

SUBCOMMITTEE NO. 2

Agenda

Senator Bob Wieckowski, Chair
Senator Mike McGuire
Senator Jim Nielsen



Thursday, March 15, 2018
9:30 a.m. or upon adjournment of session
State Capitol - Room 112

Consultant: Joanne Roy

OUTCOMES

PRESENTATION – California Natural Resources Agency budget overview.

- John Laird, Secretary for Natural Resources

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3	Various Technical Adjustments 4-0	3
	3600 Department of Fish and Wildlife – Both Items Approved	
4	Proposition 84 Reversion and Appropriation 4-0	3
5	Sacramento Valley Salmon Resiliency Strategy Implementation 4-0	3
	3860 Department of Water Resources – All Items Approved	
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PUBLIC COMMENT

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 CALENDAR**0540 Secretary of the Natural Resources Agency**

- 1. California Ocean Protection Council – Once Through Cooling.** The budget requests \$5.4 million annually from the State Water Resources Control Board's Once-Through-Cooling (OTC) Interim Mitigation Program payments to the Ocean Protection Trust Fund to fund projects identified as necessary to mitigate the harm to Marine Protected Areas (MPA) caused by entrainment and impingement of marine life as a result of OTC. This proposal also seeks to make two limited-term positions permanent.
- 2. Proposition 1 Bond Auditing.** The budget requests \$11.13 million one-time in Proposition 1 funding to be appropriated over the life of the bond for auditing services provided by the Department of Finance Office of Audits and Evaluation, of which \$540,000 is appropriated in fiscal year (FY) 2018-19. This request will scale Proposition 1 funding for audit services over the life of the bond, with the majority of audit services being performed in the mid-years, when programs and projects are fully underway or completed and have the highest amount of projects and related expenditures to audit.
- 3. Various Technical Adjustments.** The budget requests for various technical reappropriations, reversions, reversions with associated new appropriations, and baseline appropriation adjustments to continue implementation of previously authorized programs. This proposal also requests authorization of two new accounting positions for the Department of Forestry and Fire Protection to support administration of bond funds for the Secretary of the California Natural Resources Agency (CNRA). These two positions will be funded from existing resources and used to fulfill previously authorized agency program activities.

3600 Department of Fish and Wildlife

- 4. Proposition 84 Reversion and Appropriation.** The budget requests a reversion of \$6.9 million in Proposition 84 funding appropriated in FY 2015-16. The Department received \$12.7 million in FY 2015-16 of which the balance will not revert until June 30, 2020. This proposal also requests a new appropriation of \$32 million in Proposition 84 that were appropriated in FY 2007-08 through FY 2014-15. The requested funds will be used for habitat restoration purposes in line with the Department's mission and consistent with the Proposition 84 bond act requirements.
- 5. Sacramento Valley Salmon Resiliency Strategy Implementation.** The budget requests a reversion of \$5,698,000 in Proposition 50 funds appropriated in FY 2015-16 and FY 2016-17. This proposal also requests a new appropriation of \$14.394 million in Proposition 50 funds that were appropriated in FY 2013-14 and FY 2016-17. The requested funding will support the completion of restoration actions on Battle Creek, to support winter-run Chinook Salmon recovery and benefit spring-run Chinook Salmon and steelhead. This is a key element of the Sacramento Valley Salmon Resiliency Strategy and an important recovery plan action for these species. The Battle Creek project is an ongoing multi-agency effort, which requires the additional funding to complete and allow re-introduction of winter-run Chinook Salmon to the creek.

8570 Department of Water Resources

- 6. Flood Corridor Program and Tribal Engagement.** The budget requests \$2.9 million in FY 2018-19, \$177,000 in FY 2019-20, and \$176,000 in FY 2020-21 to support the Flood Corridor Program and the Tribal Engagement program. Specifically, the proposal is as follows:

Flood Corridor Program

- Requests a reversion and reappropriation of \$2 million from Proposition 84 for local assistance in 2018-19.
- Request \$530,000 from Proposition 13 for state operations (\$177,000 for FY 2018-19 and FY 2019-2020, \$176,000 for FY 2020-21).

Tribal Engagement

- Requests \$684,000 one-time from Proposition 84 for grants or contracts that facilitate greater and more effective participation by Tribal governments and Tribal communities in the Integrated Regional Water Management programs and activities.

- 7. Resiliency Strategy Implementation.** The budget requests \$500,000 one-time from the Harbors and Watercraft Revolving Fund for aquatic weed control, a contributing cause of the decline of delta smelt, Chinook salmon, and steelhead.

The Delta Smelt Resiliency Strategy calls for enhanced control of invasive aquatic plants, which have deleterious effects on water quality and foster invasive predator populations.

- 8. San Joaquin River Restoration Program and San Joaquin River Projects.** The budget requests \$20,800,000 in state reimbursement authority from CNRA and the Wildlife Conservation Board (Propositions 40, 84, and 1) to support 17 existing positions for continued work on the San Joaquin River Restoration Program (SJRRP) and the San Joaquin River Projects. Specifically, this proposal requests:

- \$15.6 million (\$5.1 million in FY 2018-19, \$5.3 million in FY 2019-20, and \$5.2 million in FY 2020-21) in reimbursement authority from Proposition 84 from CNRA to support SJRRP.

The requested funds will be used to support the SJRRP through program management, hydraulic and sediment studies, geotechnical investigations, habitat studies, and design, to evaluate and implement priority actions identified in the settlement agreement between the Natural Resources Defense Council (plaintiff) and the U.S. Bureau of Reclamation (co-defendant) and the Friant (co-defendant) in September, 2006, regarding the dewatering of the river to give to farmers that resulting in dead fish, and the program's environmental impact study/environmental impact report.

- \$5.2 million (\$1.1 million in FY 2018-19, \$2.1 million FY 2019-20, and \$2 million in FY 2020-21) in reimbursement authority from Propositions 84, 40, and 1 from the Wildlife Conservation Board to support habitat restoration, recreation, and public access improvement projects along the San Joaquin River (SJR).

The requested funds will be used for design and permitting of a gravel pit isolation and access improvement project at the Milburn Pond Ecological Reserve on the SJR; construction of a public fishing access project at the Sycamore Island Recreation area; planning and implementation of work for a bridge rehabilitation project on the SJR; and salmon spawning habitat enhancement on the SJR.

3940 State Water Resources Control Board

- 9. Water Rights Online Annual Use Reporting.** The budget requests \$384,000 one-time (\$192,000 from the Water Rights Fund and \$192,000 from the General Fund) and four positions to implement the Water Rights Online Reporting Program. The Water Rights Online Reporting Program is responsible for the receipt, analysis, and validation of approximately 38,500 annual water use reports. The requested funding would be used to address increased workload related to: (1) two legislative bills that mandate online reporting of water rights information and changes in the frequency of water use reporting from every three years to annually; and (2) the Governor's January 2014 Drought Proclamation, which highlighted the need for better water rights data to inform water use decisions.

Staff Recommendation: Approve all vote-only items as budgeted.

ISSUES FOR DISCUSSION

0540	Secretary of the Natural Resources Agency
3125	California Tahoe Conservancy
3340	California Conservation Corps
3480	Department of Conservation
3540	Department of Forestry and Fire Protection
3600	Department of Fish and Wildlife
3640	Wildlife Conservation Board
3760	State Coastal Conservancy
3790	Department of Parks and Recreation
3810	Santa Monica Mountains Conservancy
3825	San Gabriel and Lower Los Angeles River and Mountains Conservancy
3835	Baldwin Hills Conservancy
3855	Sierra Nevada Conservancy
3860	Department of Water Resources
3875	Sacramento-San Joaquin Delta Conservancy
3940	State Water Resources Control Board
8570	California Department of Food and Agriculture
0540	Ocean Protection Council

Issue 1 – The Drought, Water, Parks, Climate, Coastal Protection, and Outdoor Access for All Act of 2017 (SB 5): Budget Change Proposals (BCPs)
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Governor’s Proposal. If voter-approved, the Governor’s budget proposes to spend \$1.02 billion in SB 5 (de León), Chapter 852, Statutes of 2017, bond funds for the first year of implementation. Of this amount, the budget proposes to dedicate \$123 million to climate adaptation and resiliency programs.

The following table lists the programs proposed to receive SB 5 funding in FY 2018-19:

Department	BCP Title	Programs	State Operations	Local Assistance	Capital Outlay	Total	PY
Baldwin Hills Conservancy	Support and Local Assistance	Habitat Restoration, Watershed Protection, Park Improvements	\$0.135	\$1.100	\$0.000	\$1.235	0.0
California Conservation Corps	Corps Projects and Local Assistance Grants	Habitat Restoration	5.183	4.567	0.000	9.750	7.0

California Department of Food and Agriculture (CDFA)	Fair Deferred Maintenance	Deferred Maintenance	0.350	3.209	0.000	3.559	2.0
CDFA	SWEEP and Healthy Soils	SWEEP and Healthy Soils Program	1.048	26.404	0.000	27.45	7.0
California Tahoe Conservancy	Upper Truckee River and Marsh Restoration Project	River and Marsh Restoration	0.000	0.000	3.200	3.200	0.0
Department of Conservation	Working Lands and Riparian Corridors	Agricultural Land Trusts	0.195	1.000	0.000	1.195	0.0
Department of Fish and Wildlife	Implementation of California Drought, Water, Parks, Climate, Coastal Protection, and Outdoor Access For All Act of 2018	River Restoration	1.574	22.060	0.000	23.6	10.5
Department of Forestry and Fire Protection	Urban Forestry Program	Urban Forestry	1.070	13.555	0.000	14.63	4.0
Department of Parks and Recreation	Safe Neighborhood Parks Local Assistance	Local Parks Grants	3.135	460.292	0.000	463.4	13.0
Department of Parks and Recreation	State Park System Scoping, Planning and Redwood Reforestation	Park Maintenance and Forestry	4.185	0.000	0.000	4.185	3.0
Department of Water Resources	Drought and Groundwater Investments	Regional Groundwater Sustainability	15.500	46.250	0.000	61.75	6.0
Department of Water Resources	Floodplain Management, Protection and Risk Awareness Program	Floods	2.000	0.000	0.000	2.000	0.0
Department of Water Resources	Floodwater for Groundwater Recharge	Groundwater recharge	2.500	0.000	0.000	2.500	0.0
Department of Water Resources	Multi-Benefit Flood Improvements Projects	Floods	0.000	0.000	94.000	94.00	0.0
Department of Water Resources	Salton Sea Management Program Phase 1 Implementation	Salton Sea	0.000	0.000	30.000	30.000	0.0
Department of Water Resources	Urban Streams Restoration Program	Urban Streams Restoration	0.537	0.000	0.000	0.537	0.0
Natural Resources Agency	Appropriations of SB 5 for Agency Programs	Waterways, Parkways, Multi-benefit Green Infrastructure	0.700	56.500	0.000	57.20	5.0
Ocean Protection Council	CA Ocean Protection Council - Advancing Ocean and Coastal Health Productivity and Resiliency	Marine Wildlife, Coastal Restoration and Management	0.284	20.000	0.000	20.28	2.0
Sacramento-San Joaquin Delta Conservancy	Economic Development in the Delta	Delta	0.117	0.939	0.000	1.056	2.0
San Gabriel and Lower Los Angeles River and Mountains Conservancy	Los Angeles River Watershed and Tributaries Support, Local Assistance, and Capital Outlay Allocations	LA River	0.430	8.245	0.000	8.675	0.0
Santa Monica Mountain Conservancy	Los Angeles River Watershed and Tributaries	LA River	0.300	8.375	0.000	8.675	0.0

San Diego River Conservancy	SB 5 Local Assistance Grant Program	San Diego River	0.050	0.000	0.000	0.050	1.0
Sierra Nevada Conservancy	Watershed Improvement Program and Conservancy Projects	Habitat Restoration	1.045	5.300	0.000	6.345	3.0
State Coastal Conservancy	Support and Local Assistance Appropriation	Coastal Restoration and Management	0.191	4.872	0.000	5.063	1.5
State Water Resources Control Board	California Drought, Water, Parks, Climate, Coastal Protection, and Outdoor Access for All Act of 2018	Drinking Water, Groundwater Treatment, Groundwater Sustainability	1.330	145.920	0.000	147.3	10.0
Wildlife Conservation Board	Lower American River Conservancy and Conservation Project Grant Programs	Habitat Restoration	0.853	20.000	0.000	20.85	5.0
Department of Parks and Recreation	Statewide bond costs	Bond Management	0.747	0.000	0.000	0.747	5.0
Natural Resources Agency	Statewide bond costs	Bond Management	0.426	0.000	0.000	0.426	2.0
Department of Water Resources	Statewide bond costs	Bond Management	0.188	0.000	0.000	0.188	1.0
			\$44.1	\$848.6	\$127.2	\$1,019.9	90.0

* Source: Legislative Analyst's Office

For more detail for each of the BCPs listed above, a summary of each of these proposals is as follows:

1. **CNRA: Appropriations of SB 5 funds for Agency Programs.** Requests \$57.2 million in support and local assistance from SB 5 in FY 2018-19, and five new permanent positions. The requested funding is allocated in the bond act, as specified to provide various conservation, recreation, restoration, and multi-benefit greening and water conservation projects.
2. **CNRA: Bonds and Grant Unit.** Requests to make six long-term limited positions permanent within the Bonds and Grants Unit at CNRA. The funding for these positions is in the Agency's baseline budget and comes from Proposition 1, Proposition 84, and the Greenhouse Gas Reduction Fund.
3. **CNRA: California Ocean Protection Council – SB 5 Advancing Ocean and Coastal Health, Productivity, and Resiliency.** Requests to appropriate \$20.284 million from SB 5 Bond Funds to the California Ocean Protection Trust Fund to provide critical support for projects that maintain and advance healthy, resilient, and productive ocean and coastal ecosystems for the benefit of current and future generations.
4. **CNRA, Department of Parks and Recreation, and Department of Water Resources: Lifetime Statewide Bond Costs for SB 5.** CNRA, Department of Parks and Recreation, and the Department of Water Resources request first year staffing and funding needs of eight positions and \$1.362 million in bond funding.
5. **California Tahoe Conservancy: Upper Truckee River and Marsh Restoration Project.** Requests a total of \$9.07 million for the construction phase of the Upper Truckee River and Marsh Restoration Project. The project will restore natural processes and functions of Conservancy-owned or controlled lands within the Upper Truckee River Marsh. The purpose of the improvements is to enhance the area's ecological values and water filtering capacity, with a

complimentary and appropriate level of recreation infrastructure. The total cost estimate is \$10.37 million. This request also includes a reversion of \$1.709 million from the unencumbered balances of various appropriations from FY 2014-15 through FY 2017-18.

