

Senator Josh Becker, Chair
Senator Ben Allen
Senator Catherine Blakespear
Senator Brian Dahle



Thursday, March 14, 2024
9:30 a.m. or Upon Adjournment of Session
1021 O Street - Room 2200

Consultants: Diego Lopez and Joanne Roy

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VOTE-ONLY

0555 CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY (CALEPA)

Issue 1: CalEPA Environmental Complaint System: Enhancing Transparency and Accountability

Governor's Proposal. The Governor's budget requests \$676,000 increase in reimbursement authority (includes a one-time request for \$230,000) and two permanent positions in 2024-25 to stabilize the CalEPA Environmental Complaint System and ensure that CalEPA is responsive, transparent, and accountable in addressing community complaints about environmental problems.

The one-time funding via reimbursement authority of \$230,000 for contracted services to conduct security analysis, implement enhancements to align system with current business needs and objectives, and Salesforce training for IT staff.

Background. The CalEPA Environmental Complaint System is a complaint routing and tracking system that allows California residents, businesses, and agencies to submit environmental concerns or environmental referrals related to air, water, solid waste and recycling, pesticides, and hazardous waste for further review, investigation, and response by the appropriate regulatory agency or agencies. The Complaint System is intended to ensure that government is responsive and transparent in addressing environmental concerns within CalEPA's jurisdiction.

The current Environmental Complaint System was developed in 2016 on the Salesforce platform using contracted services. CalEPA has also implemented two additional applications in the Salesforce platform. Currently there is one IT position allocated part time to support CalEPA's Salesforce environment, including all maintenance, operations, and system enhancement tasks. Due to the continuous workload and lack of internal resources, continued contractor resources were needed to support the systems.

As business needs change, the lack of resources to support the Complaint System has resulted in the system becoming increasingly misaligned with current business needs and objectives. In late 2022, the California Department of Technology (CDT) conducted a stabilization assessment on the Environmental Complaint System. The assessment highlighted several areas of deficiencies and provided specific recommendations to ensure its stability. This proposal seeks the resources needed to implement the recommendations made by CDT.

Staff Recommendation. Approve as budgeted.

Issue 2: California Environmental Reporting System Project

Governor's Proposal. The Governor's budget requests \$ 3.17 million Unified Program Account one-time to implement a technology refresh on the California Environmental Reporting System (CERS). This includes continued funding for five permanent positions previously approved in the 2022 Budget Act. The project will update the technical platform, improve data quality and the processes supporting data quality, and will modernize a critical public-facing system that enables more than 160,000 businesses

and 104 local regulators to meet their legal reporting obligation.

Background. CalEPA oversees the statewide implementation of the Unified Hazardous Waste and Hazardous Materials Regulatory Management Program (Unified Program) that applies regulatory standards to over 160,000 facilities in California. CERS is a web-based application. In 2011, CalEPA deployed CERS to collect and report regulatory data from CUPAs. All regulated businesses and CUPAs regularly use CERS to submit data to the CUPAs and Participating Agencies electronically. In 2020 the CERS application received over 500,000 regulatory submissions. Over one million electronic transfers between CERS and CUPA data systems were completed.

Staff Recommendation. Approve as budgeted.

3900 CALIFORNIA AIR RESOURCES BOARD (CARB)
3940 STATE WATER RESOURCES CONTROL BOARD (SWRCB)
3970 DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY
(CALRECYCLE)

Issue 3: CalEPA Bond and Technical Proposals

Governor's Proposal. The Governor's budget requests various bond appropriations, reappropriations, and reversions; and non-bond technical adjustments to continue implementation of existing authorized programs.

Staff Recommendation. Approve as budgeted.

3930 DEPARTMENT OF PESTICIDE REGULATION (DPR)

Issue 4: California Pesticide Electronic Submission Tracking (CalPEST) Project

Governor's Proposal. The Governor's budget requests \$4.4 million DPR Fund for 2024-25; \$4.1 million in one-time funding with a two-year encumbrance period, and \$318,000 ongoing funding to provide ongoing support for the system. The funds requested in this proposal will be used to continue the fourth year of development of the CalPEST system. The first round of implementation, making the system available to all internal and external users, is anticipated for August 2024.

Background. Pesticide products and certain structural pest control devices are required to be registered by DPR before the pesticide can be sold, distributed, or used in California. The registration process is currently paper-based and managed manually and sequentially, with limited supporting technology across disparate systems. DPR worked with the California Department of Technology's Statewide Technology Procurement to conduct a three-phase challenge-based procurement from July through December 2021. The system integrator contract was awarded in January 2022.

Staff Recommendation. Approve as budgeted.

3940 STATE WATER RESOURCES CONTROL BOARD (SWRCB)

Issue 5: Enforcement Support for Permanent and Sustainable Drinking Water Solutions

Governor’s Proposal. The Governor’s budget requests one permanent position and \$250,000 ongoing resources from the Safe Drinking Water Account to support the Division of Drinking Water’s (DDW) efforts to implement solutions for communities lacking safe drinking water and enforce the Safe Drinking Water Act. The Office of Enforcement (OE) will provide dedicated enforcement resources to help expedite DDW’s efforts to address systems on the Human Right to Water list and provide consistency in structure and performance between DDW’s enforcement program and other SWRCB program areas. This position would be a dedicated Attorney position within OE to support DDW’s enforcement efforts.

If approved, this Attorney position within OE would assist with legal, analytical work, investigations, progressive enforcement, and formal enforcement of violations of the Safe Drinking Water Act and associated regulations. The one Attorney position will work on matters referred by DDW, particularly where a system is unresponsive to DDW’s compliance assistance efforts and/or in situations where the system is a recalcitrant or repeat violator or has egregious violations, such as violations of a maximum containment level. Currently, OE has one Attorney III (redirected from Office of Chief Counsel to OE in April 2022) dedicated to providing legal support to DDW in drinking water enforcement matters.

Background. DDW is responsible for the implementation and enforcement of safe drinking water laws and regulations and the regulatory oversight of approximately 7,500 public water systems. Enforcement plays a vital role in providing safe drinking water and can be utilized to address unlicensed or chronically non-compliant systems, improve data collection, ensure regulatory compliance, and achieve better management practices.

DDW is progressing towards a stronger statewide enforcement culture and more routinely utilizes enforcement tools, such as citations, compliance orders, and permit revocations when public water systems violate Safe Drinking Water Act requirements. With more routinized enforcement actions, there is a need for support from the OE to further assist with enforcement consistency among the Districts and Local Primacy Agencies, to facilitate coordination and information sharing, and to integrate drinking water more fully into SWRCB’s enforcement portfolio.

Staff Recommendation. Approve as budgeted.

Issue 6: Establishment and Implementation of Instream Flow Objectives in the Scott River and Shasta River Watersheds

Governor’s Proposal. The Governor’s budget requests \$711,000 in ongoing funding from the Water Rights Fund for two permanent positions to support establishing and implementing long-term instream flow objectives in the Scott River and Shasta River Watersheds.

Background. SWRCB has primary authority over water quality under both the Porter-Cologne Water Quality Act and the federal Clean Water Act. This includes the authority to adopt water quality objectives, including flow objectives, and programs of implementation to achieve those objectives. SWRCB may implement flow objectives by specifying minimum bypass flows in conditions of a water right or by establishing minimum instream flows and curtailing water rights in order of priority. SWRCB

can also implement flows through its Clean Water Act water quality certifications associated with Federal Energy Regulatory Commission hydroelectric projects.

Instream flow needs are currently assessed and implemented in two main ways: (1) as part of processing individual water rights applications or (2) through case-by-case enforcement against unauthorized diversion. These approaches do not provide the broader flows needed for fisheries protection because degraded flow and habitat conditions may occur without any individual unauthorized diversion of water. A broader approach to establish and implement flows in the Scott River and Shasta River is intended to make better use of resources than the current water right-specific permitting and enforcement actions used to address inadequate habitat and flow.

This proposal is intended to complement SWRCB's core permitting and enforcement activities and move beyond drought emergency response (that provided immediate and interim fish protection) to long-term protections for the critical fish species in the Scott River and Shasta River watersheds.

Staff Recommendation. Approve as budgeted.

Issue 7: Gualala River Total Maximum Daily Load (TMDL) Stipulated Settlement Agreement

Governor's Proposal. The Governor's budget requests \$1.706 million Water Discharge Permit Fund (WDPF) in 2024-25 and three permanent positions in response to a lawsuit and required actions outlined in a court-approved Stipulated Settlement Agreement that resolved the litigation. This request includes \$1 million in contract funding each year over the next five fiscal years then \$706,000 annually thereafter.

This proposal is intended to support the North Coast Regional Water Quality Control Board's (RWQCB) efforts to: 1) satisfy the terms of a Stipulated Settlement Agreement; 2) comply with the Porter-Cologne Water Quality Control Act; and 3) fulfill the agency's obligations under the federal Clean Water Act to protect and restore the Gualala River watershed from its sediment impairment.

Background. Recent analyses of the composition of the Gualala River watershed's land distribution shows that there are more than 3,300 individual land ownerships in the watershed, ranging in size from a few acres up to 30,000 acres. Additionally, there are more than 1,600 miles of road within the watershed, and hundreds of individual watercourse crossings that may necessitate individual assessments from professionals familiar with erosion and sediment control.

On July 14, 2021, the Friends of the Gualala River (FOGR) filed a lawsuit alleging the North Coast RWQCB abused its discretion when it enrolled the Gualala Redwood Timer Company's timber harvest plan (THP) under its permit for timber general waste discharge requirements (GWDR) because the enrollment of the THP in the Timber GWDR did not implement the Gualala River TMDL. Additionally, FOGR alleged that the North Coast RWQCB was not meeting federal requirements to incorporate the Gualala River TMDL into its Basin Plan.

The Settlement Agreement obligates new responsibilities upon the North Coast RWQCB, including the creation of a new regulatory program to address road-related sediment discharges on private lands in the Gualala watershed. The North Coast Region has found through experience that efforts to assess, prioritize, and implement actions to remediate poorly constructed roads are complex, difficult, and time-consuming. This work requires technical expertise applied on the ground to ensure activities are done in a manner that improves water quality. Additionally, the work associated with developing Basin Plan amendments, programs of implementation, and non-point source permits is complex and takes

significant time and resources both due to the nature of the process as well as the extensive outreach needed to meet legal obligations and to successfully engage with a large group of property owners and stakeholders.

The assessments and the treatments of controllable sediment discharge sources are expensive, and the North Coast RWQCB anticipates that the three staff and the associated contract resources will be fully utilized in the integration of the Gualala River TMDL into the Basin Plan, the development of the program of implementation and the new implementing order, and the various implementation actions that follow. The contract funding resources being requested is intended to help facilitate the prioritization of treatment areas, including some evaluation of the watershed's contemporary conditions, and to support assessment and implementation efforts. This contract is viewed as fundamental to the long-term success of the program of implementation.

Staff Recommendation. Approve as budgeted.

Issue 8: Information Security and Privacy Office Staffing

Governor's Proposal. The Governor's budget requests \$629,000 ongoing from various funds (Waste Discharge Permit Fund; Safe Drinking Water Account; Integrated Waste Management Account, Integrated Waste Management Fund; Underground Storage Tank Clean Up Fund; Oil, Gas, and Geothermal Administrative Fund; Water Rights Fund; Timber Regulation and Forest Restoration Fund; and the State Water Pollution Control Revolving Fund Administrative Fund) to enhance the Information Security Office (ISO) staffing capabilities and establish a new Privacy Office. SWRCB requests four permanent positions to provide staffing needs in the areas of Privacy, Technical Security and Informational Security Compliance.

ISO requires additional staff to organize into teams (Security Operations and Compliance) with specific functionalities to effectively monitor, analyze cyber-threats, maintain documentation compliance, and ensure the organization maintains a high level of cybersecurity hygiene.

The creation of a separate Privacy Office is intended to ensure the separation of duties, thereby reducing risk associated with conflicts of interest between Information Security Officer/Office and Privacy Officer/Office while under the same reporting structure. This BCP request is intended to bring SWRCB into compliance with specified requirements that include the separation of duties between the Information Security and Privacy Officers and the establishment of a SWRCB Privacy Program.

Background. With a current staffing level of three positions, the Information Security Office (ISO) provides a minimal level of cyber-threat analysis and operates in a reactionary environment against cyber-threats. Due to limited staffing resources, proactive threat analysis activities cannot be conducted. Compliance documentation activities are also conducted at a minimum level with the ISO struggling to produce new and updated policies and procedures. Additionally, ISO does not have the dedicated staffing resources necessary to conduct required risk assessments or document System Security Plans on the 70 applications SWRCB uses to conduct its daily operations. Non-compliance with this documentation has been documented in previous California Department of Technology, Office of Information Security audits and is tracked on the quarterly submission of the Risk Register Plan of Action and Milestones (RRPOAM) report.

