

Senator Josh Becker, Chair
Senator Brian Dahle
Senator Mike McGuire



Thursday, March 16, 2023
9:30 a.m. or Upon Adjournment of Session
1021 O Street - Room 2200

Consultant: Joanne Roy

OUTCOMES

<u>Item</u>	<u>Department</u>	<u>Page</u>
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VOTE-ONLY

0555	CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY (CALEPA)	4
Issue 1:	CalEPA Geographic Information Officer 2-1 (Dahle-No)	4
Issue 2:	California Environmental Reporting System (CERS) Project 2-1 (Dahle-No)	4
Issue 3:	Information Technology (IT) Security Posture 2-1 (Dahle-No)	4
Issue 4:	Project Management Office and IT Governance Positions 2-0 (Dahle-Abstain)	5
3860	DEPARTMENT OF WATER RESOURCES (DWR)	5
Issue 5:	Dam Safety Enforcement and Design Oversight 2-1 (Dahle-No)	5
Issue 6:	Federal Rehabilitation of High Hazard Potential Dams 3-0	5
Issue 7:	Joint Operations Center Relocation 2-0 (Dahle-Abstain)	6
Issue 8:	Positions for Water and Drought Package Implementation 3-0	6
Issue 9:	San Joaquin River Basin Groundwater Recharge: Water Availability Analysis and Technical Assistance 3-0	6
Issue 10:	State Water Project (SWP) Accounting and Business Support 2-0 (Dahle-Abstain)	7
Issue 11:	Urban Water Use Objectives (SB 1157) 2-1 (Dahle-No)	7
3480	DEPARTMENT OF CONSERVATION (DOC)	8
3600	DEPARTMENT OF FISH AND WILDLIFE (DFW)	8
3860	DEPARTMENT OF WATER RESOURCES (DWR)	8
3940	STATE WATER RESOURCES CONTROL BOARD (SWRCB)	8
Issue 12:	High Priority Stream Gages (SB 19) 3-0	8

3930 DEPARTMENT OF PESTICIDE REGULATION (DPR).....	8
Issue 13: California Pesticide Electronic Submission Tracking (CalPEST) Project 2-1 (Dahle-No)	8
Issue 14: Technical Adjustments: Reappropriation of Transition to Safer, Sustainable Pest Management Funds 2-1 (Dahle-No).....	8
3940 STATE WATER RESOURCES CONTROL BOARD (SWRCB)	9
Issue 15: Augmentation to the Underground Storage Tank Cleanup Fund (USTCF) and the Orphan Site Cleanup Fund 2-0 (Dahle-Abstain)	9
Issue 16: Continuation of the Cannabis Cultivation Program 2-0 (Dahle-Abstain)	9
3960 DEPARTMENT OF TOXIC SUBSTANCES CONTROL (DTSC)	10
Issue 17: Brake Friction Materials Extension Request Support 2-1 (Dahle-No)	10
Issue 18: National Priorities List (NPL) and State Orphan Sites 2-0 (Dahle-Abstain)	10
Issue 19: San Gabriel Valley Superfund Sites Team 3-0	10
Issue 20: Stringfellow Superfund Hazardous Waste Site Removal and Remedial Action 3-0	11
3970 DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY (CALRECYCLE)	11
Issue 21: Battery Embedded Waste: Implementation (SB 1215) 2-1 (Dahle-No)	11
Issue 22: Beverage Container Recycling: Implementation (SB 1013) 2-0 (Dahle-Abstain).....	11
Issue 23: CalRecycle Integrated Information System (CRIIS) 2-0 (Dahle-Abstain)	12
Issue 24: Responsible Battery Recycling Act of 2022: Implementation (AB 2440) 2-1 (Dahle-No) ..	12
Issue 26: Wildfire Debris Cleanup and Removal Contracts Implementation (SB 978) 3-0.....	13
3980 OFFICE OF ENVIRONMENTAL HEALTH HAZARDS ASSESSMENT (OEHHA)	13
Issue 27: Developing a Statewide Extreme Heat Ranking System (AB 2238) 3-0.....	13

DISCUSSION

3960 DEPARTMENT OF TOXIC SUBSTANCES CONTROL (DTSC)	14
Department Overview.....	14
Issue 28: Staff Support for Expedited Cleanup of California National Priorities List (NPL) Sites Held open.....	16
3860 DEPARTMENT OF WATER RESOURCES (DWR)	19
Issue 29: Sustainable Groundwater Management Act (SGMA) – Program Delivery Held open	19
3940 STATE WATER RESOURCES CONTROL BOARD (SWRCB)	24
Department Overview.....	24
Issue 30: Water Rights Modernization Continuation	26
3860 DEPARTMENT OF WATER RESOURCES (DWR)	29
3640 WILDLIFE CONSERVATION BOARD (WCB)	29
3940 STATE WATER RESOURCES CONTROL BOARD (SWRCB)	29
8570 CALIFORNIA FOOD AND AGRICULTURE (CDFA)	29
Issue 31: Governor’s Proposed Budget Solutions: Drought Response and Water Resilience Held open	29

3970 DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY	37
(CALRECYCLE).....	37
Issue 32: Development of a Statewide Zero Waste Plan Held open	37
Issue 33: Governor’s Proposed Budget Solutions: Circular Economy Held open	41

Pursuant to the Americans with Disabilities Act, individuals who, because of a disability, need special assistance to attend or participate in a Senate Committee hearing, or in connection with other Senate services, may request assistance at the Senate Rules Committee, 1020 N Street, Suite 255 or by calling (916) 651-1505. Requests should be made one week in advance whenever possible.

VOTE-ONLY

0555 CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY (CALEPA)

Issue 1: CalEPA Geographic Information Officer

Governor's Proposal. The Governor's budget requests \$268,000 in permanent funding from the CalEPA Reimbursements account and one new permanent position to administer CalEPA's Geographic Information Systems (GIS) environment and develop strategies, policies, and common GIS frameworks for CalEPA's Boards Divisions and Offices. This request includes approximately \$40,000 of permanent annual funding for licensing CalEPA's GIS software tools and services.

Staff Recommendation. Approve as budgeted.

Issue 2: California Environmental Reporting System (CERS) Project

Governor's Proposal. The Governor's budget requests \$4.3 million from the Unified Program Account in 2023-24 to implement a technology refresh on the California Environmental Reporting System (CERS). This includes continued funding for the five permanent positions approved in the 2022 Budget Act. The project will update the technical platform, improve data quality and the processes supporting data quality, address inefficient input and interactions, and make identified enhancements to CERS.

Staff Recommendation. Approve as budgeted.

Issue 3: Information Technology (IT) Security Posture

Governor's Proposal. The Governor's budget requests \$605,000 General Fund (GF) in 2023-24, and \$555,000 GF in 2024-25 and ongoing to monitor and protect its IT network, computer systems, and system components against cyberthreats and attacks on its IT assets. Cybersecurity monitoring is a detection strategy that uses tools and automation to continuously scan IT network systems for control weaknesses, suspicious activities, and alerting the CalEPA to mitigate information security risks before they lead to data breaches and resulting in public services disruption, data loss, financial losses, reputational damage, and/or loss of public trust.

Staff Recommendation. Approve as budgeted.

Issue 4: Project Management Office and IT Governance Positions

Governor's Proposal. The Governor's budget requests permanent funding in the amount of \$1 million from the CalEPA Reimbursements account and two permanent civil service positions, resources, technology services, and software licenses to manage the planning and delivery of CalEPA's growing technology project portfolio, develop and promote standardization of processes and technology, drive CalEPA's delivery and use of technology towards constant improvements, and provide oversight of the agency's delegated projects. Additionally, CalEPA requests \$300,000 to acquire Project Portfolio Management (PPM) software tools in 2023-24.

Staff Recommendation. Approve as budgeted.

3860 DEPARTMENT OF WATER RESOURCES (DWR)**Issue 5: Dam Safety Enforcement and Design Oversight**

Governor's Proposal. The Governor's budget requests \$3.178 million Dam Safety Fund ongoing to support 12 new positions in 2023-24 for the implementation of an Enforcement Program (six positions/\$1.594 million) for new statutory authorities provided by SB 92 (Committee on Budget and Fiscal Review), Chapter 26, Statutes of 2017, and to address workload increases related to new dam construction projects, enlargements, repairs/remediations, and removals (six positions/\$1.584 million). The Dam Safety Program is funded by annual and application fees paid by dam owners. Revenue to support this request would be collected through annual fees and offset through the modernization of a circa 1991 application filing fee schedule to better align revenue collected with DSOD's regulatory costs for its oversight of application work.

Staff Recommendation. Approve as budgeted.

Issue 6: Federal Rehabilitation of High Hazard Potential Dams

Governor's Proposal. The Governor's budget requests \$50 million in federal reimbursement authority, \$10 million per year for five years (2023-24 through 2027-28). DWR currently receives \$2.5 million in federal reimbursement authority for this program and the requested increase will give DWR authority to receive and pass-through additional Federal Emergency Management Agency's (FEMA) Rehabilitation of High Hazard Potential Dams (HHPD) Grant funds. FEMA's allocation for the HHPD program doubled in 2022-23 and future allocations are expected to continue to rise. The purpose of FEMA's HHPD program is to provide eligible dam owners with technical, planning, design, and construction assistance for eligible rehabilitation activities that reduce dam risk and increase community preparedness.

Staff Recommendation. Approve as budgeted.

Issue 7: Joint Operations Center Relocation

Governor's Proposal. The Governor's budget requests \$4.773 million GF in 2023-24 for one-time costs for Department of General Services (DGS) expenses related to the relocation of the state/federal Joint Operations Center from the current location on El Camino Avenue to a new facility. This request is specific to the Division of Flood Management's shared portion of the project costs. The facility will be shared with the State Water Project (SWP) who will provide their own share of funding.

Staff Recommendation. Approve as budgeted.

Issue 8: Positions for Water and Drought Package Implementation

Governor's Proposal. The Governor's budget requests six new positions, no new state operations funding, for the delivery and administration of over \$800 million allocated to DWR in the 2021- 22 and 2022-23 Budget Acts for drought relief for urban communities and Sustainable Groundwater Management Act (SGMA) implementation.

The Budget Acts of 2021 and 2022 provided \$800 million dollars in state funding to DWR to deliver to funding recipients across the State for immediate and interim drought relief and sustainable groundwater management projects to comply with SGMA. This funding will assist communities in dire need due to the state's prolonged extreme drought conditions exacerbated by climate change. DWR lacks enough positions to conduct the work required to deliver the funding and manage the grants. These new positions are intended to provide resources to help communities effectively plan for and manage their water resources and implement projects to address drought and climate change.

Staff Recommendation. Approve as budgeted.

Issue 9: San Joaquin River Basin Groundwater Recharge: Water Availability Analysis and Technical Assistance

Governor's Proposal. The Governor's budget requests \$2.5 million GF one-time in 2023-24 and \$600,000 annually in 2024-25 through 2028-29 (a total of \$4.9 million) for state operations for existing staff positions and consultants. The purpose of this request is for the department to help enable Groundwater Sustainability Agencies (GSA) and local public agencies to complete water rights applications for groundwater recharge by doing the following:

- Support outreach and collaboration with the State Water Resources Control Board (SWRCB).
- Conduct, or provide guidance on, SWRCB required water availability analyses.
- Develop basin-wide modeling tool sets to support SWRCB required downstream impact analyses.
- Provide additional technical assistance to local agencies, as needed. Work will be performed by existing positions and consultants.

Staff Recommendation. Approve as budgeted.

Issue 10: State Water Project (SWP) Accounting and Business Support

Governor's Proposal. The Governor's budget requests five new permanent full-time positions to enhance the financial stability of the SWP while improving transparency and providing knowledge transfer to internal and external stakeholders. The increased staffing is intended to support the functional business requirements and technical business requirements of the newly enhanced SAP system (which is DWR's software accounting system and system of record used for accounting, budget, and planning needs), Portfolio and Project Management/Resource Management (PPM/RM) and Cost Allocation and Billing (CAB). In addition, a position is requested to support increased needs of data analysis and investigation for SWP capital financing.

Staff Recommendation. Approve as budgeted.