6. ***California Conservation Corps: Corps Projects and Local Assistance Grants.*** Requests \$9.75 million in bond funding for FY 2018-19 and seven positions for program delivery and planning and monitoring activities. The funding would be used to provide over 150,000 annual hours in projects to enhance and restore state parkways, and administer \$4.567 million in grants to certified local conservation corps.
7. ***Department of Conservation: Working Lands and Riparian Corridors.*** Requests \$1.195 million for FY 2018-19 to build agricultural land trust capacity.
8. ***Department of Forestry and Fire Protection: Urban Forestry Program.*** Requests one-time funding of \$14.6 million in FY 2018-19 to provide urban forestry projects.
9. ***Department of Fish and Wildlife: Implementation of SB 5.*** Requests \$23.5 million for local assistance and state operations to support competitive grants and the redirection of 10.5 existing positions, currently supported with expiring bond money and other funds, to implement SB 5. Authorization of the request would allow the department to support a variety of projects, which include climate change adaptation, protecting and restoring rivers and streams, and improving conditions for fish and wildlife.
10. ***Wildlife Conservation Board: Lower American River Conservancy and Conservation Project Grant Programs.*** Requests a FY 2018-19 state operations appropriation in the amount of \$853,000 and five PY position authority to implement the applicable statutory requirements resulting from SB 5. The board is further requesting \$20 million in funding which may be used for either capital outlay or local assistance to implement new programs as specified in SB 5.
11. ***State Coastal Conservancy: Local Assistance and State Operations Funding.*** Requests a local assistance appropriation of \$4.872 million, and a support (state operations) appropriation of \$191,000 in FY 2018-19 pursuant to Chapters 9 (ocean, bay, and coastal protection) and 10 (climate preparedness, habitat resiliency, resource enhancement, and innovation) of SB 5 and consistent with the Conservancy's rollout plan. The support appropriation will include \$130,000 of planning and monitoring funding and \$61,000 of program administration. The Conservancy also requests 1.5 new permanent, full-time positions to implement the SB 5 programs, one new Staff Services Analyst and one-half a of a Conservancy Project Development Analyst.
12. ***Department of Parks and Recreation (Parks): Safe Neighborhood Parks Local Assistance.*** Requests a one-time increase of \$3.135 million for support and \$460.292 million for local assistance in FY 2018-19. This proposal requests funding for program delivery staff to manage and oversee several SB 5 grant programs. Parks anticipates the need for \$3.135 million and 13 positions in the first year.
13. ***Parks: State Park System Scoping, Planning and Redwood Reforestation.*** Requests a one-time increase of \$4.185 million and three positions in FY 2018-19 to undertake scoping and planning for critical State Park System projects and for a critical redwood reforestation partnership.

14. ***Santa Monica Mountains Conservancy: Los Angeles River Watershed and Tributaries.*** Requests appropriation of \$300,000 state operations and \$8.375 million local assistance. Additionally, the Conservancy requests the local assistance funds be available for encumbrance and expenditure until June 30, 2020. Funds will be used for the implementation of the Santa Monica Mountains Comprehensive Plan, the Rim of the Valley Trails Corridor master Plan, the Los Angeles County River Master Plan, the San Gabriel and Los Angeles Rivers Watershed and Open Space Plan, and to further cooperation with local governments in the region to secure open space and parkland, to expand efforts to integrate nature into the urban environment and to expand education, public access, and resource stewardship components in a manner that best serves the public, protects habitat and provides recreational opportunities.
15. ***San Gabriel and Lower Los Angeles River and Mountains Conservancy: Los Angeles River Watershed and Tributaries.*** Requests \$8.675 million with allocations for state operations and \$8.245 million for local assistance in FY 2018-19 to begin implementation of projects consistent with SB 5 and the Watershed and Open Space Plan for the San Gabriel and Los Angeles Rivers.
16. ***Baldwin Hills Conservancy: Support and Local Assistance.*** Requests \$1 million for local assistance grants and \$135,000 for state operations. The appropriations will support the Conservancy's mission, in particular by continuing its watershed protection, habitat restoration, acquisition and park improvements in the Ballona Creek/Baldwin Hills Watershed and support an existing Park and Recreation Specialist position.
17. ***San Diego River Conservancy: Appropriation for Program Delivery.*** Requests \$50,000 for program delivery in FY 2018-19 in order to support the Conservancy's implementation of its statutory authorization, mission and strategic plan – in particular, by continuing to conserve land, offer outdoor recreation and provide public access to trails and other open space, outdoor recreation and public educational opportunities along the San Diego River watershed. The request will provide funding for one new position to support implementation of the local assistance grants program. It is anticipated that grant funds will be awarded over a 9-year period beginning with FY 2019-20 and that ongoing administration will continue through FY 2029-30.
18. ***Sierra Nevada Conservancy: Watershed Improvement Program and Conservancy Projects.*** Requests \$6.4 million and three positions to implement SB 5. Specific appropriations are requested as follows: a) \$5.3 million for local assistance for grants to support the Sierra Nevada Watershed Improvement Program; b) \$260,000 for program delivery; and, c) \$785,000 for planning and monitoring.
19. ***Department of Water Resources (DWR): Drought and Groundwater Investments.*** Requests one-time funding for 6.0 positions and \$61.8 million for drought and groundwater investments to achieve regional sustainability. DWR also requests a two-year extended encumbrance for the local assistance funds.
20. ***DWR: Floodplain Management, Protection and Risk Awareness Program.*** Requests a one-time appropriation of \$2 million in state operations to begin implementation of the Floodplain Management, Protection and Risk Awareness Program to protect people and property in California's alluvial fan, coastal and riverine floodplains.
21. ***DWR: Floodwater for Groundwater Recharge.*** Requests a one-time appropriation of \$2.5 million in state operations to conduct strategic planning, identify data gaps, and develop tools

necessary to prepare a statewide plan to use floodwater for managed aquifer recharge and support sustainable water resources.

22. **DWR: Multi-Benefit Flood Improvement Projects.** Requests a total of \$94 million for FY 2018-19 to implement multi-benefit flood improvement projects. This request will support existing staff and contract work needed to carry out the projects.
23. **DWR: Salton Sea Management Program Phase 1 Implementation.** Requests \$30 million in Reimbursement Authority (\$23.9 million in capital outlay and \$6.1 million in state operations). DWR will be reimbursed from CNRA appropriation from SB 5. The authority will be used to construct water management infrastructure and habitat conservation and dust mitigation projects pursuant to the CNRA Salton Sea Management Phase I 10-year Plan and required by the State Water Resources Control Board Stipulated Order WRO 2002-0013. The reimbursement authority will provide DWR the resources needed to implement the design, construction, and construction management for the 1,000 acres of aquatic habitat/dust mitigation and construct water supply infrastructure required for the full implementation of the Salton Sea Management Program Plan and support 13 existing full-time equivalent positions.
24. **DWR: Urban Streams Restoration Program.** Requests a one-time appropriation of \$537,000 in state operations to support the Urban Streams Restoration Program. Funds will support 2.1 existing positions to provide technical assistance and to develop grant solicitations.
25. **Sacramento-San Joaquin Delta Conservancy: Economic Development in the Delta.** Requests two positions and \$1.1 million to begin implementation of SB 5.
26. **State Water Resources Control Board: California Drought, Water, Parks, Climate, Coastal Protection, and Outdoor Access for All Act of 2018.** Requests \$147,300,000 in budget authority and 10 positions to administer the programs and permit projects authorized by SB 5 and requests the local assistance funds be available for an extended encumbrance period of two years.
27. **California Department of Food and Agriculture (CDFA): Fair Deferred Maintenance Program.** Requests \$3.559 million and two positions for FY 2018-19 to begin providing deferred maintenance support to the Network of California Fairs and requests budget bill language to make this funding available, for encumbrance or expenditure, for two years through June 30, 2020. This will provide more fairs more opportunities to generate self-sustaining revenue and safer facilities for the public during events and the emergency personnel who utilize the fairgrounds during catastrophic events such as earthquakes, wildfires, and floods.
28. **CDFA: State Water Efficiency and Enhancement Program and Healthy Soils Program.** Requests \$27.452 million and seven positions in FY 2018-19 to award, administer, and monitor \$17.8 million in State Water Efficiency and Enhancement Program grants and \$8.604 million in Healthy Soils Program grants; and requests budget bill language to make this funding available, for encumbrance or expenditure, for two years through June 30, 2020.

Overall, the Governor's proposed spending plan for SB 5 moneys in FY 2018-19 is consistent with the parameters set forth in SB 5.

Background. *SB 5 (de León), Chapter 852, Statutes of 2017, established the Drought, Water, Parks, Climate, Coastal Protection, and Outdoor Access for All Act of 2017 (SB 5).* SB 5 allocates a total of

\$4.1 billion – \$4 billion of which is new bond authority and the remaining \$100 million will be redirected from unsold bonds previously approved as part of Propositions 1, 40, and 84. SB 5 is subject to voter approval and has been placed on the June 2018 ballot as Proposition 68.

SB 5 includes the following purposes and accompanying amounts:

SB 5 FUNDING ALLOCATIONS		
SB 5 Chapter	Purpose	Amount (in Millions)
2	Investments in environmental and social equity, enhancing disadvantaged communities	\$725
3	Investments in protecting, enhancing, and accessing local and regional outdoor spaces	285
4	Restoration, preservation, and protection of existing state park facilities and units	218
5	Trails and greenway investments	30
6	Rural recreation, tourism, and economic enrichment investment	25
7	Grants pursuant to the California River Parkways Act of 2004 and the Urban Streams Restoration Program	162
8	To the state conservancies, Wildlife Conservation Board, CNRA, and the Salton Sea Authority for specified purposes	767
9	Ocean, bay, and coastal protection	175
10	Climate preparedness, habitat resiliency, resource enhancement, and innovation	443
11	Clean drinking water and drought preparedness	250
11.1	Groundwater sustainability	80
11.5	Flood protection and repair	550
11.6	Regional sustainability for drought and groundwater, and water recycling	390
TOTAL		\$4,100

Of the \$4.1 billion bond, the Governor proposes to spend \$1.02 billion in the FY 2018-19 budget.

Past Natural Resources Bonds. Since 2000, multiple general obligation bonds, totaling approximately \$27 billion, have been approved and provide funding for purposes similar to SB 5, including the following:

RESOURCES GENERAL OBLIGATION BONDS SINCE 2000		
Proposition (Year)	Purpose	Amount Authorized (in Billions)
12 (2000)	Parks and natural resources protection	\$2.1
13 (2000)	Safe drinking water, water quality, flood protection, and water reliability projects	1.9*
40 (2002)	Development, restoration, and acquisition of state and local parks, recreation areas and historical resources, and for land, air, and water conservation programs	2.6
50 (2002)	CALFED Bay-Delta Program projects including urban and agricultural water use efficiency projects; grants and loans to reduce Colorado River water use; purchasing, protecting and restoring coastal wetlands near urban areas; competitive grants for water management and water quality improvement projects; development of river parkways; improved security for state, local and regional water systems; and grants for desalination and drinking water disinfecting projects	3.3*
1E (2006)	Rebuild and repair California's most vulnerable flood control structures to protect homes and prevent loss of life from flood-related disasters, including levee failures, flash floods, and mudslides, and to protect California's drinking water supply system by rebuilding delta levees that are vulnerable to earthquakes and storms	4.0*
84 (2006)	Safe drinking water, water quality and supply, flood control, waterway and natural resource protection, water pollution and contamination control, state and local park improvements, public access to natural resources, and water conservation efforts	5.3*
1 (2014)	Ecosystem and watershed protection and restoration, water supply infrastructure projects, including surface and groundwater storage, and drinking water protection	7.5

TOTAL	\$26.7
* Reflects amount authorized by voters adjusted by Proposition 1 (2014), which reallocated some previously approved bonds for other purposes.	

These past resources bonds have been expended and encumbered to varying degrees (as of June 2017), but still have unencumbered moneys available for future spending, as follows:

ENCUMBERED & UNENCUMBERED PORTIONS OF RESOURCES BONDS SINCE 2000		
Bonds since 2000	Percentage of Bond Expended & Encumbered	Amount of Bond Unencumbered
Proposition 1	10%	\$6,765,091,000
Proposition 1E	76	971,254,856
Proposition 84	87	695,380,797
Proposition 50	95	181,223,896
Proposition 40	95	139,227,968
Proposition 13	91	184,919,878
Proposition 12	99	13,896,654
TOTAL	67%	\$8,950,995,049

Although two-thirds of moneys from resources bonds approved by voters since 2000 have been expended and encumbered, almost \$9 billion remain unencumbered. SB 5 would add an additional \$4 billion, for a total of approximately \$13 billion in general obligation bonds available for natural resources and environmental protection purposes.

Legislative Analyst's Office (LAO). *Reasonable Approach to Implementing First Year of Funding.* Overall, LAO finds that the Administration's SB 5 funding plan for 2018-19 is reasonable. While departments are proposing to spend hundreds of millions of dollars in the budget year, they generally have targeted this spending towards programs that are likely to be successfully implemented this first year. This includes focusing on grant programs for which administering departments are confident that they can develop grant guidelines and make awards before the end of the budget year, such as when the funding supports existing or recently active grant programs. In addition, some spending is targeted towards more narrowly defined state purposes, such as implementing the Salton Sea Management Plan. For new programs authorized by the bond, the Administration generally is requesting funding for administrative positions that would be responsible for developing program guidelines during the budget year.

LAO also notes that in most cases, local assistance and capital outlay funding is targeted to programs where prior bond funds largely have already been spent or committed to projects, leaving little available for new projects absent this proposal. For example, the proposal would provide \$47 million for DWR to offer another round of grants to local groundwater agencies that are in the process of developing plans to help implement the Sustainable Groundwater Management Act (SGMA). Proposition 1 (2014) provided such support to some agencies; however, those grants have been fully allocated and not every local agency received funding.

Notably, there are a number of programs in SB 5 for which the administration is not requesting any resources for 2018-19, including for projects or administrative support. This includes some programs with relatively large amounts of funding authorized in SB 5, such as for multibenefit projects to implement voluntary agreements that improve stream conditions for fish (\$200 million), water recycling projects (\$80 million), and coastal watersheds restoration (\$64 million). Based on LAO's

review; however, the Administration has a reasonable rationale for delaying spending on these programs. In some cases, it could be premature to appropriate spending in the budget year because program details and planning will need more time to be developed (such as for the voluntary agreements), and in other cases previously approved funds remain available (such as water recycling funds in Proposition 1).

Long-Term Funding Plan Not Identified. While the budget-year plan appears reasonable, the Administration has not identified a spending plan for subsequent years. Therefore, it is unclear when the Administration expects to begin funding programs that are not proposed to receive project funding in the budget year. It is also unclear how many years the Administration thinks it will take to fully appropriate all of the funds.

Additional Scrutiny Needed for Some Proposals. Though the budget-year proposals generally seem reasonable, LAO has identified a couple of proposals that raise specific concerns. These proposals include:

- ***DWR Flood Control Projects.*** The Administration proposes \$94 million for flood control projects. However, the proposal by DWR does not specify which projects will be funded, denying the Legislature the ability to provide sufficient oversight over how these funds will be spent. The state's flood management infrastructure has billions of dollars of needed renovations and improvements according to various reports, and it is unclear which of those needs will be targeted by the proposed funding.
- ***DFW Competitive Grant Programs.*** The budget plan proposes a total of \$14 million for two grant programs related to habitat restoration and improving conditions for fish and wildlife. However, the proposed budget already includes \$28 million from Proposition 1 for similar DFW activities, and there remains \$179 million in authority from that bond that has not yet been committed for these types of projects. At the time of this analysis, the department was unable to explain why the SB 5 funding plan included appropriations for these programs when there were still outstanding funds available from another bond.