ISO needs to adapt to an increasingly complex cyber-threat and compliance environment. Current staffing levels cannot address the required network monitoring, incident response needs, and the daily

inquiries and compliance regimens generated by an organization of 2700+ employees.

Privacy has been a subdomain of the Information Security Office and initially did not have separate privacy security controls or compliance requirements. Within the last five years, the field of Privacy has evolved into a specialized field which now complements Information Security. SWRCB has not separated the ISO and Privacy Office functions and because of the increasing demands on Information Security Staff, such as increased cyber-threats, compliance requirements, security, and audit assessments, SWRCB is unable to implement mandated privacy requirements and compliance obligations for protecting the private information of SWRCB staff and members of the public. Additional resources are needed for the creation of a new Privacy Office/Program.

Staff Recommendation. Approve as budgeted.

Issue 9: New Groundwater Recharge Permitting Unit

Governor's Proposal. The Governor's budget requests \$1.2 million in on-going funding from the Water Rights Fund to support five positions to help expedite groundwater recharge permits. The proposed positions – four within the Division of Water Rights and one within the Administrative Hearings Office (AHO) – would review recharge applications, implement new recharge reporting requirements, coordinate with applicants and the Department of Water Resources (DWR) on future recharge projects, help address the water rights permitting backlog, and support hearings for protest resolution.

This proposal would establish four positions within the Division to expedite the review and approval of groundwater recharge permit applications, provide technical assistance to applicants, develop an equitable approach for processing applications for groundwater recharge, and ensure projects are consistent with water rights priorities and protections for fish and wildlife. This proposal would establish one position within the AHO to support the expected increase in water right hearings.

Background. Because each groundwater recharge project is unique, it can take SWRCB staff 400 hours (temporary filing) to 1,900 hours (standard filing) on average to process a single groundwater recharge permit, where action may be taken without a water rights hearing. The timeline for processing permits also varies, temporary permits can be completed within about four months while standard permits can take multiple years. At present, SWRCB has six staff with their time predominantly dedicated to groundwater recharge permitting activities. These staff typically conduct limited program development and outreach activities, historically process an average of four temporary permit applications per year, and process multiple ongoing standard water rights applications, including other major projects.

California's growing emphasis on groundwater recharge led to a sharp increase in permitting activities during the 2022-2023 wet season. This included a record number of recharge permits (11) and new reporting requirements that have since been made permanent. SWRCB's current permitting program cannot absorb the increased workload stemming from the new interest and laws.

Local agencies are proposing 340 recharge projects over the next seven years. That equates to about 43 projects per year. It is likely not all those proposals would result in applications for surface water diversion, but it is safe to estimate that at least half will. SWRCB does not have the staffing available to process an additional 21 projects per year because of chronic understaffing and the emergency drought. This proposal would help achieve the goals of the Water Supply Strategy to expand average annual groundwater recharge by at least 500,000 acre-feet and support California's investment in groundwater recharge projects.

There has long been an imbalance in the amount of water rights work (high) compared to the number of water rights staff (low). For example, the permitting section consists of 21 staff and is working on a backlog of 300 applications. Permitting staff focus on finalizing applications, which includes identifying applications that are not being diligently pursued (cancellation), and situations where the necessary findings cannot be made to issue a permit (denial). The permitting section has concentrated efforts in recent years to identify candidates and transfer long-pending applications and other highly complex permitting related matters to the AHO to assist with reaching final action. On average, the permitting section issues 12 permits per year and receives 16 new filings.

The four new positions requested in this proposal would double SWRCB's groundwater recharge permitting capacity, allowing staff to heighten awareness of permitting options through outreach and pre-filing consultations and to boost temporary and streamlined standard applications filings. The additional one position with the AHO is expected to increase the AHO's ability to achieve resolution of water rights permitting proceedings by approximately 50 percent.

These new positions would also continue coordinating with DWR on stakeholder education and outreach related to the existing 180-day temporary permit processes, options for reducing regulatory barriers for local agencies, technical assistance for potential applicants, and assessing water available for recharge. DWR is prioritizing groundwater recharge projects that demonstrate the feasibility of capturing available high flows to recharge local groundwater while minimizing flood risks. Since August of 2022, the Division has met with DWR on a weekly basis to coordinate on groundwater recharge permit applications. The effort resulted in temporary permits for two new projects during the winter of 2022-2023. This collaboration is expected to continue.

Staff Recommendation. Approve as budgeted.

3960 DEPARTMENT OF TOXIC SUBSTANCES CONTROL (DTSC)

Issue 10: Climate Change Resiliency at Toxic Waste Sites

Governor's Proposal. The Governor's budget requests five permanent positions with funding of \$1.6 million in 2024-25, and \$1.2 million ongoing from the Toxic Substances Control Account (TSCA). DTSC also requests reimbursement authority in 2024-25 of \$385,000 and \$199,000 in 2025-26 for the department to accept funding from the California Natural Resources Agency.

These resources are intended to assess the impacts of climate change on the cleanups at current, historical, and future toxic waste sites and to address those impacts as warranted. DTSC intends to use these resources to enforce the assessment of vulnerabilities at toxic waste sites due to climate change impacts, ensure adaptation plans are prepared to increase remedy resiliency where necessary, provide public information to stakeholders, and prioritize actions where the risks are greatest and threats to vulnerable communities are most severe.

The department proposes to do the following:

- Enhance current GIS-based mapping tools in EnviroStor to facilitate inventorying and prioritizing sites in locations most likely to be impacted by climate change.
- Prepare and regularly update guidance documents for DTSC project managers to assist in

evaluating both active and historic toxic waste sites against various climate change impacts.

- Prepare and implement an internal workplan for climate change activities including identification of resource gaps and prioritization of active and historic sites vulnerable to climate change impacts.
- Develop and implement needed protective measures at orphan sites.
- Perform and/or review the engineering and scientific evaluation of climate change impacts to assure a protective remedy at toxic waste sites utilizing best available science.
- Track and integrate the rapidly evolving body of scientific data and policies regarding climate change into site mitigation approaches.
- Work across state government agencies and with local governments and communities to help them craft pathways of adaptation to help maintain the protectiveness of toxic waste sites in their communities.
- Prioritize sites in vulnerable communities and communicate with the public and stakeholders and respond to their input on the approaches for addressing climate change on toxic waste sites.

A workload analysis indicates a minimum of five permanent positions are necessary to address the immediate needs and provide long-term framework enhancements, training, and ensure remedy resiliency at cleanup sites.

Background. As the lead state agency at toxic waste sites, DTSC must ensure ongoing remedial action and the state's previous investments at historic sites are maintained and safeguards taken to prevent future response costs. With climate changes occurring rapidly, DTSC must act now to protect public health and the environment from possible detrimental effects of climate change on the protectiveness of decisions at toxic waste sites.

DTSC's strategy is to leverage existing expertise on climate change and toxic waste site issues by working across federal, state, and local governments and communities to apply the tools, guidance, and processes to establish pathways of adaptation that continue to protect the public at sites threatened by climate change.

Staff Recommendation. Approve as budgeted.

Issue 11: Meeting Public Demand for Timely Site Cleanup in the Bay Area

Governor's Proposal. The Governor's budget requests \$1.7 million TSCA in 2024-25 and ongoing, \$800,000 in reimbursement authority in 2024-25 and ongoing, and nine permanent positions to enable the timely cleanup of contaminated sites in the Bay Area. The work performed by the additional site mitigation staff will yield reimbursements of at least 50 percent of the costs through standard voluntary agreements and orders as part of DTSC's cleanup and brownfields redevelopment work.

This request is intended to manage increasing workload related to site cleanups overseen by the Berkeley branch of DTSC's Site Mitigation and Restoration Program (SMRP). This includes eight positions in SMRP, which are reimbursable, and one position in the Office of Environmental Equity (OEE), which is not reimbursable. The purpose of this proposal is to authorize positions for the Berkeley branch that would enable addressing the projects that come in more quickly, and thereby enable maintenance of a steadier workload.

Background. The staffing level for the Berkeley branch has not kept pace with the increase in the

number of contaminated sites in its jurisdiction requesting oversight. Since DTSC is currently unable to clear active sites through certification as quickly as new sites are added, DTSC has fallen behind in its ability to provide proper oversight.

SMRP staff work on a portfolio of projects over the course of a year. Some projects will be reimbursable—particularly voluntary agreement projects—while other work is not, such as work on orphan site projects or work not directly billable to specific sites. DTSC reviewed 2021-22 actuals by position type/classification at the Berkeley office to determine the share of time attributable to reimbursable projects and found it to be slightly more than 50 percent.

The Berkeley branch executed 36 agreements or orders for oversight per year on average between 2017 and 2022. In 2022-23, the Berkeley branch received 35 applications for oversight, and redirected as many as possible to other DTSC branches, SWRCB, and local county partners because accepting more projects would result in more projects being delayed. However, when a county turns to DTSC for assistance, DTSC is not in a position to refuse because DTSC is the lead oversight agency. In addition, DTSC was selected as the state agency to provide oversight for some sites for consistency with the Memorandum of Agreement (MOA) between DTSC and SWRCB. Therefore, even while minimizing the number of new sites, the Berkeley branch still executed 18 agreements in 2022-23.

The number of sites that have completed remedies and can be certified has decreased in recent years as a result of the increasing staff workload. When staff are spread thin across an increasing number of projects, turnaround times increase, and projects that would reach certification relatively quickly in the past are delayed. Since the current number of authorized positions is not sufficient to certify sites at a rate that would keep the number of active sites steady, there has been significant growth in the number of active sites. Berkeley staff are working to advance projects, but cannot keep up with the number of new orders and agreements coming in.

Staff Recommendation. Approve as budgeted.

Issue 12: National Priorities List and State Orphan Sites

Governor’s Proposal. The Governor’s budget requests a transfer of \$20.5 million from TSCA to the Site Remediation Account (SRA) and \$20.5 million expenditure authority from SRA in 2024-25 to fund the state's National Priorities List (NPL) obligations and state orphan sites.

Background. In partnership with the US Environmental Protection Agency (USEPA), DTSC acts on behalf of the state to remediate sites listed on the NPL. NPL sites are among the most heavily contaminated and difficult to remediate toxic waste sites in the nation. When no viable responsible party can pay for the work at these sites, the federal Comprehensive Environmental Response, Compensation, and Liability act (CERCLA) authorizes investigation of the site to be paid for with federal funds and for response actions to be paid for with a mix of federal and state funds.

Under CERCLA, at NPL sites where no viable potentially responsible party exists, DTSC, acting on behalf of the state, must provide assurances that it will pay a 10 percent state-match for federal remedial action costs while federal funds pay for the remaining 90 percent.

DTSC must also provide assurances to pay for 100 percent of operations and maintenance (O&M) costs at these sites. DTSC pays to investigate hazardous substance releases, construct remedies, and operate and maintain those remedies at state orphan sites in which a potentially responsible party (PRP) fails to

comply with an order to address the threat or when there is no financially viable PRP. Unlike at federal NPL sites, DTSC uses the SRA to fund all direct site remediation costs for characterization, remedy selection, remedy implementation, and O&M at orphan sites to address exposure or threat to human health and the environment.

Additionally, costs may be incurred to address conditions that may create an immediate endangerment at a site. Allocation of SRA funds to a site is based on several factors. Federal NPL and state orphan sites are scored and prioritized on a quantitative weighting of exposure (meaning the number and proximity of humans or resources such as drinking water) and threat (meaning risk of damage or harm when exposed) to public health and the environmental impact.

Staff Recommendation. Approve as budgeted.

Issue 13: Universal Waste Electronic Devices Reporting System Modernization

Governor’s Proposal. The Governor’s budget requests one permanent position, \$808,000 in 2024-25 and \$508,000 ongoing from the Electronic Waste Recovery and Recycling Account (EWRRA) to do the following: (1) implement SB 1215 (Newman), Chapter 370, Statutes of 2022, which expands the scope of the Electronic Waste Recycling Act (EWRA) to include additional device categories, address the operational needs of DTSC, (2) minimize security and failure risks posed by the existing system, and (3) provide a modernized reporting system with enhanced features to increase data reliability and compliance, helping to better protect communities and the environment.