Issue 11: Urban Water Use Objectives (SB 1157)

Governor's Proposal. The Governor's budget requests \$7 million GF over 4 years (\$2 million in 2023-24, \$2 million in 2024-25, \$1.5 million in 2025-26, and \$1.5 million in 2026-27) for external consulting costs in order to implement the requirements of SB 1157 (Hertzberg), Chapter 679, Statutes of 2022. The resources are intended to be used to:

- Perform a statewide, representative saturation end-use study,
- Quantify the benefits and impacts of the 2030 indoor residential water use standard on water, wastewater, and recycled water systems,
- Evaluate the long-term effects of telework on indoor residential water use using two years of data reflecting implementation of the 2025 indoor residential water use standard,
- Conduct studies and investigations to identify if variances to accommodate unique challenges related to indoor residential use including stranded assets, impacts on disadvantaged communities, environmental flows, wastewater or recycled water operations, and others,
- Collaborate with the State Water Resources Control Board (SWRCB) on any joint recommendations,
- Collaborate with a broad group of stakeholders. These studies and collaborative efforts require external consultants for big data acquisition and analysis, facilitation and communication services, and dedicated DWR staff
- Develop a report to Legislature by October 1, 2028 on outcomes and recommendations as warranted.

SB 1157 lowers the statewide indoor residential water use from 55 gallons per capita daily (gpcd) to 47 gpcd beginning 2025, and to 42 gpcd beginning 2030. SB 1157 requires DWR, in coordination with SWRCB to conduct studies and investigations to assess specified impacts of this standard.

Staff Recommendation. Approve as budgeted.

3480 DEPARTMENT OF CONSERVATION (DOC)
3600 DEPARTMENT OF FISH AND WILDLIFE (DFW)
3860 DEPARTMENT OF WATER RESOURCES (DWR)
3940 STATE WATER RESOURCES CONTROL BOARD (SWRCB)

Issue 12: High Priority Stream Gages (SB 19)

Governor's Proposal. The Governor's budget requests a total of \$4.675 million GF over two years, starting in 2023- 24, to begin implementing recommendations outlined in SB 19 (Dodd), Chapter, 361, Statutes 2019, focusing on the reactivation of historical stream gages.

SB 19 directed DWR and SWRCB to develop a plan to deploy a network of stream gages in consultation with the Department of Fish and Wildlife, Department of Conservation, Central Valley Flood Protection Board, and interested stakeholders. The SB 19 Stream Gaging Prioritization Plan was completed in 2022.

Staff Recommendation. Approve as budgeted.

3930 DEPARTMENT OF PESTICIDE REGULATION (DPR)

Issue 13: California Pesticide Electronic Submission Tracking (CalPEST) Project

Governor's Proposal. The Governor's budget requests \$3.3 million DPR Fund for 2023-24: \$2.9 million in one-time funding with an extended encumbrance period to June 30, 2027, and \$371,000 ongoing for two permanent staff to continue the CalPEST design, development, and implementation.

Staff Recommendation. Approve as budgeted.

Issue 14: Technical Adjustments: Reappropriation of Transition to Safer, Sustainable Pest Management Funds

Governor's Proposal. The Governor's budget requests a one-year extension to the liquidation periods of various General Fund appropriations to continue implementation of previously authorized projects.

Staff Recommendation. Approve as budgeted.

3940 STATE WATER RESOURCES CONTROL BOARD (SWRCB)**Issue 15: Augmentation to the Underground Storage Tank Cleanup Fund (USTCF) and the Orphan Site Cleanup Fund**

Governor's Proposal. The Governor's budget requests the following:

- 1) An additional \$300 million USTCF one-time for reimbursing costs associated with the cleanup of contamination from leaking petroleum USTs. The request will provide a total of \$380 million for this purpose in 2023-24.
- 2) A one-time transfer of \$30 million from USTCF to the Orphan Site Cleanup Fund for reimbursing costs associated with the cleanup of contaminated leaking petroleum USTs where there is no financial responsible party, and the applicant is not eligible for the USTCF program.
- 3) As part of this request for items 1 and 2 listed above, SWRCB requests extended availability of funding (three years to encumber and three years to liquidate) to align with administrative and programmatic needs.

Staff Recommendation. Approve as budgeted.

Issue 16: Continuation of the Cannabis Cultivation Program

Governor's Proposal. The Governor's budget requests ongoing funding phased in over three years to support 94 positions to continue the Cannabis Cultivation Program, as follows:

- 2023-24: \$12 million various funds (\$5.227 million Waste Discharge Permit Fund (WDPF), \$6.396 million Cannabis Control Fund, and \$432,000 Water Rights Fund (WRF)) to support 58 existing and four new positions.
- 2024-25: \$19.1 million various funds (\$5.578 million WDPF, \$13.1 million Cannabis Tax Fund, and \$432,000 WDPF) to support 62 existing and 30 new positions as well as aerial imagery and related tools.
- 2025-26: \$19.7 million various funds (\$6.15 million WDPF, \$13.1 million Cannabis Tax Fund; and \$432,000 WRF) to support 92 existing and 2 new positions as well as aerial imagery and related tools.

The funding and positions are intended to provide ongoing funding for the Cannabis Cultivation Program, allowing SWRCB and Regional Water Quality Control Boards to fulfill statutory mandates to address water quality and instream flow-related impacts of cannabis cultivation and associated water diversions

Staff Recommendation. Approve as budgeted.

3960 DEPARTMENT OF TOXIC SUBSTANCES CONTROL (DTSC)**Issue 17: Brake Friction Materials Extension Request Support**

Governor's Proposal. The Governor's budget requests \$593,000 in 2023-24 and \$590,000 ongoing from the Toxic Substances Control Account (TSCA) and three permanent positions to manage the extension request process and to ensure manufacturer compliance with the motor vehicle brake friction materials law. DTSC's request includes \$30,000 TSCA per year to fund the purchase, sampling and analysis of brake pads to ensure compliance with SB 346 (Kehoe), Chapter 307, Statutes of 2010. Costs will be partially offset by fees paid by manufacturers submitting extension requests.

SB 346 restricted the use of copper and other toxic materials in automobile brake pads.

Staff Recommendation. Approve as budgeted.

Issue 18: National Priorities List (NPL) and State Orphan Sites

Governor's Proposal. The Governor's budget requests a revenue transfer of \$13.7 million from TSCA to the Site Remediation Account (SRA), and corresponding SRA appropriation of \$13.7 million, to fund the state's NPL obligations and state orphan sites with Priorities 1A, 1B, 2, and 3, and statewide service contracts. Health and Safety Code Section 25173.7 states the Legislature's intent that the annual Budget Act appropriate an amount sufficient to pay for the estimated direct site remediation costs identified in the department's annual SRA Report.

Staff Recommendation. Approve as budgeted.

Issue 19: San Gabriel Valley Superfund Sites Team

Governor's Proposal. The Governor's budget requests seven permanent positions and \$1.5 million TSCA ongoing to provide adequate staff for the oversight and management of the San Gabriel Valley Superfund Sites (SGVSS) cleanup projects. The requested positions would be designated exclusively for the SGVSS, which have been prioritized by the US Environmental Protection Agency (USEPA) on the NPL under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA, also referred to as "Superfund").

The SGVSS encompass numerous contamination zones and cleanup projects over an entire drinking water basin, making it one of the largest contaminated groundwater cleanup projects in the state of California. The proposed resources would establish a dedicated team of project managers to carry out DTSC's responsibilities for the SGVSS, including the following:

- 1) Support to USEPA for management and oversight for each of the six operable units at the SGVSS.
- 2) Long-term Operation and Maintenance (O&M) of Groundwater Extraction and Treatment Systems (GWETS) required by USEPA to use treated groundwater as a source of drinking water for local communities, including many disadvantaged communities.

- 3) Site discovery, characterization, and cleanup of shallow zone source areas of the groundwater contamination in soil and soil gas to reduce the potential threat to public health, and (4) ongoing identification and enforcement of Responsible Parties to ensure that they pay the full cost for cleanup of the SGVSS.

Staff Recommendation. Approve as budgeted.

Issue 20: Stringfellow Superfund Hazardous Waste Site Removal and Remedial Action

Governor's Proposal. The Governor's budget requests \$7 million GF over five fiscal years; \$1.2 million in 2023-24, \$1.7 million in 2024-25, \$1.5 million in 2025-26, \$1.2 million in 2026-27, and \$1.4 million in 2027-28 for US EPA-mandated removal and remedial action to continue characterization of the Stringfellow Superfund Hazardous Waste Site.

Staff Recommendation. Approve as budgeted.

3970 DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY (CALRECYCLE)

Issue 21: Battery Embedded Waste: Implementation (SB 1215)

Governor's Proposal. The Governor's budget requests 14 permanent ongoing positions to be phased in over three fiscal years to implement SB 1215 (Newman), Chapter 370, Statutes of 2022. This request includes 12 positions to begin in 2023-24 with annual costs of \$2 million Covered Battery-Embedded Waste Recycling Fee Subaccount (Subaccount) in 2023-24, and 2024-25, with an additional two positions to start in 2025-26 with ongoing costs of \$2.2 million for all 14 positions.

In addition, CalRecycle requests budget bill language to provide loan authority of \$6.2 million in 2023-24 from the Electronic Waste Recovery and Recycling Account (EWRRRA) to the Subaccount to ensure that adequate cash is available to implement SB 1215 and support all direct appropriations drawing from the fund. This loan authority is necessary until CalRecycle can collect the batter-embedded waste recycling fee in 2025-26, as authorized by SB 1215. SB 1215 expands the EWRA to include battery-embedded products.

Staff Recommendation. Approve as budgeted.

Issue 22: Beverage Container Recycling: Implementation (SB 1013)

Governor's Proposal. The Governor's budget requests 44 permanent ongoing positions phased in over two years, and 15 two-year limited-term positions with costs of \$6.9 million in 2023-24, \$8.1 million in 2024-25, and \$6.3 million ongoing from the Beverage Container Recycling Fund (BCRF) to implement SB 1013 (Atkins), Chapter 610, Statutes of 2022. CalRecycle also requests an additional \$450,000 BCRF one-time for contract funds to update the Division of Recycling Integrated Information System (DORIIS) to accommodate the associated operational changes to the BCRP.

SB 1013 adds wine and distilled spirits to the California Beverage Container Recycling and Litter Reduction Act (commonly referred to as 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.

Staff Recommendation. Approve as budgeted.

Issue 23: CalRecycle Integrated Information System (CRIIS)

Governor's Proposal. The Governor's budget requests \$2.3 million in continued project funding in 2023-24 for the CalRecycle Integrated Information System (CRIIS) project and to make the four temporary positions approved in 2022-23 permanent ongoing positions with ongoing costs of \$780,000 BCRF. CRIIS will be an ongoing initiative to migrate and modernize the Beverage Container Recycling Program (BCRP)'s current application, the Division of Recycling Integrated Information System (DORIIS). The goal is to consolidate all recycled material programs into a single enterprise solution more easily supported by the department.

Staff Recommendation. Approve as budgeted.

Issue 24: Responsible Battery Recycling Act of 2022: Implementation (AB 2440)
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Governor's Proposal. The Governor's budget requests 18 permanent, ongoing positions to be phased in over two fiscal years (11 positions in 2023-24 and an additional seven positions in 2024-25) with total ongoing costs of \$2.995 million Covered Battery Recycling Fund (CBRF) to implement AB 2440 (Irwin), Chapter 351, Statutes of 2022.

In addition, CalRecycle requests budget bill language to provide loan authority of \$2 million EWRRA in 2023-24, \$2.995 million EWRRA in 2024-25 and 2025-26 to the CBRF to ensure that adequate cash is available to implement AB 2440 and support all direct appropriations drawing from the fund. This loan authority is necessary until CalRecycle can be reimbursed by the program operator for the actual and reasonable regulatory costs incurred, including those associated with the development, implementation, and enforcement of the regulations. CalRecycle projects that full loan repayment will occur by 2026-27.

AB 2440 (Irwin) creates the Responsible Battery Recycling Act of 2022, which requires producers of covered batteries, as defined, to establish a stewardship program for the collection and recycling of covered batteries.

Staff Recommendation. Approve as budgeted.

Issue 26: Wildfire Debris Cleanup and Removal Contracts Implementation (SB 978)

Governor's Proposal. The Governor's budget requests three permanent, full-time positions and \$400,000 GF ongoing to implement the prequalified bidder requirements under SB 978 (McGuire), Chapter 472, Statutes of 2022, for Disaster, Debris Removal for wildfires.

SB 978 requires CalRecycle to prequalify contractors to enter into contracts to perform prescribed wildfire debris cleanup and removal work in communities impacted by wildfires. SB 978 prohibits CalRecycle from awarding a contract to any bidder for the performance of any portion of a wildfire debris cleanup and removal project, unless the bidder meets prescribed eligibility requirements.

Staff Recommendation. Approve as budgeted.

