Senate Budget and Fiscal Review—Mark Leno, Chair

SUBCOMMITTEE NO. 2 Agenda

S. Joseph Simitian, Chair
Jean Fuller
Alan Lowenthal

January 27, 2011
9:30 am or upon adjournment of session
Rose Ann Vuich Hearing Room (2040)

Consultant: Catherine Freeman

Discussion Items

Resources—Environmental Protection—Energy—Transportation

Department Proposed for Discussion—Energy

8660 California Public Utilities Commission

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

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

ITEMS PROPOSED FOR VOTE-ONLY

1. BCP-4: California Advanced Services Fund Extension/Expansion. The Governor requests an increase of three positions and $24.8 million from the California Advanced Services Fund (CASF) to extend the existing CASF program of grant awards for broadband deployment projects (previously the CASF program was due to sunset at the end of 2012).

The proposal would (1) establish a new Regional Broadband Consortia Grant Account within CASF to fund efforts to encourage broad band deployment activities throughout the state; and (2) expand the CASF by establishing a new Broadband Infrastructure Revolving Loan Account Program to help program applicants fund capital costs of broad band facilities not funded by federal or state grants.

2. BCP-5: State Broadband Data and Development Grant Program--American Reinvestment and Recovery Act (ARRA) Grant. The Governor requests an increase of four limited-term positions and $1.6 million from the Federal Trust Fund pursuant to augmentations of CPUC's ARRA grant for the State Broadband and Development Grant Program. The total augmented grant award is $5.6 million for a performance period set to end in September 2014.

Staff Recommendation: APPROVE the above requests (Items 1-2).

VOTE:

ITEMS FOR DISCUSSION

3. BCP-1: Diablo Canyon Seismic Study Peer Review Panel. The Governor requests an increase of $500,000 in reimbursable consultant services, which will be reimbursed by PG&E. This will allow the CPUC to enter into a limited-term contract with a technical consultant to perform analysis of seismic studies at Diablo Canyon Power Plant per recommendations of Chapter 722 of 2006 (AB 1632, Blakeslee). In addition, the commission proposes to coordinate a peer review panel with other state agencies.

LAO Comments:

CPUC Has No Seismic Technical Expertise But Would Like to Review PG&E's Study. CPUC lacks the technical expertise to interpret the study which they have required of PG&E. Nonetheless, they would like to review the study. As such, the CPUC is seeking approval for funds to contract with a third-party consulting firm to review PG&E's study.

Department of Conservation's California Geological Survey (CGS) Is State's Expert In Earthquake Hazards Studies and Has Technical Expertise to Review PG&E Study. Geologists at CGS prepare the definitive maps of faults in California, including the 2010 Fault Activity Map of California and maps of Alquist-Priolo Earthquake Fault Zones, where building is regulated due to the potential for fault rupture of the ground surface. CGS prepares seismic hazard estimates based on CGS fault mapping as well as earthquake history and fault slip rates. The seismic hazard model prepared jointly by CGS, U.S. Geological Survey, and others represents a consensus of scientific opinion on the potential for earthquakes throughout California. CGS uses this seismic hazard model as a basis for comparison for numerous peer reviews of reports by geologists or geophysicists who recommend seismic design parameters for construction projects. In our view, CGS has qualified technical staff necessary to review PG&E's seismic study, based on its extensive technical knowledge and expertise in the area of seismic activity.

LAO Recommendation. We find that the Department of Conservation's CGS has qualified technical experts on staff who are capable of conducting a review of PG&E's study, and we have been advised by CGS that it may be able to conduct the review at a cost significantly less than requested in the budget request. Therefore, we recommend that the Legislature deny the budget proposal as requested, and direct that the administration return with a revised lower-cost proposal that uses the services of CGS.

Staff Comments. Staff concurs with the LAO recommendation regarding the seismic studies. In discussions with the department it is also unclear whether the CPUC intends to fulfill the peer review portion of the budget proposal. The commission states that other state agencies have declined continued participation in the peer review panel proposed by CPUC. This peer review panel seems to be a key element of the seismic analysis.

The committee may wish to ask the commission to:

(1) Respond to the LAO analysis; and
(2) Discuss why the peer review panel no longer includes other state agencies, as discussed in the budget proposal.