The one-time \$808,000 request includes \$600,000 to develop the new Universal Waste Electronic Devices (UWED) reporting system and \$208,000 for a permanent Information Technology Specialist II (ITS II) position. The annual \$508,000 request includes the \$300,000 annual licensing cost for the new UWED reporting system and \$208,000 for the permanent ITS II who will provide IT support during and after the implementation contract of the new UWED reporting system.

Background. Since the establishment of the EWRA in 2003, approximately 2.2 billion pounds of covered video display devices have been recycled. With electronics technology rapidly evolving and electronics becoming more intricate, specialized, and ubiquitous, SB 1215 addressed the broadening scope of electronic technologies by expanding the EWRA definition of “covered electronic device” to include a “covered battery-embedded product,” (CBEP). SB 1215 defined CBEP as a new or refurbished product containing a battery that is not intended to be easily removed from the product by the consumer with no more than commonly used household tools.

CBEPs are required to be identified and added to the device categories in the UWED database for reporting and tracking purposes. The data available in UWED is essential for DTSC and CalRecycle to ensure that CBEP handlers comply with all universal waste handling requirements.

The existing UWED system was developed in the early 2000s. It was built on a legacy application platform in which feature and capability enhancements/additions are no longer supported. Due to the outdated programming language used in developing UWED, changes to the current system may present security and incompatibility risks, impacting current system functions and business continuity. In addition, the UWED system does not meet current state security standards, thus making DTSC vulnerable to cyberattack.

The current UWED system lacks in its ability to perform checks on the data and information the users

input. This could lead to data that is inconsistent and unreliable. Because of this, DTSC is hindered in its ability to effectively and efficiently track e-waste handler activity and the movement of e-waste within and out of the state.

Staff Recommendation. Approve as budgeted.

3970 DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY (CALRECYCLE)

Issue 14: Covered Electronic Waste Recycling Fee Subaccount Abolishment (TBL)

Governor's Proposal. The Governor's budget requests trailer bill language (TBL), which includes a technical amendment to abolish the Covered Electronic Waste Recycling Fee Subaccount (Fund 3417), leaving the Electronic Waste Recovery and Recycling Account (Fund 3065) as the fund in which all covered electronic waste recycling fees collected from sales of covered electronic devices, are deposited. The TBL proposes to retain the Covered Battery-Embedded Waste Recycling Fee Subaccount (Fund 3418) as the fund for covered battery-embedded waste recycling fees collected from sales of covered electronic devices. This will eliminate the requirement to perform a transfer each year, and all fund users can maintain their existing direct appropriations to the EWWRA.

Background. The Electronic Waste Recycling Act of 2003 (EWRA) requires a retailer selling a covered electronic device in this state to collect from a consumer a covered electronic waste recycling fee at the time of retail sale, as specified. EWRA requires all fees collected under the act to be deposited in the Electronic Waste Recovery and Recycling Account (EWWRA); and outlines other requirements for the fee's establishment, adjustment, and administration. Money in the account is continuously appropriated for specified purposes, including, but not limited to, paying covered electronic waste recycling fee refunds, and making electronic waste recovery and recycling payments.

Staff Recommendation. Approve as budgeted.

Issue 15: CalRecycle Integrated Information System (CRIIS)

Governor's Proposal. The Governor's budget requests continued project funding of \$13.1 million in 2024-25 from the California Beverage Container Recycling Fund (BCRF) for the CalRecycle Integrated Information System (CRIIS). CRIIS is an extensive ongoing initiative to migrate the California Beverage Container Recycling Program's (BCRP) current application, which is called the Division of Recycling Integrated Information System (DORIIS), into a modern, stable, cloud-based platform. CRIIS is intended to achieve the goal of consolidating all CalRecycle program applications into an enterprise solution.

CalRecycle requests funding to continue developing CRIIS, and to procure the support necessary for a successful transition from aging siloed systems to a single solution. CRIIS will replace DORIIS and provide a cohesive, consistent, and updated system. CRIIS will also build a framework for future growth and enable consolidation of other IT systems to achieve legislatively-mandated recycling goals and a circular economy.

Background. BCRP was created in 1988 and considerable state infrastructure has been built to implement and oversee this program. With more than \$1.5 billion flowing through BCRP annually, large

investments have been made in the certification and management of participants and their receivable and payable accounts, inspections, investigations, collections, and audits to ensure proper accounting and financial processes.

DORIIS is an aging, high-profile system that only serves one division within CalRecycle. If this system were to fail, CalRecycle is at risk of delay for collecting and invoicing millions of dollars and failing to meet state-mandated requirements. DORIIS processes nearly one million user transactions per year and allows for the management of over \$1.5 billion in program receipts and invoices annually. The average cost of DORIIS is \$3 million annually and requires a contract with an outside vendor since the department does not have the skill set or expertise to support the technology.

CalRecycle is looking to build a centralized enterprise system that will track recycling and management of all material programs within its purview; and that can be operated by state staff and maintained by IT services. Since DORIIS is a very complex system, this transition will need to occur first. A centralized enterprise system for all of the department's material management programs would also support the department's works to achieve the state's many recycling goals and build a circular economy — a single enterprise system is intended to create efficiencies in material tracking, stakeholder management, stakeholder interaction, and enhance program administration.

The CRIIS project received approval in March 2023. As a single enterprise system, CRIIS will move CalRecycle towards aligning its multiple, aging applications as well as streamlining and standardizing processes, maximizing compliance, increasing fraud prevention, and providing transparency for management and stakeholders. In addition, CRIIS will increase automation, functionality, and the ability to collect revenue.

The CRIIS project will impact 800+ internal CalRecycle users and an estimated 25,000+ external users and stakeholders. Examples of stakeholders include beverage manufacturers, distributors, retailers, recycling centers, processors, and grantees. CalRecycle plans to transition maintenance and support of the newly expanded CRIIS system from a vendor to state staff resources post-implementation and will require training and certifications for in-house staff. This is a multi-year effort to consolidate existing systems with ongoing expansion and inclusion of future programs.

Staff Recommendation. Approve as budgeted.

DISCUSSION

8570 CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE (CDFA)

Issue 16: Blythe Border Protection Station Replacement

Governor’s Proposal. The Governor’s budget requests \$99.3 million Public Buildings Construction Fund for the California Department of Food and Agriculture to begin the construction phase for the Blythe Border Protection Station Replacement Project.

Background. CDFA maintains a system of 16 BPSs on the major roadways into California to prevent invasive species from entering the state. Invasive species threaten the safety of California’s food supply; kill urban and forest trees; reduce natural biodiversity by out-competing native species; clog waterways and water delivery systems; render rangeland, recreational areas and other public and private lands unusable; result in trade restrictions; and increase pesticide and herbicide use. Invasive species are economically and environmentally devastating to California agriculture and natural habitats. According to CDFA, approximately 95 percent of all invasive species that have become established in California have been introduced as hitchhikers on materials brought by people driving into California in private vehicles. Invasions of the Glassy-winged Sharpshooter, Red Imported Fire Ant, and Mediterranean Fruit Fly serve as examples of potential economic and ecological effects of invasive species. Studies show that on a national level, every dollar spent on the exclusion and early detection of exotic and invasive species saves an average of \$17 in future expenses.

The existing Blythe Border Protection Station is located on Interstate 10, approximately 4 miles east of Blythe, CA in Riverside County. The proposed project will include:

- Five vehicle inspection lanes,
- A vehicle office building (approximately 4,200 gross square feet), that includes support spaces for visiting cooperative agencies and California Highway Patrol.
- Four truck inspection lanes
- Truck office building (approximately 2,900 GSF).
- Bypass lanes for the north and south sides of the vehicle inspection stations for oversized loads.

Supporting site improvements for the Blythe Border Protection Station Replacement Project will include:

- Transitioning lanes to the new nine lane BPS from westbound Interstate 10 and then again back to Interstate 10.
- Frontage road improvements, including Hobsonway, a new off/on ramp from westbound Interstate 10 to East Hobsonway
- The existing westbound Hobsonway ramp within the California Department of Transportation’s right of way will be demolished and a new Hobsonway ramp will be constructed.

The Blythe Border Protection Stations was built in 1958 and, according to CDFA, is inadequate for modern traffic levels. The Blythe BPS was designed to accommodate 600,000 vehicles annually. In the first full year of operation, 1959, total traffic was measured at 747,250 vehicles. Traffic measured 4,045,232 in 2021, almost seven times the traffic volume the station was designed to accommodate. The table below shows the volume of traffic annually.

Blythe – Traffic Trend	
Year	Traffic
2022	5,247,391
2021	4,045,232
2020	4,634,359
2019	4,738,144
2018	4,329,809
2017	5,657,500
2016	5,602,750
2015	5,383,750
2014	4,927,500
2013	4,653,750
2012	4,471,250
2007	5,000,500
2002	4,343,500
1997	3,449,250

Source: Department of Finance

CDFR indicates the project will be constructed in two phases: Phase I for the city-owned Hobsonway Road and associated utilities relocation, and Phase II for the remainder of the project including the Caltrans roadway, structures, site utilities, amenities, and improvements. The proposed Phase I of the project is scheduled to begin June 2025 and be completed in June 2026. The Phase II construction for the overall project is scheduled to begin in June 2026 and be completed in November 2027.

Staff Recommendation. Hold Open.

3100 EXPOSITION PARK

Issue 17: Exposition Park Capacity Building

Governor’s Proposal. The Governor’s budget requests \$479,000 Exposition Park Improvement Fund and \$84,000 in reimbursement authority in 2024-25 and ongoing for four positions to address increased workload in Exposition Park.

Background. The Office of Exposition Park Management, the Science Center, and the California African American Museum (CAAM), are located in Exposition Park, a 152-acre tract in south Los Angeles, which is owned by the state. For budget purposes, these three departments are collectively known as Exposition Park.

The Office of Exposition Park Management provides long-term leadership in the development and implementation of park usage policy and day-to-day management, operation and promotion of the park for its tenants and the public. The mission of the Science Center is to stimulate curiosity and inspire science learning. The mission of CAAM is to research, collect, preserve, and interpret, for public enrichment, the history, art, and culture of African Americans with an emphasis on California and the western United States.

According to Exposition Park, increased visitors and activities at Exposition Park, Park, the demand on the Office of Exposition Park Management’s (OEPM) capacity has grown. The proposed staff positions are intended to create operational efficiencies and support expanded events, facilities, management, and communications and business development needs. OEPM requests the following four positions.

One Event Coordinator. According to OEPM, the event coordinator will support efforts to generate additional revenue for the Exposition Park Improvement Fund to be used for park-wide operations and improvements through oversight of increased activation of Park property for rental usage, as well as exploration of multiple revenue streams. Due to the growing demands for facility use, the OEPM has resorted to mandated overtime to cover critical events. This position is intended to provide adequate staffing support for event management and will be reimbursable from events held throughout the Park.

One Exposition Park Facilities Manager. According to OEPM, the Facilities Manager will be responsible for overseeing maintenance and facility improvements, as well as providing oversight of approved major capital outlay projects, including a future underground parking garage and park project, which will facilitate significant revenue generation for the Park. These projects are needed to support the Park’s Master Plan and efforts towards preparing the Park to host the 2028 Summer Olympics and Paralympics. The Park requires significant repairs, which are essential to the safety of the Park and its millions of annual visitors. This position will also be responsible for managing short- and long-term maintenance of various mechanical, electrical and plumbing (MEP) and Fire & Life Safety (FLS) systems.

One Operations Assistant. According to OEPM, this position will be filled by an Associate Governmental Program Analyst (AGPA) to provide essential executive leadership support including assistance with continuous engagements with the Board of Directors, coordinating schedules and meetings, and assisting with reporting deadlines. The AGPA will also assist the OEPM staff with general operations such as interactions with, as well as dissemination of information to the Board, the public, and Park partners regarding major and critical events impacting daily operations of the park.

One Strategic Communications. According to OEPM, Exposition Park does not currently have a unified communication or business development strategy. This position is intended to lead strategic communications, formulate policies and operation to develop private partnerships and business development opportunities. This position will also be responsible for the formulation, operation, and/or evaluation of program policies.

Staff Recommendation. Hold Open.

Issue 18: Southeast Underground Parking Structure

Governor’s Proposal. The Governor’s budget requests \$352 million Public Building Construction Fund for Exposition Park for the design-build phase of Exposition Park’s Southeast Underground Parking Structure project to construct an underground parking structure with a public park on its top-deck with an adjacent headquarters and community center.

Background. In 2023-24, the Legislature provided \$14 million from lease revenue bonds for the performance criteria for this project. The total project cost is estimated at \$366 million.