3980 OFFICE OF ENVIRONMENTAL HEALTH HAZARDS ASSESSMENT (OEHHA)**Issue 27: Developing a Statewide Extreme Heat Ranking System (AB 2238)**

Governor's Proposal. The Governor's budget requests \$2.2 million GF and four permanent positions in 2023-24 and \$2.4 million GF and an additional one permanent position in 2024-25 to develop and maintain a statewide extreme heat ranking system and to develop a mobile phone application for the ranking system pursuant to AB 2238 (Luz Rivas), Chapter 264, Statutes of 2022. AB 2238 requires CalEPA to develop a statewide extreme heat ranking system. CalEPA has tasked OEHHA with the lead role in its development.

Beginning in 2025-26, \$1.2 million is requested on an ongoing basis, which includes five permanent positions and \$200,000 in contract funding. The four permanent positions would be used to develop the science needed to support the statewide extreme heat ranking system, ensure the tool is updated regularly to incorporate the latest science and user input, conduct outreach to get input from the public, and create and maintain the mobile application. The additional position starting in 2024-25 would provide maintenance and operation activities which includes user and application support and necessary upgrades to ensure a fully operational application.

As the developers of the system, OEHHA also anticipates providing some consultation to the Integrated Climate Adaptation and Resiliency Program (ICARP) in implementing the provisions of the bill with which ICARP is tasked. An ongoing \$200,000 in contract funds is intended to be used for technical consultation, acquisition of data sets, translation services, reimbursement for external reviewers, and maintenance of the mobile phone application.

Staff Recommendation. Approve as budgeted.

DISCUSSION

3960 DEPARTMENT OF TOXIC SUBSTANCES CONTROL (DTSC)

Department Overview

DTSC protects people and the environment from the harmful effects of toxic substances by restoring contaminated resources, enforcing hazardous waste laws, reducing hazardous waste generation, and encouraging the manufacture of chemically-safer products.

The three-year budget for expenditures and positions is as follows (*dollars in thousands*):

		Positions			Expenditures		
		2021-22	2022-23	2023-24	2021-22*	2022-23*	2023-24*
3620	Site Mitigation and Restoration Program	375.1	480.6	499.6	\$258,220	\$553,560	\$281,924
3625	Hazardous Waste Management	440.5	534.0	534.0	101,859	125,392	125,119
3626	Hazardous Waste Facilities	-	21.5	23.5	-	6,458	6,864
3630	Safer Consumer Products	68.8	110.8	113.8	16,865	27,917	28,088
3635	State Certified Unified Program Agency	10.8	10.8	10.8	2,062	2,423	2,424
3645	Exide Technologies Facility Contamination Cleanup	-	-	-	255,432	111,526	92,306
3650	Board of Environmental Safety	15.0	15.0	15.0	826	3,183	3,191
9900100	Administration	183.9	232.5	232.5	41,113	63,437	63,698
9900200	Administration - Distributed	-	-	-	-41,113	-63,437	-63,698
TOTALS, POSITIONS AND EXPENDITURES (All Programs)		1,094.1	1,405.2	1,429.2	\$635,264	\$830,459	\$539,916

Source: Department of Finance

Various DTSC programs include the following:

Site Mitigation and Restoration Program. The Site Mitigation and Restoration program implements the state's laws regarding site cleanup and the federal Superfund program. The program currently oversees approximately 1,290 hazardous substance release site investigations and cleanups, and monitors long-term operations and maintenance activities at. More than 249 sites where the cleanup process is complete. Additionally, the program is responsible for ensuring compliance with the terms of approximately 1,061 land-use restrictions in place on properties throughout the state.

New sites are identified through surveillance and enforcement efforts, emergency response activities, examination of other previously-identified potential sites, and public and private entities that voluntarily request that the Department take action to return local properties to productive use. These sites and projects include cleaning up federal and state Superfund properties, abandoned mines, other abandoned and underutilized properties known as "brownfields," and both active and closed military installations. The program is also responsible for the Stringfellow Hazardous Waste Site, a federal Superfund site and former hazardous waste disposal site.

The program works with the Governor's Office of Emergency Services and other state agencies to assure response readiness for acts of terrorism involving the use of toxic chemicals. Additionally, the program mitigates off-highway hazardous waste spills and responds to hazardous waste contamination resulting from illegal drug laboratories.

Hazardous Waste Management. The Hazardous Waste Management program regulates the generation, storage, transportation, treatment, and disposal of hazardous waste to minimize risks to public health and the environment. The program oversees permitting and compliance at 100 authorized facilities that manage hazardous waste, approximately 800 registered businesses that transport hazardous waste, approximately 5,000 federally-regulated generators, over 70,000 state-regulated generators, and approximately 300 facilities that are subject to corrective actions. Additionally, the program manages approximately \$2.5 billion in financial assurance resources, and supports and oversees 81 local agencies implementing the hazardous waste program elements of the Unified Program.

The program monitors hazardous waste transfer, storage, treatment, and disposal facilities for illegal activity, including electronic manifest surveillance and monitoring of registered hazardous waste transporters; enforcement of hazardous waste requirement violations found through routine inspections; complaint intake, triage, and investigations; and other focused enforcement initiatives. The program also enforces compliance with hazardous waste requirements related to electronic waste and used oil.

Hazardous Waste Facilities. The Hazardous Waste Facilities program oversees the hazardous waste permitted facilities that are permitting for storage, treatment, and disposal of hazardous waste to minimize risks to public health and the environment. The program oversees the maintenance activities and compliance at 100 authorized facilities that manage hazardous waste and approximately 300 facilities that are subject to corrective actions. Additionally, the program manages approximately \$2.5 billion in financial assurance resources.

The program monitors permitted hazardous waste storage, treatment, and disposal facilities for illegal activity, including electronic manifest surveillance, enforcement of hazardous waste requirement violations found through routine inspections; complaint intake, triage, and investigations; and other focused enforcement initiatives.

Safer Consumer Products. The Safer Consumer Products (SCP) program compels manufacturers to reduce human and environmental exposure to toxic chemicals that are used in consumer products. The SCP program calls for industry to develop safer consumer products by identifying safer alternatives that eliminate or reduce the use of hazardous chemicals in products in order to identify Priority Products for possible regulation; provides support and guidance to Priority Product manufacturers for the analysis of safer alternatives, and issues regulatory responses to proposed alternatives. The program encourages the adoption of “green chemistry” practices.

State as Certified Unified Program Agency. CalEPA designated DTSC as the Certified Unified Program Agency (CUPA) in Trinity and Imperial Counties. As the CUPA, the department is responsible for implementing the six elements of the Unified Program: hazardous waste generator and onsite treatment activities, spill-prevention control and countermeasure plans for owners of above ground petroleum storage tanks; the underground storage tank program; hazardous material release response plans and inventories; the California Accidental Release. Prevention program; and certain Uniform Fire Code requirements pertaining to hazardous material management plans and inventories.

Board of Environmental Safety. The Board of Environmental Safety is a five-member board that sets fees through regulations, hears hazardous waste permit appeals, and provides strategic guidance to the department. The board also contains an Ombudsperson who serves as a resource to the public and the regulated community.

Issue 28: Staff Support for Expedited Cleanup of California National Priorities List (NPL) Sites

Governor’s Proposal. The Governor’s budget requests six permanent positions and \$1.4 million Toxic Substances Control (TSCA) in 2023-24 and annually thereafter for DTSC’s Site Mitigation and Restoration Program in order to implement needed oversight of 22 NPL projects during the investigation, remedy construction, and long-term operation and maintenance (O&M). DTSC will seek federal reimbursement for these costs through the Multi- Site Cooperative Agreement (MSCA) federal grant fund.

Background. The Legislature enacted California Health and Safety Code (HSC) Section 25173.7 with the intent to appropriate an “amount sufficient to pay for the estimated costs identified by” DTSC at federal Superfund and state orphan sites. The law requires the estimate to include “direct site remediation” costs, which fund contractors to investigate and to clean up sites. State law authorizes DTSC’s use of these Site Remediation Account (SRA) funds to pay for the following:

- The state’s share at federal Superfund sites (NPL sites).
- Undertaking an investigation, cleanup, or other action when a Potentially Responsible Party (PRP) is noncompliant with an issued order.
- Undertaking a response action when no PRP is identified.
- Implementation of a removal or remedial action when there may be an imminent or substantial endangerment to public health or welfare or to the environment.
- Verifying a suspected chemical release and initiate PRP searches and enforcement.

Because the state provided assurance it would meet its obligations at NPL sites, SRA funds are allocated to the NPL sites first. Remaining SRA funds are then allocated to the state orphan sites. SRA Funds are used solely for contracted activities and cannot be used for DTSC oversight activities.

Once a site remedy becomes “operational and functional”, USEPA and the state enter into a Site Transfer Agreement to transfer the O&M activities and funding responsibilities to the state. A remedy is “operational and functional” either one year after remedy construction is complete, or when it is determined, concurrently by the USEPA and the state, to be functioning properly and performing as designed, whichever is earlier.

The cost of cleanup of contaminated sites is site specific and requires that the exposure potential and the nature and extent of contamination are well understood. The process can be complex and time-consuming. However, not expediting the process may allow contaminants to spread, migrate or get dispersed across larger footprints. The larger the footprint of contamination, the more soil and/or groundwater that must be treated. For example, if soil is contaminated and the contaminants reach groundwater the remedy must address the soil and groundwater contamination. Additionally, if the groundwater is not expeditiously treated greater volumes of water must be treated to remove the contamination.

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) established the Hazardous Substance Superfund Trust Fund to pay for the cleanup of sites where the PRP cannot be found or cannot pay. The Superfund Trust Fund was funded through special taxes on industry and general taxpayer revenues. However, on December 31, 1995, Congress allowed the special taxes on industry to expire. Since 1995, the Superfund Trust Fund steadily decreased because it depended on general taxpayer revenues. The decrease in funding resulted in lagging cleanups.

In California, the average number of Remedial Designs has been approximately 2.4 per year. However, given the size and complexity of California's 22 fund-lead NPL sites, the Remedy Designs could be only for portions of the site. Many of the 22 NPL fund-lead sites have been broken up into operable units to allow portions of the sites to be addressed while investigations are ongoing at other operable units.

Bipartisan Infrastructure Law. In November 2021, the federal Bipartisan Infrastructure Law (BIL) was passed, which allocated a one-time \$5.4 billion for cleaning up longstanding pollution at Superfund and brownfields sites. The funding includes:

- \$3.5 billion for Superfund site clean-up work.
- \$1.5 billion to scale-up community-led brownfields revitalization.

The BIL funds can only be used by USEPA for “shovel ready” projects—sites that have completed design and are ready for construction. In addition, the BIL waives states' 10 percent state cost share for sites using the one-time \$3.5 billion funding. Additionally, the BIL, reinstated the excise taxes with a focus on chemicals and hazardous imported substances and will have higher rates for a newly expanded group of taxable substances. It is expected to generate \$14.5 billion over 10 years or \$1.5 billion annually.

Multi-Site Cooperative Agreement (MSCA) Grant Funding. Through a Multi-Site Cooperative Agreement (MSCA), administered by USEPA, states can apply for grant funding to cover the cost of oversight activities. States apply for MSCA grant monies each year. Each year, USEPA caps the annual MSCA grant dollars based on federal funding levels. However, the federal annual appropriations are expected to increase as a result of reinstated excise taxes. As with all grants, MSCA grant monies are not guaranteed to the state. Staff working on NPL fund-lead sites use MSCA grant monies until they are exhausted. Then, DTSC's TSCA fund is used to cover the shortfall.

Since 2007, DTSC has received between \$300,000 to \$350,000 in MSCA grant funding annually to cover the cost of oversight activities at the 22 sites. This equates to approximately 1.25 to 1.90 personnel years, for the entire state.

In April 2022, DTSC submitted a MSCA grant application requesting \$1.4 million in MSCA Grant funds for 2022-23. However, given the prior year forecast(s) of estimated costs, the requested funds could not be granted. Instead, USEPA doubled the funding from prior years and agreed to engage in early discussions to increase the funding in future years. DTSC will receive \$750,000 in MSCA funding for FY 2022-23. DTSC has begun discussions with USEPA Region 9 and will submit draft 2023-24 forecasts in April 2023.

California NPL Sites. There are currently 96 NPL sites in California. Of the 96, DTSC is the state-lead agency for 22 NPL fund-lead sites as well as other NPL sites under other funding sources. At NPL fund-lead sites, federal funding is used to investigate and cleanup the sites before passing long-term operation to the state. Many of these sites were identified in the early 1980's or prior and have not yet reached remedy completion. Meanwhile, contamination at these sites continues to cause human health and environmental threat, migrate, and increase the cost to cleanup.

The investigation and cleanup of NPL sites can be funded through multiple sources depending on the financial viability of the responsible parties (RP), any settlements, and the phase of cleanup. If an RP is viable, the RP pays the costs to implement the remedy.