Staff Recommendation: DENY PROPOSAL. Request the CPUC return with (1) a revised lower-cost proposal that utilizes the services of the California Geological Survey; and (2) includes other state agencies in the peer review panel.

VOTE:

4. BCP-2: Modernization of the Electric Grid (Advance Energy Storage "AES"). The Governor requests two positions and $229,000 to develop and implement advanced energy storage (AES) to serve the state's peak demand more cost-effectively as part of the need to comply with the Federal Government's Energy Independence and Security Act of 2007 (EISA). Title XIII of EISA requires state's consideration of new standards and protocols for smart grid technologies including AES technologies. Implementing a Smart Grid system with energy storage will move the electric grid and customer service from a "static" to "dynamic" state to improve the efficiency and reliability of the electric delivery systems. AES technologies will support the modernization of the grid and the integration of renewable energy resources such as wind and solar into a Smart Grid Infrastructure to achieve the 33 percent renewables goal by 2020.

LAO Comments:

> ***AES Legislation Was Enacted in 2010.*** Subsequent to the Legislature's evaluation of the CPUC's 2010-11 budget request related to AES, Chapter 469, Statutes of 2010 (AB 2514, Skinner), was enacted to provide Legislature's policy direction in the area of AES. Commonly referred to as AB 2514, the legislation authorized the CPUC to determine by October 2013 what (if any) are the appropriate energy storage capacity targets for Investor Owned Utilities (IOUs). IOUs are then required to meet those targets by 2015 and 2020.
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> ***Budget Request Fails to Account for Legislative Policy Direction***. The budget proposal submitted for legislative review does not include a workload analysis associated with the implementation of AB 2514 and, in fact, is totally silent regarding AB 2514. Instead, the Governor's budget proposal cites 2007 federal energy legislation as the driving force behind its request to increase staffing capacity for AES-related work, but does not explain how, if at all, this legislation creates additional staffing requirements at CPUC. In fact, CPUC staff have indicated that the state is currently in compliance with the 2007 federal mandate. Having failed to evaluate how recent policy direction has impacted their current workload, the CPUC will still need to provide adequate analysis and justification to merit approval of this request.
>
> ***LAO Recommendation.*** Until such time as the administration provides adequate analysis of its AES workload in a manner that clearly lays out work done to date as well as justification of needs going forward, accounting for legislative policy direction in AB 2514, we recommend that the Legislature deny the CPUC's budget request.

Staff Comments. Staff concurs with the LAO analysis. The subcommittee may wish to ask the commission whether it intends to submit an updated budget proposal reflecting the recent statutory changes.

Staff Recommendation: DENY WITHOUT PREJUDICE—Request the department return in the spring with an updated proposal that reflects recent legislation.

VOTE:

5. BCP-3: Natural Gas Distribution Safety Program. The Governor requests an increase of four positions and $498,000 ($249,000 Public Utilities Reimbursement Account and $249,000 Federal Trust fund) to improve the safety of natural gas distribution systems in California. This request is in response to the September 9, 2010, pipeline failure in San Bruno as well as new regulations enacted by the Federal Department of Transportation, Pipeline, Hazardous Material Safety Administration.

Staff Comments. Staff notes that while the department has begun work on this program per previous budget action (Section 28 notification), questions remain about the appropriate level of funding for this program. The committee may wish to ask the commission what their estimation of the appropriate level of funding is for this program ongoing.

Staff Recommendation: APPROVE

VOTE:

Department Proposed for Discussion—Energy

3360 California Energy Commission (Energy Resources Conservation and Development Commission)

The Energy Resources Conservation and Development Commission (commonly referred to as the California Energy Commission or CEC) is responsible for forecasting energy supply and demand; developing and implementing energy conservation measures; conducting energy-related research and development programs; and siting major power plants.

Governor's Budget. The Governor's Budget includes $386.2 million (no GF) for support of the CEC, a decrease of approximately $196 million, due primarily to decreases in special funds that have a two-year encumbrance period.