High-Priority Projects Might Lack Funding if Voters Reject SB 5. The Legislature will not know until close to its constitutional deadline to pass the state budget whether voters have approved SB 5. Despite this uncertainty, LAO thinks it is appropriate that the Governor has included these proposals in his January budget because doing so allows the Legislature several months to review the proposals and ensure that the spending plan is consistent with its priorities. However, should the bond measure fail to pass, the Legislature might be faced with decisions about whether it wants to find alternative funding sources for certain programs with little time before the constitutional budget deadline to explore its options. Considering potential alternative funding sources might be especially important for programs where (1) the state has an obligation to provide funds (such as for the Salton Sea Management Plan), (2) the state could face long-term financial costs if it does not make certain investments (such as in the case of maintaining flood management or other infrastructure), or (3) additional funding might be key to successful execution of a statewide priority (such as support for local implementation of SGMA). Some existing programs might be able to utilize past funding sources. For example, the Urban Forestry Program is supported in the current year with the Greenhouse Gas Reduction Fund (GGRF). Other programs, however, rely on nearly exhausted bond funds and would need a new fund source to continue.

LAO Recommendations. Approve Proposals With a Couple Modifications. LAO recommends approval of most of the Administration's SB 5 funding requests and associated positions. However, based on its review of the proposals, LAO recommends the following two modifications:

- ***Budget Bill Language Specifying Flood Projects.*** LAO recommends that the Legislature direct DWR to report at budget hearings on which specific flood management projects will be funded in the budget year. Based on this information—as well as an assessment of its own priorities—LAO recommends that the Legislature adopt budget bill language that would schedule the proposed flood funding by project.
- ***Replace SB 5 Funds With Proposition 1 Funding for Two DFW Grant Programs.*** LAO recommends reducing DFW’s allocation from SB 5 by \$14 million and increasing its appropriation from Proposition 1 by an equivalent amount. This will be more consistent with the administration’s broader approach to allocating the first year of SB 5 funding. Moreover, it will be administratively more efficient for the department to operate one set of bond programs related to habitat restoration and improving conditions for fish and wildlife, rather than simultaneously administering parallel programs from different bonds.

Report at Budget Hearings on Long-Term Funding Plan. LAO recommends that the Legislature direct the Administration to report at budget hearings on its longer-term strategy for expending SB 5 funds. Doing so would give the Legislature a better sense of when programs not proposed for funding in 2018-19 would be implemented and how long the Administration proposes taking to fully allocate bond funding.

Consider Budget-Year Priorities and Alternative Funding if SB 5 Fails. LAO notes that the Legislature might wish to consider whether there are certain programs funded in SB 5 that would be high enough priorities to fund from other sources should SB 5 fail. This could involve, for example, the budget subcommittees identifying an alternative budget approach for specific programs—including funding amounts and sources—that could be adopted in June if the proposition fails. Aside from the General Fund, whether an alternative fund source could be used for a particular program would probably depend on the allowable uses of that fund. In addition, the use of alternative fund sources generally would involve the trade-off of not having those funds available for other purposes.

Staff Comments. State Responsibilities and Obligations. SB 5 is required to go to the voters for approval in June of this year. Although the Governor’s budget anticipates the passage of this general obligation bond, the budget includes activities/responsibilities that the state would still be obligated to perform/fulfill regardless of whether the SB 5 bond is approved.

For example, DWR requests \$30 million in SB 5 funding for the Salton Sea Management Program, which is estimated to cost a total of \$383 million. On March 16, 2017, CNRA released its 10-year plan for various actions, such as habitat and dust mitigation projects, at the Salton Sea. The Sea’s water level is currently maintained primarily by agricultural runoff, which, by existing agreement – the Quantification Settlement Agreement (QSA) – started being reduced in 2017. Without significant restoration efforts, the QSA water transfers when fully implemented are highly likely to result in the collapse of the Sea’s ecosystem over the next 10 to 20 years.

Another example of SB 5 funding for state responsibilities is a BCP entitled, “Multi-Benefit Flood Improvement Projects (SB 5).” DWR requests a total of \$94 billion in SB 5 moneys to implement multi-benefit flood improvement projects to support existing staff and contract work needed to carry out projects. The BCP includes State Plan of Flood Control (SPFC) facility improvements such as replacement of aging infrastructures, making urgently needed repairs to existing structures, and improving system capacity. In 2003, a state appellate court found the state responsible for a SPFC levee failure along the Yuba River (this case is commonly referred to as the *Paterno* decision). The state eventually reached a settlement paying \$464 million to nearly 3,000 plaintiffs. *Paterno*

established a new standard for the state's flood liability and makes it possible that the state could ultimately be held responsible for the structural integrity of *all* SPFC facilities.

If SB 5 is not approved by the voters in June, a question arises as to what alternative funding sources are available to ensure that the state fulfills its responsibilities and obligations, such as the ones noted above.

The State's Debt. The Governor's Budget Summary states, "[E]conomic expansions do not last forever. In the post-war period, the average expansion has lasted about five years. By the end of the 2018-19 fiscal year, the expansion will have matched the longest in modern history a moderate recession will drop state revenues by over \$20 billion annually for several years." (Governor's Budget Summary – 2018-19, page 3.) Regardless of the amount of revenue coming in, the state still must pay the debt it has incurred. As mentioned above, debt service is a significant General Fund expenditure – The state pays just under \$6 billion in debt service currently and is expected to possibly reach \$7.3 billion in 2025-26.

When considering the \$1.02 billion worth of proposals put forth by the Governor using SB 5 moneys, the Legislature may wish to consider whether these BCPs are commensurate to its priorities to ensure that they merit adding to the state's debt over the next few decades. In a nutshell, will a proposal utilizing SB 5 moneys give the state the biggest bang for its buck and the interest that it must pay on it?

Questions. The Legislature may wish to ask the Administration the following:

- 1) How would the projects be prioritized for alternative funding should SB 5 fail?
- 2) Is there an alternative funding plan for any of the proposed projects?
- 3) Is there a longer term plan being developed beyond the first year?

Staff recommendation: Hold open.

0540 Secretary of the Natural Resources Agency**Overview**

The mission of the California Natural Resources Agency (CNRA) is to restore, protect and manage the state's natural, historical and cultural resources for current and future generations using creative approaches and solutions based on science, collaboration and respect for all involved communities. The CNRA Secretary, a member of the Governor's cabinet, sets the policies and coordinates the environmental preservation and restoration activities of 26 various departments, boards, commissions and conservancies, and directly administers the Sea Grant Program, Ocean Protection Council, California Environmental Quality Act, Environmental Enhancement Mitigation Program, River Parkways, Urban Greening, and the California Cultural and Historical Endowment grant programs.

CNRA consists of the departments of Forestry and Fire Protection, Conservation, Fish and Wildlife, Parks and Recreation, and Water Resources; the California Conservation Corps; Exposition Park; California Science Center; California African American Museum; the State Lands Commission; the Colorado River Board; the San Francisco Bay Conservation and Development Commission; the Energy Resources Conservation and Development Commission; the Wildlife Conservation Board; the Delta Protection Commission; the California Coastal Commission; the State Coastal Conservancy; the California Tahoe Conservancy; the Santa Monica Mountains Conservancy; the Coachella Valley Mountains Conservancy; the San Joaquin River Conservancy; the San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy; the Baldwin Hills Conservancy; the San Diego River Conservancy; the Sierra Nevada Conservancy; the Sacramento-San Joaquin Delta Conservancy; the Native American Heritage Commission; and the Special Resources Program.

CNRA's proposed budget is \$155.262 million, which represents a 53.5 percent decrease in expenditure from last year. Most of CNRA's budget is comprised of special funds, with \$4.86 million in General Fund.

Issue 2 – Environmental License Plate Fund (ELPF)**Governor's Proposals.**

- **California Ocean Protection Council – Ocean Resiliency Program.** The Governor's budget proposes to appropriate \$15 million of Environmental License Plate Funds to the California Ocean Protection Trust Fund to address the threats of climate change on coastal and marine ecosystems (and the communities that rely on them) by supporting projects that do the following: advance understanding of the impacts of climate change on coastal and ocean ecosystems; support adaptation strategies to address sea-level rise and changing ocean conditions such as ocean acidification and hypoxia; and build broader ecosystem resilience by improving ocean health; and, allowing marine life and habitats to better withstand climate change impacts.
- **Natural Resources Conservation Project Monitoring Program.** The budget proposes \$700,000 ongoing in Environmental License Plate Fund (ELPF) and four positions to administer a project monitoring program within the Agency. The program will conduct

ongoing compliance monitoring of projects funded by the Agency departments and conservancies.

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

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

The fund supports activities in more than 20 state departments, boards, conservancies, and commissions.

In the past, the Administration had identified a structural deficit in ELPF. In FY 2016-17, LAO estimated that the fund had an underlying structural deficit of about \$9 million annually. The deficit was primarily caused by: (a) slower-than-expected growth in revenues from the sales of personalized license plates since the early 2000s (and even some declines in more recent years) and (b) increases in expenditures in the mid-2010's due to rising employee compensation and administrative costs.

However, this year, ELPF increased \$9.6 million in revenues, primarily due to the new black and yellow legacy plates. There are over 230,000 legacy plates on the road and if that stays constant or increases the fund will continue to see a higher level of revenue from annual renewals. As a result, the Administration states that the fund shows a healthy balance going forward.

***Ocean Protection Council (OPC)*.** OPC was created in 2004 by the California Ocean Protection Act to integrate and coordinate the state's laws and institutions responsible for protecting and conserving ocean resources, including coastal waters and ocean ecosystems. OPC incorporates ecosystem perspectives into the management of coastal and ocean resources using sound science, with a priority of protecting, conserving, and restoring coastal and ocean ecosystems. OPC is also legislatively mandated to "coordinate governance and stewardship of the state's ocean, to identify priorities, bridge existing gaps, and ensure effective and scientifically sound approaches to protecting and conserving the most important ocean resources.

OPC's Strategic Plan for 2012 – 2017 proposes action in areas of critical need and highlights a focus on five areas: 1) science-based decision making, 2) climate change, 3) sustainable fisheries and marine ecosystems, 4) coastal and ocean impacts from land-based sources, and 5) existing and emerging ocean uses.

Staff Comment. Both of the Governor's budget proposals have merit. However, as noted earlier, prior to the current FY, ELPF faced a structural deficit. The new uses of ELPF may raise cautious concern because the fund was only recently balanced. The balance of the fund may be tenuous in the long-run if purchases of the legacy plates fade over time and there is not a new one that replaces its popularity.

Staff Recommendation. Approve as budgeted.

Issue 3 – Information Security Operations

Governor’s Proposal. The Governor's budget requests \$2,916,000 from various funds (\$1,778,000 one-time, \$1,138,000 ongoing) and six positions to establish a new Security Operations Center (SOC) to address information security and cyber security vulnerabilities and threats. SOC would provide service and support for all CNRA’s departments, commissions, conservancies, and boards that require information security operational activities to protect and secure critical information, systems, and infrastructure assets.

Background. *Information Technology at CNRA.* CNRA consists of thirty organizations (departments, commissions, conservancies, and boards) which have a total of 21,000 employees in over 1,000 locations throughout the state. The organizations' size ranges from large (i.e. CalFire, Department of Water Resources, Parks and Recreations, Fish and Wildlife) to small (i.e. Delta Protection, Native American Heritage, and Sacramento-San Joaquin Delta Conservancy).

In the last six years, CNRA organizations have expanded their use of information technology to help achieve their mission objectives and to effectively perform various program areas activities and tasks. CNRA organizations have utilized technology advances such as private and public cloud services, virtualization technologies, software as a service, and platform as a service. In addition, CRNA organizations have deployed numerous specialized technology solutions related to areas such as, but not limited to: water management, energy management, emergency and response management, conservation, oil and gas, land management, recreation management, engineering, and environmental science. Many of the CNRA organizations do not have independent technology resources and rely on the Agency to provide technology services and support.

Data Centers Vary in Levels of Security. CNRA currently maintains a Tier III Data center used by all of the Agency’s organizations. A data center is a facility used to house computer systems and associated components, such as telecommunications and storage systems. It generally includes backup power supplies, redundant data communications connections, environmental controls (e.g. air conditioning, fire suppression) and various security devices. A large data center is an industrial-scale operation using as much electricity as a small town.

Data centers are categorized in four levels, or tiers, based upon the availability of data processing from the hardware at a location. The higher the Tier level, the greater the expected availability. The Data Center Tier 4 is considered the most robust and least prone to failures. Tier 4 is designed to host mission critical servers and computer systems, with fully redundant subsystems (cooling, power, network links, storage etc.) and compartmentalized security zones controlled by biometric access controls methods. This is in contrast to Tier 1, the simplest data center typically used by small business or shops. The overall CNRA technology environment consist of: A Tier III Data Center, 6,000 virtual servers, 11 petabytes of data, 800 websites, 30,000 end-devices (PCs, workstations, laptops, tables), 3,500 applications/software products, and roughly 4,000 sensors.

Increase in Data Breaches and Cyber-Attacks. Recent information security assessments conducted as required by the State Administrative Manual 5305.7 and 5305.2 reveals that the majority of CNRA organizations are unable to implement and maintain the proper level of security control required and therefore are not or just partial in compliance with state, federal, and industry regulation and policies. In addition, information security incidents have risen due to lack of the proper level of security control across the CNRA organizations.

Over the last 12-month period the CNRA Data Center's intrusion monitoring logs, reflect over 4,000,000 cyber-security hack attempts and probes for infrastructure vulnerabilities to network/system security. This number increases exponentially every time new systems, applications, services, and devices are added to the overall CNRA technology eco-system. As automation becomes more prevalent, high-risk system and confidential information maintained and entrusted to CNRA organizations can become more vulnerable to compromise. In addition, CNRA organizations information and cyber security incidents have increased by 22 percent over the last year. To mitigate the ever-increasing trend reflected in cyberattack incident reports, security staff and resources (tools) are required to effectively combat the attempted breaches on security and privacy, which continue to increase in complexity and sophistication.

Staff Comments. *Previous IT Projects.* A 2015 report by the State Auditor revealed that California has a history of failed IT projects. Between 1994 and 2013, for example, the state terminated or suspended seven IT projects after spending almost \$1 billion. In the State Auditor's September 2013 assessment of high-risk issues the state and certain agencies face, the assessment concluded that based on the high costs of certain projects and the failure of others, the state's oversight of IT projects should remain designated as an area of ongoing concern. Given the increasing reliance on information technologies and CNRA's level of security risk, it would be prudent to provide CNRA resources to proactively mitigate security vulnerabilities and respond to cyber-security attacks for the Agency and all its organizations entities. However, it is important to have proper oversight procedures in place to ensure execution of the project goes as intended. A question may arise as to how CNRA intends to ensure proper oversight and execution of the project.

California Department of Technology (CDT). According to CDT, the department "is the guardian of public data, a leader in IT services and solutions, and has broad responsibility and authority over all aspects of technology in California state government, including: policy information, inter-agency coordination, IT project oversight, information security, technology service delivery, and advocacy." The BCP is silent as to whether CDT has any involvement in establishing a new Security Operations Center as proposed. Considering that CDT has broad authority and authority over all aspects of technology in the state government, including information security, a question may arise as to what are the role and responsibilities of CDT in this proposal?