If an RP is not viable, the cleanup and remedy may be funded as part of a settlement agreement, annual

appropriations for USEPA, or both. In addition, USEPA may elect to fund-lead NPL sites while pursuing potential RPs.

While DTSC is currently overseeing the cleanup at 22 NPL fund-lead sites, it is also responsible for oversight at six other NPL sites with activities funded by the MSCA grant. Some of these six sites may become fund-lead in the near future. Additionally, depending on the phase at these sites they may or may not be eligible for MSCA grant funds for labor costs.

Staff Comments. DTSC notes that providing the requested resources will have long term fiscal benefits. By expediting the eight NPL sites and assisting the USEPA Region 9 in advancing them to remedy selection and eligible for the Bipartisan Infrastructure Law (BIL) funds, DTSC states that the state would be able to take advantage of the BIL's waiver of the state responsibility to provide a 10 percent match for construction cost. These savings could be substantial. For example, securing the waiver at just two of the eight sites would save at least \$10 million based on USEPA Region 9's preliminary construction cost estimates. In addition, additional staff resources are intended to ensure that DTSC is able to work with USEPA to develop cost-effective remedy designs that take into account long-term O&M costs, which are a state responsibility. Given competing demands, existing DTSC staff cannot invest sufficient time into in-depth reviews or independent analysis of long-term ramifications to the state for the increased pace of project design anticipated due to the additional federal funding.

DTSC is confident that there is a chance to obtain full funding to cover staffing costs related to this proposal, but there is some level of uncertainty.

Staff Recommendation. Hold open.

3860 DEPARTMENT OF WATER RESOURCES (DWR)**Issue 29: Sustainable Groundwater Management Act (SGMA) – Program Delivery**

Governor’s Proposal. According to LAO:

Proposes \$14 Million in Ongoing General Fund to Support 40 Positions, 11 of Which Are New. The Governor’s budget proposes \$14 million General Fund on an ongoing basis and authority for 11 new positions to support SGMA implementation activities. In addition to supporting the new positions, this funding would backfill expiring Proposition 68 funds in order to continue funding 29 existing positions. Overall, the proposal would sustain roughly the same current number of positions in the SGMA program, as most of the 11 new positions would backfill some of the current staff who were temporarily assigned to SMGA work but will be transitioning back to their other DWR responsibilities beginning in 2024-25. The 11 new positions would be conducting:

- ***Enhanced Data Collection.*** DWR plans to increase the frequency at which it collects data from existing and new monitoring wells, particularly in high-priority areas, such as areas in which vulnerable communities rely on domestic wells, areas identified for recharge projects, and areas where land is actively subsiding and dry well mitigation measures are taking place.
- ***Enhanced Basin Characterization.*** DWR plans to conduct higher resolution aerial and ground-based geophysical surveys of groundwater basins. These surveys will benefit recharge projects by providing information about ideal recharge pathways and subsurface layers and land subsidence. They will also inform placement of additional groundwater monitoring stations.
- ***Enhanced Reporting.*** DWR plans to continue sharing information online, to aid in data-informed decision making. In addition, it will more frequently update dry-well susceptibility analyses and provide this information to all levels of government for drought, flood, and recharge planning and response.

Proposes \$900,000 in One-Time General Fund Support to Develop Groundwater Trading Implementation Plan. The budget proposes \$900,000 General Fund on a one-time basis to develop an implementation plan for groundwater trading that considers vulnerable users. The funding would support two DWR positions and engage consulting services to help complete the plan. The plan would be developed based on recommendations in the California Water Commission’s white paper, *A State Role in Supporting Groundwater Trading with Safeguards for Vulnerable Users: Findings and Next Steps*. This one-time planning effort would include interagency coordination among DWR, Department of Fish and Wildlife, Department of Food and Agriculture, and SWRCB. It would consider impacts on disadvantaged communities, small and medium farmers, and the environment.

Background. According to LAO:

Groundwater Depletion Is Escalating. Groundwater is a key component of the state’s water supply. Water users rely less on groundwater in wet years—when surface water is more abundant—and more in dry years. In some smaller and more vulnerable communities that lack access to surface water, groundwater provides up to 100 percent of drinking water supplies. Overall, California uses more groundwater than is restored through natural or artificial means. This imbalance is leading to depletion (known as “overdraft”), failed wells, water quality problems, permanent collapse of underground basins, and land subsidence. The current drought has heightened the urgent need for sustainable groundwater

management. And while recent storms may have helped recharge some shallow groundwater basins, years of overdraft in deeper basins mean it could take months or years to recharge groundwater in some areas.

State Passed Major Legislation to Regulate Groundwater in 2014. In 2014, the Legislature passed and the Governor signed three new laws—Chapters 346 (SB 1168, Pavley), 347 (AB 1739, Dickinson), and 348 (SB 1319, Pavley)—collectively known as SGMA. With the goal of achieving long-term groundwater resource sustainability beginning in 2040, the legislation represents the first comprehensive statewide requirement to monitor and operate groundwater basins to avoid overdraft. The act’s requirements apply to 94 of the state’s 515 groundwater basins that DWR has found to be “high and medium priority” based on various factors, including overlying population and irrigated acreage, number of wells, and reliance on groundwater. (The remaining 421 basins ranked as being lower in priority—generally smaller and more remote—are encouraged but not required to adhere to SGMA.) While comprising less than one-fifth of the groundwater basins in California, the 94 high- and medium-priority basins account for 98 percent of California’s annual groundwater pumping. The figure below displays the time line for meeting SGMA’s key requirements.



Source: LAO

SGMA Required Local Agencies to Submit Groundwater Sustainability Plans (GSPs). SGMA assigns

primary responsibility for ongoing groundwater management to local entities, through the required formation of groundwater sustainability agencies (GSAs). SGMA requires GSAs to develop and implement long-term GSPs. These plans define the specific guidelines and practices that govern the use of individual groundwater basins, including potentially limiting extractions from these basins. Among the 94 high- and medium-priority basins, DWR identified 21 as being “critically overdrafted,” which it defines as a condition where a “continuation of present water management practices would probably result in significant adverse overdraft-related environmental, social, or economic impacts.” The GSAs managing groundwater in those basins were required to submit their GSPs to DWR for review by January 2020, while GSPs for the remaining basins were due by January 2022. SGMA allows DWR two years to review GSPs. Among the critically overdrafted basins, DWR deemed GSPs for 12 basins to be incomplete and required that they be resubmitted in July 2022. DWR continues to review new and resubmitted GSPs.

DWR Undertaking Numerous Key Activities. SGMA tasked DWR with several key responsibilities in the initial phases of the act’s implementation. As GSAs developed and have begun to implement their GSPs, DWR’s role has continued to grow. The figure below displays some of DWR’s key SGMA activities.

DWR’s Key Sustainable Groundwater Management Act (SGMA) Implementation Activities

- ✓ Defining and prioritizing groundwater basins.
- ✓ Collecting and disseminating data and best practices, including:
 - Collecting groundwater level data (and installing new monitoring wells to do so).
 - Collecting statewide land use and land subsidence data.
 - Conducting statewide geophysical surveys (to understand subsurface conditions and land subsidence, which informs recharge and dry well mitigation).
- ✓ Providing technical and financial assistance to groundwater sustainability agencies (GSAs).
- ✓ Reviewing groundwater sustainability plans (GSPs) to determine if they comply with the law.
- ✓ Assisting GSAs in implementing the activities detailed in their GSPs.
- ✓ Reviewing GSAs’ annual GSP reports.
- ✓ Reviewing GSAs’ five-year GSP updates.
- ✓ Maintaining an online SGMA portal (for GSAs and the public) and information repository.

DWR = Department of Water Resources.

Source: LAO

The State Water Resources Control Board (SWRCB) also has certain responsibilities in implementing SGMA, such as to intervene when local entities do not follow the law's requirements. If any basins ultimately fail to comply with SGMA, SWRCB is charged with taking over their management.

State Has Provided Significant Funding to Implement SGMA. The state has provided more than \$800 million since 2014-15 for SGMA implementation activities. This includes:

- **State Operations.** DWR has received \$314 million (\$84 million from Proposition 68 bond funds and \$229 million from the General Fund) to support state management of the SGMA program.
- **Local Planning Grants.** The state has provided \$93 million in Proposition 1 bond funds for planning grants, which supported local agencies as they formed GSAs and developed their GSPs.
- **Local Implementation Grants.** The state has provided \$430 million (\$134 million from Proposition 68 bond funds and \$296 million from the General Fund) for local implementation grants. Examples of grant-funded activities include developing ways to inject surface water into aquifers, expanding conveyance infrastructure to increase recharge, installing monitoring wells, and developing or upgrading infrastructure to increase the use of recycled water.

Sustainable Groundwater Management Act Resource History

(In Millions)

	2014-15 Through 2021-22			2022-23		Totals
	Proposition 1	Proposition 68	General Fund	Proposition 68	General Fund	
State operations	—	\$68	\$203	\$16	\$27	\$314
Planning grants	\$93	—	—	—	—	93
Implementation grants	—	134	180	—	116	430
Totals	\$93	\$202	\$383	\$16	\$143	\$837

Source: LAO

About 125 DWR Staff Currently Support SGMA Program. Currently, the SGMA program has authority for 69 positions. In addition, staff from other DWR programs are sometimes assigned to the SGMA program and typically are funded on a limited-term basis. Currently, about 56 positions are on loan from other DWR programs. Of the 125 staff currently supporting SGMA, 31 are funded with Proposition 68 bond funds, while 94 are funded by the General Fund.

LAO Comments. Successful Implementation of SGMA Is Vital to State's Water Supply, Community Drinking Water, and Agricultural Sector. The state relies heavily on groundwater, both for drinking water—particularly for small, vulnerable communities dependent on wells—and agricultural irrigation. As it grapples with periods of prolonged drought and a resulting lack of consistently adequate amounts of surface water, the importance of groundwater continues to grow. Successful implementation of SGMA's requirements will help ensure that the goals envisioned by the Legislature are achieved and remain a priority. The past decade has included a number of key SGMA implementation milestones, including definition and prioritization of groundwater basins; formation of GSAs; data collection; and development, submission, and review of GSPs. The state has entered the next period of SGMA implementation—undertaking the activities articulated in the GSPs that will eventually lead to basin sustainability. DWR plays an important role in ensuring these activities are successful, and the proposed increase in SGMA program funding and position authority could help the department better carry out its responsibilities.

Having DWR Collect and Disseminate Key Data Makes Sense. DWR has taken on more responsibility for collecting and reporting groundwater data statewide than was originally envisioned. This seems appropriate, in that it leverages DWR's economies of scale relative to having each local agency collect and report data. Moreover, having DWR collect key information, such as data about groundwater levels and land subsidence, not only ensures that the data and measurements are consistent across groundwater basins statewide, but that data are collected on a regular and frequent basis.

Expanding Role of DWR Would Benefit From Increased General Fund Support. Although SGMA implementation continues to move from planning to execution, DWR still has workload associated with reviewing GSPs and providing technical assistance to GSAs on their plans. DWR also will have ongoing workload associated with reviewing GSAs' annual reports and regular five-year GSP updates. Because Proposition 68 funds have mostly all been expended, DWR would not be able to continue these existing activities at the same level without more support. In addition, DWR is taking on an expanded role that should help facilitate better decision-making and inform recharge, dry well mitigation, and flood projects.

Ongoing Legislative Oversight of SGMA Implementation Is Important. Given the state's reliance on groundwater and the importance of SGMA to ensuring the sustainability of groundwater basins, ongoing oversight by the Legislature can help ensure implementation remains on pace and legislative priorities are being met. Legislative oversight also can help ensure that GSPs adequately account for equity concerns and that inequities are not exacerbated. For example, legislative oversight can shine a light on whether enough is being done in vulnerable communities that rely on domestic wells for their drinking water and where reports of dry wells have been increasing. The success of SGMA ultimately is not about whether deadlines are being met—although deadlines can help ensure progress—but whether groundwater use, banking, and recharge allow the state to actually reach sustainability.

LAO Recommendations.Consider Approving Ongoing and One-Time Funding and Positions. As discussed earlier, in the context of the state's budget problem, LAO recommends the Legislature employ a higher threshold when considering new General Fund spending proposals, given that they necessitate making reductions to existing spending commitments. LAO finds that the proposed funding and position authority for SGMA implementation activities could meet this higher bar, despite the associated trade-offs. They would allow DWR to continue implementing SGMA activities that the Legislature has previously indicated are among its high priorities. Moreover, ensuring sustainable groundwater management is key not only to future water supplies and the state's agricultural sector, but also to protecting drinking water for many vulnerable communities. The proposed funding would support DWR activities that are important to the success of local agencies in achieving statewide groundwater sustainability, and would allow the state to take advantage of economies of scale by supporting centralized data collection. LAO therefore recommends the Legislature consider approving the Governor's proposals.