ITEMS PROPOSED FOR VOTE-ONLY

Item 1. BCP-1: Extend Limited-Term SEP-ARRA Positions. The Governor requests an additional ten month extension of nine limited-term positions. Extending the term of these positions will enable the Energy Commission to continue to manage and close out activities implementing the State Energy Program (SEP), funded under the American Recovery and Reinvestment Act of 2009 (ARRA). The positions provide administrative and technical support to implement and administer the SEP portion of ARRA. In order to meet all federal requirements for funding oversight, staff will be needed to monitor activities and close out various programs to provide adequate information to federal oversight agencies.

Staff Recommendation: APPROVE the above request (Item 1).

VOTE:

Item for Discussion

Item 2. Budget Issue: Energy Resources Program Account Surcharge. Under current law, the CEC is authorized to impose and adjust the Energy Resources Program Account (ERPA) surcharge. At the November 8, 2010 business meeting, the commission approved an ERPA surcharge increase which became effective January 1, 2011. The rate was increased from $0.00022 to $0.00029, which is expected to generate $8.4 million in the current year and $16.9 million in 2011-12.

The ERPA fund supports many of the basic programs of the CEC, including its siting and energy forecasting functions. State law directs electric utilities (both privately and publicly owned) to collect a state energy surcharge from all electric customers. The Board of Equalization collects the surcharge from the utilities.

Staff Comments: During previous year budget hearings, the CEC did not indicate that it would require such a significant change in the ERPA surcharge to maintain its baseline programs. In part because of this, during the 2010-11 session, the Legislature passed SB 675 (vetoed) that would have directed the CEC to dedicate $8 million annually from its ERPA to fund an estimated 90 new California Partnership Academies. These academies would fund career technical education to deliver skills and knowledge needed for successful employment in clean technology, renewable energy or energy efficiency.

In part, the veto message stated that raising ERPA to fund these programs would cut other core programs at CEC.

The Committee may wish to have the CEC comment upon:

(1) Prior year estimates that would have alerted budget committees to such a significant need to increase the ERPA surcharge in fall 2010.
(2) Impacts to ratepayers
(3) Actions CEC took to reduce expenditures prior to raising the surcharge on ratepayers.

Recommendation: Reduce Budget Item 3360-001-0465 by $8.4 million. Require the CEC to return in spring hearings with an explanation and discussion of the fund condition of ERPA, programs funded by the surcharge, and impacts of the surcharge increase on ratepayers.

Vote:

Department Proposed for Discussion—Cal-EPA

3900 Air Resources Board

The Air Resources Board (ARB), along with 35 local air pollution control and air quality management districts, protects the state's air quality. The local air districts regulate stationary sources of pollution and prepare local implementation plans to achieve compliance with federal and state standards. The ARB is responsible primarily for the regulation of mobile sources of pollution and for the review of local district programs and plans. The ARB also establishes air quality standards for certain pollutants, administers air pollution research studies, and identifies and controls toxic air pollutants.

Governor's Budget. The Governor's Budget includes $652.6 million (no GF) for support of the ARB in FY 2011-12. This is about a 10 percent increase over current year expenditures due primarily to an increase in Proposition 1B (Transportation Bond) expenditures.

ITEMS FOR DISCUSSION

1. BCP-1: Continuing Program Implementation for the California Ports Infrastructure Security, and Air Quality Improvement Account, Highway, Traffic Reduction, Air Quality and Port Security Fund of 2006 (Proposition 1B).

Background. Proposition 1B of 2006 includes $1 billion, upon appropriation by the Legislature and subject to such conditions and criteria contained in a statute enacted by the Legislature, to the State Air Resources Board for emission reductions for activities related to the movement of freight along California 's trade corridors.

In 2008, the Air Board adopted Program guidelines and awarded the first year grant funds (approximately $250 million) to local agencies. Due to the bond freeze of 2009, among other factors, the board's allocation of funds slowed, resulting in the request for reversion and reappropriations.

Liquidation of expenditures for bond expenditures generally is set at up to three years. This allows the Legislature the opportunity to review and provide oversight for extensions of liquidation beyond this time in the budget process, and to adjust programs should departments not meet the Legislature's expectations for disbursement of funds.