Staff Recommendation. Hold open.

3600 Department of Fish and Wildlife (DFW)

Overview

DFW is responsible for promoting and regulating the hunting of game species, promoting and regulating recreational and commercial fishing, and protecting California's fish and wildlife for the public trust. The department manages over one million acres of public land including ecological reserves, wildlife management areas, and hatcheries throughout the state.

Activities Conducted by the Department of Fish and Wildlife

2017-18 (Dollars in Millions)

Category	Funding	Authorized Positions	Description
Biodiversity Conservation	\$266.5	712.7	Conduct activities to conserve, protect, manage, and restore fish, wildlife, native plants, and habitat.
Hunting, Fishing, and Public Use	101.4	355.3	Facilitate sustainable hunting, fishing (recreational and commercial), and trapping by conserving and managing game species.
Enforcement	91.0	458.8	Enforce compliance with laws and regulations, investigate habitat destruction and pollution incidents, and investigate illegal commercialization of wildlife.
Management of Department Lands and Facilities	90.6	323.4	Manage hatcheries, wildlife areas, ecological reserves, fish and wildlife laboratories, and public access areas.
Spill Prevention and Response	44.3	236.4	Prevent damage, minimize impacts, and restore and rehabilitate fish and wildlife and their habitats from the harmful effects of oil or other spills.
Communications, Education, and Outreach	4.7	16.5	Conduct resource conservation education, conduct community and stakeholder outreach, and disseminate information.
Fish and Game Commission	1.6	10.0	Establish and oversee implementation of the state's fish and wildlife policies, rules, and regulations.
Administration	—	258.0	Provide administrative support and executive leadership for the department's activities.
Totals	\$600.0	2,371.1	

*Funding for administration is included in other categories.

* Source: Legislative Analyst's Office

DFW's proposed budget is \$609.7 million, which represents 1.6 percent increase in expenditure from last year. Most of the department's budget is comprised of special funds, with \$93.8 million in General Fund and 2,171.8 positions.

Issue 4 – Restructuring the Fish and Game Preservation Fund (FGPF)

Governor’s Proposal. The budget proposes \$50.6 million ongoing funding (\$6.6 million General Fund, \$18 million Motor Vehicle Account (MVA) and \$26 million Tire Recycling Management Fund (TRMF)) for the following purposes: 1) Address the structural deficit in FGPF (\$19.6 million); and, 2) Improve and expand DFW’s program activities (\$31 million).

Fish and Game Preservation Fund (FGPF) (Governor’s Proposal)			
(Dollars in Thousands)			
	2016-17	2017-18	2018-19
<i>Total Resources</i>	\$164,476	\$178,828	\$192,443
Total Revenue	98,027	120,747	141,996
Total Expenditures	106,395	128,381	142,285
	-8,368	-7,634	-289
Fund Balance	\$58,081	\$50,447	\$50,158

Addressing FGPF Structural Deficit. The budget provides \$19.6 million to continue critical programs supported by FGPF that are affected by the long-running structural imbalance. The proposal avoids reducing funding to current level of service or loss of entire program elements. Activities benefitting from this proposal include:

- Recruitment, retention, and reactivation of hunters and anglers;
- Communication with hunters and anglers to provide timely information on hunting and fishing opportunities throughout the state;
- Fisheries management in support of fish stocking in state waterways;
- Human-wildlife interaction;
- Law enforcement capacity to prevent the illegal take of fish and wildlife;
- Native and game fisheries monitoring;
- Management of lands for the improvement of wildlife-related outdoor recreation;
- Upgrade and modernization of marine fisheries data management systems; and,
- Addressing emerging management needs relating to commercial fisheries.

Expanding DFW Programs. The budget includes a \$31 million augmentation for purposes of implementing specific priorities identified through the California Fish and Wildlife Strategic Vision (CFWSV) process, as follows:

Proposed 2018-19 DFW Program Expansions

(Dollars in Millions)

Activity	Description	Funding	Positions
Improve marine fisheries management and data	Increase scientific marine fishery monitoring, implement Marine Life Management Act Master Plan actions, develop centralized electronic collection system for marine fisheries data, conduct environmental review for emerging marine use projects (such as artificial reefs or desalination), and develop and implement program to reduce whale entanglements.	\$8.4	38
Enhance marine enforcement	Purchase new patrol boat and skiff to be used north of San Francisco and increase enforcement patrols in Marine Protected Areas and commercial and recreational fisheries.	5.8 ^a	8
Monitor and assist salmon	Conduct various activities to monitor, assess, and recover CESA-listed salmon, and to restore salmon, steelhead, and sturgeon fisheries, including: real-time fish monitoring, coordinating and evaluating habitat restoration activities, and conducting genetic analyses.	4.9	18
Monitor and review declining species	Conduct statutorily required three- and five-year reports on status of CESA-listed species, collect information on current species and habitat assessment and monitoring efforts, and collect data on species population trends.	3.2	9
Enhance wildlife trafficking enforcement	Increase inspections, investigations (including responding to tips), and legal actions related to illegal wildlife trafficking and commercialization.	2.8	8
Support voluntary conservation programs	Develop, implement, and expand conservation agreements and strategies with private landholders and stakeholders to protect at-risk species, including through established state programs such as "safe harbor" agreements and the Regional Conservation Investment Strategy program.	2.2	8
Support hatchery production	Upgrade hatchery operations by (1) employing cryopreservation technology to improve genetic diversity and (2) installing new lighting to extend timeline for spawning.	1.3 ^b	1
Increase administrative support	Provide administrative support for the department's expanded activities.	1.3	7
Update wildlife connectivity assessment	Conduct analyses of wildlife habitat "connectivity zones" to advise transportation planners on mitigation strategies, and design and conduct studies to evaluate mitigation techniques for future road projects.	1.1	1
Totals		\$31.0	98

^a Includes \$2 million for one-time purchase of new patrol boat.

^b Includes \$1 million for one-time purchase of equipment.

DFW = Department of Fish and Wildlife and CESA = California Endangered Species Act.

* Source: Legislative Analyst's Office

As shown above, the Governor proposes to add 98 new positions to the department's workforce to implement the proposed activities. As with funding, the proposed augmentations are proportionally very substantial for many activities, more than doubling existing levels for five of the nine categories. Currently DFW has authority for 2,371 positions, so this would represent about a 4 percent increase. Of the new staff, 67 positions would be from three classifications of environmental scientists, 16 would be law enforcement positions, and the remainder would be from various analyst classifications.

New Revenue to FGPF: Tire Fee (\$26 million). The budget proposes to divert \$26 million ongoing, which would have gone to APCF from the Tire Recycling Management Fund, to FGPF instead. The Cap-and-Trade Expenditure Plan proposes to backfill APCF with GGRF revenue for the budget year. Trailer bill language (TBL) amends the purpose of the 75-cent portion of the tire fee from mitigation of air pollution caused by tires to mitigation of harms on wildlife and habitat caused by tires.

Tire Fee: Statutory Purpose. Currently, statute governing the 75-cent portion of the tire fee provides that the money be spent to mitigate air pollution harms caused by tires. TBL proposes to change the purpose of the 75-cent fee statutorily by amending PRC §42889 as follows:

- (a) Of the moneys collected pursuant to Section 42885, an amount equal to seventy-five cents (\$0.75) per tire on which the fee is imposed shall be transferred by the State Board of Equalization to the ~~Air Pollution Control Board~~ **Fish and Game Preservation** Fund. The ~~state board~~ **Department of Fish and Wildlife** shall expend those moneys, or allocate those moneys to the districts for expenditure, to fund programs and projects that mitigate or remediate ~~air pollution harmful impacts to wildlife and its habitat~~ caused by tires in the state, to the extent that the ~~state board or the applicable district~~ **Department of Fish and Wildlife** determines that the program or project remediates ~~air pollution the negative impacts harms~~ created by tires upon which the fee described in Section 42885 is imposed.

TBL changes the statutory purpose from mitigating or remediating air pollution caused by tires to mitigating or remediating harmful impacts to wildlife and its habitat caused by tires.

New Revenue to FGPF: MVA (\$18 million). The budget proposes to use \$9.01 million from MVA for the Biodiversity Conservation Program. This program encourages the preservation, conservation, maintenance, and restoration of wildlife resources, including the Ecosystem Restoration Program, under the jurisdiction and influence of the state. Activities involve the conservation, protection and management of fish, wildlife, native plants, and habitat to ensure maintenance of biologically sustainable populations of those species.

The budget proposes to use \$8.99 million from MVA for DFW enforcement purposes. This program serves the public through law enforcement, public safety and hunter education. Law enforcement promotes compliance with laws and regulations protecting fish and wildlife resources; investigates habitat destruction, pollution incidents and illegal commercialization of wildlife. Wardens also serve the public through general law enforcement, mutual aid and homeland security.

Background. California Fish and Wildlife Strategic Vision (CFWSV). AB 2376 (Huffman), Chapter 424, Statutes of 2010, required CNRA to convene a committee to develop a strategic vision for the Department of Fish and Game (now called DFW) and the California Fish and Game Commission. The CFWSV Project established a strategic vision for DFW and the Commission that addresses, among other things, improving and enhancing their capacity and effectiveness in fulfilling their public trust responsibilities for protecting and managing the state's fish and wildlife. As part of the project, a blue-ribbon citizen commission and a stakeholder advisory group supported the executive committee in developing a strategic vision report in 2012. Since the issuance of the report, DFW has pursued multiple efforts to align its revenue and costs, including: the establishment of regional conservation investment strategies, mitigation banking, California Endangered Species Act permitting fees, revenues for timber harvest plan review, a scientific collecting permit fee, a lands pass program, an indexing fee to account for inflation, and an increase in commercial fishing fees.

Fish and Game Preservation Fund (FGPF): General Background. FGPF was established in 1909 as a repository for all funds collected under the Fish and Game Code and any other law relating to the protection and preservation of birds, mammals, fish, reptiles and amphibia in California. Revenues are generated from the sale of licenses for hunting, recreational and commercial fishing, and numerous special permits.

FGPF is made up of many different accounts. 29 of these accounts are “dedicated” and collect fee revenues that may only be used for specified purposes and activities. For example, the “duck stamp” account, where duck hunters pay a special fee that is deposited into this account, may only be spent on duck-related activities.

Revenue from licenses, fees and permits that are not directed by statute to a dedicated account are deposited in the only “nondedicated” account in FGPF, which makes up 80 percent of the overall FGPF. This account supports general purpose activities of DFW and has experienced an operating shortfall over the years.

FGPF Nondedicated Account: Sources of Revenue. FGPF nondedicated account revenue is derived from a variety of sources. A majority of revenue comes from recreational fishing licenses and permits. The second biggest revenue generator is recreational hunting licenses and permits; this is followed by commercial fishing licenses and permits as well as environmental review fees paid by project proponents. The smallest source of revenue is commercial fishing landing fees.

FGPF Nondedicated Account: DFW Activities. FGPF nondedicated account supports a variety of program activities. Some of the main functions supported by FGPF are displayed in the following table:

Main Functions Supported by FGPF Nondedicated Account	
Law Enforcement	Support for more than 400 wildlife officers positioned throughout the state to promote compliance with laws and regulations protecting fish and wildlife resources. Wildlife officers also investigate habitat destruction, pollution incidents and illegal commercialization of wildlife, and serve the public through general law enforcement, mutual aid and homeland security.
Lands Management	Management of department-owned lands including wildlife areas, ecological reserves, and public access areas to contribute to the conservation, protection, and management of fish and wildlife. Among other things, these activities support hunting opportunities and serve as required match for federal wildlife restoration grant funds.
Wildlife Conservation	Activities conducted by regional and field staff related to resource assessment and monitoring, conservation and management activities for game and nongame species, and public outreach related to those species. Funding for these activities also serves as required match for federal wildlife restoration grant funds.
Fisheries Management	Development and implementation of policies to address management, protection, and restoration of fish species and their habitats. Also promotes commercial and public recreational angling opportunities. These funds serve as required match for federal sport fish restoration grant funds.
Fish and Game Commission	The commission establishes regulations for hunting, sport and commercial fishing, aquaculture, exotic pets, falconry, depredation control, listing of threatened or endangered animals, marine protected areas, public use of department lands, kelp harvest, and acts as a quasi-judicial appeal body.

FGPF: Addressing the Structural Imbalance (\$19.6 million). In past years, expenditures have exceeded revenues, with the gap reaching over \$20 million annually beginning in 2014-15. While DFW has been able to operate a higher level of expenditures by utilizing the balance in the reserve, that balance has depleted. Some causes of FGPF nondedicated account's structural imbalance include: fund shifts (particularly to the General Fund), lifting of prior spending restrictions (e.g. vehicles, furloughs), increased need for federal funds, and cost of business increases (e.g. employee compensation). Although revenues in FGPF have remained relatively stable over the last decade, statutory mandates have expanded resulting in increased expenditures while the fund balance continues to decrease.

FGPF: Current Year (2017-18) Spending Plan. The 2017-18 budget plan included \$18.7 million from various sources to address the ongoing shortfall in the nondedicated account of FGPF. This additional revenue allowed DFW to sustain current activities supported by this account through the year. Of the total amount provided, \$1.6 million – \$900,000 increase in commercial landing fees and \$750,000 of \$8.7 million in lifetime license revenues – represented ongoing funding. The budget package also included statutory changes associated with these two new revenue sources: 1) A schedule detailing the new commercial landing fees for each species; and, 2) Elimination of the Lifetime License Trust Account and transfer of the existing account balance and future revenues from lifetime license purchases directly into the FGPF nondedicated account and other relevant accounts.

Tire Fee: General Background. Pursuant to the California Tire Recycling Act (Public Resources Code (PRC) §42860 et seq.), a person who purchases a new tire is required to pay a California tire fee. AB 923 (Firebaugh), Chapter 707, Statutes of 2004, adjusted the tire fee from \$1 per tire to \$1.75 per tire and was due to sunset in 2015. AB 8 (Perea), Chapter 401, Statutes of 2013, extended the sunset to January 1, 2024. \$1 of the fee is deposited into the Tire Recycling Fund for oversight, enforcement, and market development grants related to waste tire management and recycling. The remaining \$0.75 is deposited in the Air Pollution Control Fund (APCF) for programs and projects that mitigate or remediate air pollution caused by tires. The fee is scheduled to be reduced on January 1, 2024 to \$0.75 per tire – at which time, all of the revenue will be deposited into the Tire Recycling Fund.

Tire Fee: Fee or Tax? Contrary to the name, the tire fee is a tax. Proposition 26 (2010) expanded the scope of what is deemed a state or local tax. New laws to create – or extend – certain types of revenue measures are now subject to a higher approval requirement for taxes. Proposition 26 requires a two-thirds vote in the Legislature to pass many charges and tax revenue allocations that under the state's previous rules could have been enacted by a simple majority vote. The tire fee was extended pursuant to AB 8 (Perea), Chapter 401, Statutes of 2013, by a two-thirds vote of the Legislature, post-Proposition 26 (2010); and did not meet any exceptions from the requirement to qualify as a fee. Therefore, revenue raised by the tire fee is considered General Fund and is not constrained by trust for beneficial purposes under the California Constitution. However, it may be directed for a specific purpose by statute.