Continue to Monitor Successes and Challenges of SGMA Implementation. Given its importance in overall statewide water resource management and protecting vulnerable communities, LAO recommends the Legislature continue to conduct robust oversight of ongoing SGMA implementation. The Legislature could do this through a number of ways, including requesting updates at annual budget subcommittee hearings, conducting oversight hearings, or requesting additional reporting when warranted. For example, the Legislature could consider holding oversight hearings or requesting additional reporting at particular milestones, such as the completion of the groundwater trading implementation plan, DWR's final determinations on all GSPs, or at the five-year mark when GSAs must submit GSP updates.

Staff Recommendation. Hold open.

3940 STATE WATER RESOURCES CONTROL BOARD (SWRCB)

Department Overview

The State Water Resources Control Board (SWRCB), along with nine Regional Water Quality Control Boards (RWQCBs), promote proper allocation and use of the state's water resources, and preserve, enhance, and restore the quality of state water resources.

The three-year expenditures and positions budget is as follows (*dollars in thousands*):

		Positions			Expenditures		
		2021-22	2022-23	2023-24	2021-22*	2022-23*	2023-24*
3560	Water Quality	1,827.5	1,874.5	1,919.3	\$3,984,347	\$1,561,470	\$1,767,111
3565	Drinking Water Quality	379.3	391.3	404.6	197,469	199,374	200,602
3570	Water Rights	328.0	391.0	368.9	109,351	106,441	103,131
3575	Department of Justice Legal Services	-	-	-	2,801	2,801	2,801
TOTALS, POSITIONS AND EXPENDITURES (All Programs)		2,534.8	2,656.8	2,692.8	\$4,293,968	\$1,870,086	\$2,073,645

Source: Department of Finance

Various SWRCB programs include:

Water Quality. This program advances the highest possible quality of water for the state. Specific activities include the following:

- Formulating, adopting, and updating water quality control plans, permit terms, conditions, and water standards and water management decisions.
- Monitoring water quality to determine compliance with control plans, permit terms, conditions, and water standards and implementing the Total Maximum Daily Load program to address pollution in the state's most seriously impaired water bodies by developing plans that allocate responsibility for reducing pollution.
- Ensuring the waters of the state are not degraded by hazardous waste spills or tank leaks, or by spills or tank leaks from solid and hazardous waste treatment, storage, and disposal facilities.
- Requiring waste dischargers, including storm water dischargers, to prevent and abate water pollution and inspect dischargers to determine compliance with requirements.
- Assisting owners and operators of underground tanks in financing the cleanup of unauthorized releases from their tanks.
- Administering financial assistance programs, that include loan and grant funding for construction of municipal sewage facilities, drinking water systems, water recycling facilities, watershed protection projects, and non point source pollution control projects.

Drinking Water Quality. The Drinking Water Program works to protect and improve the health of all state residents by promoting the safety of drinking water. This program is responsible for enforcing the

state and federal Safe Drinking Water Acts, adopting drinking water standards, and enforcing compliance with drinking water standards. The program also establishes criteria for water recycling projects; supports and promotes water system security; provides support for improving technical, managerial, and financial capacity of public water systems; certifies laboratories that analyze environmental samples for regulatory purposes; and maintains a registry of certified water treatment devices.

Water Rights. The Water Rights Program ensures that the state's water resources are put to beneficial use, while protecting prior rights, water quality, and the environment. Specific activities include:

- Allocating the unappropriated waters of the state to ensure water is used in accordance with state laws.
- Maintaining a record of title of appropriative water rights initiated and maintained since 1914, including those for stock ponds, livestock, and small irrigation and domestic use ponds.
- Maintaining records of water diversion and use under riparian and pre-1914 rights and groundwater extractions in four southern counties.
- Enforcing permit and license terms and conditions, abating illegal diversions, protecting public trust resources, and preventing waste or unreasonable use under all rights.
- Assisting the courts in determining existing rights to surface water throughout the states through court reference and statutory adjudication proceedings, and in determining rights to groundwater through the groundwater adjudication process.

Department of Justice Legal Services. This Program includes Department of Justice legal services to support the Water Boards in judicial proceedings related to the Water Boards' authorities.

Issue 30: Water Rights Modernization Continuation

Governor’s Proposal. The Governor’s budget requests \$31.5 million General Fund in 2023-24 for the Updating Water Rights Data for California (UPWARD) modernization project, which is a foundational piece of California’s broader water rights modernization effort. This request for one-time contract funds is intended to allow the UPWARD project to be completed on time and with adequate functionality.

Background. SWRCB administers water rights laws in California. These laws help provide certainty to water users and are intended to help protect the environment from the impacts that occur because of water diversions. SWRCB’s Division of Water Rights regulates and enforces the water rights priority system, oversees development and implementation of the Bay Delta Water Quality Control Plan, and is responsible for protecting resources, such as fisheries, wildlife, recreation, and navigation, which are held in the public trust.

Surface Water Rights: Brief History and Basics. The California water rights system consists mainly of two different kinds of rights: riparian and appropriative. (Other types of rights exist in the state, among them reserved rights [water set aside by the federal government when it reserves land for the public domain] and pueblo rights [a municipal right based on Spanish and Mexican law].)

Riparian Rights. Riparian rights entitle the landowner to use a share of the water flowing past their property. While riparian rights require no permits or licenses, they apply only to the water that would naturally flow in the stream and they do not allow the user to divert water for storage or use it on land outside its watershed. Riparian rights remain with the property when it changes hands.

Appropriative Rights. Water right law was set on a different course with the Gold Rush. Miners built extensive networks of waterways to work their claims. The water carried in these systems had to be transported far from the original river or stream.

The foundation for how the state manages water rights dates back to the Gold Rush. Miners built extensive networks of waterways to work their claims. The water carried in these systems had to be transported far from the original river or stream. The self-governing miners applied the “finders-keepers” rule to water.

To stake their water claims, the miners developed a system of “posting notice.” It allowed others to divert available water from the same river or stream, but their rights existed within a hierarchy of priorities. This “first in time, first in right” principle became a feature of modern water rights law.

When California became a state in 1850, lawmakers adopted the law of riparian rights. One year later, the Legislature recognized the appropriative right system. The appropriative system continued to increase as agriculture and population increased and ownership of land was transferred into private hands. This is the basis of a series of disputes that continue today.

The conflicting nature of the state’s dual water right system has prompted legal disputes. Unlike appropriative users, riparian right holders were not required to put water to reasonable and beneficial use. This clash of rights resulted in a constitutional amendment requiring all water use to be “reasonable and beneficial.” These “beneficial uses” include municipal and industrial uses, irrigation, hydroelectric generation, livestock watering, recreational uses, fish and wildlife protection.

Up to the early 1900s, appropriators — most of them miners and non-riparian farmers — had simply

taken control of and used what water they wanted. Sometimes notice was filed with the county recorder, but no formal permission was required from any administrative or judicial body.

The Water Commission Act of 1913 established today's permit process and created the agency that evolved into SWRCB, which was given the authority to administer permits and licenses for the state's surface water.

Riparian rights still are a higher priority than appropriative rights. The priorities of riparian right holders generally carry equal weight and during a drought all share in the shortage.

In times of drought and limited supply, the most recent ("junior") right holder must be the first to discontinue use; each right's priority dates to the time the permit application was filed with SWRCB. Although pre- and post-1914 appropriative rights are similar, post-1914 rights are subject to a much greater degree of scrutiny and regulation by SWRCB.

SWRCB was created in 1956 as part of the same legislation that created DWR. There was recognition that DWR would hold water rights and operate water project facilities. The Legislature created an independent board to administer the water rights functions to avoid a conflict of interest by DWR.

Water Rights System and Management of Water Diversions. The state's management of water diversions has not adequately evolved with changing public values and management needs. As the state heads into a fourth year of drought, SWRCB is challenged to provide timely, useful, and meaningful information to guide state and local water management decisions, which are especially vital during periods of drought.

Other western states including Washington, Oregon, Nevada, and Idaho manage water diversions much more nimbly than California, which puts them in better positions to adjust to "aridification" – the transition to a drier climate – that will lead to less available water in reservoirs, aquifers, and streams. The ability to adjust diversions quickly will be crucial for protecting fish and wildlife, other water right holders, and public health and safety as California deals with the new normal of climate change-induced extreme wet and dry conditions. To make a century-old water right system work in this new era, SWRCB needs accurate and timely data and modern data infrastructure.

Recent Efforts to Modernize Water Rights System. This proposal builds on recent state investments to modernize California's water rights system, including \$30 million in 2021-22 to begin rebuilding the state's water rights data management system and \$52 million in 2022-23 to establish pilot projects to, among other things, collect real-time diversion data, develop data and analytical tools to implement the water rights priority system in additional watersheds, and create more robust supply/demand models for the Delta watershed. The proposal also builds on the Administration's efforts to address aridification and future loss of water supplies due to climate change.

The funding provided in 2021-22 focused on the scoping and initial development of a new water rights data management system to replace the state's outdated legacy system. The initial funding funded the scoping, procurement, staffing, and development of primary functions of a new and robust data system, while providing time to finalize the detailed requirements needed to complete the full system rebuild.

The procurement process to select the software developer (bidder, or vendor) is underway. SWRCB and California Department of Technology (CDT) selected a challenge-based procurement process to select the vendor. This procurement process allows completion of the Project Approval Lifecycle (PAL) before or at the point of awarding the vendor contract. This process has allowed for rapid progress but comes

with additional uncertainty related to scope and magnitude when the procurement begins. This uncertainty can result in initial cost estimates being much higher or lower than the initial budget request and allocation.

The UPWARD process to date is summarized as follows:

- July 2021: initial funding provided for UPWARD project.
- August 2021: Solicitation for consulting project manager released.
- September – October 2021: Gartner Consulting selected for consulting project manager; contract executed. Gartner Consulting responsible for managing the master work plan, schedule, report status, risk management and mitigation; developing strategy and determining critical quality measures for business process re-engineering; overseeing change management controls and procedures in coordination with the Board; and developing a data conversion strategy and plan; guiding project and developing primary documentation/artifacts required during a major IT project.
- November – December 2021: Development of scenarios and user stories, which provide narrative guidance and structures to vendors and bidders.
- January – June 2022: Vendors develop Proof of Concept (POC), state staff evaluate bidders' technical approach and capabilities, gauge ability to understand the project, and evaluate bidders working capabilities. Functional and non-functional requirements, and other required components of the PAL, are scoped and drafted.
- July – September 2022: Evaluation and scoring of the system design proposals (July), with negotiations planned for August/September.
- October – December 2022 (projected): Contract award to the selected bidder.
- Of the initial \$30 million provided in 2021-22, the UPWARD project currently has \$19.7 million remaining and available for system design, build, and implementation. This proposal requests \$31.5 million to fully fund the estimated implementation vendor contract to complete the UPWARD system. The State Water Board anticipates the total cost of the UPWARD project will be approximately \$62.4 million.

The original anticipated project cost for UPWARD was based on estimates of the minimum funding that would be needed to begin the project quickly and responsibly, while allowing time to build a logical foundation for subsequent funding requests.

Many unknowns of the full system scope were discovered throughout the proof of concept (POC) and internal-facing development processes. With an improved understanding of the actual scope and magnitude of the project, the costs provided by the bidders now serve as the best estimate of the true total cost of the project. An average value was used to determine the value of this request since the costs vary between bidders.

This proposal is intended to address inequity by making water rights documents easily accessible online (so people do not have to drive to Sacramento to view information, which they must do at present).

Staff Recommendation. Hold open.

3860 DEPARTMENT OF WATER RESOURCES (DWR)
3640 WILDLIFE CONSERVATION BOARD (WCB)
3940 STATE WATER RESOURCES CONTROL BOARD (SWRCB)
8570 CALIFORNIA FOOD AND AGRICULTURE (CDFA)

Issue 31: Governor's Proposed Budget Solutions: Drought Response and Water Resilience

Governor's Proposal. According to LAO:

Proposes Some Modest Changes, but Retains Vast Majority of Water-Related Funding. The Governor's budget proposes to reduce spending by \$194 million and delays spending by \$300 million until 2024-25, yielding combined General Fund budget solutions of \$494 million in 2023-24. This approach retains \$8.6 billion of \$8.8 billion planned for water-related activities over the five years. The proposal retains nearly all of the funding appropriated or planned for immediate drought response and instead focuses most of the funding reductions in other categories. (In addition, the Governor's budget proposes \$139 million in new one-time General Fund spending for flood management projects, which we discuss in more detail in a separate publication.)