2011-12 Governor's Budget. The Governor's budget requests (1) technical adjustments for reappropriations and reversions for Proposition 1B Goods Movement Emission Reduction Program, and (2) Trailer Bill Language to allow a timeframe to encumber Proposition 1B funds through June 30, 2013, and to allow liquidation of encumbrances until June 30, 2019 (up to 6 years).

Staff Comments. The board's request for reversion and reappropriation will allow the board to continue to administer the bond funds from the 2006 bond sale. However, the justification for an extended timeframe for liquidation of funds beyond established norms may reduce the Legislature's oversight of the bond funds and the program through which the funds are administered. The bond gives the Legislature the authority to set criteria and parameters for appropriation of these funds, including measures to allow for legislative oversight.

STAFF RECOMMENDATION: APPROVE (1) reappropriations and reversions, and (2) extended encumbrance period through June 30, 2013. **Deny proposal to extend the liquidation of funds beyond three-years of encumbrance**.

2. Administration's Renewable Portfolio Standard (RPS) Activity Continues to Circumvent Legislative Authority.

Background (LAO Recommendation). Current law requires the California Public Utilities Commission (CPUC) to enforce compliance by the private utilities (commonly referred to as investor-owned utilities, or IOUs) with 20 percent RPS. The CPUC is prohibited from ordering an IOU t o procure more than 20 percent of its retail sales of electricity from eligible renewable energy resources.

Recent laws have attempted to increase the RPS to 33 percent, with corresponding increases for publicly-owned utilities (POUs). The legislation would have set a framework for regulation as well as legislative intent for implementation of these standards. This legislation was vetoed by the Governor.

Executive Orders. In November 2008, the Governor issued an executive order calling for all electricity providers to obtain 33 percent of their electricity from renewable sources by 2020. Legislative Counsel has advised the legislature that, in general, *the Governor may not issue an executive order that has the effect of enacting, enlarging, or limiting legislation.*

Administration Continues Work on 33 Percent RPS. The Air Board has stated that it continues to spend funds to develop a 33 percent RPS despite the lack of statutory guidance. This continues despite work by the Legislature (SB 23, Simitian), to define in statute the parameters for a 33 percent RPS.

Staff Comments: This subcommittee heard the same issue last year and acted to reduce various state agency budgets, and directed the administration to cease spending funds for the purpose of developing a renewable energy standard or similar requirement absent the enactment of legislation that authorizes such activities.

Staff Recommendation: Recommend REDUCE the ARB Budget Item 3900-001-0115 by $2 million specifically for activities related to the 33-percent Renewable Portfolio Standard and/or Renewable Energy Standard rulemakings and proceedings. Require the department to return in spring with a plan to work with the Legislature to develop appropriate legislation guiding the development of a renewable energy standard.

Vote:

Department Proposed for Discussion—Cal-EPA

3930 Department of Pesticide Regulation

The Department of Pesticide Regulation (DPR) administers programs to protect the public health and the environment from unsafe exposures to pesticides. The department: (1) evaluates the public health and environmental impact of pesticides use; (2) regulates, monitors, and controls the sale and use of pesticides in the state; and (3) develops and promotes the use of reduced-risk practices for pest management. The department is funded primarily by an assessment on the sale of pesticides in the state

Governor's Budget. The Governor's Budget includes $82.1 million (no GF) for support of the DPR, an increase of approximately $6.6 million, or 8 percent, over current year expenditures. This increase is almost entirely in special funds.

1. BCP-1: Enhancement of the California Department of Food and Agriculture Analytical Chemistry Services. The department requests $2.6 million from the DPR Fund to enhance the California Department of Food and Agriculture's (CDFA) pesticide analysis capabilities. Of this amount, $603,000 is one-time and $1.9 million is ongoing.

The department utilizes the laboratory to conduct chemical analysis of pesticide residues on produce and in the environment (such as indoor or outdoor locations, in fields). The results of these analyses serve not only as the basis for registration and enforcement actions, but for the development of mitigation actions for pesticide use.

Staff Comments. The subcommittee may wish to ask the department whether it looked at alternative options for state laboratories or other state agencies rather than continued reliance on the CDFA laboratory.

Staff Recommendation: APPROVE the request.