Tire Fee: The 75-Cent Portion of the Fee: Carl Moyer Memorial Air Quality Standards Attainment Program (Carl Moyer Program). PRC §42889(a) restricts the use of revenue derived from the 75-cent portion of the tire fee. The revenue must be spent to mitigate or remediate air pollution caused by tires in the state to the extent that the Air Resources Board (ARB) or the applicable district “determines that the program or project remediates air pollution harms created by tires upon which the fee described in Section 42885 is imposed.”

The revenue raised by the 75-cent portion of the tire fee is deposited into APCF and is one of three ongoing funding sources for the Carl Moyer Program. The other two sources are the motor vehicle registration charge levied by a local district and the smog abatement fee (smog check). Approximately \$1 billion has been allocated to the Carl Moyer Program to date and the program has provided over \$60 million in grant funding each year to clean up older, polluting engines throughout the state.

ARB administers the program, which provides grants through the state's 35 local air quality management and air pollution control districts for deployment of engines, equipment, and emission-reduction technologies that are cleaner than required by current laws or regulations and reduce emissions of specified air pollutants. Covered sources include onroad vehicles, off-road nonrecreational equipment and vehicles, locomotives, marine vessels, agricultural sources of air pollution, and other categories necessary for the state and local air districts to meet air quality goals.

According to ARB, emissions from heavy-duty diesel engines have been identified as a major source of air pollution, including smog-forming nitrogen oxides (NOx) and cancer-causing air toxics including particulate matter (PM) from diesel combustion. 70 percent of the airborne carcinogens in California come from diesel exhaust. The Carl Moyer Program accelerates the replacement of older, dirtier diesel engines with newer, cleaner technologies. Emission reductions achieved by the program play a role in helping California meet federal air quality standards and reduce toxic emissions and associated health risk in communities throughout the state. The program provides incentives to obtain early or extra emission reductions, especially from emission sources in minority and low-income communities and areas disproportionately impacted by air pollution.

Greenhouse Gas Reduction Fund (GGRF). Since 2012, ARB has conducted eight California-only and 13 joint California-Quebec cap-and-trade auctions. To date, approximately \$6.5 billion has been generated by the cap-and-trade auctions and deposited into GGRF. GGRF revenue is estimated to be \$2.7 billion in 2017-18 and \$2.4 billion in 2018-19.

State law specifies that the auction revenues must be used to facilitate the achievement of measurable GHG emissions reductions and outlines various categories of allowable expenditures. Statute further requires the Department of Finance, in consultation with ARB and any other relevant state agency, to develop a three-year investment plan for the auction proceeds, which are deposited in GGRF. ARB is required to develop guidance for administering agencies on reporting and quantifying methodologies for programs and projects funded through GGRF to ensure the investments further the regulatory purposes of the California Global Warming Solutions Act of 2006 (AB 32 (Núñez and Pavley), Chapter 488, Statutes of 2006).

Proceeds from cap-and-trade auctions provide an opportunity for the state to invest in projects that help California achieve its climate goals and provide benefits to disadvantaged communities. Statutes require a state agency, prior to expending any money appropriated to it by the Legislature from GGRF, to prepare a description of: 1) Proposed expenditures; 2) How they will further the regulatory purposes of AB 32; 3) How they will achieve specified GHG emissions reductions; 4) How the agency considered other objectives of that act; and, 5) How the agency will document expenditure results.

Motor Vehicle Account (MVA): General Background. MVA derives the majority of its revenue from vehicle registration fees and driver's license fees and primarily supports the California Highway Patrol and the Department of Motor Vehicles. MVA supports the administration and enforcement of laws regulating the use, operation, and registration of vehicles on California public streets and highways, including the enforcement of traffic and vehicle laws by state agencies and the mitigation of negative

environmental effects of motor vehicles. Due to expenditures outpacing revenues, the MVA has faced an operational shortfall in recent years. Although revenue has increased over the current year and budget year, the reserve continues to slowly deplete.

MVA: California Constitution Article XIX. The budget change proposal (BCP), “Sustainable Funding for Fish and Wildlife,” states that the proposed use of MVA moneys for DFW activities is consistent with California Constitution Article XIX. Article XIX, Section 3(b), refers to Section 2(a), which states that motor vehicle revenues may be used for “research, planning, construction, improvement, maintenance, and operation of public streets and highways (and their related public facilities for nonmotorized traffic), including the mitigation of their environmental effects, the payment for property taken or damaged for such purposes, and the administrative costs necessarily incurred in the foregoing purposes.”

Legislative Analyst’s Office (LAO). *Some Have Called for Additional Funding for DFW to Meet Current-Law Responsibilities.* Beyond just addressing the structural imbalance in the FGPF to maintain DFW’s existing activities, arguments have been made that DFW needs a budget augmentation to *increase* its existing service levels in order to meet its statutory responsibilities. For example, the Legislature has expressed dissatisfaction with the funding available to DFW by enacting statute in 2006—which is still in law today—stating: “The Legislature finds and declares that the department continues to be inadequately funded to meet its mandates. While revenues have been declining, the department’s responsibilities have increased in order to protect public trust resources in the face of increasing population and resource management demands . . . To fulfill its mandates, the department must secure a significant increase in reliable funding, in addition to user fees.”

Proposal Would Significantly Augment Existing DFW Activities

(Dollars in Millions)

Activity	2017-18	2018-19	Proposed Increase	
			Amount	Percent
Funding				
Improve marine fisheries management and data	\$2.1	\$10.5	\$8.4	409%
Enhance marine enforcement	7.7	13.5	5.8	75
Monitor and assist salmon	8.2	13.1	4.9	60
Monitor and review declining species	0.7	3.9	3.2	466
Enhance wildlife trafficking enforcement	1.2	4.0	2.8	233
Support voluntary conservation programs	0.8	3.0	2.2	276
Support hatchery production	26.8	28.1	1.3	5
Increase administrative support	— ^a	— ^a	1.3	— ^a
Update wildlife connectivity assessment	0.2	1.3	1.1	618
Positions				
Improve marine fisheries management and data	15	53	38	253%
Enhance marine enforcement	45	53	8	18
Monitor and assist salmon	51	69	18	35
Monitor and review declining species	4	13	9	225
Enhance wildlife trafficking enforcement	7	15	8	114
Support voluntary conservation programs	5	13	8	160
Support hatchery production	157	158	1	1
Increase administrative support	258	265	7	3
Update wildlife connectivity assessment	1	2	1	100

^aData not available.

DFW = Department of Fish and Wildlife.

* Source: Legislative Analyst's Office

DFW Undergoing Comprehensive Budget Review to Answer Key Questions. The department has faced long-term questions regarding its revenues and expenditures. In particular, stakeholders and the Legislature have sought greater clarity over how the fee revenues generated by fishers, hunters, and permit seekers—which are intended to directly benefit the fee payers—interact with the General Fund provided for public trust activities, and exactly which of the department's activities are supported by each funding source. In some cases, the department has struggled to respond to these questions because of the multiple and overlapping goals associated with their conservation responsibilities. For example, over the course of a day, a warden patrolling the coast might track and catch an illegal poacher, inspect the catch of licensed fishermen to ensure they are staying within catch limits, remove abandoned crab traps that are creating a hazard for migrating whales, ensure no one is fishing in Marine Protected Areas, and issue a citation to someone boating under the influence of alcohol. The variety of these activities illustrates why DFW can have difficulty deciding and explaining exactly how to assign costs to its various revenue sources. Paying for the cost of this warden's activities that regulate and benefit the commercial fishing industry would be an appropriate use of the fees they pay. However, maintaining a healthy fishery and marine ecosystem benefits not only the fishing industry but also the broader public trust resource, suggesting General Fund would also be an appropriate funding source for a portion of this warden's activities.

To address this budgeting challenge, the Legislature enacted language in the *2017-18 Budget Act* directing the department to complete a zero-based budget. In response, DOF has initiated a "mission-based budgeting" review of DFW. According to DOF, this analysis will "determine the appropriate level of expenditures and resources needed to implement government services and programs." The review began in the fall of 2017, and the Administration has not given a timeline for its completion or when it may be able to share its findings.

LAO Recommendations. Adopt Funding Package to, at a Minimum, Address FGPF Shortfall. LAO recommends the Legislature identify sufficient new ongoing revenues to provide at least \$19.6 million to support DFW's existing activities. Failure to do so would further limit the department's ability to implement current law and protect the state's public trust resources. While the department has sustained its service levels in recent years using one-time budget solutions, LAO recommends the Legislature address this issue with a permanent solution in 2018-19 and avoid further uncertainty or the need to repeatedly revisit how to address the funding gap in future budgets. The Proposition 64 requirement to spend an additional \$6.6 million in General Fund can begin to address this shortfall, and the Legislature could provide the additional \$13 million from a combination of other sources, including MVA or additional General Fund.

Adopt Ongoing Augmentation Package That Reflects Legislative Priorities. LAO concurs with the Administration that providing the department with some additional resources would improve its ability to respond to both existing and growing responsibilities. LAO therefore recommends the Legislature augment DFW's budget based on what it views as the highest state priorities. LAO finds that the Governor's proposal provides a reasonable starting place, but the Legislature can add, modify, or remove activities based on its assessment of the most important priorities. Because LAO finds that both the threats to wildlife—particularly species that are already threatened or endangered—and the associated responsibilities for the department will increase with the effects of a changing climate, LAO recommends prioritizing proposals that respond to such pressures. These include those that would protect endangered salmon, increase enforcement in Marine Protected Areas, and monitor and assist species identified under CESA.

Require DFW to Provide More Detailed Justification for Use of MVA, Approve Corresponding Amount of Funding. While the proposed use of MVA for DFW's vehicle-related tasks seems

reasonable in concept, at the time this report was prepared the department had not yet provided sufficient justification for what amount of funding would be appropriate. LAO therefore recommends requiring that DFW provide the budget subcommittees an accounting for how much of its workload is directly related to motor vehicles. While LAO understands this exercise might be difficult given the multiple activities that staff such as wardens may undertake in a given day—only some of which might be related to vehicles—LAO believes developing a reasonable estimate is important to justify the use of MVA for this new purpose. LAO recommends the budget subcommittees review these data before approving the use of MVA for DFW. To the extent the department is able to quantify its vehicle-related workload, LAO recommends the Legislature appropriate a corresponding amount of MVA to DFW.

Reject Proposed Use of TRMF. LAO recommends the Legislature reject the Governor’s proposal to use \$26 million from the TRMF for DFW. LAO believes the department has not sufficiently justified the legal nexus for using tire fees to support its workload. Furthermore, given the fund is scheduled to experience a significant drop in revenues in 2024—and the Governor proposes to stop using it for DFW at that time—LAO recommends the Legislature avoid using it to establish new ongoing activities and positions that will be difficult to sustain in the future. Correspondingly, LAO also recommends against directing \$26 million from the GGRF to CARB, as rejecting the proposed TRMF transfer to DFW would negate the need for that backfill.

Balance Use of Other Funding Sources with Other State Priorities, Consider Revisiting Based on Results of Budgetary Review. LAO was not able to identify an obvious source for augmenting DFW’s budget—all of the options before the Legislature come with trade-offs. The Legislature will need to balance the strengths and weaknesses of each source to fund the service levels it wants DFW to provide. Moreover, as discussed earlier, determining the right mix of General Fund and fees for a budget augmentation is complicated by the uncertainty surrounding DFW’s use of existing revenues. Assuming it chooses to focus program augmentations on new activities that benefit the public trust—such as protecting native species—relying primarily on the General Fund for program expansions in 2018-19 would be appropriate. However, the Legislature may want to revisit the mix of funding sources in future years once additional information on the department’s existing budget is available. For example, if DOF’s budget analysis reveals that significant General Fund is being used to support activities that benefit specific groups—such as hunters, recreational or commercial fishers, or permit applicants—the Legislature may want to raise corresponding fees and reduce the General Fund support.

Require DFW and DOF to Provide Update on Progress of Budgetary Review. LAO recommends requiring DOF and DFW to provide the Legislature with updates on their mission-based budgeting review. Specifically, LAO recommends requesting a verbal update on the status of the review during spring budget hearings, and enacting budget bill language to require a formal written update and summary of initial findings to be provided no later than October 1, 2018. This information will be important for informing development of the 2019-20 budget. LAO recommends requiring that this written update include a summary of initial findings related to (1) how DFW uses its existing revenues and which fund sources support which types of activities; (2) instances where DFW should readjust how it is directing existing revenues to support its activities and to better meet legal and programmatic requirements; (3) instances where DFW appears to have insufficient funding—either in total, or from a particular source—to implement specific statutory responsibilities; (4) instances where DFW might be undertaking activities outside of its core mission; (5) instances where statutory changes might be needed to improve DFW’s service delivery; (6) data or information that is lacking or unavailable and therefore precludes answering some of these key budgetary questions, and suggestions for how to

overcome those gaps, and (7) to the degree that the full review is not yet complete, what data and questions remain to be analyzed, and a timeline for its completion.

Staff Comments. *Tire Fee: Backfill Carl Moyer Program Using GGRF.* For 2018-19, the Administration's Cap-and-Trade Expenditure Plan proposes to use \$26 million in GGRF to backfill APCF for the \$26 million being diverted from APCF to FGPF.

On July 25, 2017, Governor Brown signed AB 398 (E. Garcia), Chapter 135, Statutes of 2017, which, among other things extended authorization for ARB to utilize the cap-and-trade program to reduce GHG emissions after December 31, 2020. There have been questions about whether or not AB 398, which was passed by a two-thirds vote in the Legislature, had any impact on the current cap-and-trade program set to expire December 31, 2020, and the revenues it generates. In the formal opinion of Legislative Counsel, AB 398 did not immediately change the character of cap-and-trade revenue. Specifically, Legislative Counsel has determined that the revenues generated through December 31, 2020 by the current cap-and-trade program continue to be subject to a trust and, therefore, must continue to be appropriated in a manner that is reasonably related to GHG emissions reductions through December 31, 2020. As for revenue generated by the cap-and-trade program post-2020, the Legislative Counsel has not come to a determination yet – the nature of GGRF moneys could potentially change in the coming decade.

At least until 2021, the purpose of GGRF moneys is to reduce GHG emissions regardless from what funds they are spent.

Tire Fee: Backfill to Carl Moyer After the Budget Year. As noted above, the \$26 million from the tire fee to FGPF is ongoing funding. The Cap-and-Trade Expenditure Plan proposes to backfill APCF with GGRF for 2018-19. However, a question arises as to what, if any, source is intended to backfill for the Carl Moyer Program after the budget year.

Tire fee: 2024 Sunset. Current law sunsets PRC §42889 on January 1, 2024. After that date, the entire tire fee reduces from \$1.75 per tire to \$0.75 per tire with all of the revenue going towards tire recycling purposes. The proposed TBL does not include amendments to extend or eliminate the sunset date. A question arises as to if and how DFW plans to replace the \$26 million ongoing revenue source after January 1, 2024, when the 75-cent portion of the tire fee being redirected from APCF to FGPF no longer exists.