The scope of the project includes, but is not limited to:

- An underground parking structure/garage with no less than 1,500 spaces.
- Structure/garage with adequate load bearing infrastructure to hold a nearly 6-acre park cap that will serve as park space for the community and can host large festivals or outdoor events.
- EV Charging stations.
- Parking automation.
- Security Cameras.
- Distributed Antenna System (DAS) for cellular support.
- Parking management offices and facility storage.
- Public restrooms.
- Freight/service elevator.
- All necessary systems to support the underground structure including backup generator(s), CO2 detectors with automatic exhaust fans, sump pump(s), fire suppression systems, emergency phones, Wi-Fi and lighting system.
- Landscaping, trees, shrubbery, and flowers.
- Walking paths.
- Hydration stations.
- Wind and solar art installations.

Legislative Analyst’s Office (LAO) Comments. Since the Legislature last considered this project in 2023-24, the condition of the General Fund has deteriorated. Additionally, the LAO and the Department of Finance now forecast substantial ongoing deficits—roughly \$30 billion annually—in 2025-26 through 2027-28. In light of the state’s worsening budget picture, the LAO thinks the Legislature should be very cautious about adopting new proposals that could exacerbate the state’s budget problems—not only in the budget year but also in future years—and contribute to the Legislature potentially needing to make painful cuts to existing state programs in the future.

With that context in mind, we note that the design-build phase of the underground parking structure project is anticipated to be quite costly—over \$350 million. The administration proposes to borrow money to fund these costs by issuing lease revenue bonds. The LAO estimates that the debt service payments for these lease revenue bonds would total roughly \$25 million per year for 25 years. How much of these debt service payments will be repaid by the General Fund still is unclear. This is because the administration indicates that it expects to use some combination of two sources—General Fund and Exposition Park Improvement Fund (EPIF)—to repay the bonds issued to support the project, but it has not yet determined the share that will come from each source. Despite this uncertainty, based on the condition of the condition of EPIF (which is already running an operating deficit), significant General

Fund support likely would be required. This, in turn, would put additional pressure on the already strained General Fund.

The LAO also notes that when the Legislature considered this project in 2023-24, the budget proposal identified that the project would construct an underground parking structure with a public park on its top deck to replace existing surface parking at Exposition Park. That proposal did not mention that the project would also construct an adjacent 3-story, 43,000-square-foot headquarters and community center. The administration indicates that the omission of these project components from the project description was a labeling oversight. Regardless, this omission creates uncertainty around whether the Legislature intended to fund these project components. Furthermore, a lack of clarity also exists regarding whether these project components are needed on an urgent basis or could be deferred until a later date when the General Fund might be in a better position to support them.

LAO Recommendations. First, LAO recommends the Legislature consider whether continuing to fund this project remains a high legislative priority given the deterioration in the condition of the General Fund over the past year. This is because the debt service payments for this costly project are anticipated to be roughly \$25 million per year for 25 years, and we expect that a significant portion of these costs may need to come from the General Fund.

Second, if the project continues to be a high priority for the Legislature, the LAO recommends it consider whether it wants to move forward with the full proposed scope at this time or consider approving a reduced scope in line with the project description that was provided in the 2023-24 budget proposal. That more limited scope included constructing an underground parking structure with a public park on its top deck to replace existing surface parking at Exposition Park but did not include constructing an adjacent headquarters and community center. The Legislature could then revisit whether to fund these other components at a later date when the condition of the General Fund improves.

Staff Recommendation. Hold Open.

3930 DEPARTMENT OF PESTICIDE REGULATION (DPR)**Issue 19: Sustainable Funding for Pest Management at DPR (BCP & TBL)****Governor's Proposal.** According to the LAO:

The Governor proposes several changes to increase revenues into the DPR Fund which would generate a total of \$30.4 million of new revenues in 2024-25 (growing to \$43.9 million in future years). Of this amount, \$9.8 million would address the structural deficit and \$17.8 million would be used to expand programs and activities (growing to \$32.5 million). The increased revenues would be generated by: (1) increasing the mill assessment (\$22.1 million in 2024-25, growing to \$33.8 million), (2) increasing registration fees through regulations (\$6.3 million in 2024-25, growing to \$7.2 million), and (3) increasing licensing fees through regulations (\$2 million in 2024-25, growing to \$2.9 million). The proposal also would provide \$717,000 from the Greenhouse Gas Reduction Fund (GGRF) on an ongoing basis to support additional programmatic expansions for the department. The LAO describes these proposals in more detail below.

Increases Mill Assessment Over a Three-Year Period, Authorizes DPR to Increase Further in Future, Sets New Statutory Caps. The Governor proposes budget trailer legislation that would increase the mill assessment over a three-year period from the current level of 21 mills to (1) 26 mills in 2024-25, (2) 27.5 mills in 2025-26, and (3) 28.6 mills in 2026-27. Beginning in 2027-28, the proposal would authorize DPR to further adjust the mill assessment as needed to align revenues with expenditures approved by the Legislature in the annual budget act, not to exceed a new statutory cap of 33.9 mills. The proposal would maintain the structure of the assessment as a flat rate and would not authorize the department to charge differential rates, such as tiering based on the acute toxicity of pesticides (as had been proposed previously) or for priority pesticides. The administration estimates that its proposed increases would generate an additional \$22.1 million in 2024-25, growing to \$33.8 million in 2026-27 when the rate is set at 28.6 mills.

The Governor's proposal also would increase the statutory cap for the additional mill assessment levied on agricultural use pesticides. Specifically, the current cap of .75 mills would be raised to 1.04 mills. As under current law, the California Department of Food and Agriculture (CDFA) would have the authority to increase this additional mill assessment in coordination with DPR to ensure that it is properly resourced to provide pesticide consultation services to DPR—as long as it does not exceed the cap. The administration indicates that CDFA does not anticipate raising this additional mill assessment in 2024-25 even if it is granted authority to do so.

Utilizes Additional Revenues to Address Structural Deficit and Support Additional Program Spending. In addition to addressing the structural deficit within the DPR Fund, the proposal would generate additional revenues to support various programmatic expansions for DPR. The proposal also would provide a small amount of ongoing GGRF to support additional programmatic expansions for the department, which is discussed in greater detail below. As shown in the figure below, the proposal would provide DPR with an additional \$18.5 million in 2024-25 beyond what is needed to address existing workload. This would cover 65 new positions in 2024-25, increasing to \$33.2 million and 117 positions in 2026-27 and ongoing. (In addition to the ongoing amounts displayed in the figure, the proposal includes about \$100,000 from the DPR Fund on a one-time basis in 2026-27 for travel support related to inspections.)

Governor's Proposed Spending Increases for DPR						
(Dollars in Millions)						
Activity	2024-25		2025-26		2026-27 and Ongoing	
	Funding	Positions	Funding	Positions	Funding	Positions
Process Improvements and Safer Alternatives	\$9.5	35	\$15.7	58	\$17.9	64
Alternative pest management grants and support	\$4.3	7	\$6.7	11	\$7.7	11
Administrative support	3.1	14	4.7	22	4.7	22
Pesticide registrations and reevaluations	1.1	7	1.7	10	2.2	12
Pesticide environmental evaluations	0.9	6	2.2	13	2.9	17
Pesticide human health evaluations	0.2	1	0.4	2	0.4	2
Statewide Service Improvements	\$5.5	18	\$7.1	22	\$9.1	33
Pesticide monitoring and data evaluation	\$3.2	7	\$3.2	7	\$3.9	11
Pesticide takeback events	0.6	1	1.1	1	1.1	1
Product compliance and mill auditing	0.6	5	0.6	5	1.0 ^a	7
State pesticide enforcement actions	0.3	1	0.3	1	1.2	6
Fumigation tarp testing	0.3	—	0.3	—	0.3	—
Worker Health and Safety Program	0.3	2	0.4	3	0.4	3
Regulation development	0.3	2	0.3	2	0.3	2
Licensing and Certification Program	0.1	—	1.0	3	1.0	3
Support for CACs and Outreach	\$3.5	12	\$5.6	19	\$6.3	20
Training and compliance support for CACs	\$2.0	5	\$2.5	5	\$3.2	6
Local engagement and outreach	1.5	7	3.0	14	3.1	14
Totals	\$18.5	65	\$28.3	99	\$33.2	117

^a In addition to the ongoing amount, the proposal includes about \$100,000 from the DPR Fund on a one-time basis for travel support related to inspections.

Note: Totals may not add due to rounding. All additional spending and positions are supported by the DPR Fund, except \$717,000 from GGRF to support four positions and air monitoring activities.

DPR = Department of Pesticide Regulation; CACs = County Agricultural Commissioners; and GGRF = Greenhouse Gas Reduction Fund.

Source: LAO

As shown in the figure above, a significant portion of this funding would go towards alternative pest management grants and support activities. Other major new spending includes support for (1) enforcement activities, such as investigating pesticide use violations and tracking pesticide residue levels on fresh produce; (2) pesticide registrations, such as reducing the time needed to complete registrations and expediting the approval of safer alternatives; and (3) pesticide evaluations and monitoring, such as identifying and reevaluating pesticides for which actions might be needed to reduce or eliminate adverse impacts.

Most of the programmatic expansions from the DPR Fund would be supported by the additional revenues generated from increasing the mill assessment, while a smaller amount would come from new revenues associated with DPR increasing registration and licensing fees and from GGRF. In cases where projected revenues exceed proposed expenditures, DPR would use the remaining funding to address the structural deficit and build sufficient reserves within the DPR Fund.

DPR Would Increase Registration and Licensing Fees to Align With Additional Expenditure Authority. In several cases, the proposal would provide additional expenditure authority from the DPR Fund to augment the department's Registration Program and Licensing and Certification Program. Both programs are directly supported by their respective regulatory fees. The proposal would continue with this practice by having these augmentations be supported by fees instead of the mill assessment. However, in order to fully support these proposed expansions, DPR would need to use its existing authority to increase both registration and licensing fees through the regulation process. The department indicates the exact fee increases it would implement still are uncertain and that it would plan to hold public workshops in 2024 to discuss potential changes. Despite this uncertainty, the administration estimates that the forthcoming increases would generate an additional \$8.3 million in 2024-25

(\$6.3 million from registration fees and \$2 million from licensing fees), growing to \$10.1 million by 2026-27 and thereafter (\$7.2 million from registration fees and \$2.9 million from licensing fees).

Provides Some New Funding From GGRF for Air Quality Monitoring and Outreach Activities. The proposal also would provide \$717,000 from GGRF and four positions in 2024-25 and ongoing to support pesticide air monitoring and data evaluations and stakeholder engagement. The department indicates that this work is related to the community air pollution monitoring and reduction program established by AB 617 (C. Garcia), Chapter 136, Statutes of 2017.

Includes Several Policy Changes. The Governor proposes budget trailer legislation that would make several changes, including the following:

- ***Changes Mill Assessment Payer Responsibility.*** The proposal would require the mill assessment to be paid by the entity that first sells a pesticide into the state. This contrasts with current law, under which it is paid by the entity who has registered the pesticide. DPR indicates that this change would address payment responsibility issues related to online retail and align the mill assessment with how the state collects other fees and taxes.
- ***Extends Statute of Limitations for Mill Assessment Payment Violations Found in Audits.*** The proposal would extend the current statute of limitations for DPR to take enforcement actions when audits reveal mill assessment payment violations. Currently, the department must bring enforcement actions within four years of the occurrence of the violation. The proposal would allow DPR to bring enforcement actions on violations that have occurred within four years of the audit's commencement, but no later than two years after the audit's completion. DPR indicates that this extended timeline would better reflect the period it needs to complete audits and take corresponding enforcement actions.
- ***Extends Statute of Limitations for Pesticide Use Violations.*** Currently, enforcement actions on pesticide use violations must be brought by DPR or County Agricultural Commissioners (CACs) within two years of the occurrence of the violation. The proposal would extend this timeline to three years. The department indicates that this change would better reflect the time needed to investigate and bring enforcement actions for pesticide use violations.
- ***Authorizes DPR to Enforce California's Laws on Out-of-State Pesticide Dealers.*** The proposal would authorize DPR to levy administrative penalties of up to \$15,000 on violations related to pesticide dealers, such as when entities act in this role without a license. Currently, the authority to levy administrative penalties related to pesticide dealers resides solely with CACs. DPR indicates taking enforcement actions on out-of-state pesticide dealers would be a more appropriate role to assign to the state, since the primary role of CACs is to be the main enforcement authorities within their jurisdictions.
- ***Exempts Emergency Pesticide Use Authorizations From California Environmental Quality Act (CEQA) Review.*** CEQA requires state and local agencies to consider the potential environmental impacts associated with potential public or private projects or activities. Federal law authorizes the US Environmental Protection Agency to allow federal and state agencies (such as DPR) to permit the unregistered use of a pesticide to address emergency conditions. For example, this might occur when no other registered pesticides are available to control a serious pest problem that would result in significant economic losses or cause adverse environmental impacts. These emergency authorizations are only permitted for a limited time within a defined geographical area and usually involve pesticides that have been registered for other uses (such as for different crops). The proposal would exempt such emergency pesticide use authorizations from requiring a CEQA review.