VOTE:

Department Proposed for Discussion—Cal-EPA

3940 State Water Resources Control Board

The State Water Resources Control Board (State Water Board) and the nine Regional Water Quality Control Boards (Regional Boards or Water Boards) preserve and enhance the quality of California's water resources and ensure proper allocation and effective use. These objectives are achieved through the Water Quality and Water Rights programs.

Governor's Budget. The Governor's Budget includes $793.8 million (including $29.6 million GF) for support of the State Water Board in FY 2011-12. This is a 16.3 percent decrease under current year expenditures due primarily to a proposed one-time augmentation in the current year of $158 million from the Underground Storage Tank Cleanup Fund (see more detail below). The $29.6 million in proposed GF reflects a decrease of approximately $11.2 million in expenditures that are mainly the net result of the Governor's requests to shift various GF expenses to fee-supported special funds.

Items Proposed for Vote-Only (Part 1)

1. BCP-3: Department of Defense—Edwards Air Force Base. The Governor requests a one year extension of federal authority in the amount of $327,000 (Federal Funds) and 2.1 limited-term positions (2.0 PYs) originally authorized in FY 2009-10 for regulatory oversight of the expedited cleanup at Edwards Air Force Base. The Air Force has committed sufficient funds for regulatory oversight as well as environmental restoration at the base which corresponds to workload (reimbursable) by the regional water board staff for review and site inspection.

2. BCP-4: Continuing Program Implementation for Propositions 13, 50 and 84. The Governor requests various technical adjustments for local assistance appropriations and re-appropriations for Propositions 13, 50 and 84.

Staff Recommendation: APPROVE the above requests (Items 1-2).

VOTE:

ITEMS PROPOSED FOR VOTE-ONLY (Part 2)

Proposals to Shift GF Expenditures to Fee-Supported Special Funds (Items 3-5): According to the Administration, the following three items are proposals to help address the state's fiscal crisis by reducing GF expenditures for activities that based on the "polluter pays" principle, arguably should be supported by fees.

3. BCP-1: National Pollutant Discharge Elimination System (NPDES) Wastewater Program Fund Shift.

Background. In FY 2006-07 the State Water Board redirected $4 million in NPDES federal funds to a different program and fee payers prevailed upon the Legislature and Governor to offset their fee burden by partially backfilling the $4 million with $1.4 million in GF. This proposal would remove the GF and increase fees to replace it.

The NPDES program is authorized by the Clean Water Act and administered by the Water Boards under an agreement with the United States Environmental Protection Agency that requires the Water Boards to help protect water quality by reviewing and renewing discharge permits, monitoring discharge reports, and issuing enforcement actions on permit violations.

2011-12 Governor's Budget. The Governor proposes to remove $1.4 million GF from the NPDES program and replace it with an equal amount from the fee-supported Waste Discharge Permit Fund (WDPF) so that the program would be entirely funded by the WDPF.

4. BCP-2: Irrigated Land Regulatory Program (ILRP) Fund Shift.

Background. When the ILRP fee schedule adopted by the State Water Board in June 2005, failed to raise the anticipated level of revenue, the Legislature allocated $1.8 million GF in FY 2006-07 to make up the difference. This proposal would remove the GF and increase fees to replace it.

The ILRP regulates discharges from irrigated agricultural lands in order to prevent impairment of the waters that receive the discharges. For example, discharges can affect water quality by transporting pollutants including pesticides, sediment, nutrients, salts (including selenium and boron), pathogens, and heavy metals from cultivated fields into surface waters. Regional Water Boards issue conditional waivers of waste discharge requirements to growers that contain conditions requiring water quality monitoring of receiving waters and corrective actions when impairments are found.

2011-12 Governor's Budget. The Governor proposes to remove $1.8 million GF from the ILRP and replace it with an equal amount from the fee-supported Waste Discharge Permit Fund (WDPF) so that the program would be entirely funded by the WDPF.

5. BCP-4: Water Rights Program (WRP) Fund Shift.

Background. The Court of Appeal previously found against the state for funding certain WRP workload from a fee-supported special fund—the Water Right Fund (WRF). Those activities are currently supported by the GF. The Governor is proposing to shift the bulk of these expenditures back to the WRF.