Tire Fee: Changing the Statutory Purpose. As noted above, the tire “fee” is actually a tax and may be used for whatever purpose provided in statute. TBL changes the purpose of the tire fee from mitigating air pollution caused by tires to mitigating “harmful impacts to wildlife and its habitat caused by tires in the state.” A question arises as to whether the Senate wishes to prioritize \$26 million in tire fee revenue in this manner rather than continue using the funds to mitigate environmental pollution caused by waste tires.

Transportation-Related Fund Sources and Environmental Effects to be Mitigated. The BCP states:

The proposal provides funding from transportation-related fund sources with a clear nexus to fish and wildlife. Road networks across the State have fragmented and isolated habitat to the degree that wildlife migration corridors are obstructed and cause large losses. The Department is consistently working at the local level to minimize these impacts that result from

transportation corridors that impede fish and wildlife movement. With a few exceptions (e.g. Caltrans contract positions); the department is not funded to address this workload.

A 2016 UC Davis Road Ecology Center report estimates the cost of wildlife-vehicle conflict to be at least \$225 million annually. This report cites data that nearly 6,000 traffic incidents involved wildlife in 2015, with mule deer being the most common (91 percent), followed by coyote (6 percent), and black bear (two percent). The department responds to traffic incidents involving wounded wildlife and makes arrangements for disposition of the animal as appropriate, such as placing the animal with a private wildlife rehabilitation facility. The department also works with tribes, which may take possession of an animal carcass involved in a traffic collision, consistent with a memorandum of understanding.

Transportation-Related Fund Sources and Waste Tires. The product upon which the tire fee is placed is an integral part of a motor vehicle. However, the authority for the fee, the California Tire Recycling Act, pertains to the tire after the end of its useful life as a form of waste – the fund source, the tire fee, relates to solid waste rather than transportation. Tires no longer in service can cause pollution and become solid waste that need to be disposed or recycled – the tire fee helps pay for activities to address these issues. Environmental damages caused by waste tires still exist and there is no shortage of activities for which these moneys could be appropriated for their current statutory purpose.

MVA: Mitigation of Environmental Effects: Animal Strikes. As noted above, the use of MVA moneys is restricted by California Constitution Article XIX. The budget shows that MVA moneys will be used for DFW’s Biodiversity Program and Enforcement. DFW proposes to allocate MVA funds for the following activities:

- Enforcement:
 - Wildlife trafficking; and,
 - General law enforcement.

- Biodiversity Conservation Program:
 - Salmon/steelhead monitoring;
 - Trend monitoring and status reviews; and,
 - Statewide connectivity.

In regards to environmental effects being mitigated, DFW states:

A 2017 UC Davis annual report showed nearly 8,000 plus animals were struck by vehicles costing California more than \$276 million in damages, including \$38 million attributed to wildlife losses. This is up to 20 percent from the previous year’s report. This is but a small fraction of documented wildlife mortality on California’s roadways...

Environmental effects that need to be mitigated include “taking” species listed under the California Endangered Species Act; incidents involving animal vs. vehicle; presence of aquatic and terrestrial migration barriers; and discharging sediment or other deleterious materials to streams, wetlands, and other sensitive habitats.

Currently, environmental effects caused by public streets and highways are generally being mitigated in a piecemeal fashion absent the project efficiency and economy of scale benefits that are possible from advanced planning. Advanced planning may encompass high priority

conservation areas, as well as include larger-scale/landscape-level mitigation which often benefits multiple species and habitats. Coordinated, large-scale mitigation provides economy of scale benefits pertaining to project cost, as well as attendant economy of scale benefits to fish and wildlife resources and their habitats.

The term “environmental effects,” in Article XIX, may be broadly interpreted and does not include parameters on the types of environmental effects that may be mitigated. DFW contends that animal strikes are environmental effects that satisfy the Constitutional requirements for using MVA moneys; and that activities related to DFW enforcement and the Biodiversity Conservation Program will mitigate those environmental effects. Streets and highways can divide wildlife habitat and migration corridors, which can lead to animal strikes; DFW activities related to statewide connectivity seem appropriate for mitigating the environmental effect of animal strikes in such cases. However, when considering some of the other activities to be funded by MVA, such as enforcement for wildlife trafficking, questions may arise as to how these activities may mitigate the harm to wildlife that are struck by vehicles.

What are Other Options for a Comprehensive Solution? The Governor’s proposal amounts to an ongoing solution to addressing the FGPF’s structural imbalance. Permanent solutions are necessary. Some of the solutions that have been brought up in the past include: statewide fees/taxes, water rights fee (assessed by State Water Resources Control Board), or a non-consumption user fee (boat rentals, diving, whale watching). In addition, the following table displays revenue generating options that other states use:

Other States Fish and Wildlife Revenue Generation	
General Sales Tax	Missouri, Arkansas
Sales Tax on Outdoor Gear	Texas, Virginia
Real Estate Transfer Tax	Florida, South Carolina
General Obligation Bonds	Nevada
Lottery Funds	Arizona, Maine

Almost all of the FGPF’s revenue is derived from fees from recreational hunters and anglers, with some funding coming from California Environmental Quality Act filers and commercial fishers. However, some have raised the argument that the department’s work serves a statewide purpose and the public good, which should merit the consideration of some of these alternative proposals.

Staff Recommendation. Hold open.

Issue 5 – State Water Project (SWP)

Governor’s Proposal. The budget requests \$3.94 million reimbursement authority to enter into an agreement with the California Department of Water Resources, to support 17 existing positions currently funded by Proposition 84. The requested authority will ensure that the State Water Project complies with California Endangered Species Act requirements, and supports the implementation of mitigation actions and adaptive management.

Background. California SWP. DWR maintains and operates SWP, which is a water storage and delivery system of reservoirs, aqueducts, power plants and pumping plants. SWP includes 34 storage facilities, reservoirs and lakes; 20 pumping plants; four pumping-generating plants; five hydroelectric power plants; and about 701 miles of open canals and pipelines. Its main purpose is to store water and distribute it to 29 urban and agricultural water suppliers in Northern California, the San Francisco Bay Area, the San Joaquin Valley, the Central Coast, and Southern California. Of the contracted water supply, 70 percent goes to urban users and 30 percent goes to agricultural users.

SWP makes deliveries to two-thirds of California's population. It provides supplemental water to approximately 25 million Californians and about 750,000 acres of irrigated farmland. SWP is also operated to improve water quality in the Delta, control Feather River flood waters, provide recreation, and enhance fish and wildlife.

DFW provides regulatory oversight to water storage and distribution operators. State law requires DFW to provide technical input and regulatory oversight to the operators of California's water storage and distribution systems. This involves the analysis and synthesis of hydrology and fisheries data to guide the water project's operations to avoid and minimize impacts to sensitive fishes. Participation by the department in long-term technical and management teams will be necessary to conduct adaptive management of water operations and coordinate implementation of all associated mitigation requirements over the longer timeframe required for infrastructure construction and operations.

DFW is currently developing an agreement with DWR to support its existing level of participation and to provide additional funding for staffing needed as part of updated California Endangered Species Act and federal Endangered Species Act authorizations for the State Water Project and to implement the California Water Fix.

Incidental Take Permits. The California Endangered Species Act (CESA) prohibits the take of any species of wildlife designated by the California Fish and Game Commission as endangered, threatened, or candidate species. CDFW may authorize the take of any species listed as endangered, threatened, candidate, or a rare plant, if that take is incidental to otherwise lawful activities and if certain conditions are met. These authorizations are commonly referred to as incidental take permits (ITPs).

In 2008, the U.S. Fish and Wildlife Service (USFWS) issued a biological opinion (BiOp) on the long-term operations of the SWP and determined that the operation is likely to jeopardize the continued existence and adversely modify the critical habitat of federally listed Delta smelt.

In 2009, the National Marine Fisheries Service issued a BiOp on the SWP operations and determined that the SWP operations are likely to jeopardize the continued existence and adversely modify the critical habitat of federally listed Sacramento River winter-run Chinook salmon, Central Valley spring-

run Chinook salmon, Central Valley steelhead, and the Southern Distinct Population Segment of North American green sturgeon.

In 2009 DFW issued DWR an ITP for the ongoing and long-term operation of the SWP existing facilities in the Sacramento-San Joaquin Delta for the protection of longfin smelt. CDFW also issued DWR consistency determinations for the NMFS BiOp and USFWS BiOp. The 2009 Incidental Take Permit is set to expire on December 31, 2018. DFW is currently participating in the development and review of the environmental documentation and issuance of a new ITP.

The requested reimbursement authority will provide the department resources to ensure adequate protection of fish species listed under CESA and to participate and oversee multiple regulatory and planning initiatives focused on the Delta, Yolo Bypass and Suisun Marsh in relation to implementation of mitigation requirements for SWP and the Central Valley Project.

Staff Recommendation. Approve as Budgeted.

3860 Department of Water Resources**Overview**

The Department of Water Resources (DWR) protects and manages California's water resources. In this capacity, DWR plans for future water development and offers financial and technical assistance to local water agencies for water projects. In addition, the department maintains the State Water Project, which is the nation's largest state-built water conveyance system. Finally, DWR performs public safety functions such as constructing, inspecting, and maintaining levees and dams.

The Governor's 2018-19 budget proposes a total of \$475 million from various funds for support of the department. This is a net decrease of \$1.5 billion compared to projected current-year expenditures. This year-to-year decrease is primarily due to the way bond funds are accounted for in the annual budget. Specifically, DWR had \$1.8 billion in 2017-18 spending authority from bond funds appropriated over the past several years, compared to roughly \$310 million proposed for appropriation in 2018-19. (These totals exclude the roughly \$1.7 billion in annual payments from water contractors for DWR's work on the State Water Project, as those funds are not appropriated through the annual budget act.)

Issue 6 – Central Valley Flood Protection Board (CVFPB) – General Fund Baseline Increase

Governor's Proposal. The Governor's budget requests \$1.4 million in General Fund state operations for FY 2018-19 and FY 2019-20. CVFPB's current funding, The Disaster Preparedness and Flood Protection Bond Act of 2006 (Proposition 1E), will be expended in FY 2017-18. CVFPB is therefore requesting to redirect its funding source so that CVFPB can continue to meet its statutorily mandated functions consistent with the Central Valley Flood Protection Act of 2008.

Background. *CVFPB Oversees Central Valley Flood Protection System on Behalf of the State.* Formerly called the State Reclamation Board, the CVFPB was created in 1911 to address flood issues in the Central Valley. Funding for CVFPB is included in DWR's budget, though the board is an independent agency with its own regulatory authority. The board oversees the State Plan of Flood Control (SPFC) on behalf of the state.

The SPFC is a system of flood protection infrastructure along the main stem and certain tributaries of the Sacramento and San Joaquin rivers, consisting of about 1,600 miles of levees and other flood protection structures such as dams and weirs. Although many SPFC components were locally or federally constructed, in the 1950s the state committed to the federal government that it would oversee the SPFC system and maintain it pursuant to federal standards. For most segments of SPFC levees, the state has developed formal agreements with local governments (primarily local reclamation districts) to handle regular operations and maintenance responsibilities. CVFPB's activities include: (1) collaborating with local agencies to improve SPFC flood protection structures; (2) issuing permits for work on SPFC levees and facilities; and (3) ensuring that levees are maintained up to required standards, including ensuring that levee "encroachments" such as pipes or docks either meet code requirements and receive permits or are removed.

The board also oversees state-owned properties within the Sacramento San Joaquin Drainage District (SSJDD), which is a statutorily defined area containing the SPFC that encompasses over 1.7 million acres in 14 counties. Such properties include land holdings as well as flood-related structures like levees. Besides overseeing the flood protection system, as part of its property management role the board also oversees leases for state-owned lands—primarily located within flood bypasses—for farming, natural gas extraction, or other purposes.

Paterno Court Decision Established State Liability for SPFC. In 2003, a state appellate court found the state responsible for a SPFC levee failure along the Yuba River, thereby establishing a new standard for the state’s flood liability. The 2003 decision in the *Paterno v. California* case found that the state had failed to properly maintain the Linda Levee (located south of Marysville) and therefore was liable for resulting flood damage when it failed in 1986. Although the levee was both originally constructed and maintained at the time by local entities—not the state—and reportedly had *never* met engineering standards, the court found that the state undertook liability when it assumed control of the SPFC in the 1950s. Specifically, courts found that the state “had ample opportunity to examine” and repair the levee. The decision found that the state was ultimately financially responsible for the failure of SPFC facilities, even when they had been maintained by local entities. The state eventually paid a \$464 million settlement to the nearly 3,000 plaintiffs. The *Paterno* decision’s precedent makes it possible that the state could ultimately be held responsible for the structural integrity of all SPFC facilities.

SPFC System Needs. The US Army Corps of Engineers identified thousands of non-compliant encroachments and/or deficient maintenance and operations of facilities within the SPFC. They estimate that 90 percent of the state’s project levees no longer qualify for the federal Levee Rehabilitation Program. When a state project levee loses this status, it is no longer eligible for federal contribution funding for rehabilitation to return a levee to its pre-flood status. Instead, those rehabilitation costs and any associated liability due to loss of life/property falls on the state and/or local flood agency (*Paterno*).

2017-18 Budget Included Funding and Staffing Augmentation, New Fee Authority. The 2017-18 Budget Act provided an increase in funding and staffing for CVFPB to better accomplish its statutory responsibilities. Specifically, the budget provided an increase of \$2.2 million in General Fund and authorized nine new positions. This brought the board’s total funding to \$9.6 million and total staffing to 47 authorized positions. About half of the new funding was to support the new positions, and the remainder was for the board to contract with DWR to develop a comprehensive database of the property owned by the state within the SSJDD. All of this new funding—including the funding for the positions—was provided on a three-year basis and will expire in 2020-21. Though the workload for these positions is ongoing, the funding was provided on a limited-term basis because the Administration wants the board to develop options for generating additional revenue to support its operations in future years in lieu of General Fund support.

Additionally, the 2017-18 budget package gave CVFPB expanded statutory authority to charge fees to cover the costs of its services, including its costs related to issuing permits for encroachments, inspecting encroachments on SPFC levees, and managing SSJDD property.

Legislative Analyst’s Office (LAO). Proposes Shifting \$1.4 Million for Ten Existing Positions from Bond Funds to General Fund. The Governor’s budget proposal would increase General Fund support for CVFPB by \$1.4 million and reduce funding from Proposition 1E by a like amount. Proposition 1E is a general obligation bond approved by voters in 2006 for flood protection activities. This funding supports personnel costs for ten of the board’s existing positions. The Administration

proposes this fund shift because Proposition 1E funds are nearly fully expended and will no longer be available for the budget year. Although these positions were previously funded with bond funds, they carry out ongoing, core responsibilities for the board that are not exclusively linked to the bond, including processing permit applications for SPFC projects. Consistent with the approach the Administration used to fund the board in the current year—to provide funding on a limited-term basis while CVFPB pursues options for generating additional revenues—this proposal requests the \$1.4 million in General Fund for just two years even though the workload is ongoing.

LAO Recommendations. LAO recommends the Legislature adopt the Governor’s proposal. Allowing CVFPB to continue its existing level of oversight of SPFC facilities is an important component of state efforts to maintain flood protection and public safety. LAO also find merit in the Governor’s proposal to provide the funding on a two-year basis, as this would allow the board the opportunity to exercise its existing fee authority and begin generating additional revenues to use in lieu of General Fund in the future.

LAO additionally recommends the Legislature adopt supplemental reporting language requiring CVFPB to submit a report to the Legislature by February 1, 2019 that provides an update on its activities to generate additional revenues. This would help prepare the Legislature for how it might approach funding the existing positions whose General Fund is scheduled to expire. Having this information before it faces that 2020-21 budget decision would also allow the Legislature the opportunity to provide additional direction or assistance to CVFPB if the board is encountering barriers or making insufficient progress in implementing new revenue-generating practices. LAO recommends the report address five potential options for generating new revenues: permitting fees, inspection fees, noncompliance penalties, lease and royalty revenues, and a new SSJDD assessment. For each of these options, LAO recommends the report provide the following information: (1) status of implementation, (2) amount of revenue generated thus far, (3) estimated annual revenues in 2020-21 and future years, (4) barriers to implementation, and (5) suggestions for addressing those barriers.

Staff Recommendation. Approve as budgeted and adopt supplemental reporting language as reflected in the LAO recommendation.

Issue 7 – State Water Project Aging Infrastructure Improvements

Governor’s Proposal. The Governor's budget requests 74 positions to support the California State Water Project (SWP). Specifically, the requested resources would be used to:

- Meet new and expanded state and federal regulatory requirements.
- Respond timely, safely, and cost-effectively to urgent or emergency work as defined by Public Contract Code §10122 et seq., and other Executive, Legislative or regulatory mandates.
- Implement an asset management program, enhance condition assessment and maintenance programs, and facilitate increased design, construction and inspection projects for an aging SWP infrastructure.
- Provide legal support for the Oroville Dam spillway emergency and recovery.

Background. SWP. *(Please refer to page 35 for background information regarding SWP.)*

Oroville Incident. Lake Oroville is SWP's largest storage facility with a capacity of approximately 3.5 million acre feet. On February 7, 2017, erosion was discovered on the lower chute of the main flood control spillway at Lake Oroville. With an onslaught of winter storms, releases down the damaged main spillway were unable to prevent the reservoir from overtopping the concrete weir. Water cascaded down the emergency spillway, triggering the evacuation of more than 180,000 people downstream of Lake Oroville on February 11.

This incident highlighted the importance of committing sufficient resources to inspect, assess conditions, set priorities, meet regulatory compliance obligations, and maintain the SWP including its 26 regulated dams and approximately 700 miles of canals and pipelines.

State Division of Safety of Dams (DSOD) and Federal Energy Regulatory Commission (FERC) Regulations. Of the 26 regulated dams, 22 are under the jurisdiction of the DSOD, with 11 of those also under the jurisdiction of the FERC. In compliance with DSOD and FERC regulations, DWR's Dam Safety Branch (DSB) convenes an independent consulting board on five-year cycles to review dam performance data and operation and maintenance records, participate in comprehensive inspections, and produce a report of categorized findings and recommendations. Following each Board meeting, the DSB develops the scope of work, schedule, budget, and resources needed to address each of the findings and recommendations. DSB currently has 90 dam safety projects underway or queued to begin in the near future, which is a progressive increase from the 30 projects planned and scheduled three years ago.

Staff Comments. Most of the requested positions seem reasonable given the increased workload. However, some of the positions may not be needed in the near term. For example, the request for positions to respond to the Settlement Agreement and the FERC relicensing might be premature given the discussions are still underway and the required actions have not yet been determined.

Staff Recommendation. Hold open.

Issue 8 – Infrastructure Repairs and Reimbursement for Flood Control

Proposal. A member letter submitted to the subcommittee requests \$100 million General Fund on an annual basis for DWR to perform flood control infrastructure maintenance, repairs, and improvements, as follows:

- \$50 million to meet statutory state cost share of federal projects;
- \$5 million for State Plan of Flood Control system-wide improvement;
- \$22.5 million for the operations and maintenance of state maintained facilities pursuant to Water Code §8361;
- \$22.5 million for flood system repair projects and small communities and regional flood management plan implementation.

Background. *State responsibilities: Flood-related activities.*

- **DWR.** DWR is the state’s lead agency in flood-related activities. The department’s responsibilities include the full cycle of flood-related activities, including preparing for future floods, forecasting imminent floods, and responding to actual floods. Besides providing guidance and assistance to local agencies, DWR also maintains certain SPFC levees and facilities.
- **Central Valley Flood Protection Board (CVFPB).** Formerly called the State Reclamation Board, CVFPB was created in 1911 to address flood issues in the Central Valley. The board holds responsibility, on behalf of the state, for overseeing the SPFC. Its activities include collaborating with other agencies to improve the SPFC’s flood protection structures, issuing permits for work on the system’s levees and structures, enforcing removal of problematic levee encroachments, and serving as the intermediary between USACE and SPFC permit applicants.
- **Other State Agencies Also Involved.** Like FEMA, the state’s Office of Emergency Services (OES) provides disaster assistance during and after a flood event. The State Water Resources Control Board and regional water boards set and regulate stormwater discharge requirements. The California Department of Fish and Wildlife monitors and regulates the potential impacts of flood management efforts on fish and wildlife, including issuing permits for certain projects. Additionally, the Delta Stewardship Council evaluates flood projects proposed within the Delta to ensure they are consistent with established state goals for the region, and is developing a Delta Levees Investment Strategy to guide the state in prioritizing levee funding.

Member Letter. The letter notes that levees have experienced significant damage that could prevent them from doing well in the next high-water event and that an estimated \$800 million in needed repairs for significant levee damage due to high water events. The letter states that if these repairs are not done, not only are communities at risk of devastating floods, but repairs will be far more urgent, costlier, and extensive in the future.

The letter further notes that the need for a consistent and reliable source of funding to address the backlog of operation and maintenance needs.

Finally, the letter notes that the Central Valley Flood Protection Plan estimates up to \$21 billion needed over 30 years for upkeep of SPFC system of levees.

Staff Recommendation. Hold open.

3940 State Water Resources Control Board
8570 Department of Food and Agriculture**Issue 9 – Safe and Affordable Drinking Water**

Governor’s Proposal. The Governor’s budget requests a one-time loan of \$4.7 million from the Underground Storage Tank Cleanup Fund to fund the initial implementation of this new program, specifically:

- \$3.3 million and 23 position for the State Water Resources Control Board to: (1) develop and adopt a fund implementation plan, (2) process charges that would be deposited into SADWF, (3) map areas at high risk for drinking water contamination and process drinking water data provided by local agencies, (4) develop an assessment of the total amount of annual funding needed to assist water systems in the state to provide safe drinking water, and (5) perform accounting and other administrative tasks.
- \$1.4 million and seven positions for the Department of Food and Agriculture to collect charges from agricultural entities.

In addition, the Governor’s budget proposes trailer bill language (TBL) to establish the Safe and Affordable Drinking Water Program and Safe and Affordable Drinking Water Fund. Among the provisions in the TBL, the proposal:

- 1) Establishes the Safe and Affordable Drinking Water Program and Fund to be administered by the State Water Resources Control Board for purposes of providing money to provide replacement water, develop & sustain long-term solutions (construction, O&M), outreach, and testing.
- 2) Provides the Department of Food and Agriculture the authority to impose and collect fees from certain agricultural entities.
- 3) Exempts agricultural operations from specified enforcement actions related to nitrates for 15 years.
- 4) Establishes four charges to fund the program:
 - a) Confined animal facilities fee:
 - i) Beginning January 1, 2021:
 - (1) Requires secretary to establish a new confined animal fee, commensurate with the actual risk to groundwater from discharges of nitrate, max \$1,000/facility annually until January 1, 2036.
 - ii) Convene working group composed of reps of confined animal facilities excluding dairies to determine the actual risk, if any, to groundwater from discharges of nitrate from confined animal facilities excluding dairies.
 - iii) Operative January 1, 2034:
 - (1) Beginning July 1, 2036, confined animal fee established by secretary, max of \$1,000 limit. Authorizes secretary to adjust fee through emergency regulations.
 - (2) The confined animal fee and dairy fee shall total \$3 million or 30 percent of funding needed for nitrate, whichever is less.
 - b) Fertilizer fee:
 - i) Establishes a fertilizer fee of six mills (\$0.006) per dollar of sales.
 - (1) Sunsets January 1, 2034.
 - ii) Beginning January 1, 2034, decreases fertilizer fee to two mills (\$0.002) per dollar of sales.

- iii) After January 1, 2036, authorizes secretary to adjust fee as necessary but not to exceed 70 percent of the anticipated funding need for nitrate or \$7 million, whichever is less.
 - c) Dairy fee:
 - i) Beginning January 1, 2021, establishes a dairy fee of \$0.01355 per hundredweight of milk.
 - (1) Sunsets January 1, 2036.
 - ii) Beginning January 1, 2036
 - (1) Establishes a dairy fee of \$0.00678 per hundredweight of milk.
 - (2) Authorizes secretary to adjust fee necessary, but not to exceed 30 percent of the anticipated funding need for nitrate or \$3 million, whichever is less.
 - d) Safe and Affordable Drinking Water Fee
 - i) From July 1, 2019 to July 1, 2021, establishes a water fee based on size of water meter.
 - (1) \$0.95/month for water meter less than or equal to 1” diameter.
 - (2) \$4/month for water meter greater than 1” and less than or equal to 2”
 - (3) \$6/month for water meter greater than 2” and less than or equal to 4”
 - (4) \$10/month for water meter greater than 4”
 - (5) \$0.95/month for a customer without a water meter.
 - (6) \$10 or less/month for a customer that has multiple meters serving a single address.
 - (7) Exemptions for customers whose household income is equal to or less than 200 percent of the federal poverty level.
 - ii) Beginning July 1, 2021, imposes a water fee as established by SWRCB for purposes of the Fund.
 - iii) Beginning July 1, 2023, requires fee schedule to be set at an amount that does not result in the total uncommitted amount in the fund exceeding two times the anticipated funding need in the most recent assessment of funding need.
- 5) Prohibits the Legislature from increasing fees except by an affirmative 2/3 vote.

Background. *Federal, State, and Local Entities Regulate Drinking Water.* The federal Safe and Affordable Drinking Water Act (SDWA) was enacted in 1974 to protect public health by regulating drinking water. California has enacted its own safe drinking water act to implement the federal law and establish state standards. The U.S. EPA enforces the federal SDWA at the national level. However, most states, including California, have been granted “primacy” by the U.S. EPA, giving them authority to implement and enforce the federal SDWA at the state level.

Maximum contaminant levels (MCLs) are health-based drinking water standards that public water systems are required to meet. MCLs take into account the health risk, detectability, treatability, and costs of treatment associated with a pollutant. Agencies responsible for regulating water quality enforce these standards.

The SWRCB’s Division of Drinking Water (DDW) regulates public water systems that provide water for human consumption and have 15 or more service connections, or regularly serve at least 25 individuals daily at least 60 days out of the year. (A “service connection” is usually the point of access between a water system’s service pipe and a user’s piping.) The state does not regulate water systems with less than 15 connections; county health officers oversee them. At the local level, 30 of the 58 county environmental health departments in California have been delegated primacy—known as Local Primacy Agencies (LPAs)—by the SWRCB to regulate systems with between 15 and 200 connections within their jurisdiction. For investor-owned water utilities under the jurisdiction of CPUC, the DDW or LPAs share water quality regulatory authority with CPUC.

The DDW regulates approximately 7,500 water systems. About one-third of these systems have between 15 and 200 service connections. The number of smaller systems—specifically, those with 14 or fewer connections—is unknown but estimated to be in the thousands.

California Safe Drinking Water Act. The California Safe Drinking Water Act requires SWRCB to regulate drinking water to protect public health, and requires SWRCB to ensure that all public water systems (PWSs) are operated in compliance with the act. If a PWS within a disadvantaged community consistently fails to provide an adequate supply of safe drinking water, SWRCB may order the water system to consolidate with a receiving water system. SWRCB may also contract with an administrator to provide administrative and managerial services to a designated PWS to assist with the provision of an adequate and affordable supply of safe drinking water.

Multiple Causes of Unsafe Drinking Water. The causes of unsafe drinking water can generally be separated into two categories (1) contamination caused by human action and (2) naturally occurring contaminants. In some areas, there are both human caused and natural contaminants in the drinking water.

Three of the most commonly detected pollutants in contaminated water are arsenic, perchlorate, and nitrates. While arsenic is naturally occurring, perchlorate contamination is generally a result of military and industrial uses. High concentrations of nitrate in groundwater are primarily caused by human activities, including fertilizer application (synthetic and manure), animal operations, industrial sources (wastewater treatment and food processing facilities), and septic systems. Agricultural fertilizers and animal wastes applied to cropland are by far the largest regional sources of nitrate in groundwater, although other sources can be important in certain areas.

Unsafe Drinking Water a Statewide Problem. SWRCB has identified a total of 331 water systems that it or LPAs regulate that are in violation of water quality standards. These water systems serve an estimated 500,000 people throughout the state. The number of water systems with 14 or fewer connections that are currently in violation of water quality standards is unknown, but estimated to be in the thousands by SWRCB. Of the 331 systems identified by SWRCB, 68 have violations associated with nitrates (and in some cases, additional contaminants). In some of these water systems, unsafe contamination levels persist over time because the local agency cannot generate sufficient revenue from its customer base to implement, operate, or maintain the improvements necessary to address the problem. The challenge in these systems is often a product of a combination of factors, including the high costs of the investments required, low-income of the customers, and the small number of customers across whom the costs would need to be spread.

Safe and Affordable Drinking Water a Human Right. In response to concerns about the prevalence of unsafe drinking water in California, AB 685 (Eng), Chapter 524 of 2012, was enacted. This law declares the state's policy that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes. Under AB 685, state agencies are required to consider this policy when revising, adopting, or establishing policies, regulations, and grant criteria. AB 685 clarifies that it does not expand the state's obligations to provide water or require the state to fund water infrastructure.

SWRCB Administers Programs to Provide Safe Drinking Water. The SWRCB administers the Drinking Water State Revolving Fund (DWSRF), which provides continuously appropriated funding for low- and zero-interest loans, debt refinancing, principal forgiveness, and grants to public water systems for infrastructure improvements to correct system deficiencies and improve drinking water quality. Eligible projects include the planning, design, and construction of drinking water projects such as water treatment systems, distribution systems, and consolidation with another water system that has safe drinking water. The program is funded by annual capitalization grants from the U.S. EPA and a federally required 20 percent state match (usually from bond funds). The federal and state funds are

then used to provide financial assistance for eligible projects. In FY 2016-17, SWRCB estimates the DWSRF disbursed about \$330 million and provided technical assistance to water systems.

SWRCB also administers temporary programs to provide safe and affordable drinking water. For example, SWRCB administers the Clean Drinking Water Program for Disadvantaged Households, which provided one-time funding of \$8 million General Fund in FY 2017-18 to disadvantaged households and small water systems to ensure they have adequate access to clean drinking water and adequate sanitation. Eligible projects include capital costs for replacement and repair of existing domestic wells. The board has also administered funds approved by the voters through various bond measures for capital investments, and some operations and maintenance costs aimed at providing safe drinking water. For example, Proposition 1 (2014) authorized \$520 million for grants and loans for projects that improve water quality, including to help provide clean, safe, and reliable drinking water to all Californians. Some of this funding supports the DWSRF.