LAO Background. According to the LAO:

DPR Is Responsible for Regulating Pesticides. DPR is charged with protecting public health and the environment by regulating pesticides. The department is responsible for evaluating and registering pesticide products at the state level. This includes the continuous review of pesticides and, if needed, the formal reevaluation of products to identify actions needed to reduce or eliminate adverse impacts. DPR also is responsible for licensing individuals and businesses that sell, consult on, or apply pesticides. Additionally, the department tests pesticide residues on fresh produce and oversees local enforcement of pesticide use laws and regulations by CACs. DPR and CACs have the authority to discipline those who violate state pesticide laws and regulations, such as through levying administrative penalties. Finally, the department offers grants and conducts outreach activities to encourage the adoption of alternative pest management practices. Historically, about 90 percent of DPR’s budget has been supported by the DPR Fund with the remaining amount coming from other special funds and federal funds.

DPR Fund Is Used to Support the Regulation of Pesticides. The DPR Fund is a repository of taxes and fees paid by pesticide retailers, wholesalers, and businesses. The state uses the fund to support state and local activities related to regulating pesticides. The majority of the fund’s resources are provided to DPR to support its core functions and responsibilities. Roughly one-quarter of the DPR Fund’s revenues are provided to CACs as partial reimbursement for their pesticide enforcement activities. Expenditures from the DPR Fund are expected to total roughly \$138 million in 2023-24.

DPR Fund Is Made Up of Revenues From Tax on Pesticide Sales And Several Fees. The DPR Fund is primarily supported by three main funding sources: the mill assessment, registration fees, and licensing fees:

- ***Mill Assessment.*** The largest revenue source for the DPR Fund—about 80 percent—is the mill assessment, a tax levied on pesticides when first sold into or within the state. In 2023-24, the mill assessment is estimated to raise about \$100 million. The mill assessment is currently set at the statutory maximum level of 21 mills, or 2.1 cents per dollar of sales. Revenues derived from 7.6 mills are statutorily directed to CACs. The remaining amount is used primarily to support several DPR activities, such as pesticide enforcement, monitoring and surveillance, reevaluations of potential pesticide impacts, and alternative pest management grants and outreach.
- ***Registration Fees.*** Registration fees account for about 16 percent of the fund’s total revenues. All pesticides must be registered with DPR before they can be sold or used in the state. Registration fees are collected both at the time of initial product registration and through annual renewals. In 2023-24, registration fees are estimated to raise about \$25 million. DPR uses these revenues to directly support its workload in registering pesticides. Statute authorizes DPR to adjust fees through the regulatory process to ensure that revenues fully support the department’s Registration Program.
- ***Licensing Fees.*** Licensing fees—which are paid biennially by pesticide professionals and businesses—account for about four percent of the fund’s total revenues. In 2023-24, licensing fees are estimated to raise about \$2 million. DPR uses these revenues to directly support its workload in licensing and certifying pesticide professionals and businesses. Statute authorizes DPR to adjust fees through the regulatory process to ensure that revenues fully support the department’s Licensing and Certification Program.

Additional Mill Assessment Levied on Agricultural Use Pesticides. The state also levies an additional .75 mills on agricultural use pesticides. In 2023-24, this additional assessment is estimated to raise about \$2 million. These revenues go to the Department of Food and Agriculture Fund—not the DPR Fund. This funding supports CDFA in providing consultation services to DPR on certain regulatory actions.

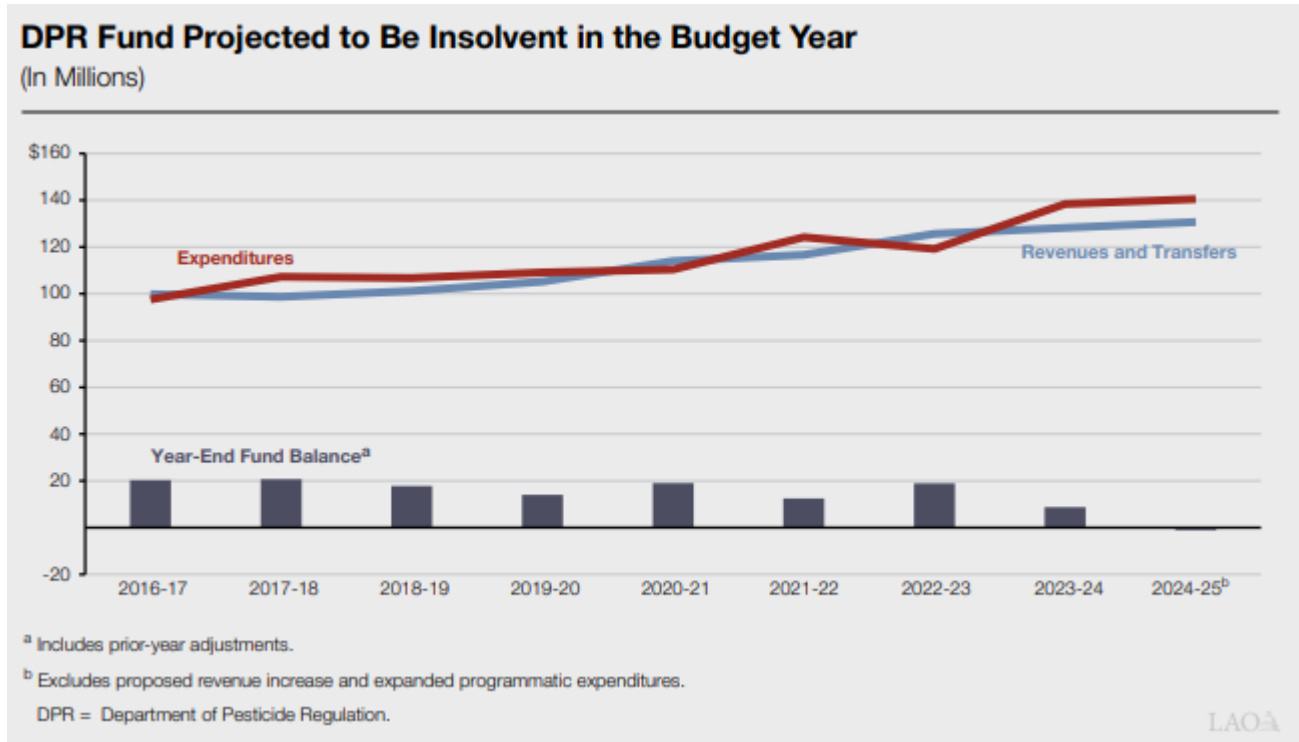
Legislature Has Taken Some Short-Term Actions in Response to DPR Fund’s Structural Deficit. In recent years, the growth in expenditures from the DPR Fund has outpaced growth in revenues, creating a structural deficit within the fund. This is primarily due to revenues from the capped mill assessment being unable to keep pace with costs associated with expanded DPR programmatic responsibilities that have been enacted through legislation. The Governor’s 2021-22 budget included a proposal to increase and tier the mill assessment. Under that proposal, more acutely toxic pesticides would have been charged a higher rate (or tier). The additional funding generated would have been used to address the fund’s structural deficit and support various programmatic expansions across DPR, CDFA, and CACs. The Legislature rejected the proposal and instead provided General Fund resources of \$10.3 million in 2021-22 and \$8.8 million in 2022-23 to DPR. The funding provided relief to the DPR Fund and supported alternative pest management grants and outreach, environmental monitoring, and pesticide take-back events hosted by CACs. Budget bill language also directed DPR to use a portion of the funding to hire a consultant to study tiering the mill assessment.

DPR Developed a Sustainable Pest Management (SPM) Roadmap. In January 2023, the department released its SPM Roadmap, which includes strategies to transition the state to safer, more sustainable pest management. Actions in the plan include expediting the registration of new pesticide products, supporting research of and outreach for alternatives to high-risk pesticides, and expanding monitoring and data collection. A key goal of the roadmap is to eliminate the use of “priority pesticides” by 2050. The plan defines priority pesticides as those that warrant attention and planning to expedite their replacement and elimination; but does not list any specific pesticides as falling into this category. The criteria for priority pesticides include factors such as risk level and the availability of effective alternatives. The plan states that DPR will take future steps to identify which pesticides should receive this categorization under the advisement of a multi-stakeholder committee.

Independent Contractor Examined Funding Needs for DPR and Appropriate Structure for Mill Assessment. In August 2023, the independent contractor that DPR hired to conduct the statutorily directed study released its final findings and recommendations. These included:

- ***Set Mill Assessment at a Flat Rate in the Near Term.*** The report recommended that the mill assessment initially be set at a flat rate—such that all pesticides are assessed the same tax rate—increasing from 21 mills to 33.9 mills over a three- to five-year period. It also recommended allowing the mill assessment to be adjusted up to a cap to be set in statute.
- ***Generate Additional Funding to Expand DPR’s Activities.*** The study recommended that the mill assessment be set at a level sufficient to generate revenues above what is needed to cover the structural deficit to enable DPR and CACs to address identified programmatic needs at an expanded level, and to provide an additional amount to CDFA to support its pesticide consultation services.
- ***Consider Tiered Mill Assessment Structure in the Future.*** The report recommended that DPR revisit the possibility of adopting a tiered mill assessment once it has made progress in identifying priority pesticides pursuant to its SPM Roadmap. Under a tiered model, the state would levy a higher mill assessment on products that the department categorizes as priority pesticides. The report noted that such an approach likely would not incentivize the purchase of safer alternatives, but rather would (1) signal a need for alternatives and (2) generate additional revenues that could be used to support the research of and outreach for alternatives.
- ***DPR Has Additional Needs.*** The report found that DPR’s registration and licensing programs—which are not supported by the mill assessment—also have unfunded programmatic needs.

DPR Fund Projected to Be Insolvent in 2024-25. Because the steps the Legislature took to provide relief to the DPR Fund relied on temporary General Fund support, the fund’s structural deficit remains.



Source: LAO

As shown in the figure above, the administration projects that the DPR Fund will be insolvent in the budget year—meaning it will not have sufficient revenues to cover projected expenditures. Specifically, projected expenditures of \$140.5 million will exceed the anticipated available resources of \$139.3 million from revenues and reserves (from the prior-year end fund balance), resulting in a \$1.2 million gap. The ongoing structural gap is even larger without the fund’s reserves to help cover expenditures. (These totals reflect projections of what would occur in 2024-25 absent the Governor’s proposed new revenues and expenditures.) As shown, the revenues that support the fund have grown steadily in recent years, including a notable increase around 2019-20 resulting from pandemic-related pesticide sales (such as household disinfectants). At the same time, expenditures have continued to increase at an even faster rate due to augmented activities related to pesticide enforcement and additional staff approved to support the registration and reevaluation of pesticides.

LAO Assessment. According to the LAO:

Increasing Mill Assessment Is Justified. Overall, the LAO finds two key justifications for the state to increase the mill assessment. First, it has not been increased since 2004. Given the considerable amount of time since its last adjustment, an increase is warranted to ensure that it both aligns with current department expenditures and is able to support new state priorities related to pesticides going forward. Second, increasing the mill assessment to support these activities aligns with the “polluter pays” principle, whereby those who produce or otherwise contribute to pollution (such as environmental impacts from pesticides) should bear the associated regulatory costs of managing and preventing damage to public health and the environment.

Flat Increase to the Mill Assessment Represents Reasonable Approach. The LAO finds that a flat increase to the mill assessment, as the Governor has proposed, is a reasonable approach. This structure has several benefits. For instance, a single tax rate is easier for the state to administer and offers a more

predictable revenue stream. It also is simpler and more predictable for the entities that pay the tax. A flat increase also aligns with the recommendations in the independent contractor's report. The report analyzed various ways in which the state could tier the mill assessment, but ultimately found that a flat increase was the most appropriate structure until the department has begun identifying priority pesticides. Given the department still is in the beginning stages of identifying priority pesticides—with much of this work dependent on the expanded staffing the Governor proposes—adopting plans to implement a tiered mill assessment structure now would be premature.

Proposal Would Solve Structural Deficit Within the DPR Fund and Allow for Future Growth in DPR and CDFR Activities. The Governor's proposal would address the structural imbalance within the DPR Fund on an ongoing basis. Specifically, the proposed increases to the mill assessment would provide sufficient new revenues for the DPR Fund to address its current structural deficit and cover DPR's existing workload on an ongoing basis. Furthermore, raising the statutory cap and providing DPR with authority to make future increases to the mill assessment also would add to the ongoing stability of the fund by establishing a way for revenues to keep pace with the expenditure levels the Legislature sets through the annual budget act. Authorizing this "room" for revenues to grow also can provide the Legislature with greater confidence that it will be able to assign necessary responsibilities to the department in the future without placing excessive pressure on the DPR Fund. Similarly, the proposed increase in the statutory cap for the mill assessment on agricultural use pesticides would create a mechanism to ensure CDFR remains sufficiently resourced to provide consultant services to DPR. The inclusion of the statutory caps also aligns with the recommendations in the independent contractor's report. The LAO finds the specific new caps the Governor proposes for the two mill assessments—33.9 mills for all pesticides and the additional 1.04 mills specifically for agricultural use pesticides—to be reasonable. However, moderately lower or higher statutory caps also could be justifiable.

Increasing Mill Assessment to Support Programmatic Expansions Would Help DPR Pursue State Goals. As noted, the Governor proposes increasing the mill assessment beyond what is needed to address the DPR Fund's existing operating imbalance and generating additional funding to expand DPR's activities. Overall, the LAO finds the proposed programmatic augmentations supported by the mill assessment increases to be reasonable given that they are targeted at (1) enhancing the enforcement of pesticide laws and regulations, (2) increasing the number of pesticide reevaluations the department can administer, and (3) encouraging the use and development of safer alternatives and practices. None of the proposed activities seem beyond the scope of the department's responsibilities or extraneous to meeting its core mission. Furthermore, the proposed augmentations largely align with the funding needs identified in the independent contractor's report.

Supporting Certain Programmatic Expansions With Fee Increases Also Is Appropriate. The Governor's proposal would augment the department's registration and licensing activities by having DPR use its existing regulatory authority to increase the fees that directly support these programs. Overall, the LAO finds the proposed programmatic expansions to be reasonable given that they would be used to (1) improve the department's registration process, which has experienced an increase in average processing times in recent years and (2) provide the department with additional resources to certify and educate individuals and businesses applying for pesticide licenses. The LAO also finds that the proposed augmentations largely align with the funding needs identified in the independent contractor's report. Furthermore, supporting these activities with fee increases is an appropriate approach given that it tasks those who are regulated by these programs with paying the costs for the provided services.

However, Legislative Priorities Should Also Be Incorporated. While the LAO finds the administration's proposed programmatic augmentations to be reasonable, they do not represent the only options for expanding DPR's activities. The Legislature has an important opportunity now to determine (1) the scope of activities it wants DPR to conduct, (2) the associated level of resources required, and

(3) the corresponding level at which the mill assessment should be set. This could involve removing or refining activities proposed by the Governor or adding activities that are legislative priorities. Ensuring that legislative priorities are reflected is particularly important given the opportunity that adjusting taxes and fees provides in setting the state's overall goals for pesticide regulation and ensuring they are well supported. Depending on the actions taken, modifying planned programmatic augmentations could result in higher or lower increases to the mill assessment and registration and licensing fees than proposed by the Governor. Potential categories of modifications the Legislature could consider include:

- ***Funding for SPM Roadmap Activities.*** The Governor's proposal would use funding to support activities outlined in the department's SPM Roadmap—such as identifying priority pesticides and expediting the registration of reduced-risk pesticides. While these activities could provide some benefits, the LAO notes that the SPM Roadmap is an administration-led initiative. The Legislature may wish to consider whether it agrees that these are worthwhile activities for DPR to undertake and whether any statutory guidance might be needed to further align the proposed actions with its own priorities.
- ***Funding for CACs.*** A central component of the proposal is to ensure that sufficient state resources are provided to uphold pesticide laws and regulations. While the Governor's proposal includes additional enforcement funding for DPR, it does not augment funding for CACs' enforcement activities. This diverges from the recommendation made in the independent contractor's report, which identified a \$10.2 million funding need for CACs. The LAO also notes that the last time the state raised the mill assessment, the portion provided to CACs was also increased. While current allotments could be sufficient, this is an important opportunity for the Legislature to ensure that CACs are properly resourced to effectively complete their statutorily required enforcement activities.
- ***Recently Chaptered Legislation.*** The proposal does not provide resources to implement recently chaptered legislation—such as for AB 652 (Lee), Chapter 662, Statutes of 2023, which requires DPR to convene an environmental justice committee. This omission is consistent with the administration's overall approach in the Governor's budget, which mostly excludes augmentations related to implementing recently chaptered legislation. (The administration indicates it will consider including such resources as part of the May Revision depending on the overall budget condition.) However, given the important opportunity the Legislature has right now to set DPR's scope of work and corresponding funding needs, it is a key juncture for considering whether all of its desired activities are included—particularly those already enacted into law by the Legislature and Governor.

If Community Air Pollution Workload Is a Core Department Activity, Funding It From the DPR Fund—Rather Than GGRF—Is Appropriate. One of the primary purposes of reconsidering the mill assessment is to provide sufficient resources for DPR's core programs so the department is better equipped to meet its mission and statutory authorities. Historically, the department's core functions and programs have been supported by the DPR Fund. The Governor's proposal continues this approach with one notable exception—the proposal to instead fund the ongoing activities related to AB 617 with GGRF. The ongoing nature of these augmentations suggests that the administration views this workload as a core department function. Moreover, DPR indicates that these activities—working with local communities on air pollution impacts caused by pesticides—are needed even in areas that do not currently participate in the AB 617 program. Accordingly, the LAO finds the DPR Fund to be a more appropriate ongoing fund source than GGRF to support these activities.

Policy Changes Appear to Be Reasonable. Overall, the LAO finds that the Governor's proposed statutory changes align with the overall intent of the budget proposal and would support the department in further meeting its mission and statutory responsibilities. As noted above, these include changing the

mill assessment payer responsibility, extending the statute of limitations for pesticide use and mill assessment payment violations, authorizing DPR to enforce state laws and regulations on out-of-state pesticide dealers, and exempting emergency pesticide use authorizations from CEQA. The LAO finds that these changes could (1) improve the collection of the mill assessment, (2) strengthen the enforcement of pesticide laws and regulations, and (3) facilitate the authorized use of pesticides in emergency situations.

Incorporating Accountability Measures Could Help Legislature Assess Effectiveness of Proposed Changes. The amount of funding DPR would receive under this proposal would represent a significant augmentation for the department. The proposal (including the proposed GGRF spending) would increase the department’s ongoing base spending levels by about 25 percent. While the LAO finds the proposed augmentations to be reasonable, the Legislature would benefit from conducting oversight of how the funding is being used and the degree to which it is helping DPR meet its core objectives. Monitoring the department’s progress in meeting state objectives—such as improving the registration and reevaluation of pesticides—would inform the Legislature on DPR’s successes and challenges in implementing the funding augmentations and, in turn, help inform whether future programmatic modifications might be needed.

Staff Comments. CEQA. Current law, Public Resources Code (PRC) Section 21080(b)(4), exempts from CEQA, “specific actions necessary to prevent or mitigate an emergency.”

DPR states that the department has successfully used this existing CEQA exemption for approving emergency pesticide use; and have not had any lawsuits challenging that use to date. Because there is no evidence of real risk of litigation and because notice of exemptions do not require a lot of legwork, it is unclear what significant gains would result from the administration’s proposed exemption for “*Approval by the Department of Pesticide Regulation of a pesticide emergency exemption pursuant to Section 136p of Title 7 of the United States Code.*”

This proposal seems high-risk/low-reward by adding a statutory CEQA exemption tied to federal regulations that, while historically stable, are outside of the state’s purview. The proposed exemption comes with a risk of opening up loopholes in addition to pinning the state to federal regulations that could change. Also, DPR has successfully used existing CEQA exemptions and has not provided any examples of litigation — It does not appear that DPR has had any issues with the existing emergency CEQA exemption. The plain meaning of the current exemption is broad and includes what the administration is proposing.

A question arises as to the necessity of adding another exemption to CEQA when current law seems to suffice.

AB 2113 (Garcia)(2024). A policy bill, AB 2113, has been introduced in the Assembly this year with the same trailer bill language proposed by the administration. AB 2113 is currently in the Assembly Committee on Environmental Safety and Toxic Materials. Considering that the administration’s trailer bill proposal has considerable policy implications, a question arises as to whether it may be more prudent for the proposal to be analyzed, discussed, and shaped through the policy committee process via AB 2113.

LAO Recommendations. According to the LAO:

Approve Some Level of Flat Mill Assessment Increase With Statutory Caps... The LAO recommends the Legislature approve a flat increase to the mill assessment to address the structural deficit within the

DPR Fund and to support high-priority programmatic expansions. The mill assessment has not been adjusted in 20 years and an increase would ensure that the DPR Fund can accommodate current department expenditures and is able to support new state priorities for pesticides going forward. Furthermore, structuring the change as a flat increase—rather than tiered—is a reasonable approach given that it is easier to administer, offers a more predictable charge and revenue stream, and DPR has not yet identified a list of priority pesticides that could be used to form tiers for differential charges. The LAO also recommends the Legislature incorporate statutory caps for both the mill assessment applied to all pesticides and the additional mill assessment levied on agricultural use pesticides—either at the levels proposed by the Governor or something close. This would allow revenues within the DPR Fund to keep pace with expenditure levels set by the Legislature and provide confidence that the department can be tasked with future responsibilities without placing excessive cost pressures on the fund.

...But Consider Modifications to Ensure DPR Has Sufficient Resources to Accomplish Legislative Priorities. Given the opportunity that revising the mill assessment provides in setting the state’s overall goals related to pesticides, the LAO recommends the Legislature ensure that its spending priorities are reflected in the scope of work and associated level of funding that the final budget deal provides. This could include modifying or adding to the Governor’s proposed programmatic augmentations. Depending on the actions taken, this may require the Legislature to implement higher or lower increases to the mill assessment and registration and licensing fees than proposed by the Governor.

Support DPR’s Community Air Pollution Workload With DPR Fund. The LAO recommends the Legislature reject the Governor’s proposal to fund DPR’s community air pollution workload with GGRF and instead support these activities with the DPR Fund. The ongoing nature of this augmentation suggests that this workload is a core department function, and the department indicates the needs for this community engagement exist beyond just AB 617 program participants. Accordingly, the LAO finds it reasonable to support these activities with the department’s primary funding source. This would mean ensuring the mill assessment is set at a level to generate revenues that can cover the associated costs (\$717,000 to support four positions and air monitoring activities), along with whatever other modifications the Legislature makes to the Governor’s proposal. This would also align with the LAO’s overall recommendation that the Legislature minimize out-year GGRF commitments in order to maintain legislative flexibility over the use of these funds in upcoming years, particularly given the forecasted deficits. (Please see LAO’s recent report, *The 2024-25 Budget: Cap-and-Trade Expenditure Plan*, for more detail on the LAO’s GGRF-related recommendations.)

Approve Various Policy Changes. The LAO recommends the Legislature approve the Governor’s proposed policy changes. These include changing the mill assessment payer responsibility, extending the statute of limitations for pesticide use and mill assessment payment violations, authorizing DPR to enforce state laws and regulations on out-of-state pesticide dealers, and exempting emergency pesticide use authorizations from CEQA. These changes align with the overall intent of the budget proposal and would support the department in further meeting its mission and statutory responsibilities. The LAO finds that these changes could (1) improve the collection of the mill assessment, (2) strengthen the enforcement of pesticide laws and regulations, and (3) facilitate the authorized use of pesticides in emergency situations.

Consider Adding Accountability Measures. The LAO recommends the Legislature consider adding accountability measures as a way to conduct oversight of programmatic expansions and to ensure that funding is helping DPR meet its core objectives. Monitoring the degree to which the department is meeting these objectives—such as improving the registration and reevaluation of pesticides—also would inform the Legislature on the successes and challenges of implementing the augmentations and, in turn, guide potential future programmatic modifications. Specifically, the Legislature could require DPR to complete a report that discusses how the funding augmentations are being utilized and what outcomes are being achieved. The Legislature could require the report to include specific metrics that it

believes are important to track, such as average processing times for pesticide registrations, the number of pesticide reevaluations being undertaken each year, and updates on the department's progress in identifying priority pesticides.