- ***Water Recycling.*** The proposal reduces \$40 million General Fund from planned 2023-24 funding for water recycling programs administered by SWRCB. Recent budgets committed a total of \$800 million for both water recycling (\$725 million) and groundwater cleanup (\$75 million). The proposal retains \$685 million for water recycling and the original \$75 million for groundwater cleanup.
- ***Watershed Climate Resilience.*** Recent budgets committed \$495 million over five years to DWR and WCB to support increased climate resilience at a watershed level. WCB plans to use funding to provide grants through existing programs. DWR has formed a Watershed Resilience Work Group and plans to complete climate risk and preparedness assessments; develop a watershed resilience planning framework, toolkit, and performance metrics; and support four to six pilot studies. The proposal reduces 2022-23 funding and planned 2023-24 funding by \$24 million and delays an additional \$270 million until 2024-25. On net, the proposal retains \$471 million for watershed climate resilience activities.
- ***Per- and Polyfluoroalkyl Substances (PFAs) Support.*** Recent budgets committed \$200 million over three years for various activities to address PFAs. These are long-lasting chemicals that are hard to break down and have been used in a variety of consumer and industrial products to create, for example, nonstick surfaces and water- and stain-resistant fabrics. The proposed budget reduces planned 2023-24 spending by \$70 million and delays an additional \$30 million until 2024-25. On net, the proposal retains \$130 million for PFAs support.
- ***State Water Efficiency and Enhancement Program (SWEEP).*** The proposal reduces funding for the SWEEP program by \$40 million in 2022-23, retaining \$120 million over 2021-22 and 2022-23. This program, administered by CDFA, provides farmers with financial assistance to make improvements to their irrigation systems that would result in using less water and/or energy.
- ***Aqueduct Solar Panel Pilot Study.*** The proposal reduces spending by \$15 million in 2021-22 for DWR to support pilot studies on installing solar panels over aqueducts to generate energy and reduce evaporation. The proposal retains \$20 million for this purpose.
- ***Water Refilling Stations at Schools.*** The proposal eliminates all \$5 million in 2022-23 funding for SWRCB to support water refilling stations at schools.

Governor's Proposed Drought Response and Water Resilience Budget Solutions

(In Millions)

Program	Total Augmentations	Proposed Changes			Net Reductions	New Proposed Amounts
		2021-22 and 2022-23	2023-24	2024-25		
Programs Proposed for Solutions						
Water recycling, groundwater cleanup	\$800	—	-\$40	—	-\$40	\$760
Watershed climate resilience (WCB)	334	-\$158	-64	\$198 ^a	-24	310
Watershed climate resilience (DWR)	161	-42	-30	72 ^a	—	161
PFAs support	200	—	-100	30 ^a	-70	130
SWEEP	160	-40	—	—	-40	120
Aqueduct solar panel pilot study	35	-15	—	—	-15	20
Water refilling stations at schools	5	-5	—	—	-5	—
Subtotals	(\$1,695)	(-\$260)	(-\$234)	(\$300)	(-\$194)	(\$1,501)
All Other Drought Response and Water Resilience Funding	\$7,057	—	—	—	—	\$7,057
Totals	\$8,752	-\$260	-\$234	\$300	-\$194	\$8,558

^a Reflects funding delayed from a prior year.

WCB = Wildlife Conservation Board; DWR = Department of Water Resources; PFAs = per- and polyfluoroalkyl substances; and SWEEP = State Water Efficiency and Enhancement Program.

Source: LAO

Background. *Recent Budgets Committed \$8.8 Billion for Drought and Water Resilience Activities.* Recent budgets have committed a combined \$8.8 billion (\$8.3 billion from the General Fund and \$440 million from other funds) over five years to various departments for emergency drought response and water resilience activities. Of the total, \$6.9 billion was appropriated in 2021-22 and 2022-23, while \$1.8 billion is intended for 2023-24 through 2025-26. Nearly half of the funding targets activities related to drinking water, water recycling and groundwater cleanup, water supply, and flood management. About \$1.4 billion supports immediate drought response activities, such as SWRCB and CDFW to oversee and enforce regulatory restrictions on water diversions and fishing in certain streams. The remaining funding supports habitat restoration, water quality, and conservation activities.

(Next page)

Recent and Planned Drought Response and Water Resilience Augmentations

Highlighted Rows Indicate Programs Governor Proposes for Budget Solutions
General Fund, Unless Otherwise Noted ^a (In Millions)

Program	Department	2021-22	2022-23	2023-24	2024-25	2025-26	Totals
Drinking Water, Water Supply, Flood		\$2,498	\$529	\$473	\$25	\$500	\$4,025
Drinking water, wastewater projects	SWRCB	\$1,700	—	—	—	—	\$1,700
Water recycling, groundwater cleanup	SWRCB	300	\$190	\$310	—	—	800
Flood and dam safety	DWR	313	237	163	\$25	—	738 ^b
Water conveyance, water storage	DWR	100	100	—	—	\$500	700
Aqueduct solar panel pilot study	DWR	35	—	—	—	—	35
Watershed climate studies	DWR	25	—	—	—	—	25
Water storage tanks	DWR	21	—	—	—	—	21
Flood planning	DWR	4	2	—	—	—	6
Immediate Drought Response		\$1,250	\$84	\$26	\$26	\$26	\$1,411
Community drought relief	DWR	\$800	—	—	—	—	\$800
Data, forecasting, communications	Various	144	—	\$17	\$17	\$17	194
Drought contingency control section	Various	96	—	—	—	—	96
Save Our Water campaign	DWR	—	\$75	—	—	—	75
Drinking water emergencies	SWRCB	62	—	—	—	—	62
Water rights activities	SWRCB, CDFW	88	4	9	9	9	119 ^b
Drought salinity barrier	DWR	27	—	—	—	—	27
Drought food assistance	CDSS	23	—	—	—	—	23
Conservation technical assistance	DWR	10	—	—	—	—	10 ^b
Water refilling stations at schools	SWRCB	—	5	—	—	—	5
Habitat/Nature-Based Activities		\$643	\$292	\$160	\$82	\$32	\$1,208
Fish and wildlife protection/study	Various	\$300	\$47	—	—	—	\$347
Watershed climate resilience	WCB	16	158	\$96	\$50	\$14	334
Watershed climate resilience	DWR	10	67	48	25	11	161
Aquatic/large-scale habitat projects	Various	122	7	7	7	7	149
MWD resilience projects	DWR	50	—	—	—	—	50
River restoration activities	DWR	15	14	9	—	—	37 ^b
Spending from various bonds	WCB, DWR	105	—	—	—	—	105
State land and bird habitat projects	CDFW, DWR	25	—	—	—	—	25
Water Quality and Ecosystem Restoration		\$391	\$420	\$380	—	—	\$1,191
Water resilience projects	CNRA	\$165 ^b	\$100	\$180	—	—	\$445
Streamflow enhancement program	WCB	100	150	—	—	—	250
Salton Sea	DWR	40	100	80	—	—	220
PFAs support	SWRCB	30	50	120	—	—	200
Urban streams and border rivers	Various	50	20	—	—	—	70
Clear Lake	CNRA	6	—	—	—	—	6
Conservation/Agriculture		\$726	\$110	\$80	—	—	\$916
SGMA implementation	DWR	\$236	\$60	\$60	—	—	\$356
SWEEP	CDFA	110	50	—	—	—	160
Multi-benefit land repurposing	DOC	90	—	20	—	—	110
Water conservation programs	DWR	180	—	—	—	—	180
Agricultural conservation	DWR, CDFA	110	—	—	—	—	110
Totals		\$5,508	\$1,435	\$1,119	\$133	\$558	\$8,752

^a In total, \$440 million is from a variety of non-General Fund sources, including bond funds, federal funds, special funds, and reimbursements.

^b Includes funding from sources other than General Fund.

SWRCB = State Water Resources Control Board; DWR = Department of Water Resources; CDFW = California Department of Fish and Wildlife; CDSS = California Department of Social Services; WCB = Wildlife Conservation Board; MWD = Metropolitan Water District; CNRA = California Natural Resources Agency; PFAs = per- and polyfluoroalkyl substances; SGMA = Sustainable Groundwater Management Act; SWEEP = State Water Efficiency and Enhancement Program; CDFA = California Department of Food and Agriculture; and DOC = Department of Conservation.

State Investments for These Types of Activities Historically Supported Primarily Through Bonds. The vast majority of total spending on water systems—including drinking water and wastewater systems, water delivery, and flood management—comes from local water utilities, which are funded by local water charges and taxes. According to data compiled by the Public Policy Institute of California, from 2016 through 2018, local sources contributed 84 percent of total spending on water in California, with much smaller shares coming from the state (13 percent)—primarily via bond funds—and federal (3 percent) governments. State bond funding historically has filled important gaps, such as by supporting infrastructure improvements in areas that lacked local and/or long-term funding streams. The General Fund traditionally has supported emergency drought response, but in recent years also has funded more expanded types of drought response activities, such as projects to upgrade community water systems.

LAO Comments. Some Drought and Water Resilience Activities Remain Important. While LAO generally finds identifying budget solutions among the many recent one-time augmentations appropriate, LAO thinks retaining funding for the most critical activities should remain a priority. For example, maintaining funding to address drinking water emergencies and to support SWRCB’s modernization and enforcement of water rights are key to the state’s ability to effectively manage drought conditions. Recent storms also demonstrated the importance of flood and dam management. LAO therefore finds the Governor’s proposed approach to leave funding for these efforts untouched to be prudent.

Proposed Reductions Appear Reasonable. Overall, the individual reductions the Governor proposes appear reasonable—they do not take funding away from the most urgent needs and, in some cases, federal funding is available for similar purposes. In addition, based on LAO’s assessment, these reductions will not lead to major disruptions in the programs. Specifically:

- ***Water Recycling—Significant State and Federal Funding Still Available for This Purpose.*** SWRCB indicates that even with the Governor’s proposed \$40 million reduction for water recycling, it expects the remaining \$685 million would be sufficient to provide the maximum grant amount to all eligible projects based on current demand. In addition, SWRCB receives federal funding through the Clean Water State Revolving Fund (CWSRF), which can be used for water recycling projects. (The CWSRF provides low-cost financing and forgivable loans for water projects.) On top of the regular annual amount of federal CWSRF funds the state receives (roughly \$54 million), IJA is providing CWSRF with a significant increase (roughly \$850 million over five years from 2022 through 2026).
- ***SWEEP—Reduction Would Maintain Program at Historical Levels.*** Recent budgets provided the SWEEP program with \$110 million General Fund in 2021-22 and \$50 million General Fund in 2022-23. Even with the proposed \$40 million reduction, it would still receive \$10 million General Fund in 2022-23, which is more in line with historical average annual allocations. (From 2013-14 through 2019-20, SWEEP received an average of \$18 million annually from GGRF or bond funds; it did not receive funding in 2019-20 or 2020-21.) Because this is a grant program, reducing funding likely would mean fewer grants to farmers.
- ***Aqueduct Solar Panel Pilot Study—State Could Wait for Study Results Before Expanding.*** DWR awarded 2021-22 funding (\$20 million General Fund) to Turlock Irrigation District in February 2022 to install and study solar panels over several sections of its irrigation canals. The district anticipates starting construction in early 2023 and completing it in 2024. The Governor’s proposal to reduce the \$15 million for similar demonstration projects would give the state time to see whether the Turlock project has the desired results before it decides whether to fund additional pilots or expand solar panels over canals more broadly in the future.

- ***Water Refilling Stations at Schools—Funding Reduction Would Not Cause Major Disruptions.*** While the proposed \$5 million reduction would decrease funding explicitly for new water refilling stations at schools, SWRCB’s broader Drinking Water for Schools Program, which also supports water refilling stations, would continue. This program was established in 2016 and has provided two rounds of grant funding to schools totaling \$16.3 million to increase access to and/or improve the quality of their drinking water. SWRCB indicates that demand for this funding has been modest and that it has other services and funding available depending on schools’ needs. In addition, schools could choose to use their general purpose funding and federal COVID-19-related funding for water refilling stations.

Legislature Could Consider Converting Governor’s Proposed Delays to Reductions Instead. In light of the state’s budget condition, the Legislature could consider reducing rather than delaying funding—as the Governor proposes—for watershed climate resilience and PFAs support. The Legislature could then revisit whether to provide more funding for these programs in 2024-25 or a future year.

- ***Watershed Climate Resilience.*** Reducing this funding would result in an overall decline from \$495 million to \$201 million for watershed climate resilience. For WCB, this would mean providing fewer and/or smaller grants. For DWR, this could mean conducting fewer or no pilot studies over the five-year window and perhaps scaling back some of its planning and assessment activities. Should it decide to make these reductions, the Legislature also could consider redirecting more of the remaining funds from WCB to DWR. The activities DWR is undertaking—climate risk assessments; development of frameworks, toolkits, and performance metrics; and pilot studies—could be used to inform more effective and strategic spending on projects in the future.
- ***PFAs Support.*** Reducing this funding would result in an overall decline from \$200 million to \$100 million for PFAs support. Another funding source is available, however. The IJA is providing California with supplemental funds of about \$330 million over five years through the Drinking Water State Revolving Fund (DWSRF) specifically to address “emerging contaminants,” including PFAs.

Legislature Could Consider Additional Reductions. As the Legislature weighs additional budget solutions in response to a potentially worsening revenue picture, some programs it could consider reducing—or reducing further—include:

- ***Water Resilience Projects (California Natural Resources Agency (CNRA)).*** Recent budgets have provided a total of \$445 million to CNRA over three years, including \$180 million General Fund planned for 2023-24, for water resilience projects in the Delta. This program is new and was created with the funding provided in 2021-22. It allows the Administration to select projects to implement voluntary agreements with water users. The purpose is to improve conditions for native fish species and maximize water for human purposes, without necessitating stricter regulatory flow requirements. CNRA was given significant discretion over how to use these funds with few statutory parameters or reporting requirements. The Legislature could reduce or eliminate the 2023-24 amount and instead request reporting and evaluation of the use of funds to date before providing additional funds.
- ***Drinking Water (SWRCB).*** Recent budgets provided \$1.7 billion General Fund to SWRCB for drinking water projects. This includes providing financial assistance to small and/or disadvantaged communities that had projects underway to repair, upgrade, or consolidate drinking water or wastewater systems. SWRCB thus far has committed about \$265 million of the \$1.7 billion and indicates it should reserve \$400 million to meet state matching requirements for federal DWSRF funds. However, this leaves up to about \$1 billion that could be reduced. While

the activities funded by this program are important—for example, they help increase equitable access to safe, clean, and affordable drinking water within vulnerable communities—an unprecedented amount of federal funding currently is available for these purposes. This includes more than \$2.5 billion from IIJA over five years, on top of historical grant levels, for DWSRF programs (including the aforementioned \$330 million to address emerging contaminants). In addition, state statute requires an annual GGRF appropriation (through 2030) to SWRCB of \$130 million to provide more flexible funding and grants to support these types of projects. As such, the state could continue to pursue its goals and focus on the needs of disadvantaged communities even with a reduction in General Fund support.

- ***Multi-Benefit Land Repurposing (Department of Conservation, DOC).*** Recent budgets provided DOC with \$90 million in 2021-22 and planned \$20 million in 2023-24 for a new grant program to support repurposing agricultural land for other beneficial uses. Such uses might include dry farming, wildlife habitat, or groundwater capture. The program is not needed to respond to immediate and urgent drought impacts and it is too early in its implementation to know how effective it is at addressing longer-term land transition goals. As such, the Legislature could consider reducing or eliminating the \$20 million in 2023-24 and collecting information about program design, demand, and outcomes before making any future funding decisions.
- ***Additional Water Recycling Reductions (SWRCB).*** Given the influx of federal IIJA dollars to the state's CWSRF (which can be used for a variety of purposes, including water recycling projects), the Legislature could consider reducing the amount planned for 2023-24 (\$310 million) by more than the proposed \$40 million. While this could mean that SWRCB might be unable to fully meet current demand for the program using state funds, federal funds could help make up for some of that gap.

State Could Use Coordinated Approach in Seeking Reductions Within Habitat Programs That Support Similar and Complementary Efforts. Recent state budgets have included and planned for numerous augmentations to support ecosystem health, habitat restoration, and fish and wildlife protection and resilience. Such programs were funded in both the water and drought packages, as well as the nature-based activities package discussed in more detail later in this report. Many of these programs have similar types of objectives, even if their specific areas of focus may differ somewhat. The Legislature could look across these various programs and consider them together when deciding where to make needed reductions. While decreasing funding levels for some of these programs likely would mean completing fewer total projects, taking a holistic approach about where to cut and where to preserve funding could allow the state to maintain complementary efforts and continue to pursue its overall habitat and ecosystem goals in a more coordinated way. For example, programs could be categorized thematically by their overarching goal, such as protecting native fish/salmon populations. The state could then maintain funding for one or two of the programs that would most effectively achieve that goal, while potentially reducing funding for others. The figure below describes the various programs included in recent funding packages that support similar and complementary habitat restoration and wildlife protection efforts.

(Next page)

Habitat Restoration and Wildlife Protection Programs Funded in Recent Budgets

General Fund, Unless Otherwise Noted (In Millions)

Program	Department	Description	Funding Provided and Planned (2021-22 Through 2023-24)
Water resilience projects (DRWR package)	CNRA	New program supporting projects to implement voluntary agreements with water users in the Sacramento-San Joaquin Delta, improve conditions for native fish, and maximize water for human purposes without using flow regulations.	\$445 ^a
Protect fish and wildlife from changing climate conditions (NBA package)	WCB	Fish and wildlife protection projects, including land acquisition and restoration, invasive plants and species control, and wildlife corridors development.	353
Streamflow enhancement program (DRWR package)	WCB	Grant program for projects to benefit fish and wildlife by changing the amount, timing, or quality of stream flows, including by purchasing water or water rights.	250
Various WCB programs (NBA package)	WCB	Support for planning, acquisition, and restoration projects on natural and working lands.	245
Habitat restoration (NBA package)	DWR	Multi-benefit habitat projects supporting efforts to reach voluntary agreements on species protections and water flows in the Delta.	200
Aquatic habitat and drought resilience (DRWR package)	DWR	Programs and projects, such as habitat restoration projects, promoting recovery of native fish in the Sacramento-San Joaquin watershed.	122
Resilience projects for fish and wildlife (DRWR package) ^b	WCB	Projects to construct, repair, modify, or remove infrastructure to improve fish and wildlife passage.	105
Salmon protection (DRWR package) ^b	CDFW	Projects to protect, restore, and enhance riparian and aquatic salmon habitat, including restoring river channels and reconnecting flood plains.	100
Fish and wildlife protection (DRWR package) ^b	CDFW	Support to rehabilitate and shelter fish and wildlife at risk from drought conditions.	75
Climate change impacts on wildlife (NBA package)	CDFW	Projects to benefit fish and wildlife by protecting instream flows, purchasing water, and building conservation projects.	50
Fisheries and wildlife support (DRWR package) ^b	CDFW	Support for fish and wildlife at-risk during drought, including fish hatchery improvements and terrestrial and fish species monitoring and rescue.	33
Climate induced hatchery upgrades (DRWR package) ^b	CDFW	Support for an assessment of existing fish hatcheries to inform future planning and development efforts.	17
Salmon study, tribal co-management (DRWR package) ^b	DWR, CDFW	Support to study the reintroduction of salmon on the North Fork Feather River and for CDFW to work with tribal nations on fish passage above large dams.	7

^a Includes \$125 from Proposition 68 (2018) bond funds.

^b Included as part of the "Fish and wildlife protection/study" item in Figure 10.

DRWR package = funded in one of the Drought Response and Water Resilience packages; CNRA = California Natural Resources Agency; NBA package = funded in the Nature-Based Activities package; WCB = Wildlife Conservation Board; DWR = Department of Water Resources; and CDFW = California Department of Fish and Wildlife.

Source: LAO

LAO Recommendations. *Modify Governor's Proposals to Reflect Legislative Priorities.* Overall, LAO finds the Governor's proposed reductions for water and drought programs to be reasonable and therefore recommends the Legislature give them careful consideration. The proposals do not take funding away from the most urgent needs (such as responding to drinking water emergencies or supporting water rights enforcement) and, in some cases, federal funding is available for similar

purposes. Should the Legislature wish to seek alternative or additional reductions, some of the particular modifications LAO recommends it consider include: (1) reducing rather than delaying funding for watershed and PFAs support programs; (2) reducing or further reducing programs receiving federal IJA funding, such as drinking water and water recycling; (3) reducing or eliminating 2023-24 funding for new programs such as DOC's multi-benefit land repurposing program and CNRA's water resilience activities; and (4) taking a coordinated approach to reducing funding for wildlife habitat programs with similar activities and goals.

Consider Requiring Reporting and Assessment for New Programs. The Legislature could require the administration to provide reporting and assessment of newer programs, such as DOC's multi-benefit land repurposing, CNRA's water resilience activities, DWR's aqueduct pilot, and DWR's watershed climate resilience planning and assessments. Particularly if it were to reduce funding for these programs, the various evaluations and information would enable the Legislature to make more effective funding decisions in the future.

Staff Recommendation. Hold open.

3970 DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY (CALRECYCLE)

Issue 32: Development of a Statewide Zero Waste Plan

Governor’s Proposal. According to the LAO, the Governor’s budget includes \$2 million on a one-time basis in 2023-24 from the Beverage Container Recycling Fund to develop a zero waste plan. The zero waste plan would identify gaps in CalRecycle’s programs and existing laws and recommend changes needed for the state to meet and exceed the goal established under AB 341 by 2035. The department would aim to complete the plan in fall 2025. The Governor’s budget also includes \$301,000 ongoing from multiple special funds beginning 2023-24 to support two positions to oversee the development of the plan and coordinate its implementation once completed.

Background. According to the LAO:

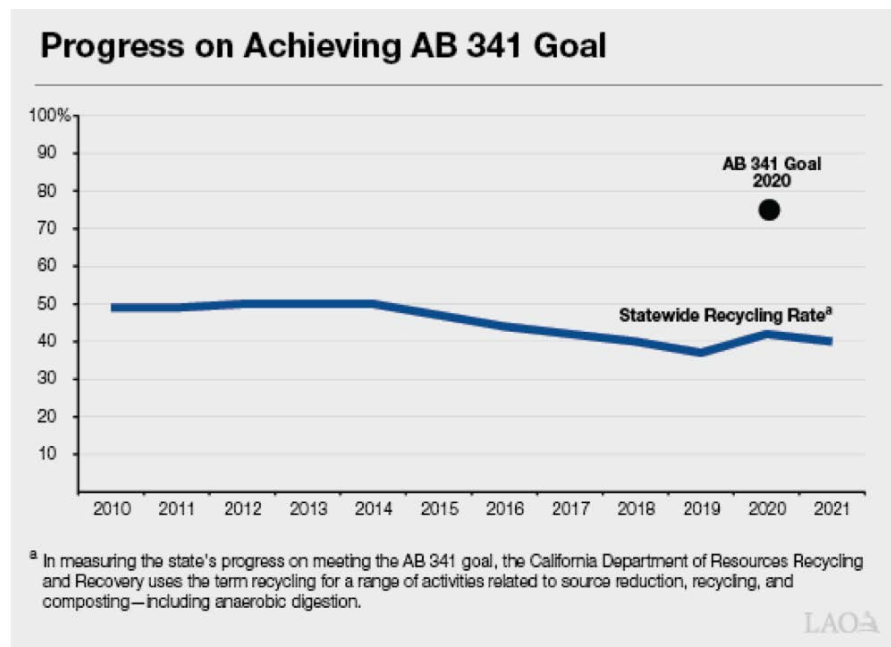
CalRecycle Administers and Provides Oversight of Waste Management and Recycling Programs. CalRecycle administers and provides oversight of the state’s waste handling and recycling programs, which largely are managed at the local level by cities and counties. CalRecycle also implements several statewide programs. This includes the Beverage Container Recycling Program, a deposit-refund system that encourages the recycling of certain beverage containers. The department also oversees multiple extended producer responsibility programs for specific products—such as carpet and paint—which require that producers collect and recycle their used products.

AB 341 Established Statewide Goal. The Legislature enacted AB 341 (Chesbro), Chapter 476, Statutes of 2011, which, among other provisions, established a goal that by 2020, at least 75 percent of statewide solid waste generated be source reduced, recycled, or composted.

For the purpose of measuring the state’s progress in achieving the AB 341 goal, CalRecycle uses the term recycling for a range of activities related to source reduction, recycling, and composting—including anaerobic digestion. As shown in figure below, the state was not able to meet the 75 percent goal by 2020.

In 2021, the statewide recycling rate was 40 percent, which was down from a recent high of 50 percent in 2014 and still significantly lower than the goal set out in AB 341.

(Next page)



Source: LAO

AB 341 Required Comprehensive Report on State's Efforts to Meet Recycling Goal. AB 341 also included a requirement for CalRecycle to report to the Legislature on strategies to achieve the 75 percent recycling goal. The first report was due by January 2014 and annually thereafter until the statutory reporting requirement ended in January 2017. The report, which CalRecycle ended up only submitting once in 2015, was required to include the following: (1) evaluation of current programs and recommendations for improvements; (2) identification of problematic waste streams and recommendations on handling those streams; (3) recommendations for reprioritizing existing resources; and (4) recommendations for statutory and regulatory changes. CalRecycle has continued to provide annual updates on the state's progress in meeting the AB 341 goal, but has not conducted a comprehensive assessment since 2015.

Recent Legislation Expanded CalRecycle's Responsibilities for Certain Waste Streams. Over the past several years, the Legislature has enacted legislation that has significantly expanded CalRecycle's responsibilities with regard to certain waste streams. These include:

- **SB 1383 (Lara), Chapter 395, Statutes of 2016.** This law requires CalRecycle to adopt regulations designed to reduce the statewide disposal of organic waste to 50 percent of 2014 levels by 2020 and 75 percent by 2025. It also requires CalRecycle to adopt regulations designed to recover at least 20 percent of disposed edible food by 2025.
- **SB 54 (Allen), Chapter 75, Statutes of 2022.** This law requires producers of single-use packaging and food service ware to implement an extended producer responsibility program. The legislation also phases in several product and recycling requirements by 2032, such as requiring that 100 percent of covered materials be recyclable or compostable. CalRecycle is charged with adopting the regulations necessary to implement the legislation.
- **SB 1013 (Atkins), Chapter 610, Statutes of 2022.** This law expands the Beverage Container Recycling Program to include wine and distilled spirit containers starting in January 2024. CalRecycle is in charge of overseeing the expansion of the program.

- ***SB 1215 (Newman), Chapter 370, Statutes of 2022.*** This law expands the existing Covered Electronic Waste Program—which uses consumer fees to support the proper collection and recycling of certain electronic devices—to include most battery-embedded products, such as cell phones. CalRecycle is in charge of overseeing the expansion of the program.

LAO Comments. *Identifying Program Shortcomings and Implementing Improvements Is a Core Department Responsibility.* The Administration indicates that the zero waste plan would identify programmatic improvements that would help the state achieve and exceed the goal set out in AB 341. This would also include identifying ways in which programs could better complement one another. While this could be helpful, these activities should already be occurring on an ongoing basis—both within individual programs and across the department. As part of its core responsibilities, CalRecycle should be (1) conducting regular program evaluations to assess how well programs are meeting their intended goals, (2) identifying any changes needed to improve programs, (3) assessing to what extent programs are aligning with the department’s core mission and statutory goals, and (4) applying lessons learned across programs to make continuous improvements.

Plan Could Become Quickly Outdated Given Recently Enacted Legislation. As mentioned above, recently enacted legislation has significantly expanded the department’s responsibilities for certain waste streams. In several cases, the activities in the legislation that the department is tasked with implementing will take effect around the same time the plan would be expected to be nearing its completion. For instance, the department likely will finalize regulations for SB 54 and SB 1215 in late 2024, which is around the time the proposed plan would begin finishing its research and analysis phase. As such, conducting the plan as proposed would preclude the department from being able to fully incorporate the impacts of these significant policy changes. In other cases, CalRecycle would only have a minimal amount of data available regarding the impact of recent statutory changes to be able to incorporate into the plan. For instance, the expansion of the Beverage Container Recycling Program under SB 1013 is expected to take effect in January 2024. While the plan might be able to capture some early outcomes from the expanded program, the data collected likely would not be significant enough for the department to include a full assessment of the program’s changes. Additionally, the assessment of program needs likely will evolve based on the degree to which the new policies are or are not having their intended outcomes. The fact that it would necessarily be dependent upon soon-to-be-outdated data raises questions about the ultimate value of the proposed plan.

High-Level Plan May Not Be Best Approach for Identifying Issues Specific to Individual Programs. As currently proposed, the plan would look broadly across all programs to identify areas where improvements could be made. However, this high-level assessment may not be the best approach for identifying improvements that are specific to individual programs. This is because each program will likely experience unique barriers and have different needs. For instance, improvements needed to increase the diversion of organic waste from landfills—as directed under SB 1383—will be different from those needed to increase the rate at which beverage containers are recycled. While the plan may be able to provide an assessment of general statewide needs and high-level goals, it is unlikely to identify improvements needed for individual programs at the level of specificity required to result in meaningful changes. This is a key reason why the department should be engaged in conducting program evaluations on an ongoing basis.

Premature to Establish More Ambitious Goal Before Meeting Existing Statutory Goal. The proposal indicates that the zero waste plan would recommend programmatic and statutory changes needed for the state to meet and *exceed* the goal established under AB 341 by 2035. As mentioned earlier, the state has not yet been able to make significant progress towards meeting the current statutory AB 341 goal.

Overall, LAO finds that planning for a more ambitious goal is premature when (1) the state has made minimal progress towards the current goal and (2) a new goal has not been established in statute.

CalRecycle Has Undertaken Similar Programmatic Assessments Before Without Additional Resources. As mentioned above, AB 341 included a reporting requirement that directed the department to identify strategies to achieve the 75 percent recycling goal. That annual requirement was in effect from January 2014 to January 2017. In many cases, the proposed new zero waste plan is very similar to the one that the department previously was required to complete under AB 341. CalRecycle indicates it was able to complete its AB 341 reporting requirement within its existing resources. This raises questions as to why, if the department found this type of assessment helpful, it could not undertake a similar planning exercise within its existing resources again. Similarly, if the Legislature found the AB 341 report useful, it could consider reestablishing the previous requirements in statute. However, providing the department with \$2 million for contract support and an ongoing increase of \$300,000 for two new positions to review its existing programs does not seem justified—particularly because it has experience in conducting a similar study without those augmentations.

LAO Recommendation. *Reject Proposal to Develop Zero Waste Plan.* LAO recommends that the Legislature reject this proposal given that (1) many of the activities that would be completed under this initiative should already be occurring within the department, (2) the plan would become quickly outdated as recently enacted legislation is implemented, and (3) the high-level nature of the plan would make it difficult to identify specific improvements to individual programs. LAO also finds that it is premature for the department to develop a plan to meet a more ambitious goal when the state has thus far made minimal progress towards its current statutory recycling goal. Finally, the department has undertaken similar programmatic assessments before without additional resources. If the Legislature believes that receiving periodic programmatic assessments from the department would be helpful, it could consider reestablishing the original AB 341 reporting requirement.

Staff Recommendation. Hold open.

Issue 33: Governor's Proposed Budget Solutions: Circular Economy

Governor's Proposal. According to the LAO:

In the circular economy area, the Governor's budget requests to reduce three programs. The largest is the elimination of \$15 million for recycling feasibility grants, which is a new program that provides grants to entities that are in the research, development, feasibility assessment, and pilot phases of new recycling technologies and projects. Reductions are also proposed for a program that provides grants to community groups operating small-scale composting programs in green spaces within disadvantaged and low-income communities (\$5 million) and the Recycling Market Development Zone (RMDZ) Loan Program (\$5 million).

2021-22 Through 2023-24 (In Millions)				
Program	Department	Total Augmentations	Proposed Reductions	New Proposed Amounts
Circular Economy Programs Proposed for Solutions				
RMDZ Loan Program	CalRecycle	\$50	-\$4.5	\$45.5
Recycling feasibility grants	CalRecycle	15	-15	—
Composting opportunities	CalRecycle	5	-5	—
Subtotals		(\$70)	(\$24)	(\$46)
All Other Circular Economy Funding	CalRecycle	\$398	—	\$398
Circular Economy Totals		\$468	-\$24	\$444

Source: LAO

Retains Most of the Funding That Was Previously Approved for Circular Economy Activities. The Governor also proposes to maintain 95 percent of the funding for circular economy activities. Most of the funding in this area was provided in 2021-22 and 2022-23, so there has been more time for the funding to be committed to projects as compared to some of the other packages. Also, a notable portion of the funding for these activities was from non-General Fund sources, and thus was not the focus of the Governor's reductions.

Background. According to the LAO:

Circular Economy Funding Supports Several Different Programs. Circular economy funding is committed to roughly a dozen programs, all of which are administered by CalRecycle. Roughly half of the funds (\$240 million) are for a program that provides grants to local jurisdictions to help them in implementing and complying with the organic waste requirements established by SB 1383 (Lara), Chapter 395, Statutes of 2016. Significant funding is also allocated to support (1) the expansion of organics recycling infrastructure, such as composting and digestion facilities (\$105 million), and (2) the RMDZ Loan Program, which provides loans to recycling businesses that prevent, reduce, or recycle recovered waste materials (\$50 million).

Circular Economy Activities Historically Not Significant Recipients of General Fund. Typically, the state has supported most of CalRecycle's budget from special funds, such as BCRF, which is supported by deposit fees consumers pay when purchasing beverages in recyclable containers. The state has not historically provided significant General Fund support for the department to undertake the types of activities included in the circular economy package.

In some cases, the package includes funding for new programs, such as those that support recycling feasibility grants, edible food recovery grants, and composting opportunities. In other cases, it supports expansions of existing programs, often with a greater reliance on the General Fund than in the past. For example, the package provides General Fund support for the expansion of the existing Greenhouse Gas Reduction Fund (GGRF)-funded grant program to include food waste co-digestion projects at wastewater treatment plants. Notably, local jurisdictions administer various programs aimed at promoting recycling and waste reduction, typically supported by user fees.

Recent and Planned Circular Economy Augmentations

(In Millions)

Highlighted Rows Indicate Programs Governor Proposes for Budget Solutions
General Fund, Unless Otherwise Noted (In Millions)

Program	Department	2021-22	2022-23	2023-24	Totals
Circular Economy		\$205	\$263	—	\$468
SB 1383 implementation grants	CalRecycle	\$60 ^a	\$180 ^a	—	\$240
Organic waste infrastructure	CalRecycle	90 ^a	15	—	105
RMDZ Loan Program	CalRecycle	25	25	—	50
Co-Digestion capacity	CalRecycle	10	10	—	20
Recycling feasibility grants	CalRecycle	2	13	—	15
Quality incentive payments	CalRecycle	10 ^b	—	—	10
Methane reduction from waste	CalRecycle	—	10 ^a	—	10
Compost permitting pilot and edible food recovery	CalRecycle	3	10	—	13
Composting opportunities	CalRecycle	5	—	—	5

^a Includes funding from the Greenhouse Gas Reduction Fund (GGRF).
^b Includes funding from Beverage Container Recycling Fund.

Source: LAO

LAO Comments. *RMDZ Loan Program Reduction Is Reasonable.* Reducing this program by \$4.5 million represents a relatively modest decrease. Leaving the program with \$45.5 million, as the Governor proposes, would enable it to continue providing nearly as many loans to recycling businesses.

Legislature Could Consider Reducing GGRF for SB 1383 Implementation Grants and Organic Waste Infrastructure Program to Offset General Fund Support for Other Activities. While the Governor does not propose funding changes for these two circular economy programs, LAO thinks they are reasonable candidates for reducing should the Legislature seek additional or alternative budget solutions. Decreasing this funding likely would result in smaller grants to local governments to support their compliance with SB 1383 and organic waste management efforts. While these grants help offset costs faced by local jurisdictions (costs which are typically passed on to users through fees), local waste management does not represent a core state responsibility and SB 1383 requirements will be implemented regardless of whether the grants are provided. Notably, of the combined \$345 million appropriated in 2021-22 and 2022-23 for these two related programs, as of February 2023, roughly \$240 million (about 70 percent) remained uncommitted and thus potentially is available for reduction. LAO notes that almost all of the uncommitted funding is from GGRF rather than the General Fund. However, to the extent that the Legislature were to reduce these GGRF expenditures, it would free up those funds to redirect and use in place of General Fund for other programs the Legislature wants to preserve, thereby achieving state budget solutions.

LAO Recommendations. *Modify Governor’s Proposal Consistent With Legislative Priorities, Identify Additional Potential Solutions.* LAO recommends the Legislature develop its own package of budget solutions based on its priorities and the guiding principles LAO identifies in its report, *Crafting Climate, Resources, and Environmental Budget Solutions*. Based on LAO’s review, LAO recommends the Legislature consider adopting the Governor’s proposed reductions for circular economy since it aligns with many of the principles LAO identifies in its report.

LAO also recommends the Legislature consider adopting additional solutions, either in place of or in addition to those proposed by the Governor. Options for legislative consideration include: (1) reducing CalRecycle’s SB 1383 implementation grants, and (2) reducing organic waste infrastructure grants. While these latter two programs are funded with GGFR, such reductions would free up those funds to offset General Fund spending on other legislative priorities.

Staff Recommendation. **Hold open.**