From its inception in 1914 until FY 2003-04, the WRP was primarily supported by the GF (90 to 95 percent). However, due to an earlier fiscal crisis, program funding was cut and eventually shifted entirely onto a fee-supported special fund—the Water Rights Fund (WRF). Subsequently, fee payers challenged the statutes authorizing the WRF and the fees that are deposited into it. While a superior court upheld the fee statutes and associated regulations in their entirety, the Court of Appeal found that in some specific instances (about 30 percent of activities associated with pre-1914 and riparian rights), the benefits accruing to the fee payers were not sufficiently proportional to the size of the fee, and the related regulations were overturned. An appeal of this decision is currently pending with the Supreme Court, which has not yet scheduled oral arguments.

2011-12 Governor's Budget. The Governor proposes to remove $3.2 million GF from the WRF and replace it with an equal amount from the fee-supported WRF.

Staff Comments (Items 3-5). The Legislative Analyst's Office has consistently recommended funding these core regulatory programs including water quality permitting activities (pollution discharge permitting program), the agricultural waiver program, and water rights activities with fees based on the polluter pays funding principle. Shifting the funding of the balance of the these core regulatory activities from the General Fund to fees would save the General Fund $6.4 million in the budget year.

Staff concurs with the LAO analysis of this issue.

Staff Recommendation: APPROVE Items 3-5.

VOTE:

ITEMS FOR DISCUSSION

6. BCP-2: One-Time Augmentation for Underground Storage Tank Cleanup Fund (USTCF).

Background. Chapter 649, Statutes of 2009 (Ruskin, AB 1188) temporarily increased storage fees (until January 1, 2013) for each gallon of petroleum placed in an underground storage tank. The Governor requests a one-time augmentation from the fund to spend a portion of these new revenues.

The USTCF is in essence an insurance program supported by petroleum underground storage tank owners who pay a fee for coverage should they have a leak from their underground storage tank. The USTCF provides up to $1.5 million in reimbursement per occurrence to petroleum underground storage tank owners and operators. AB 1188 was passed in order to address a cash shortfall in the fund.

2011-12 Governor's Budget. The Governor requests a one-time augmentation of $90 million in state operations, $13.2 million in local assistance authority from the School District Account and $15.8 million from the Orphan Site Cleanup Fund.

Staff Comments. Consistent with the requirements of AB 1188, a performance audit of the USTCF was recently released (February 2010) that found, among other things, that the program was premised on reimbursing participants as quickly as possible and, in so doing, lacks sound financial management practices and does not utilize effective cost containment measures. For example, the audit found that the USTCF does not require all claimants expecting reimbursements to provide project plans or cost estimates up front for review and approval prior to cleanup work beginning. The audit linked these inadequacies to the USTCF's 2008 financial crisis as average project costs skyrocketed—rising, over the last four years, from $131,000 to $250,000 (for closed projects) and approaching $400,000 for existing projects.

The department was directed in 2010 to prepare an action plan for the program addressing audit concerns. This issue is sufficiently complex that the subcommittee may wish to hear a full update along with reporting in a follow-up hearing so that it can determine adequate levels of funding for the program (and set an adequate multi-year plan for appropriation).

Staff Recommendation: DENY WITHOUT PREJUDICE. Direct the department to return in the spring with an update on the USTCF program and progress made after the recent audit.

Vote:

7. BCP-7: Augment Basin Planning and Water Quality Standards Program.

Background. The Basin Planning program sets the minimum water quality level that must be achieved in the waters of the state for the protection of beneficial uses. Federal regulations require a triennial review and update of each basin plan; however, according to the State Water Board, a lack of staffing has kept it from fully complying with this requirement. As a result, the State Water Board indicates it has experienced difficulty moving forward with regulatory decisions and is at an increased risk for litigation. The requested augmentation would address this deficiency.

The preparation, adoption, and regular updating of Regional Water Boards' basin plans provides the foundation for all the Water Boards' regulatory action and is required by state law as well as the federal Clean Water Act. Basin plans designate beneficial uses, establish water quality objectives, and specify a program of implementation needed for achieving these objectives for both surface and groundwater.