Staff Recommendation. Hold open.

3940 STATE WATER RESOURCES CONTROL BOARD (SWRCB)

Issue 20: Resource Needs to Address Impacts on Project Permitting Resulting from Recent Supreme Court Decisions

Governor’s Proposal. The Governor’s budget requests \$6.1 million from the Waste Discharge Permit Fund (WDPF) in 2024-25 then \$7 million annually thereafter, and 38 permanent positions phased in over two years, 26 positions in 2024-25 and an additional 12 positions beginning in 2025-26. This request includes \$1.1 million in one-time contract funds for Information Technology (IT) services, \$200,000 in one-time contract funds and \$35,000 in ongoing contract funds for staff training.

The requested resources would be used to conduct essential water quality permitting and enforcement work that has historically been conducted by the US Army Corps of Engineers (Corps) and the US Environmental Protection Agency (US EPA) but will no longer be, due to a 2023 US Supreme Court Decision that reduces federal jurisdiction over a number of waterbodies. The recent reinterpretation through the *Sackett Ruling* of what qualifies as waters of the United States significantly narrows the scope of federal jurisdiction, and the SWRCB and regional water quality control boards (collectively, the Water Boards) will need to restructure their programs to replace lost federal services and provide state protection where federal protections no longer apply.

In many cases the state processes are less efficient and more resource intensive than the lost federal protections. This BCP would provide staff and contract resources that would help the Water Boards independently manage the workload that was historically shared with the Corps; and make the transition to being the sole regulator of discharges of pollutants to these waterbodies.

Background. The Sackett Ruling. In *Sackett v. EPA* (2023) 598 US 651 (*Sackett*), the US Supreme Court held that the federal Clean Water Act’s definition of “waters of the United States” extends to only those “wetlands with a continuous surface connection to bodies that are ‘waters of the United States’ in their own right,” so that they are “indistinguishable” from those waters. Following the Court’s decision, the CWA covers only adjoining wetlands, a reading that excludes wetlands separated from jurisdictional waters by man-made dikes or barriers, natural river berms, beach dunes, and the like that had previously been protected by eight different Presidential administrations.

Sackett does not affect the definition of “waters of the state” as used in California state law. According to SWRCB, California is well positioned to employ its state-level authorities to blunt some of the adverse effects from the loss of CWA protections within the state and continue to protect water quality within its borders. In California, the Porter-Cologne Water Quality Act (Porter-Cologne) is a powerful tool to ensure state protection where federal protection is no longer available.

However, many of the state’s existing regulatory programs are structured and implemented based on how the scope of the CWA had been construed for the last 50 years. With the dramatic contraction of the CWA set forth in the *Sackett* ruling, the Water Boards administer various CWA programs in California, including the CWA section 401 water quality certification program, section 402 National Pollutant Discharge Elimination System (NPDES) permitting program, and section 303 water quality standards program. These federal programs are in addition to water quality protection requirements for “waters of the state” under Porter-Cologne, including the issuance of state permits or “waste discharge requirements” for all discharges of waste that can affect the quality of waters of the state. The Water Boards expect that going forward there will be a greater reliance on regulation of discharges using waste

discharge requirements issued solely under state law and a heavier state workload and attendant need for increased staff resources and training.

Sackett Ruling Impact on the Water Boards. The Water Boards face challenges in keeping up with workload under the existing permitting framework. Given that a significant fraction of waters is now shifting from joint federal and state jurisdiction to state-only jurisdiction, the Water Boards' partners will no longer conduct any work to permit discharges of pollutants to those waters. The Water Boards need to assume this workload and must augment resources to do so, or the boards will become a bottleneck to approval of critical projects, including housing and infrastructure projects, which usually require these permits in order to build and make up approximately 50 percent of all dredge or fill applications received per year.

The *Sackett Ruling* impacts the Water Boards' resources in a number of fundamental ways by doing the following:

- Increases the number of waters that will rely solely on state authorities requiring additional resources to replace services currently provided by the Corps.
- Requires additional policy development work to establish state definitions and procedures to respond to anticipated changes in federal regulations that are logical outgrowths of the Sackett Ruling.
- Increases workload by requiring dredge or fill projects be permitted using the less efficient WDR processes instead of issuing 401 Certifications.
- Requires creation and ongoing maintenance of WDRs for activities that were previously permitted through existing Clean Water Act Section 401 Nationwide Permits or NPDES stormwater permits.
- Requires expansion of inspection and enforcement activities to replace US EPA actions on waters that are no longer under federal jurisdiction and further increases workload by replacing Clean Water Act enforcement authorities with less efficient and more resource intensive state authorities.
- Requires changes to IT infrastructure to accommodate the changing federal authorities and support SWRCB response activities.

Addressing these changes will require additional resources. Based on current workload and expected changes, the Water Boards anticipate a need for 38 additional positions, and contract dollars for both training and IT development.

Staff Recommendation. Hold open.

3960 DEPARTMENT OF TOXIC SUBSTANCES CONTROL (DTSC)

Issue 21: Board of Environmental Safety (BES): Baseline Level of Service Increase

Governor’s Proposal. The Governor’s budget requests \$331,000 in 2024-25 and ongoing, split between the Hazardous Waste Control Account (HWCA) and TSCA, to increase baseline funding and reclassify six BES staffing positions to permanent. These upgraded staff members are intended to better support board members across the various BES responsibilities identified in SB 158 (Committee on Budget and Fiscal Review), Chapter 73, Statutes of 2021, which include:

- Consult with the Director to develop a multi-year schedule to improve DTSC performance in hazardous waste management, site mitigation, and enforcement;
- Adopt clear performance metrics for DTSC;
- Conduct an analysis of DTSC programs and the Cleanups in Vulnerable Communities Initiative;
- Hear and decide hazardous waste permit appeals;
- Provide opportunities for public hearings on individual sites;
- Approve (in 2025 and every three years) a statewide hazardous waste management plan;
- Advance environmental justice in historically disadvantaged communities;
- Conduct an analysis of the fee structure supporting DTSC; and
- Adopt a fee rate schedule by October 1 of each year.

To effectively carry out these mandates, BES has organized subcommittees of board members focused on discrete work relevant to each of these areas. This proposal is intended to allow BES to hire staff with the necessary, specialized expertise who can provide board members with detailed, independent advice and guidance in the form of staff reports, memoranda, briefings, analyses, and regulations (collectively, “Major Work Products”) to support BES efforts to satisfy its statutory requirements under SB 158. This proposal would effectively double the productivity of BES staff, increasing Major Work Products from nine in the current year to 18 Major Work Products in 2024-25 and ongoing.

Background. Historically, DTSC has faced challenges in consistently meeting its mission and numerous statutory requirements. These challenges resulted in a backlog of expired hazardous waste facility permits, delayed cleanups in vulnerable communities, and inconsistent engagement with the communities it serves. In response to these issues, the Legislature and Governor enacted SB 158, which established BES within DTSC, restructured and increased charges that support HWCA, restructured and increased the tax that support TSCA, and provided funding to support brownfield cleanups and investigations across the state.

Funding Sources for DTSC. DTSC’s funding comes primarily from HWCA and TSCA. TSCA is a repository for revenues from cost recovery, penalties, interest, and the Environmental Fee. HWCA revenues are derived from fees paid by various hazardous waste generators, transporters, and facilities. Prior to SB 158, they were last amended in statute in 1998 or earlier.

BES was established with five board members (one full-time and four part-time) and 12 additional staff positions, including an Executive Officer. Most BES board members were appointed near the end of FY 2021-22, and additional staff positions have been filled over subsequent months.

Once BES assumed its operations, board members recognized that some of the staff positions established in the initial organizational plan were not classified at suitable levels to provide effective support for

board members sufficient to carry out the functions of BES contemplated by SB 158. To effectively assess the quality of program delivery within DTSC, board members need detailed, informative, independent analysis and substantive briefings from BES staff. To meet this demand for adequate support, BES completed upgrades of four staff positions in 2022-23:

- **Administrative Assistant II to Associate Government Program Analyst (AGPA):** This position assists with Board meeting planning, budgeting, contracts, and planning. Given these responsibilities, BES determined that an AGPA would provide better service to board members than an Administrative Assistant II.
- **Senior Environmental Scientist to Environmental Program Manager I:** The original organizational plan for BES staff had all 11 positions reporting to the Executive Officer. Originally there were no management positions within the technical or administrative ranks. Upgrading the Senior Environmental Scientist to an Environmental Program Manager comports with the significant responsibility for formulating and administering responsibilities of fee setting and supporting hazardous waste permit appeals that are among BES responsibilities. This upgrade also improves management of BES staff functions in line with Cal HR requirements.
- **Attorney III to Attorney IV:** BES also determined that an Attorney III was inadequate in light of the high-profile nature of BES activities, which are often conducted at public meetings that are recorded, and upgraded that position to Attorney IV in order to provide BES with an attorney with specialized experience in the realm of Bagley-Keene and the California Public Records Act, in addition to an understanding of the myriad laws governing different DTSC programs and the ability to advise board members on sensitive matters internal to DTSC.
- **Associate Governmental Program Analyst to Staff Services Manager I:** This position was upgraded to provide a middle manager for an administrative services division within the BES organizational plan. The Staff Services Manager I would better suit the needs of public engagement and outreach to vulnerable communities.

The upgrades of BES staff positions described above have been funded through a redirection of existing resources, which results in fewer resources available to conduct other BES activities. In addition, due to the complex and highly technical nature of matters that are coming in front of the Board, BES plans to upgrade another two positions to ensure it has its own independent staff with the appropriate skill levels:

- **Staff Services Analyst to Environmental Scientist:** An environmental scientist will be able to provide timely and independent reports and briefings to the Board on highly technical matters, perform preliminary environmental analysis, review hazardous waste permit appeal documents, and provide support on DTSC fee analysis.
- **AGPA to Senior Environmental Scientist:** This senior position would better support the highly complex and technical matters that come in front of the Board such as hazardous waste permit appeals, analysis of DTSC's cleanup programs, and evaluating the public health benefits from cleanups under the Cleanups in Vulnerable Communities Initiative.

Altogether, funding for the upgrading of these six positions is intended to give board members greater support from subject matter experts and allow BES to provide higher service levels in response to public demands for greater accountability and improved oversight of DTSC.

LAO Background. According to the LAO:

HWCA Funds Support the Regulation of Hazardous Waste. HWCA primarily supports activities the Department of Toxic Substances Control (DTSC) conducts related to regulating the generation, storage, transportation, and disposal of hazardous waste through permitting, compliance monitoring, and enforcement of noncompliance.

HWCA Restructured as Part of a Larger DTSC Reform Package. Budget trailer legislation adopted as part of the 2021-22 budget package, Chapter 73 of 2021 (SB 158, Committee on Budget and Fiscal Review), restructured and increased the charges that support DTSC's two major fund sources: HWCA and the Toxic Substances Control Account (TSCA). The resulting revenues were intended to (1) solve longstanding structural deficits in HWCA and TSCA, (2) support a new Board of Environmental Safety (BES) (discussed below), (3) support programmatic expansions that would better enable DTSC to protect people and the environment from toxic substances, and (4) build sufficient reserves in both accounts.

For HWCA specifically, SB 158 replaced several prior fees with a new generation and handling fee and also increased existing facility fees. (We discuss these fees in greater detail in the section below.) While the legislation was enacted as part of the 2021-22 budget package, the state did not begin to receive additional revenues until 2022-23 due to the timing of how charges for both accounts are collected.

Senate Bill 158 also established BES within the department. Besides hearing permit appeals for hazardous waste facilities and providing strategic guidance to the department, beginning in 2023-24 the five-member board is responsible for setting charge levels for HWCA and TSCA. Specifically, the board is responsible for setting charges annually to align revenues from both accounts with the amount of expenditures authorized by the Legislature through the annual budget act.

HWCA Revenues Primarily Come From Two Major Regulatory Fees. Funding for HWCA primarily comes from the generation and handling fee (established in SB 158) and facility fees.

The generation and handling fee is charged on a per-ton basis to all entities that generate five or more tons of hazardous waste in a calendar year, while facility fees are annual charges levied on permitted facilities that treat, store, or dispose of hazardous waste. Senate Bill 158 set rates for both fees for 2022-23, but authorized BES to adjust rates each year starting in 2023-24.

Lower-Than-Projected Generation and Handling Fee Revenues Reestablished HWCA Deficit in 2022-23. During the enactment of SB 158, the new generation and handling fee was set at \$49.25 per ton and was projected to generate approximately \$81 million in total revenues in 2022-23. However, in the middle of 2022-23, DTSC indicated that these revenues were coming in significantly below what had been anticipated and would only generate about \$40 million that year. The lower-than-projected revenues reestablished the structural deficit within HWCA in 2022-23 and set the fund on a path to insolvency in 2023-24.

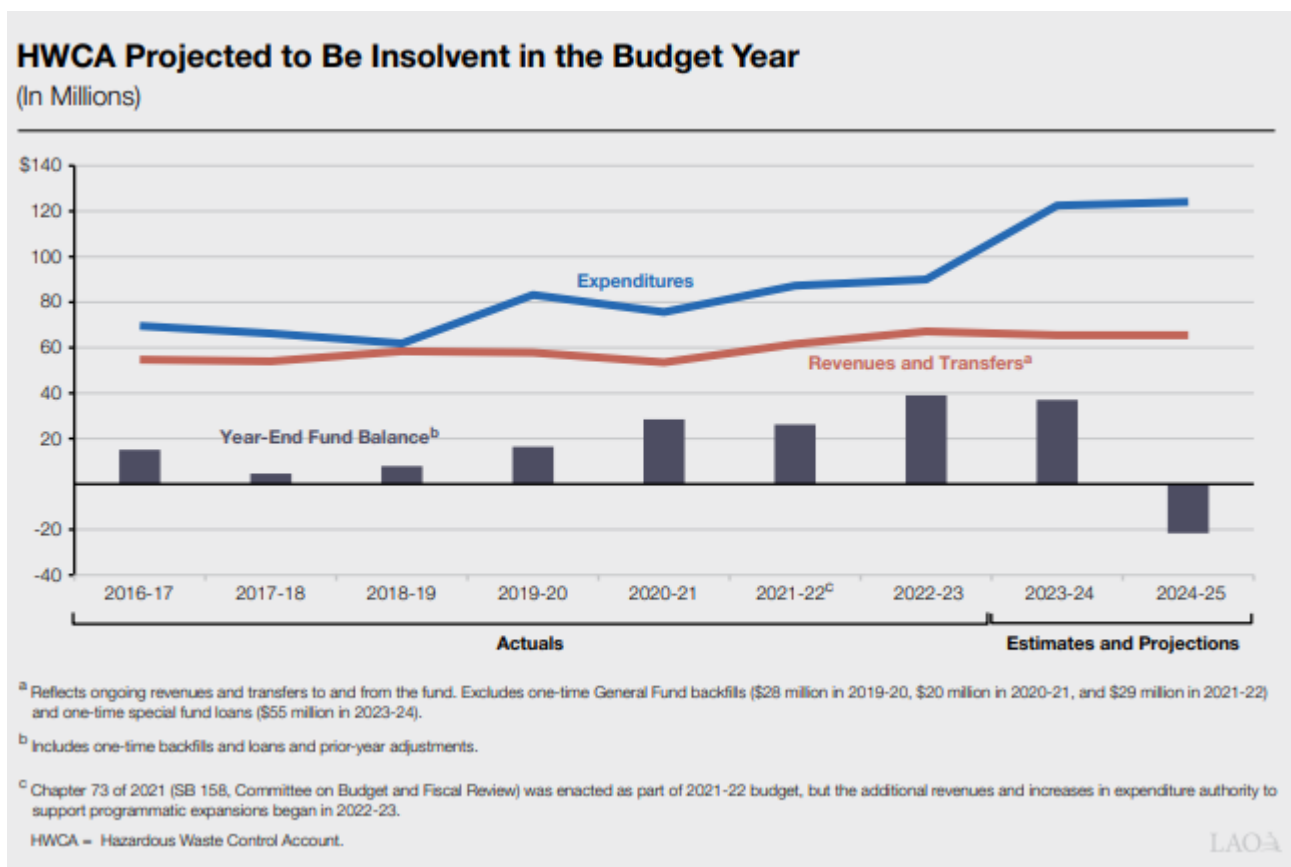
The department's preliminary analysis of the issue indicated the shortfalls were attributable to a combination of three primary factors: (1) a reduction in the amount of hazardous waste generated; (2) a higher utilization of government fee exemptions, such as related to a government entity removing or remediating hazardous waste caused by another entity; and (3) nonpayment or low payment of fee amounts owed.

2023-24 Budget Package Authorized Special Fund Loans for HWCA. To address the revenue shortfall, the 2023-24 budget provided \$55 million in special fund loans—\$15 million from TSCA and \$40 million from the Beverage Container Recycling Fund—to support HWCA. (Budget bill language currently requires DTSC to repay both loans by June 30, 2026.) The loans were intended to allow HWCA to cover its planned expenditures in both 2022-23 and 2023-24. The loans also avoided the need for BES to

increase the generation and handling fee in 2023-24. This approach was adopted to provide DTSC with additional time to conduct a more in-depth analysis of the revenue shortfalls and to identify a potential solution. The department was authorized to use a small portion of the loans to support this analysis and to improve fee administration and data collection.

HWCA Projected to Be Insolvent in the Budget Year. As shown in the figure below, HWCA has experienced a longstanding structural deficit between its ongoing revenues and expenditures.

The state has responded by providing a series of one-time General Fund backfills to keep the fund solvent, which is primarily how the fund balance has remained positive. The reform package was intended to address the structural deficit and generate additional ongoing revenues for HWCA to support both existing services and programmatic expansions. However, the lower-than-projected generation and handling fee revenues have prevented this from being accomplished.



Source: LAO

Under the administration’s estimates, HWCA is projected to become insolvent in the budget year, absent any corrective action. We note that the department is in the process of gathering revenue data from generation and handling fees that are currently being collected, which could change this projection—potentially for the better or for the worse. Accordingly, uncertainty still exists around the exact magnitude of shortfall that the state will need to address both in the budget year and on an ongoing basis. For instance, higher-than-expected revenues and/or lower-than-expected spending levels in the current year could shrink the anticipated deficit and reduce the magnitude of solutions needed in the budget year.

Administration Indicates Proposal Forthcoming at May Revision. DTSC indicates that it still is in the process of completing its analysis of the causes of the HWCA revenue shortfall, along with collecting

updated revenue information. The department has stated that it will use this analysis as the basis for a proposal to address the 2024-25 revenue gap that will be included as part of the May Revision.

LAO Comments. *Reducing HWCA Expenditures Could Have Negative Implications for Health and Safety.* Generally, the Legislature has two key categories of ongoing options for addressing structural fund imbalances: increase revenues (including by raising charges or through loans and transfers) or reduce expenditures. In the case of HWCA, the latter option could raise some concerns. In addition to addressing the structural deficits within HWCA and TSCA, a central component of the recent governance and fiscal reform package the Legislature enacted was to ensure that funding levels in both accounts were sufficient to support DTSC in better delivering on its mission and statutory authorities.

For activities supported by HWCA, this included improving hazardous waste generator inspections and enhancing criminal enforcement investigations. Given that the Legislature recently identified the department's current HWCA expenditure levels as being essential to protecting the public and environment from hazardous waste, this suggests that reducing them could result in a resumption of the safety concerns that initially led to the reform. This does not mean that opportunities for some savings do not exist. For example, the Legislature potentially could direct the department to implement program efficiencies that reduce cost pressures on HWCA and still allow for important services and protections. However, the Legislature likely will want to proceed with caution in considering any reductions to the activities supported by HWCA and ensure they do not result in increased hazards for Californians.

Moreover, identifying enough efficiencies to fully address the fund's structural deficit and maintain essential activities is highly unlikely.

Legislature Has Several Options to Provide Support for HWCA. Given concerns about reducing DTSC's expenditures and activities, the Legislature might instead want to consider (1) increasing HWCA revenues and/or (2) identifying other fund sources to backfill HWCA. Two primary pathways exist for increasing revenues. First, the Legislature could defer to BES to use its statutory authority to raise the generation and handling fee and align revenues with the amount of 2024-25 expenditures authorized for HWCA. Second, the Legislature could begin to develop its own proposal to increase the amount of revenues collected from the generation and handling fee. For instance, one factor leading to the shortfalls is a higher utilization of government fee exemptions. The Legislature could reduce these exemptions and thereby apply the fee to more payers and generate additional revenues. In addition to raising revenues, the Legislature could identify other fund sources to backfill HWCA, similar to the approach it took in the 2023-24 budget. The LAO notes that utilizing this option may be more difficult given the overall budget problem with which the state is grappling. Furthermore, the Governor's budget already proposes using special fund loans—such as from the Beverage Container Recycling Fund—to support the General Fund, which limits the ability to utilize such sources to support HWCA.

LAO Recommendation. *Use Spring Budget Process to Consider Options.* The administration plans to propose a solution for HWCA as part of the Governor's May Revision. While a solution is needed, this schedule limits the time the Legislature has to (1) weigh the benefits and trade-offs of the administration's proposal and (2) develop a proposal that aligns with its own priorities. Given these constraints, we recommend the Legislature begin this spring to weigh the various options it has for addressing the HWCA revenue shortfall. Considering the merits and trade-offs associated with these options now would put the Legislature in a better position to evaluate the Governor's proposal and alternative solutions in May when the budget deadline and need for action are more pressing.

Staff Recommendation. Hold open.

3970 DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY (CALRECYCLE)

Issue 22: Beverage Container Recycling Grants Program Staffing

Governor’s Proposal. The Governor’s budget requests position authority only for six new permanent ongoing positions in 2024-25 to implement and manage the grant programs under SB 1013 (Atkins), Chapter 610, Statutes of 2022, and AB 179 (Ting), Chapter 249, Statutes of 2022.

SB 1013 allocates \$19 million in new Beverage Container Recycling Funds, with \$10 million as a one-time allocation and \$9 million as ongoing allocations for three new grant programs. The 2023 Budget Act included five positions for SB 1013 grant implementation. As CalRecycle has begun to create the program criteria, it has become clear based on stakeholder feedback that the workload is greater than previously anticipated. In order to implement the new grant programs in a timely manner and ensure local assistance dollars are moved quickly to grantees, CalRecycle needs six additional permanent staff.

Based on the projected workload associated with these new programs, CalRecycle estimates that the Financial Resources Management (FiRM) branch will need a minimum of 18 additional staff to stand up, administer, and complete these new grant programs. To optimize the use of existing resources, CalRecycle conducted an analysis of positions that have remained vacant for more than six months and identified a dozen positions across the organization. CalRecycle is now in the process of moving and reclassifying these vacant positions to increase staffing within FiRM. However, the reorganization of these vacant positions only partially meets FiRM’s staffing needs due to a significant and rapid expansion of workload generated by the new grant programs established by AB 179 and SB 1013. FiRM will still need six additional positions to meet the expanded workload that requires FiRM to: standup new programs, develop application and scoring criteria, manage solicitations and grant awards, provide technical assistance to applicants and grantees, and implement and oversee programs and grants through completion. FiRM intends on using previously approved administrative cost provisions in AB 179 and the 2023 Budget Act to fund these positions.

The staff in these grant programs will need to provide frequent and intensive outreach and technical assistance to ensure diverse and inclusive candidate pools for each solicitation, and this requires staffing ratios that allow personnel to spend more time on these activities than existing staff ratios allow. Because these grant programs are new, they will also require more work to develop criteria for applications on the front end, as well as ongoing technical assistance for stakeholders, applicants, and grantees throughout the entire lifecycle of each program. The scale and complexity of these challenges are new for CalRecycle.

Background. SB 1013 (Atkins). SB 1013 added wine and distilled spirits to the California Beverage Container Recycling and Litter Reduction Act (commonly referred to as the Bottle Bill) commencing January 1, 2024; and, commencing January 1, 2025, authorizes dealers in unserved convenience zones to join a dealer cooperative to meet their redemption responsibilities.

AB 179 (Ting). Among other things, AB 179 provided \$73.3 million for grants to support start-up costs of recycling programs, focusing on recycling centers, mobile recycling, reverse-vending machines, and bag drop programs. Existing recycling centers may also utilize these funds to establish mobile recycling for enhanced outreach. CalRecycle was appropriated an \$73.3 million in the 2023 Budget Act and is

scheduled to receive another appropriation for the same amount in the proposed 2024 Governor's Budget.

SB 1013 and AB 179 combined provide hundreds of millions of dollars in new funding. The scale of funding exceeds the ability of existing staff resources to absorb the new workload generated by these programs. The new programs require the development of criteria for solicitations and the management of multiple cycles of application review, scoring, and awards. Existing FiRM staff are already assigned a full workload.

Staff Recommendation. Approve as budgeted.