Recent legislation for addressing drinking water system failures. In 2016, the legislature passed and Governor Brown signed two bills to help stop the proliferation of new small water systems and provide greater oversight and assistance to those that are not currently candidates for consolidation.

SB 1263 (Wieckowski, Pavley), Chapter 843, Statutes of 2016, now requires SWRCB to review permit applications for new water systems and authorizes SWRCB to deny a permit if it is found that the service area of the public water system can be served by one or more currently permitted public water systems, as specified.

SB 552 (Wolk), Chapter 773, Statutes of 2016, which, in addition to the consolidation authority provided by SB 88, provides SWRCB another tool to address the systemic issues affecting public water systems serving small, disadvantaged communities, by authorizing SWRCB to identify public water systems that are consistently unable to provide an adequate and affordable supply of safe drinking water and, once funding is available, contract with a competent administrator to provide managerial and technical expertise to that system.

Confined Animal Facilities (CAFs). According to SWRCB and RWQCBs, a CAF “is defined in California regulations as ‘any place where cattle, calves, sheep, swine, horses, mules, goats, fowl, or other domestic animals are corralled, penned, tethered, or otherwise enclosed or held and where feeding is by means other than grazing.’” Most of the CAFs in the state are in Region 5 [] including about 75 percent of the dairies and most of the poultry facilities. The state has approximately 2,200 dairies with an average size of about 700 milk cows. There are also several hundred feedlots, poultry operations, and other animal feeding operations in the state. There are about 160 dairies and feedlots in Region 8 and about 200 dairies (mostly smaller facilities with less than 300 milk cows) in Regions 1 and 2. There are also a few CAFs in other regions.

Constituents of Concern (COC) at CAFs include any material that can adversely affect the quality of waters of the state. The primary COCs at CAFs are ammonia, nitrates, salts (usually measured as total dissolved solids), and bacteria that are in animal manure. However, other COCs such as sediments and metals can also be concerns at some facilities.

CAFs Impact on Surface Waters. According to SWRCB and RWQCBs, improper collection and storage of manure or improper application of manure to land can result in discharges of COCs to surface waters. The primary concern is ammonia that is toxic to aquatic life in small amounts. High quantities of organic matter can result in depletion of dissolved oxygen. Nutrients such as nitrates and phosphorus can result in algal growth that can adversely affect beneficial uses. Coliform bacteria and other pathogens are a concern if there is human contact with the receiving water or if food is consumed

by humans impacted. For example, bacteria from dairies on the coast have impacted oysters in coastal waters north of San Francisco.

CAFs Impact on Groundwater. According to SWRCB and regional water quality control boards (RWQCBs), improper storage of manure or application of manure to land result in discharges to groundwater. The primary concerns are total dissolved solids (TDS) and nitrates. Many dairies do not have sufficient cropland to limit the application of manure to reasonable rates for plant growth. Furthermore, many additional dairies do not have adequate facilities to control the timing of applications to maximize nutrient uptake by crops and thereby minimize leaching of nitrate to groundwater.

CAFs Are Different Than Other Farming Operations. According to SWRCB and RWQCBs, although other farming operations can and do discharge COCs into surface and groundwater, CAFs such as dairies that land apply manure have features that make them a higher concern. Dairies may apply manure “to get rid of it” rather than apply it in the most efficient manner for crop production (since other farmers pay for their fertilizers, they are less likely to over apply it). Also, dairies may need to empty holding ponds during the rainy season when crops do not need nutrients. Another factor is that manure contains a higher ratio of “unwanted” salts to nutrients than do commercial fertilizers, so that even dairies with well-managed manure handling can contribute a higher salt loading than do other farming operations.

There are several hundred feedlots, poultry operations, and other animal feeding operations in the state. The primary water quality concerns at CAFs are impacts to groundwater from salts and nutrients from sources that include cropland where manure and wastewater is applied as a fertilizer. Even when best management practices are used, it appears that groundwater may be adversely affected at many facilities.

Current SWRCB Funding Programs. SWRCB, Division of Financial Assistance administers multiple funding programs to assist water systems to achieve and maintain compliance with safe drinking water standards. These programs use federal funds and state funds to address the highest priorities of infrastructure need and include the following:

Drinking Water State Revolving Fund (DWSRF). The largest drinking water funding program that SWRCB administers is DWSRF. USEPA provides DWSRF funds to states, including California, in the form of annual capitalization grants. States, in turn, provide low-interest loans and other assistance to public water systems (PWS) for infrastructure improvements. Total funding provided to PWS in executed loans and grants to date is over \$1.3 billion.

American Recovery and Reinvestment Act (ARRA). On February 17, 2009, President Obama signed ARRA, which allocated \$2 billion nationally for safe drinking water infrastructure improvements. California’s share of these funds was \$159 million, and was administered by the California Department of Public Health through DWSRF program prior to the transfer of the drinking water program to SWRCB. ARRA funds were a one-time opportunity for the state and did not require matching funds from the state. Funding agreements were issued, totaling \$149 million to 51 projects statewide. These 51 projects are distributed among 47 community drinking water systems.

Proposition 50. The Water Security, Clean Drinking Water, Coastal, and Beach Protection Act of 2002 (Proposition 50) was voter-approved in 2002. \$485 million was allocated to drinking water quality issues.

Proposition 84. The Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Act of 2006 (Proposition 84) was voter-approved in 2006. \$300 million was allocated to address drinking water and other water quality issues.

Proposition 1. The Water Quality, Supply and Infrastructure Improvement Act of 2014 (Proposition 1) was voter-approved in 2014 authorized \$7.12 billion in general obligation bonds. Proposition 1 authorized \$520 million for projects that improve water quality or help provide clean, safe, and reliable drinking water.

Proposed Proposition 68. SB 5 (de León), Chapter 852, Statutes of 2017, established the Drought, Water, Parks, Climate, Coastal Protection, and Outdoor Access for All Act of 2017 (SB 5). SB 5 allocates a total of \$4.1 billion – \$4 billion of which is new bond authority and the remaining \$100 million will be redirected from unsold bonds previously approved as part of Propositions 1, 40, and 84. SB 5 is subject to voter approval and has been placed on the June 2018 ballot as Proposition 68. SB 5 proposes to dedicate \$250 million specifically to drinking water and drought preparedness as well as \$80 million for groundwater sustainability.

Legislative Analyst’s Office (LAO) Comments. *Governor’s Budget Proposal Imposes Various Charges.* In total, the Administration estimates that the various proposed charges would generate roughly \$150 million annually when fully implemented. The charges on agricultural entities would be required to be targeted to water systems affected by nitrate contamination. Specifically, the Administration proposes budget trailer legislation to implement the following charges:

- *Charge on Water System Customers (\$130 to \$140 million).* Beginning July 2019, the Administration proposes imposing monthly charges on most water system customers ranging from \$0.95 to \$10 based on the size of the customer’s water meter. According to a recent CPUC report, the average water bill across 113 California public water systems was \$78 in the summer and \$60 in the winter. SWRCB estimates that these charges will generate between \$130 million and \$140 million annually when fully implemented. Customers would be exempted from this charge if they (1) belong to a water system with fewer than 200 connections or (2) self-certify that their household income is equal to or less than 200 percent of the federal poverty level (The 2018 federal poverty level is \$25,100 for a family of four.) Beginning July 2021, SWRCB could reduce these charges. Local water systems would be authorized to retain some of the revenue to cover costs associated with the collection of the charges.
- *Mill Fee (\$14 million).* The Administration proposes a mill fee of six “mills” (equal to six-tenths of a cent) per dollar on the sale of all fertilizer. This would be in addition to the current mill fee of three mills. According to the California Department of Food and Agriculture (CDFA), this charge is estimated to generate \$14 million per year when fully implemented.
- *Charges on Milk Producers (\$5 million).* The Administration proposes to impose charges on milk producers beginning January 2021. In total, these charges are estimated to generate \$5 million per year when fully implemented. For context, cash receipts for milk and cream production in California were \$6.1 billion in 2016.
- *Charge on Confined Animal Facilities (Amount Not Estimated).* Finally, the Administration proposes to impose a charge on confined animal facilities—excluding dairies—such as egg-production facilities. The charges are capped at \$1,000 per facility per year. At the time

this analysis was prepared, the Administration did not have revenue estimates available for the confined animal facilities charge.

The Administration has not estimated the total cost associated with bringing drinking water systems that are currently unable to meet water quality standards into compliance on an ongoing basis. However, a private consulting firm recently did a statewide drinking water needs assessment for advocates and stakeholders to determine this amount. According to the assessment, \$140 million would be required annually to improve conditions at all drinking water systems and domestic wells with substandard water quality. In LAO discussions with SWRCB staff, they indicated that the methodology used to generate the estimate appeared reasonable, but any estimate in this area is highly uncertain, particularly due to the lack of data on smaller water systems and domestic wells. The assessment estimated the costs to address systems with nitrate problems would be around \$30 million annually, and the costs to address all other systems would be \$110 million annually.

Requires SWRCB to Administer SADWF. The proposal includes a number of administrative requirements, particularly for SWRCB. In a process that requires a public hearing and opportunities for stakeholder participation, SWRCB would adopt a fund implementation plan and policy handbook with priorities and guidelines for expenditures from SADWF. In addition, SWRCB staff would be required to annually develop and present to the board an assessment of the total annual funding needed to assist water systems in the state to secure the delivery of safe drinking water. By January 1, 2020, SWRCB—in consultation with local health officers—would also have to make available a map of aquifers that are at high risk of containing contaminants that are used or likely to be used as a source of drinking water for certain smaller water systems and domestic wells. This would include identification of water systems potentially in need of assistance to address water contamination issues.

Under the Governor's proposal, SWRCB may expend up to five percent of revenues from SADWF for costs associated with its administration. In addition, CDFA may retain up to four percent of the monies collected from the charges on agricultural entities for its costs associated with implementation and enforcement, such as to establish a charge collection program and perform outreach to affected agricultural entities. This amount would decrease to two percent beginning July 2021.

LAO: Issues for Legislative Consideration. LAO identifies three issues for the Legislature to consider as it deliberates on the proposal: (1) consistency with the state's human right to water policy, (2) uncertainty about the estimated revenues that would be generated by the proposal and the amount of funding needed to address the problem, and (3) consistency with the polluter pays principle.

Proposal Is Consistent with Human Right to Water Policy. The Governor's proposal is consistent with the state's statutory policy that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption. The proposal would make safe and affordable drinking water more widely available throughout the state largely by providing funding for operations and maintenance activities for water treatment systems. While the Administration has not conducted its own estimate of the number of people this proposal would help, based on the information available, it would appear that this funding could address a large share of the problem. In particular, the proposal would prioritize additional funding to disadvantaged communities and low-income households served by water systems with less than 14 connections.

Uncertain to the Extent Proposed Revenues Will Fully Address Problems. As described above, a private consulting firm estimated the total annual cost to address contaminated drinking water at \$140 million (\$30 million for nitrate treatment and \$110 million for other contaminants). However, this estimate is highly uncertain given the lack of data about the number of smaller water systems and domestic wells that fail to provide safe drinking water. It is possible that actual costs could be

significantly higher or lower. LAO notes that under the proposal, SWRCB would be required to prepare an annual needs assessment, which could provide the Legislature with greater certainty in the future. There is also uncertainty about the amount of revenue that will be generated under this proposal, particularly from the agricultural entities. TBL allows SWRCB to adjust ratepayer charges downward if the funding provided exceeds future demand for the funds. However, if the demand exceeds funding in the future, any increase in charges would require approval by the Legislature.

Might Not Fully Implement the Polluter Pays Principle. The “polluter pays” principle is the concept that those entities that cause an environmental harm should be responsible for the costs associated with cleaning up that contamination and addressing the harm done. The vast majority of nitrate contamination is caused by agricultural activities. As such, the administration’s proposal to have agricultural entities pay charges to address the effects of that contamination appears consistent with the polluter pays principle. However, in at least two ways, the proposal might not be entirely consistent with the principle. First, it is worth noting that some of the current nitrate contaminants in groundwater are not from current agricultural operations. Instead, some of these nitrates are legacy contamination that could be from as much as decades ago. Therefore, it might not be entirely consistent with the polluter pays principle to have current operators pay for contamination caused by previous operators. Second, based on the information available, it appears that the funds raised by charges on agricultural entities might not be sufficient to address the costs related to nitrate contamination. As described above, the assessment performed by the private consulting firm estimated annual total costs of \$30 million to address drinking water systems exceeding the nitrate MCL. However, CDFA estimates the charges on dairies and fertilizer combined would total about \$19 million per year when fully implemented. (At the time this analysis was prepared, the administration had not completed a revenue estimate for the charge on confined animals.) Consequently, the proposal could result in nitrate-related contamination in drinking water being addressed from revenues generated by the charge on water system customers rather than from agricultural entities. To the extent that occurs, it would be inconsistent with the polluter pays principle.

Staff Comments. SB 623 (Monning, 2017). Last year, SB 623 was introduced to establish the Safe and Affordable Drinking Water Fund to provide money for grants loans, contracts and services to assist those without access to safe and affordable drinking water with a fund implementation plan adopted annually by SWRCB. SB 623 passed out of the Senate and has been substantially amended since it was voted out of the house of origin. SB 623 is located in the Assembly Rules Committee. As amended August 21, 2017, SB 623 is substantially similar to the Governor’s budget proposed TBL. SB 623 has yet to be heard by a policy committee.

Shielding Certain Agricultural Entities from Regulatory Actions. LAO states that SWRCB and regional water quality control boards set objectives for the amount of nitrate contamination in groundwater. Agricultural entities that contribute to levels of nitrate contamination that exceed these objectives are subject to enforcement actions that can include cleanup and abatement orders as well as cease and desist orders. However, under the Governor’s proposal, if an agricultural operation meets certain requirements, such as implementing the best practicable treatment control, and pays the charges required by this proposal, the operation would not be subject to these types of regulatory actions for at least fifteen years.

Concern has been raised that by establishing a framework that limits agency and citizen oversight over agricultural discharges, this proposal would create a “safe harbor” from enforcement that could effectively allow agricultural polluters to continue polluting practices. Based on an analysis by the Stanford Law School Environmental Law Clinic of SB 623, which the Governor’s budget proposal is significantly similar to, a coalition of opposition states:

Section 13278 [et seq.] describes considerable changes to the way that the State will regulate agricultural pollution for those growers who are paying into the Safe Drinking Water Fund. Section 13278.1(a) provides immunity from “enforcement by the State Board or a Regional Board under Chapter 5” if an agricultural operation meets specified criteria, including if the operation is “in compliance” with the provisions of an applicable agricultural WDR or waiver order. Chapter 5 contains all of the Water Boards’ enforcement tools, including cease and desist orders, cleanup and abatement orders, pollution and nuisance abatement notices, and compliance and civil penalty schedules. By exempting agricultural operations that pay an “applicable fee” and “enroll” under a WDR or waiver, the bill would effectively shield these operations from any realistic possibility of enforcement.

A question arises as to whether prohibiting specified enforcement actions against agricultural operations in exchange for their adherence to requirements provided in this proposal will improve water quality in general or prevent further contamination of sources of drinking water.

Staff Recommendation. Hold open.