2011-12 Governor's Budget. The Governor requests to shift $6.1 million and 37 positions supported by the General Fund (GF) with the same amount in the Waste Discharge Permit Fund (WDPF) resources. Additionally, $746,000 and 8.5 personnel-years supported by Reimbursements will be replaced with WDPF. The proposal requires TBL to add Total Maximum Daily Load development, basin planning, and other water quality management activities to the list of activities for which fees can be assessed.

LAO Recommendation: In May 2010, LAO recommended adoption of the Governor's May Revision proposal to shift $6.1 million of funding for basin planning from the General Fund to the Waste Discharge Permit Fund (a special fund), including a related statutory change to allow this. This proposal is consistent with the longstanding LAO recommendation to shift funding for regulatory-related activities at the water boards to fees where appropriate.

Staff Comments. Given the complexity of water board permits, sometimes at the request of the permittee for the greatest flexibility to discharge to state waters, the water board must have a clear understanding of the watershed in which the permit resides. This proposal will allow the state and regional boards to continue to meet federal Clean Water Act and state water quality objectives through a deliberative planning process. Staff notes that this proposal is consistent with Legislation actions in other Cal-EPA agencies such as the Air Resources Board's Stationary Source Program wherein activities that support the development of regulations and permit requirements are subject to regulatory fees to recoup the cost of the development of the standards.

Staff Recommendation: APPROVE

VOTE:

Department Proposed for Discussion—Cal-EPA

3960 Department of Toxic Substances Control

The Department of Toxic Substances Control (DTSC) regulates hazardous waste management, cleans up or oversees the cleanup of contaminated hazardous waste sites, and promotes the reduction of hazardous waste generation. The department is funded by fees paid by persons that generate, transport, store, treat, or dispose of hazardous wastes; environmental fees levied on most corporations; federal funds; and GF.

Governor's Budget. The Governor's Budget includes $194.3 million (including $21.9 million GF) for support of the DTSC, a decrease of $14.5 million, or 7.5 percent, under current year expenditures. This decrease is primarily in special funds (and there is no increase proposed in GF).

ITEMS PROPOSED FOR VOTE-ONLY

1. BCP-2: State Certified Unified Program Agency (CUPA) Reimbursements. The Governor requests reimbursement authority in order to expend funds available to the CUPAs from other state agencies and through reimbursement agreements with business in Imperial and Trinity Counties. Reimbursement agreements would continue to be reviewed as part of the budget process.

Staff Comments. The proposal would streamline administrative processes while allowing for legislative and administrative oversight of the CUPAs. Staff has no concerns with the reimbursement request.

2. COBCP-1: Stringfellow New Pre-Treatment Plant. The Governor requests $1.6 million GF to fund the working drawing activities for the construction of a new pre-treatment plant to treat contaminated groundwater from the Stringfellow site.

Staff Comments. The proposal is consistent with the long-term plan for remediation and treatment of contaminated groundwater at the Stringfellow site. Staff has no concerns with the reimbursement request.

Staff Recommendation: APPROVE the above requests (Items 1-2).

VOTE:

ITEMS PROPOSED FOR DISCUSSION

3. BCP-1: Land Transfer of Santa Susana Laboratory to the State. The Governor requests to convert three limited-term positions to permanent reimbursable positions to support investigation, feasibility study, and cleanup phases of the Santa Susana Field Laboratory project, scheduled for completion in 2017, after which the proposal states that the land is expected to be transferred to the state. The positions will be dedicated to oversight work.

Santa Susana is the site of widespread chemical and radioactive contamination that poses a serious public health hazard. The Boeing Company, the National Aeronautics and Space Administration, and the US Department of Energy are the responsible parties. The department's role is as an oversight agency.

Staff Comments. The proposal is consistent with DTSC's role as an oversight agency. The department has stated that the positions do not commit the state to accept the land transfer upon completion of the investigation, feasibility review, and cleanup phases. Staff has no concerns with the position request to support investigation, feasibility study, and cleanup phases at the site.

However, staff has concerns with language in the proposal that references a land transfer to the state. In past years, when land of this nature has been transferred to the state, the state has taken on long-term remediation activities that were unanticipated at the time of transfer. According to the department, remediation of groundwater at this site will take on the order of 50,000 years. The department has assured staff that the intent of the proposal is not to undertake a land transfer to the state.

