Project; (3) SB 1249 (Hill), Metal Shredder Regulation; and, (4) Golden Technology—Expedited Site Remediation.
- (2) Approve Permit and Enforcement Backlog Reduction (\$1.6 million [TSCA]), and approve the 16 requested positions as permanent. Require reporting language that requires the department to report by April 1, 2016, on: (1) the status of permits completed compared to commitments made in the budget acts of 2014-15; (2) number and status of permit modifications, emergency permits, and new permits; (3) use of EnviroStor for compliance measures (including those prior to 2008); and, (4) implementation of staff training, quality control and data inspection and reporting of enforcement actions prior to 2008.
- (3) Approve Exide Enforcement Order (\$734,000 [HWCA]) and 5.5 permanent positions. Require reporting language that requires the department to report by April 1, 2016, on: (1) the status of the implementation plan referenced in the 2015-16 budget proposal; (2) time and cost for implementing the Stipulation and Order; (3) status of the onsite investigation and cleanup efforts; and, measures taken to increase community involvement.
- (4) Approve budget bill language reducing the department's overall budget by 50 percent should the required reports (Items 2 and 3) not be submitted on time.
- (5) Reject the Hazardous Waste Reduction funding, positions and trailer bill language. This item is a policy bill that should be vetted through the appropriate policy committees.
- (6) Approve trailer bill language requiring:
 - a. Establishment of three-person, independent review panel, to oversee the department's activities, and to report to the Legislature and Governor, every 90 days, on the department's performance—specifically related to permitting and enforcement backlog reductions and meeting its legislative mandates. The panel shall include one person, each, appointed by the Assembly Speaker, Senate Rules, and the Governor. One person must be a community representative, one person must have scientific expertise related to toxic materials, and one person must be a local government management expert.
 - b. The panel will advise department's compliance with Health and Safety Code 57007, which requires the department to establish an Office of Performance, Accountability and Transparency. This office shall be established no later than December 31, 2015. The office will, provide an internal auditing function and an ombudsman function. The office will ensure that all programs are fully evaluated and, where appropriate, recommend additional measures be implemented to address uncertainties or gaps in the protectiveness of the decision-making process.

- c. Require the department to submit, as part of its January 2016 budget, a proposal implementing the panel's recommendations.
 - d. The panel shall be provided two internal staff, per diem and reimbursement for travel and reasonable business expenses, up to \$50,000.
 - e. The panel will be required to review reports and suggests on reporting obligations required of DTSC, make recommendations for improvement to programs.
- (7) Reject all May Revision proposals. These proposals require extensive review not afforded by the May Revision Process. The department should resubmit these proposals, along with permanent funding and positions evaluation, in January 2016.

Vote (recommendations 1-7):**Item 1:**

Issues 1 and 3: 2-1 (Nielsen, no) to approve recommendation
Issues 2 and 4: 3-0 to approve recommendation

Item 2:

Issues 1 and 2: 3-0 to approve recommendation
Issues 3 and 4: 2-1 (Nielsen, no) to approve recommendation

Items 3, 5 and 7: 3-0 to approve

Items 4 and 6: 2-1 (Nielsen, no) to approve

8660 California Public Utilities Commission**Commission Accountability**

Background. The Senate and Assembly budget subcommittees have, over the past three years, focused attention on the ability of the CPUC to ensure fair and reasonable energy rates, while fulfilling its statutory mandates. To this end, the subcommittees collaborated with policy committees, the Joint Legislative Audit Committee, and the Office of State Audits and Evaluations (OSAE), to investigate the CPUC's internal management. Certain of these endeavors are highlighted below. These issues were discussed at length at the subcommittee oversight hearing on April 23 of this year.

As discussed at that hearing, nearly every audit of the CPUC programs in the past ten years identified, "significant weaknesses," within the program or function identified during the audit. The subcommittee heard testimony that the CPUC used funding from vacant positions to support information technology and training programs, rather than for their specified purpose. The subcommittee also heard testimony about the criminal probes launched by state and federal investigators, an outside contract of \$5 million for criminal defense of the commission, and public requests for information. Since that time, it has come to light that a second contract of over \$1 million has been let to review public requests for information.

The subcommittee acted to approve the CPUC's requests for positions (mainly auditors), and held open a proposal to require the CPUC to return funding from vacant positions annually to ratepayers, rather than to continue to allow the funding for these positions to be used for other purposes. The subcommittee also held open a proposal to reduce the CPUC's baseline budget by \$5 million (the amount of the outside contract).

Assembly Actions. The Assembly Subcommittee No. 3 on Resources and Transportation took action on May 13, to adopt the Senate's recommended actions, and added several enhanced oversight and accountability actions as well. Specifically, they acted to:

- 1. Reduce CPUC's State Operations budget by \$5 million.
- 2. Adopt trailer bill language requiring the CPUC to notify the JLBC semi-annually of any redirection of funding and/or positions.
- 3. Direct the California Research Bureau, in consultation with appropriate state entities, using CPUC funds, to make recommendations (outlined above) related to improving oversight, regulation and efficiency of CPUC's duties with regard to energy, communications, transportation and utility safety enforcement and water.
- 4. Reduce funding for the San Joaquin Valley to implement AB 2672 (Perea), Chapter 616, Statutes of 2014, (consultant funding) from \$500,000 to \$250,000 (in both 2015-16 and 2016-17), as recommended by the LAO.

- 5. Adopt budget bill language that prohibits the CPUC from redirecting any of the approved audit positions (approved in this subcommittee on April 23) and any existing base positions in these audit areas. Require the CPUC to report back to the subcommittee during the 2016 spring budget process on the outcomes of the various audits.
- 6. Adopt trailer bill language to provide that Office of Ratepayer Advocate's legal resources within its existing budget be used for attorneys that administratively report to the Office of Ratepayer Advocates.

May Revision Proposal. The Administration also requests various trailer bill changes to the New Solar Homes Partnership Program, net metering, and interconnection dispute resolution. The Administration did not submit budget proposals for any of these items. The LAO has recommended rejection of these items as they are policy proposals more appropriate to the policy bill process.

Staff Comments. The Assembly actions mirror the recommended Senate actions from the April 23 hearing and further restrict the CPUC from redirecting positions and funding without legislative approval. These proposals are changes in policy that require extensive review not afforded by the May Revision process. The department should seek policy bills to make these statutory changes.

Staff Recommendation: Conform to Assembly actions. Reject May Revision trailer bill proposals.

Vote:

Items 1-3, 5-6: 3-0 to approve recommendation

Item 4: 2-1 (Nielsen, no) to approve recommendation