The committee may wish to seek clarification from the department to ensure they do not intend to transfer land to the state under this proposal. To further guarantee that the land transfer is not part of the proposal, the subcommittee may wish to consider the following budget bill language:

> Item 3960-001-0014. No positions approved under this item shall be used to investigate or work on a transfer of land between the responsible parties at Santa Susana Field Laboratory and the State of California.

Staff Recommendation. APPROVE with Budget Bill Language.

Department Proposed for Discussion—Cal-EPA

3980 Office of Environmental Health Hazard Assessment (OEHHA)

The Office of Environmental Health Hazard Assessment (OEHHA) was created in 1991 as part of the California Environmental Protection Agency to evaluate the health risks of chemicals in the environment. The office (1) develops and recommends health-based standards for chemicals in the environment, (2) develops policies and guidelines for conducting risk assessments, and (3) provides technical support for environmental regulatory agencies.

The budget proposes total expenditures of $19.9 million ($3.4 million, General Fund), an increase of $1.7 million (eight percent) above the current-year budget.

ITEMS PROPOSED FOR DISCUSSION

1. BCP-1: Proposition 65 Fund Shift to Support Existing Proposition 65 Implementation and Oversight Activities

Background. Proposition 65, the Safe Drinking Water and Enforcement Act, was enacted as a ballot initiative in November 1986 with the goal of protecting state residents and drinking water sources from chemicals known to cause cancer, birth defects, or other reproductive harm. Proposition 65 program requirements include (among others), listing of chemicals known to cause cancer, birth defects, or other reproductive harm. The list is updated annually by OEHHA.

From the time of approval by the voters in 1986 until 2009, the state's Proposition 65 program was funded primarily by the GF. However, the Budget Act of 2009 shifted $2.3 million from the GF to the Safe Drinking Water and Toxic Enforcement Fund (SDWTEF) which derives its revenues from Proposition 65 penalties paid by businesses in enforcement cases. The special fund was never intended to provide long-term funding for the program since penalties are insufficient to fund the program and revenues to the fund are unpredictable.

2011-12 Governor's Budget. The Governor requests a fund shift of $1.1 million from the Safe Drinking Water and Toxic Enforcement Fund (SDWTEF) to the General Fund in 2011-12 and $2.3 million ongoing in future years.

Staff Comments. For the most part, following a required report to the Legislature in 2005 on long-term baseline funding requirements of the Office, along with recommendations on the appropriate mix of GF and special funds to support OEHHA activities—OEHHA has moved to diversify its funding mix.

The proposal to restore the program to GF may have merit; however, given the state's fiscal situation, appropriate alternative funding would be preferable. Without taking action to reduce the funding from the SDWTEF account, the fund balance would be reduced to under a prudent reserve of $2 million within two years.

The board has indicated that a possible alternative funding source is the Toxic Substances Control Account (TSCA), which is primarily funded from a broad-based environmental fee charged to businesses of at least 50 employees that handle hazardous materials. Many of these materials contain Proposition 65 chemicals. The fund is administered by the Department of Toxic Substances Control and currently has a structural deficit.

After receiving the budget proposal, the administration updated its projections for the SDWTEF and has concluded that there is sufficient funding to continue to fund this program using SDWTEF *for one year*. However, in order to do this, technical budget changes would be required to adjust expenditure authority appropriately.

This is one of many voter-approved initiatives that provide no ongoing funding source for the mandated programs. The committee may wish to:

(1) Request the department respond to the likely outcomes to state program activity levels should the Legislature wish to reduce the level of program activities by OEHHA without an increase in GF.
(2) Describe any potential liability the state may have by reducing funding for the program.
(3) Describe discussions with the Secretary for Cal-EPA and the Department of Toxic Substances Control regarding the use of the Toxic Substances Control Account and the overall priorities for funding within Cal-EPA.

Staff Recommendation: DENY PROPOSAL. Additionally: (1) Increase one-time expenditure authority from the Safe Drinking Water and Toxic Enforcement Fund by $1.1 million; (2) Approve Supplemental Report Language requiring OEHHA to determine the appropriateness of the Toxic Substances Control Account or other special fund sources that could be used to fund this program.

VOTE: