



# Use Technology to Streamline the State-Level Environmental Review Process

## **Summary**

The California Environmental Quality Act (CEQA) requires the state to review studies that assess the potential environmental impacts of proposed projects. The state is also responsible for posting notices prepared pursuant to CEQA. The state's review and notice posting process is a cumbersome, manual, paper process. This process should be automated to reduce paperwork and streamline the environmental review process.

## **Background**

### **California Environmental Quality Act**

The law that governs environmental review in the state is known as CEQA.<sup>1</sup> CEQA's purpose is to inform decision-makers and the public of potential significant environmental impacts of proposed projects. CEQA applies to significant public projects and private development projects that require discretionary governmental approvals.<sup>2</sup>

The public agency legally responsible for complying with CEQA is called the "lead agency." During project development, a lead agency is responsible for the preparation of environmental documents (studies that assess the project's impacts on the community) and making these documents available for public review and comment prior to project approval.<sup>3</sup> For example, an environmental document would assess the noise, traffic, air quality, and aesthetic impacts of a project on the surrounding community, including the impact on biological resources, wetlands, the coastal zone and cultural and historical resources. During the public review period, any public agency or member of the public can submit comments on the environmental document.

In addition to environmental documents, lead agencies also file notices as part of the CEQA review process. Notices inform the public of the action that was taken on a project. Filing of the notices starts statutorily-defined legal challenge periods.<sup>4</sup> CEQA specifies that some projects must go through a state-level environmental review process. For the state-level review process, lead agencies submit environmental documents to the State Clearinghouse for distribution to state agencies, which then have the opportunity to comment on the environmental documents and work with lead agencies to mitigate project impacts.

### **The State Clearinghouse**

The State Clearinghouse is a unit of the Governor's Office of Planning and Research. The State Clearinghouse is responsible for posting notices and coordinating the state-level review of environmental documents. The State Clearinghouse processes thousands of documents each year, ranging from simple one-page notices to multi-volume environmental documents. The number of documents submitted to the State Clearinghouse has increased steadily from 8,000

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notices and environmental documents in 1999 to over 14,000 in 2003, an increase of 75 percent. In 2003, 9,300 notices and 4,700 environmental documents were filed with the State Clearinghouse.<sup>5</sup>

State law requires the State Clearinghouse to physically post the notices in its office during the legal challenge period. It also requires the State Clearinghouse to make these notices available to the public via the Internet.<sup>6</sup> The notices inform the public when a proposed project has been exempted from environmental review or when the environmental review process for a project has been completed and been approved by a lead agency.

### ***The State Clearinghouse database***

The State Clearinghouse maintains an electronic database of summary information for each notice and environmental document that is submitted to the Clearinghouse pursuant to CEQA. The database does not contain the actual documents. In 2003, State Clearinghouse staff manually entered summary information from paper documents into the database for over 14,000 notices and environmental documents.<sup>7</sup> The State Clearinghouse has three full-time clerical staff and two part-time temporary staff manually inputting information into the database.<sup>8</sup> The environmental documents and notices are entered manually because an electronic filing system has not been implemented.

The State Clearinghouse has attempted to automate data entry through an Internet-based online submission process that could reduce its staff costs and provide faster, more efficient service to public agencies and provide more timely information on proposed projects to the public.<sup>9</sup> Development of an online submission process, called CEQAnet II or “application,” was completed in 2002 by the Information Center for the Environment at the University of California, Davis (UC Davis).<sup>10</sup> CEQAnet II would allow lead agencies to file the notice online, provide instant acknowledgement of filing, and immediately post the notice on the web site. This would eliminate manual entry of the document summaries by State Clearinghouse staff and make the information available to the public immediately.

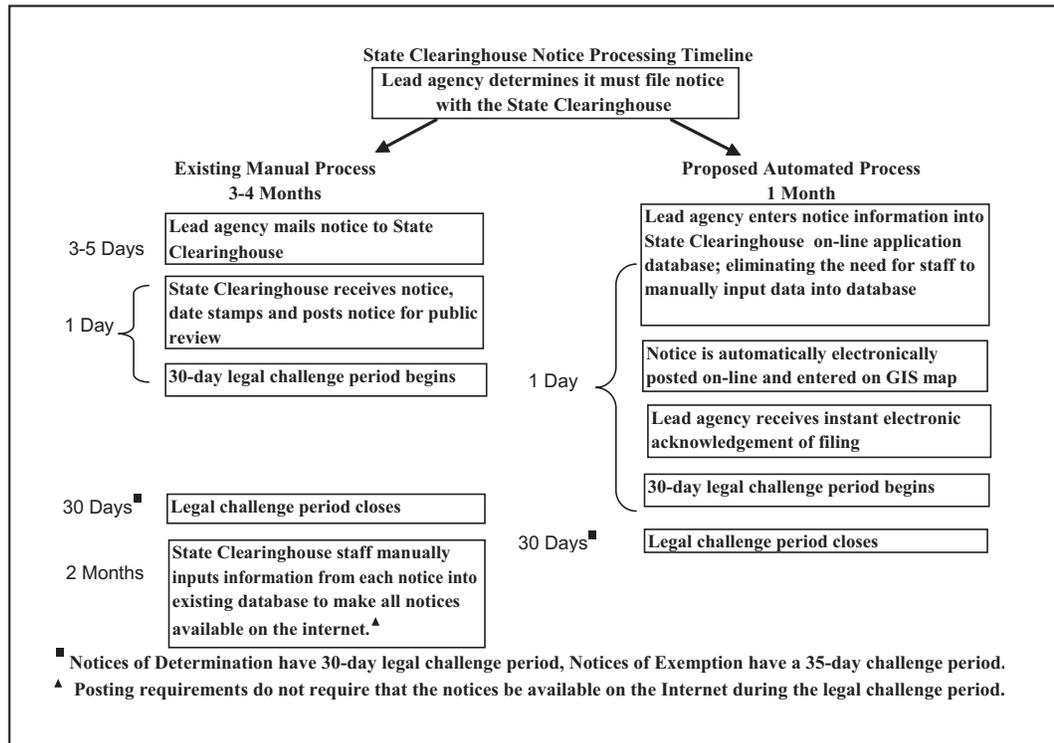
An additional function of the application includes Geographic Information System (GIS) mapping capability. The GIS mapping will display the geographic location of all projects in the database as they are entered. The benefit of mapping is that state agencies can quickly identify proposed projects that could impact state facilities or environmentally sensitive areas.

As shown in Exhibit 1, if the application was implemented the State Clearinghouse notice processing timeline would be reduced from three months to one month, inclusive of the statutorily required legal challenge period. Although the manual entry process has a backlog of up to two months, the State Clearinghouse meets its statutory posting requirements. With the current process, manual entry into the database occurs after the legal challenge period has



closed. In contrast, CEQAnet II would post notices on the Internet during the legal challenge period.

**Exhibit 1**



Despite its benefits, the application has not been implemented due to concerns raised by the Department of Finance, Teale Data Center, and the information technology staff of the Governor’s office. The concerns include identifying the appropriate host for the database, security, resources and adequate staffing. The main concern from the Department of Finance was that a state database should be hosted by the state data center, Teale Data Center. Firewall issues prevented UC Davis from hosting the application. In addition, the Governor’s Office Information Technology Unit does not believe it could adequately support the application because of staffing and resource limitations.<sup>11</sup> According to Department of Finance staff, the Feasibility Study Report was approved in June 2000. The next step is for the Office of Planning and Research to complete a Special Project Report and submit it to the Department of Finance, which can then complete its review and incorporate costs in the regular budget cycle.<sup>12</sup>

**Long-term solution**

Implementation of the application is a short-term solution to streamlining the state-level environmental review process. A long-term solution is to implement California Technology

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Enabled Services (Smart Services). Smart Services, including web portals, would create a framework for the automation of state business processes.

The state-level environmental document review and notice filing processes are well-suited to the web portal concept. A web portal would incorporate the application and expand it to include the filing of large environmental documents online. A web portal creates a workspace on a server that can collect electronic files from lead agencies and make them available to state agencies for review and comment. It allows for quick access to all documents, document sharing, interactive comments among reviewers, e-mail notifications and reminders and a centralized document library that can be searched. This system would help state agencies gain review time and be able to identify important projects more readily.

The State Clearinghouse application and state agency electronic document management systems should be incorporated in the state web portal to fully automate the state-level environmental review process. Centralized document management systems through the state web portal should be available to provide online review of CEQA documents within one to two years.

### ***Electronic document management system***

The State Clearinghouse coordinates the state-level intergovernmental review process for environmental documents. The State Clearinghouse sets the comment period for each environmental document and identifies the appropriate reviewing agencies, which are selected for their expertise in a particular subject matter or geographical area or their responsibility for particular types of projects.<sup>13</sup>

Once a state agency receives a document from the State Clearinghouse, it must coordinate its internal review and compile comments to be sent to the State Clearinghouse prior to the close of the comment period. This is currently a cumbersome process requiring circulation of the large environment documents through various functional units, and gathering, compiling and submitting comments to the State Clearinghouse.

California Department of Transportation District 3 (Caltrans District 3) has implemented electronic document management software to automate the internal review process. The software enables quick, simultaneous distribution of scanned documents to individuals in multiple locations. This gives document reviewers more time by eliminating mailing and other document distribution process delays. The software generates and distributes automatic and electronic due-date reminders. Reviewer comments are compiled and automatically forwarded to the document manager, who can then forward them to the State Clearinghouse prior to the close of the comment period. The document history, reviewer comments, action dates and other items are maintained in the database, thus eliminating costly storage of paper documents.



Caltrans District 3 did an extensive post-implementation review of the benefits and costs of the electronic document management system.<sup>14</sup> The cost savings amounted to less staff time spent copying, mailing and physical routing of documents among various staff locations. Caltrans District 3 reviews about 2,200 environmental documents per year and estimated that the electronic document management system produces an annual cost savings of about \$78,000.

### **Recommendations**

- A. The State Clearinghouse and Teale Data Center should implement the CEQAnet II application at the State Clearinghouse.**
  
- B. The State Clearinghouse and Teale Data Center should create a web portal that incorporates CEQAnet II and an electronic document management system to streamline the state-level environmental review process.**

### **Fiscal Impact**

Assuming implementation in January 2005, the CEQAnet II application would cost \$48,000 in Fiscal Year (FY) 2005–06, but would result in savings each year thereafter. After the first year, the application would cost about \$56,000 for annual licensing, maintenance, and Teale Data Center costs, but this would be offset by larger savings in personnel costs.<sup>15</sup> By FY 2006–07, the decreased data entry work load should reduce one full-time clerical position costing \$57,000. By FY 2007–08, two clerical positions should be eliminated for an annual savings of \$114,000. Based on past document growth through the State Clearinghouse, a total of three positions should be saved by FY 2008–09, for an annual savings of \$171,000. Since the number of environmental documents and notices is expected to continue to increase, the State Clearinghouse would need to employ additional data entry staff if CEQAnet II is not implemented.

The cost of a centralized document management system through a centralized web portal solution cannot be estimated at this time.

**General Fund**  
(dollars in thousands)

Fiscal Year	Savings	Costs	Net Savings	Change in PYs
2004–05	0	0	0	0
2005–06	\$0	\$48	(\$48)	0
2006–07	\$57	\$56	\$1	(1)
2007–08	\$114	\$56	\$58	(2)
2008–09	\$171	\$56	\$115	(3)

Note: The dollars and PYs for each year in the above chart reflect the total change for that year from FY 2003–04 expenditures, revenues and PYs.

## Endnotes

- <sup>1</sup> *Pub. Res. C. Section 21000 et seq.*
- <sup>2</sup> *Ronald E. Bass, Albert I. Herson, Kenneth M. Bogdan, CEQA Deskbook, A Step-by-Step Guide on How to Comply With the California Environmental Quality Act, 2<sup>nd</sup> ed. (Point Arena: Solano Press Books, 1999), pp. 1–2.*
- <sup>3</sup> *Ronald E. Bass, Albert I. Herson, Kenneth M. Bogdan, CEQA Deskbook, A Step-by-Step Guide on How to Comply With the California Environmental Quality Act, pp. 13–14.*
- <sup>4</sup> *Pub. Res. C. Section 21083(c); and Title 14 California Code of Regulations, Chapter 13, Section 15024. The public comment period for environmental documents and notices varies from 30–45 days. Generally, the notices that are filed to inform the public of proposed projects have a 30–35 days public comment period.*
- <sup>5</sup> *Governor’s Office of Planning and Research, State Clearinghouse, Environmental Document Filings with the State Clearinghouse, Calendar Years 1999 through 2003 (Sacramento, California, 2004).*
- <sup>6</sup> *Pub. Res. C. Sections 21091 and 21159.9.*
- <sup>7</sup> *Governor’s Office of Planning and Research, State Clearinghouse, Environmental Document Filings with the State Clearinghouse.*
- <sup>8</sup> *Governor’s Office of Planning and Research, State Clearinghouse, State Clearinghouse Roles and Responsibilities, (Sacramento, California, March 8, 2004); and interview with Scott Morgan, senior planner, State Clearinghouse, May 14, 2004.*
- <sup>9</sup> *Memorandum from Terry Roberts, director of the State Clearinghouse to Becky Curler, manager, Governor’s Office Information Technology Unit (February 3, 2004).*
- <sup>10</sup> *Memorandum from Terry Roberts, director of the State Clearinghouse to Becky Curler, manager, Governor’s Office Information Technology Unit (February 3, 2004).*
- <sup>11</sup> *Email from Becky Curler, manager, Governor’s Office Information Technology Unit, to Terry Roberts, director of the State Clearinghouse (February 4, 2004).*
- <sup>12</sup> *Interview with Jim Esarte, Department of Finance, Sacramento, California (May 25, 2004).*
- <sup>13</sup> *Governor’s Office of Planning and Research, State Clearinghouse Handbook (Sacramento, California, January 2004), pp. 5–8.*



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- <sup>14</sup> Department of Transportation, District 3, Planning and Local Assistance Sacramento Office, Lotus/IBMDomino.Doc Pilot Program Report/Statewide Deployment Recommendation, internal draft final report (May 21, 2004).
- <sup>15</sup> Interview with Terry Roberts, director, State Clearinghouse, Sacramento, California (April 14, 2004).





# Streamline the Department of Pesticide Regulation's Registration Process

## **Summary**

The Department of Pesticide Regulation's process for registering a new pesticide product or amending a currently registered product requires staff time and resources for activities that primarily protect the business interests of data owners, duplicates federal registration processes that already provide adequate protection to data owners, and creates marketplace barriers for pesticide products. This duplication of effort does nothing to improve public health or the environment.<sup>1</sup> Department staff also perform some consumer protection functions that divert resources away from focusing on core environmental protection functions. State law and regulation should be amended to address these issues.

## **Background**

### **Letters of authorization**

According to the U.S. Environmental Protection Agency (U.S. EPA), before a pesticide is marketed and used in the United States, the U.S. EPA evaluates it to ensure it will meet federal safety standards that protect human health and the environment. The U.S. EPA grants a license or "registration" for pesticides meeting these requirements. This permits the distribution, sale and use of pesticides according to specific use directions and requirements identified on the label.<sup>2</sup>

Pesticide registration is a scientific, legal, and administrative process through which the U.S. EPA examines the ingredients of the pesticide; the particular site or crop on which it is to be used; the amount, frequency, and timing of its use; and the appropriate storage and disposal practices. In evaluating a pesticide registration application, the U.S. EPA assesses a wide variety of potential human health and environmental effects associated with use of the product. The producer of the pesticide must provide data from tests done according to U.S. EPA regulatory guidelines. These data must address concerns pertaining to the identity, composition, potential adverse effects, and environmental fate of each pesticide. For example, the tests evaluate whether a pesticide has the potential to cause harmful effects on humans, wildlife, fish, and plants, including endangered species and non-target organisms, as well as possible contamination of surface water or ground water from leaching, runoff, and spray drift. Potential human risks range from short-term toxicity to long-term effects such as cancer and reproductive system disorders.<sup>3</sup>

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Applicants for U.S. EPA registration of a pesticide product containing the same active ingredients as products already registered (even though the formulation may not be the same) are not required to submit data; instead, they can simply cite “all” data on file with the U.S. EPA that was previously submitted by other registrants.<sup>4</sup> Although other registrants can reference the data, there is a 15-year window of protection to owners of that data. If other registrants want to use these data for their submissions during the 15-year window, they are required to submit a letter of authorization and pay the owner of that original data. After 15 years, any registrant can use the data without a letter of authorization from the original data owner.<sup>5</sup>

Similar to federal requirements, state law requires that before a pesticide can be marketed and used here, the California Department of Pesticide Regulation (DPR) must evaluate it to ensure it will not harm human health or the environment.<sup>6</sup> Pesticides that pass DPR’s scientific, legal, and administrative process, which is very similar to the U.S. EPA’s process described above, are granted a license that permits their sale and use according to requirements set by DPR to protect human health and the environment.<sup>7</sup>

In contrast to federal law, however, applicants registering a pesticide in California must submit all required data or specifically cite relevant data currently on file with DPR. If applicants do not own the cited data, they must obtain a letter of authorization from the data owner. This applies to the use of data generated by another registrant even after the 15-year window of federal protection has expired.<sup>8</sup> DPR must return applications that do not include a letter of authorization when one is required even though the submitted data may show the product to be safe or the application references data DPR has already reviewed. If an applicant cannot obtain a letter of authorization from the data owner, the applicant must conduct and submit new studies to DPR even though the information in those studies is duplicative of data already reviewed and on file with DPR. In these cases, DPR staff must re-review data they have previously reviewed for other products.<sup>9</sup>

Tracking and researching the ownership of data, returning applications that do not have letters of authorization, and processing and reviewing new studies that are duplicative of studies supporting similar products DPR has already registered requires DPR to expend a significant amount of staff time and resources on unnecessary administrative tasks that do not improve public health or the environment. It also adds to registrants’ costs by lengthening the time required to bring a new pesticide to market.<sup>10</sup>

### ***Efficacy data reviews***

The advent of pesticide regulatory programs at the state and federal levels began with an emphasis on ensuring that products are effective or efficacious. Efficacy reviews determine whether a product performs as claimed. They do not evaluate health and safety claims. Thus, efficacy reviews are a consumer protection function rather than an environmental protection



function. Over the years, the focus of pesticide regulatory programs has shifted toward protection of human health and the environment. The consumer protection aspects of pesticide regulatory programs at the federal level and in most states have been de-emphasized or eliminated.<sup>11</sup>

California remains the exception to this evolution. State law requires DPR to ensure the efficacy of pesticides used in California. Specifically, Food and Agricultural Code Section 11501 requires DPR to assure users that pesticides are properly labeled and are appropriate for the use designated by the label; Section 12824 requires DPR to endeavor to eliminate from use in California any pesticide not beneficial for the purposes for which it is sold; and Section 12825 authorizes DPR to cancel the registration of any pesticide that is of little or no value for the purpose for which it is intended.<sup>12</sup>

Based upon these sections of law, DPR adopted regulations that require it to review efficacy claims for all pesticides.<sup>13</sup> Verification of efficacy claims diverts DPR staff resources away from performing core environmental protection functions, such as health and safety reviews, to performing a consumer protection function. These requirements exceed those of the federal government and any other state, and can be eliminated through changes to state law.

### **Recommendations**

- A. The Governor should work with the Legislature to repeal Section 12811.5 of the Food and Agriculture Code, which prohibits the California Department of Pesticide Regulation (DPR) from considering data in support of a registration unless the registrant has received written permission from the original data submitter.**

Repealing this section would allow DPR to rely upon any data on file, regardless of data ownership, to support the registration of a new pesticide product or an amendment to a currently registered pesticide product. Eliminating this additional authorization step would save DPR staff time and resources without affecting its core mission of protecting public health and the environment. It would also accelerate DPR's decision-making process on registration requests. DPR should redirect staff resources toward completing pesticide health and safety reviews and other critical tasks necessary to register pesticides in the state.

- B. The DPR should amend its regulations regarding the review of efficacy data to make these regulations consistent with United States Environmental Protection Agency requirements. (U.S. EPA requires applicants to assure themselves through testing that their products are efficacious, but it does not typically require applicants to submit their efficacy data when registering pesticides.)<sup>14</sup>**

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DPR would only review efficacy data for public health pesticides (sanitizers, disinfectants, and sterilants). If a registrant submits a U.S. EPA review of efficacy data for these pesticides, DPR would review that evaluation and only refer to the efficacy data if there are any questions DPR has about the U.S. EPA evaluation. DPR would reserve the right to require that efficacy data be submitted upon request prior to or any time after registration. DPR should redirect staff resources toward completing pesticide health and safety reviews and other critical tasks necessary to register pesticides in the state.

### ***Fiscal Impact***

DPR's goal and commitment to the pesticide industry is to register pesticides within 60 days of receiving the registration application. Currently, DPR has a registration backlog of more than 600 pesticides that have exceeded the 60-day window (hardly anything gets through in 60 days). DPR has 20 staff positions dedicated to registering pesticides. DPR estimates that about 50 percent of its registration staff's time is spent dealing with issues related to letters of authorization and efficacy data reviews.

DPR estimates that by eliminating the requirement for letters of authorization and amending its efficacy data requirements it could meet the 60-day registration window for 75 to 90 percent of all product registrations and label amendments.<sup>15</sup>

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### **Endnotes**

- <sup>1</sup> Interview with Paul Helliker, director, Department of Pesticide Regulation (March 9, 2004); and interview (phone) with Barry Cortez, branch manager, Pesticide Registration Branch, Division of Registration and Health Evaluation, Department of Pesticide Regulation (March 11, 2004).
- <sup>2</sup> U.S. Environmental Protection Agency, "Pesticides: Regulating Pesticides: Data Requirements" (Washington, D.C.).
- <sup>3</sup> U.S. Environmental Protection Agency, "Pesticides: Regulating Pesticides: Data Requirements" (Washington, D.C.). U.S. EPA data requirements are listed in the Code of Federal Regulations, Chapter 40, Part 158.
- <sup>4</sup> Department of Pesticide Regulation, "Pesticide Product Registration: Perceived Duplication with U.S. Environmental Protection Agency: Efficiencies and Resources," January 2003.
- <sup>5</sup> Department of Pesticide Regulation, "Pesticide Product Registration Reform Initiative, Draft," March 9, 2004.
- <sup>6</sup> Food & Agri. C. Section 12811 et seq.
- <sup>7</sup> Department of Pesticide Regulation, "Regulating Pesticides: The California Story, A Guide to Pesticide Regulation in California" (Sacramento, CA, October 2001).
- <sup>8</sup> Department of Pesticide Regulation, "Pesticide Product Registration Reform Initiative, Draft," March 9, 2004.
- <sup>9</sup> Department of Pesticide Regulation, "Pesticide Product Registration: Perceived Duplication with U.S. Environmental Protection Agency: Efficiencies and Resources," January 2003.
- <sup>10</sup> Interview (phone) with Barry Cortez, branch manager, Pesticide Registration Branch, Division of Registration and Health Evaluation, Department of Pesticide Regulation (May 14, 2004).



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- <sup>11</sup> Department of Pesticide Regulation, "Pesticide Product Registration Reform Initiative, Draft," March 9, 2004.
- <sup>12</sup> Department of Pesticide Regulation, "Pesticide Product Registration Reform Initiative, Draft," March 9, 2004.
- <sup>13</sup> CCR, Title 3, Div. 6, Chapter 2, Subchapter 1, Art. 3, Section 6186.
- <sup>14</sup> Department of Pesticide Regulation, "Notice of Proposed Changes in the Regulations of the Department of Pesticide Regulation: Efficacy Data Requirements for Pesticide Products," July 28, 1997.
- <sup>15</sup> Interview (phone) with Barry Cortez, branch manager, Pesticide Registration Branch, Division of Registration and Health Evaluation, Department of Pesticide Regulation (May 14, 2004).





# Simplify Process for Interagency Work Authorizations

## **Summary**

State departments often perform work for each other in order to utilize specialized expertise and maximize staffing resources. The current process that departments must follow in order to perform work for another department is excessive and wastes valuable state resources. State departments need a simplified process to authorize other state departments to perform work.

## **Background**

State entities commonly perform work for other state entities to take advantage of specialized expertise and staffing resources to carry out important work. For example, the Department of Water Resources designs and administers construction of fish barrier dams for the Department of Fish and Game. To perform such work, a formal interagency agreement must be prepared and reviewed by the legal divisions of both the client department and the department performing the work.<sup>1</sup> In addition, the Department of General Services (DGS) approval is needed for interagency agreements that exceed \$50,000.<sup>2</sup> The current process and requirements to execute an interagency agreement are excessive and waste valuable state resources.

The current process is a formal contracting process that often takes months to complete. There are at least 25 steps in the normal preparation, review, transmittal, approval and other processing phases necessary to complete an interagency agreement.<sup>3</sup> Additional revision and negotiation steps are often needed because the legal counsel of the different departments disagree about cost reimbursements and boilerplate language. Additional revision and negotiation steps lead to numerous delays before completing the agreements.<sup>4</sup>

The long contracting process often results in program and project delays. This can result in serious impacts either because of delayed services, or because the funding for the projects is only available for a specific time period and the negotiations to develop and implement the interagency agreement extended past the funding period.

The staff time associated with preparation, processing, legal review, and revision is costly. It is estimated that the normal preparation, review and approval process requires approximately 50 hours of time from program managers, contract specialists, and legal staff. Agreements requiring extensive revisions take significantly longer. The total number of interagency agreements processed annually for the entire state is estimated at 2,000.<sup>5</sup> Elimination of this formal contracting process for interagency agreement could be expected to save at least 45 hours per agreement.<sup>6</sup> Provisions in the Government Code provide DGS wide latitude to

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exempt or give blanket approval for the performance of any work or furnishing of any services, materials or equipment by one agency to another.<sup>7</sup>

There is very little value added by preparing a formal agreement because very few departments fail to deliver on these agreements.<sup>8</sup> If there are problems, these are worked out between the program managers and/or executive management from the two departments; departments do not sue each other.<sup>9</sup>

### ***Recommendation***

**The Governor should issue an Executive Order stating that to make state government more efficient and responsive, there is a need to streamline the state's internal contracting processes and direct the State and Consumer Services Agency, or its successor, to simplify the interagency contracting process.**

- Pursuant to the Executive Order, the State and Consumer Services Agency, or its successor, should develop a contract simplification plan stating the action steps necessary to achieve the goal of contract simplification, indicating actions that will be taken immediately and a timeline for future actions.
- The Department of General Services (DGS), or its successor, should, to the extent possible, no longer require formal interagency agreements when work is performed by one department for another and give blanket approval to all such interagency work assignments.
- DGS, or its successor, should develop guidelines for state departments to follow to replace the current interagency agreement/contract process with a simple work statement/scope of work, budget and memorandum agreement to be approved only by appropriate department officials.
- DGS, or its successor, should identify the statutes and regulations that need to be amended to simplify the interagency agreement process and propose legislative and/or administrative actions necessary to make the changes.

### ***Fiscal Impacts***

Fiscal impacts associated with the elimination of formal interagency agreements/contracts were estimated using the following assumptions:

- The elimination of the formal process can be done immediately by simply calling on DGS to give blanket approvals and exempt such work from its review. Accordingly, savings associated with eliminating this costly process were assumed to be initiated at the start of the Fiscal Year 2004–2005.
- There are approximately 2,000 formal interagency agreements processed in state government each year. Assuming that elimination of a formal process would eliminate an average of 45 hours of staff time for each of the 2,000 projects would produce annual savings of approximately 50 PY. If 35 percent of the savings are realized by program managers, 50 percent by contract analysts and 15 percent by legal staff, the annual savings would be as follows:



Classification	Monthly Salary	1 PY Savings*	PY Reductions	Cost Savings
Senior Engineer	\$6,490	\$105,350	17.5	\$1,843,625
Staff Services Analyst	\$3,768	\$ 64,520	25.0	\$1,613,000
Staff Attorney III	\$7,667	\$123,005	7.5	\$ 922,538
		<b>Total</b>	<b>50.0</b>	<b>\$4,379,163</b>

\*Includes salaries, 5 percent salary savings, benefits @ 30 percent, and \$8,000 in OE&E costs.

These savings are associated with eliminating the unnecessary staff time needed to develop, process, review, and approve formal interagency agreements. Savings to departments would be realized in all funding sources when another department performs work for them.

**General Fund**  
(dollars in thousands)

Fiscal Year	Savings	Costs	Net Savings (Costs)	Change in PYs
2004-05	\$1,095	\$0	\$1,095	(12.5)
2005-06	\$1,095	\$0	\$1,095	(12.5)
2006-07	\$1,095	\$0	\$1,095	(12.5)
2007-08	\$1,095	\$0	\$1,095	(12.5)
2008-09	\$1,095	\$0	\$1,095	(12.5)

Note: The dollars and PYs for each year in the above chart reflect the total change for that year from FY 2003-04 expenditures, revenues and PYs.

**Other Funds**  
(dollars in thousands)

Fiscal Year	Savings	Costs	Net Savings (Costs)	Change in PYs
2004-05	\$1,095	\$0	\$1,095	(12.5)
2005-06	\$1,095	\$0	\$1,095	(12.5)
2006-07	\$1,095	\$0	\$1,095	(12.5)
2007-08	\$1,095	\$0	\$1,095	(12.5)
2008-09	\$1,095	\$0	\$1,095	(12.5)

Note: The dollars and PYs for each year in the above chart reflect the total change for that year from FY 2003-04 expenditures, revenues and PYs.

**Endnotes**

- <sup>1</sup> Department of General Services, "State Contracting Manual" (Sacramento, California, March 2003), Section 3.03.
- <sup>2</sup> Gov. C. Section 11256.

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- <sup>3</sup> E-mail from Mary Ann Benny-Sung, administrative officer, Division of Engineering, Department of Water Resources, to Les Harder, California Performance Review (May 2004).
- <sup>4</sup> Interview with Leslie F. Harder, Jr., chief, Division of Engineering, Department of Water Resources (May 2004).
- <sup>5</sup> Interview with Jackie Collins, SCPRS administrator, Procurement Division, Department of General Services (May 2004). DGS provided information stating that 2,209 interagency agreements were registered in the SCPRS database between July 1, 2003 and May 21, 2004. Some of these agreements are for multiple years, some interagency agreements are exempt for registration in this database. Based on this information, the author estimates that approximately 2,000 interagency agreements are processed each year in state government.
- <sup>6</sup> E-mail from Mary Ann Benny-Sung. Based on the steps and processing time associated with completing an interagency agreement, only about 10 percent of the effort is associated with establishing the scope of work and budget.
- <sup>7</sup> Gov. C. Section 11250–11262.
- <sup>8</sup> Memorandum from Mike Chrisman, secretary for Resources Agency to Paul Miner, chief deputy cabinet secretary (January 23, 2004), pp. 6–7.
- <sup>9</sup> Memorandum from Mike Chrisman to Paul Miner, pp. 6–7.



# Establish a Risk-Based, Multi-Media, Environmental Compliance Assurance Program

## **Summary**

Annually, thousands of mandated compliance inspections are performed at small and mid-sized businesses under programs regulated by the California Environmental Protection Agency without regard to the regulatory history of the business, or its relative risk to the community and the environment. A risk-based, multi-media (air, water, land) inspection protocol should be developed to ensure the efficient use of resources and the consistent application of regulations.

## **Background**

The California Environmental Protection Agency (Cal-EPA) issues permits for regulated activities and routinely inspects against permit requirements according to an established schedule.<sup>1</sup> These routine inspections are not standardized, and the frequency and intensity of inspections are not based on the risk the regulated activity presents to the community and environment. Enforcement follow-up to inspections can be highly variable.<sup>2</sup> These practices result in the inefficient use of resources, and create an uneven regulatory climate across the state and environmental programs.

## **Inspections as usual**

Routine inspections are not standardized, and the frequency and intensity of inspections is not based on the risk of the regulated activity to the community and environment. This approach results in businesses that present the greatest danger to the community and the environment being inspected with the same frequency and in the same manner as those businesses that present less risk. All businesses that handle hazardous materials and waste are subject to compliance oversight by federal, state, or local agencies, and are typically subject to compliance inspections at regular intervals. No adjustment in the inspection cycle is made for those businesses that maintain a high level of compliance with environmental laws. For example, solid waste landfills are required to be inspected each month even though they have a history of compliance, while a business located near a residential area that handles thousands of gallons of hazardous materials is inspected only every three years.

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California's current environmental regulatory system relies heavily on an approach that measures effectiveness by the number of inspections and enforcement actions taken, instead of using improved compliance as a measure of success. The state does not have a compliance assurance program that uses a wide range of regulatory tools, such as rigorous enforcement activities and providing assistance to regulated entities that result in compliance with environmental regulations and actual improvements in environmental quality.

Local and state agencies regulate approximately 150,000 sites and conduct at least 100,000 compliance inspections each year. In most program areas, the regulatory activities of these state and local agencies are not coordinated.

***Inspections are not based on public risk***

Inspection frequencies are not based on the risk the regulated activity presents to the public or on the business' compliance history.<sup>3</sup> For example, the California Accidental Release Program regulates businesses that handle extremely hazardous substances in quantities that can have potentially irreversible effects on health and the environment if an accident occurs. These regulated businesses are categorized into one of three program levels that determine the accident prevention-related activities a business is required to develop and implement. The program levels are determined by clear environmental, physical, and safety factors including the business' compliance and accident history, the potential off-site impacts and the type of safety equipment that has been installed. All regulated businesses, however, are subject to compliance inspections every three years and periodic audits, regardless of the risk-based program level. In fact, large chemical companies are subject to the same inspection frequency as businesses handling a single cylinder of compressed gas.

***Inspections lack multi-media perspective***

A legislative report prepared by Cal-EPA on cross-media coordination concluded that the state should "pursue whatever reforms are needed at both the agency and [the program] level to achieve more cross-media coordination." The report pointed out that "Cal/EPA has not effectively implemented mechanisms for preventing, identifying, and responding to environmental problems involving multiple media [air, water, land]. The agency can and should lead its boards, departments and office towards greater cross-media consideration and coordinated action." The report pointed out that the current lines of accountability within the agency "are blurred due to the medium-specific laws and organizational structure under which the agency works," and that "there is no institutional structure to encourage or require cross-media actions."<sup>4</sup>

The Deputy Secretary for Law Enforcement and Counsel at Cal-EPA has statutory authority to develop multi-media compliance for regulatory programs, including local programs that "take consistent, effective, and coordinated compliance and enforcement actions to protect public health and the environment."<sup>5</sup>



### **Smarter inspecting**

Many states have recognized the limited effectiveness of existing regulatory programs for small and mid-sized businesses. These states make maximum use of limited resources to achieve the highest level of regulatory compliance. Massachusetts has been a leader in this effort, creating the “Environmental Results Program.” This program seeks to achieve broad compliance across the regulated community and fundamentally changes the approach to compliance by engaging business sectors in developing comprehensive environmental requirements and practices and using self-certifications coupled with the threat of inspections. A key component of self-certification is reporting areas of non-compliance, and developing and submitting a “Return to Compliance Plan.”<sup>6</sup>

The Environmental Results Program makes maximum use of compliance assistance at the outset to help the business sector understand how to achieve and remain in compliance. Industry-specific workbooks and workshops are developed and presented at the beginning of a focused compliance assurance effort. This approach creates incentives for the owners of the businesses to take personal responsibility for complying with environmental regulations.

In developing the Environmental Results Program, Massachusetts addressed a number of deficiencies in its traditional inspection and enforcement approach. It wanted to create more comprehensive environmental performance; promote lasting industry-wide change; encourage multi-media compliance; and promote pollution prevention. The state recognized that small and mid-sized businesses could benefit from more compliance assistance, and it believed that costs could be cut for both industry and government without sacrificing results.

Measurement of regulatory performance is critical to this program because it enables the state to target its limited resources on “problem” facilities. Mandatory inspection schedules are replaced by targeted inspections focused on facilities where self-certification has raised a “red flag,” non-responding facilities, facilities that have received citizen complaints or facilities where self-certification indicates multiple improvements are needed. All Return to Compliance plans that are received are reviewed to determine if the content and schedule are appropriate and acceptable.

Since its creation in 1997, the program has been endorsed and supported by the U.S. Environmental Protection Agency. This new approach has also been adopted and implemented by 10 other states including Delaware, Tennessee, Rhode Island and Florida, covering such industrial sectors as auto repair facilities, auto body shops, auto painting shops, photo-processors, dry cleaners, printers, auto salvage yards, underground storage tank owners and industrial wastewater generators.<sup>7</sup>

Three elements of the Environmental Results Program are particularly important for California; pollution prevention, a multi-media approach and worker health and safety. Pollution prevention is integrated into the regulatory programs because the best way to deal

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with waste is not to create it in the first place. A complete multi-media approach to regulatory compliance is utilized for each industrial sector. Finally, worker health and safety issues are addressed as part of a complete review of the facility.

Given the fragmented nature of California's regulatory programs and its separate programs for pollution prevention and worker health and safety, using the Environmental Results Program approach could achieve a more efficient integration of these disparate programs. This also could result in a comprehensive environmental and occupational health and safety effort for affected industry sectors.

Another example of a risk-based regulatory approach exists in food safety programs. Over the last decade, an approach called "Hazard Analysis and Critical Control Point" (HACCP) was implemented for the nation's food safety programs. This effort places increased responsibility on the regulated community to improve food handling practices to reduce the risk of food-borne illnesses. Program guidelines have been developed jointly by the U.S. Food and Drug Administration, U.S. Department of Agriculture, and the National Advisory Committee on Microbiological Criteria for Foods.<sup>8</sup>

As a result of its success in reducing food-borne illnesses, HACCP has been established in all federal, state and local food safety programs. One report indicates that, as a result of the HACCP, a 50 percent reduction in the cases of salmonella in our food supply had been achieved. It is this type of dramatic results in improved public health and environmental protection that may be replicated through implementation of a risk-based, compliance assurance program within Cal-EPA.<sup>9</sup>

### ***Standardized enforcement processes***

Key elements of a compliance assurance program include compliance inspections and appropriate enforcement follow-up. When inspections uncover violations, enforcement actions must be taken to ensure the business returns to compliance. Appropriate penalties must be imposed to deter future violations and offset any economic advantage a violator might realize by skirting the law. California's environmental protection programs do not have common enforcement mechanisms and processes available. This lack of uniformity requires additional effort to coordinate multi-media enforcement. It also increases the training needs for those who must deal with numerous processes. It also may result in violations not being addressed in a timely and uniform manner.<sup>10</sup> Standardization of enforcement mechanisms and processes within Cal-EPA would improve the ability of staff within all environmental programs to conduct multi-media compliance assurance programs.

### ***Recommendations***

- A. The California Environmental Protection Agency (Cal-EPA), or its successor, should develop a risk-based, multi-media inspection protocol. The protocol should identify all statutory and regulatory changes that must be made in order to implement the**



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risk-based, multi-media inspection protocol. This protocol should be developed by July 1, 2005 and implemented by January 1, 2006.

- B. Cal-EPA, or its successor, should develop an implementation plan to create a multi-media environmental compliance assurance program. This plan should be developed by July 1, 2005 and implemented by January 1, 2006.
- C. Cal-EPA, or its successor, should develop an enforcement protocol, which standardizes the administrative, civil, and criminal enforcement processes to be used in all environmental programs. The Governor should work with the Legislature to implement the protocol.
- D. Cal-EPA, or its successor, should develop an enforcement appeals process to be used by all environmental programs. The Governor should work with the Legislature to implement the protocol.
- E. Cal-EPA, or its successor, should launch several pilot programs utilizing the Environmental Results Program approach.

Two pilot programs should be launched in the first year after the release of this report and should cover industrial sectors where other states have already developed the core materials.

Two additional pilot programs should be developed and implemented starting in the second year after the release of this report.

All pilot programs should be conducted with a multi-media approach (air, land and water) as well as incorporating pollution prevention. Baseline inspections should be conducted prior to the implementation of any pilot program so that reliable statistics can be compiled during the course of the pilot program to assess rates of compliance. The pilot programs should be implemented primarily by the Certified Unified Program Agencies while state agencies should take the lead in developing the training materials and conducting the actual training sessions.

- F. Cal-EPA, or its successor, should establish contacts with other states utilizing the Environmental Results Program and with the U.S. Environmental Protection Agency to share information and pool resources for future activities.

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## **Fiscal Impact**

Emphasis of this proposal is on better utilization of existing resources that could be redirected from routine inspections to support the increased multi-media compliance assurance directed at regulated businesses. The largest fiscal benefit resulting from these efforts should occur as a result of increased compliance and pollution prevention. Increased compliance should lead to reduced need for lengthy and expensive enforcement actions. Reductions in chemical use obtained through pollution prevention should reduce industry costs.

Improved compliance should reduce the release of chemicals into the environment thus reducing community and employee exposure to harmful chemicals. This should result in improved health, which may be translated into reduced health care cost and avoidance of lost wages.

Reducing the release of harmful chemicals into the environment will also have a general benefit to the environment by improving the quality of our water and air. Chemicals released into the environment can contribute to the production of air pollution that accelerates the destruction of surface materials. An overall improvement in air quality will help to reduce the rate of destruction to the state's infrastructure.

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## **Endnotes**

- <sup>1</sup> CCR, Title 27, Sec. 15150, CHSC Sec. 25288.
- <sup>2</sup> California Environmental Protection Agency Unified Environmental Statute Commission, "Unifying Environmental Protection in California" (California January 1997), pp. 7, A28–A34.
- <sup>3</sup> State of California, California Environmental Protection Agency, "A Structural and Fiscal Review of the California Environmental Protection Agency" (February 2000), pp. 4, 15, 19, 33–36.
- <sup>4</sup> State of California, California Environmental Protection Agency, "A Structural and Fiscal Review of the California Environmental Protection Agency" (February 2000), pp. 11–18.
- <sup>5</sup> Gov. C. Section 12812.2.
- <sup>6</sup> State of Massachusetts, "Environmental Results Program" (May 2004), <http://www.mass.gov/dep/erp/about.htm> (last visited June 16, 2004).
- <sup>7</sup> State of Tennessee website: <http://www.state.tn.us/environment/> (last visited June 16, 2004); ECOS website: <http://www.sso.org/ecos/ECOStatesArticles/Fall%202003%20ECOStates.pdf> (last visited June 16, 2004); and State of Florida website: <http://www.dep.state.fl.us/Air/programs/sbap/links.htm> (last visited June 16, 2004).
- <sup>8</sup> U.S. Food and Drug Administration, U.S. Department of Agriculture, National Advisory Committee on Microbiological Criteria for Foods, "Hazard Analysis and Critical Control Point Principles and Application Guidelines" (August 1997), website: <http://vm.cfsan.fda.gov/~comm/nacmcfp.html> (last visited June 16, 2004).
- <sup>9</sup> Presentation by Cary G. Peterson, commissioner, Utah Department of Agriculture and Food, "Roles and Responsibilities of Federal and State Agencies, Challenges and Opportunities" (February 1999), website: <http://ag.utah.gov/pressrel/fsspeech.html> (last visited June 16, 2004).



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- <sup>10</sup> *Little Hoover Commission, Cal-EPA “An Umbrella For the Environment” (June 1991); California Environmental Protection Agency Unified Environmental Statute Commission, “Unifying Environmental Protection in California” (California January 1997), p. 7; and California Environmental Protection Agency, “A Structural and Fiscal Review of the California Environmental Protection Agency” (February 2000), pp. 33–36.*





# Enact Pending CEQA Guideline Amendments

## **Summary**

Proposed amendments to the California Environmental Quality Act guidelines were developed by the Resources Agency in August 2003.<sup>1</sup> They have been “on hold” since. The amendments should be adopted as soon as possible.

## **Background**

The California Environmental Quality Act (CEQA) is intended to ensure significant environmental impacts from any public and private projects are mitigated.<sup>2</sup> Regulations interpreting and implementing CEQA are defined as “guidelines.”<sup>3</sup> CEQA and CEQA guidelines require the state or local governmental agency with primary permitting authority over the project to approve an environmental document. Generally, the primary agency can issue one of the following documents:<sup>4</sup>

- Notice of exemption: For projects categorically exempted from the Act. There were 6,078 Notices of Exemption filed with the state in 2003.<sup>5</sup>
- Negative declaration: For projects that will not have a significant environmental effect. These include “mitigated negative declarations” for projects where the proposed plan will resolve any significant effects. There were 2,572 negative declarations filed in 2003.<sup>6</sup>
- Environmental Impact Report (EIR): For projects with significant environmental effects. There were 577 environmental impact reports filed in 2003.<sup>7</sup>

There are significant monetary and time differences between a Negative Declaration (including mitigated negative declarations) and an EIR. For a medium-size project, an EIR costs between \$150,000 to \$200,000 and takes about 18 months to prepare. A negative declaration or mitigated negative declaration for the same project will take just four months to prepare and cost about \$30,000.<sup>8</sup>

A working group representing a broad spectrum of interests was convened in 1995 to develop changes to the guidelines to bring them up to date with changes in legislation and court rulings.<sup>9</sup> In August 2003, the Resources Agency drafted amendments to 25 sections of the guidelines. These amendments would allow many medium-sized projects which now require a full Environmental Impact Report to proceed with a negative declaration or mitigated negative declaration.<sup>10</sup> The amendments were crafted to reduce ambiguity in the current regulations regarding whether a negative declaration is adequate or whether a full EIR should be required.<sup>11</sup> The changes were also adopted with an eye toward more uniform court rulings

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regarding which type of approval is appropriate.<sup>12</sup> In addition, the amendments keep issues addressed in earlier EIRs from having to be reexamined.<sup>13</sup>

For these and other technical reasons, public and private development representatives have urged prompt adoption of the amendments.<sup>14</sup> If the amendments are not adopted by the deadline of August 22, 2004, the process of amending them will have to start from scratch, since that will be the end of the one-year review period allowed under CEQA.<sup>15</sup> These same groups and developers have also identified new guideline amendments needed because of court decisions handed down since the pending amendments were drafted. Therefore, they all recommend that a working group representing a broad spectrum of interests be convened to commence work on those changes. This was the approach that was taken in adopting the 1998 Amendments, which allowed consensus to be achieved on a broad range of issues.<sup>16</sup>

### ***Recommendations***

- A. The Governor should direct the Resources Agency, or its successor, to adopt draft amendments to the pending California Environmental Quality Act guidelines.**
  
- B. The Resources Agency, or its successor, should convene a working group of environmental law specialists, from within and outside of state government. After the pending guideline amendments are adopted to develop further recommendations to update the guidelines.**

### ***Fiscal Impact***

Adopting the pending amendments and further updating the guidelines would provide a stimulus to California's economy. Most development projects are generated by the private sector. The amended guidelines could shave up to a year off the time it now takes to approve those projects and reduce costs. The economic benefit to the state, and resulting increase in revenues, cannot be estimated but would likely be significant.

For projects initiated by state agencies, \$120,000 would be saved for each project that could proceed with negative declaration instead of having to complete a full EIR. About 57 state projects required full EIRs in 2003. If one-third of these projects requiring EIRs had been able to proceed instead with a negative declaration, about \$2.3 million (\$376,000 General Fund) could have been saved.



**General Fund**  
(dollars in thousands)

Fiscal Year	Savings	Costs	Net Savings (Costs)	Change in PYs
2004–05	\$376	\$0	\$376	0
2005–06	\$376	\$0	\$376	0
2006–07	\$376	\$0	\$376	0
2007–08	\$376	\$0	\$376	0
2008–09	\$376	\$0	\$376	0

Note: The dollars and PYs for each year in the above chart reflect the total change for that year from FY 2003–04 expenditures, revenues and PYs.

**Other Funds**  
(dollars in thousands)

Fiscal Year	Savings	Costs	Net Savings (Costs)	Change in PYs
2004–05	\$1,904	\$0	\$1,904	0
2005–06	\$1,904	\$0	\$1,904	0
2006–07	\$1,904	\$0	\$1,904	0
2007–08	\$1,904	\$0	\$1,904	0
2008–09	\$1,904	\$0	\$1,904	0

Note: The dollars and PYs for each year in the above chart reflect the total change for that year from FY 2003–04 expenditures, revenues and PYs.

## Endnotes

- <sup>1</sup> California Office of Administrative Law, "California Regulatory Notice Register," Register 2003, No. 34-Z (Sacramento, California, August 22, 2003), p. 1295.
- <sup>2</sup> Hon. John T. Knox, former Chairman of the Assembly Local Government Committee and co-author of the California Environmental Quality Act, as quoted in "Report of the CEQA Workgroup," Bay Area Council, p. 1, February, 1996, <http://www.bayareacouncil.org/opinions/CEQAawkgrrprt.pdf> (last visited April 26, 2004).
- <sup>3</sup> Pub. Res. C. Section 21087 (a).
- <sup>4</sup> Governor's Office of Planning and Research, Overview of the California Environmental Review and Permit Approval Process, [http://ceres.ca.gov/topic/env\\_law/ceqa/guidelines/intro.html](http://ceres.ca.gov/topic/env_law/ceqa/guidelines/intro.html) (last visited March 22, 2004).
- <sup>5</sup> Report printed on April 26, 2004, State Clearinghouse CEQA Database, Governor's Office of Planning and Research.

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- <sup>6</sup> Report printed on April 26, 2004, State Clearinghouse CEQA Database, Governor's Office of Planning and Research.
- <sup>7</sup> Report printed on April 26, 2004, State Clearinghouse CEQA Database, Governor's Office of Planning and Research.
- <sup>8</sup> Interview with James Moose, Remy, Thomas, Moose & Manley, Sacramento, CA (May 7, 2004).
- <sup>9</sup> Interview with Maureen Gorsen, Deputy Secretary for Law Enforcement and Counsel, California Environmental Protection Agency (March 15, 2004).
- <sup>10</sup> Interview with James Moose, Remy, Thomas, Moose & Manley, Sacramento, CA (May 7, 2004).
- <sup>11</sup> Interview with Maureen Gorsen, Deputy Secretary for Law Enforcement and Counsel, California Environmental Protection Agency (March 15, 2004).
- <sup>12</sup> Interview with Albert I. Herson, Vice President, Science Applications International Corporation, Sacramento, CA (April 1, 2004).
- <sup>13</sup> California Regulatory Notice Register, August 22, 2003; California Resources Agency, "Proposed Amendments to CEQA Guidelines," section 15152, <http://www.ceres.ca.gov> (last visited April 26, 2004).
- <sup>14</sup> In addition to the individuals named above, Ms. Gorsen, Mr. Herson, Mr. Moose and Mr. Taylor, public agency representatives interviewed who discussed impediments to public projects caused by the current status of CEQA include Gary Winter, Chief, Department of Transportation Division of Environmental Analysis (March 23, 2004) and Bruce Behrens, Chief Deputy Director (acting), Department of Transportation (April 15, 2004).
- <sup>15</sup> Gov.C. Section 11346.4(b) requires that regulations must be adopted within one year after publication in the California Regulatory Notice Register.
- <sup>16</sup> Interviews with Susan Brandt-Hawley, Glen Ellen, CA (March 25, 2004); Albert I. Herson, Science Applications International Corporation, Sacramento, CA; Maureen Gorsen, Deputy Secretary for Law Enforcement and Counsel, CalEPA; James Moose, Remy, Thomas, Moose & Manley, Sacramento, CA (April 7, 2004).



# Consolidate Responsibility for Hazardous Materials and Hazardous Waste Under One Agency

## **Summary**

Hazardous materials and hazardous waste regulatory responsibilities are divided between the Office of Emergency Services (OES) and the California Environmental Protection Agency (Cal-EPA). The mission and organizational structure of OES does not support the implementation, maintenance and oversight of hazardous materials and hazardous waste programs conducted by its local government partners. Responsibility for these programs should be transferred to Cal-EPA where staff is dedicated to regulatory, inspection, enforcement and other activities necessary to support these programs.

## ***The unified hazardous materials program created in 1994***

In 1994, the Legislature created a Unified Hazardous Waste and Hazardous Materials Management Regulatory Unified Program to consolidate and coordinate the activities of six separate hazardous materials programs under the direction of the Secretary for Environmental Protection.<sup>1</sup> State law makes the Secretary responsible for coordinating the activities of four separate state agencies and 86 local government agencies and for ensuring these government agencies implement the Unified Program in a consistent manner.

## ***Not all unified program elements directly controlled by the environmental secretary***

The Department of Toxic Substances Control (DTSC), the State Water Resources Control Board, the Office of Emergency Services and the Office of the State Fire Marshal are responsible for statewide policy development and oversight of local unified program agencies. Of these four state agencies, DTSC and the Water Board are part of Cal-EPA, while OES and the Office of the State Fire Marshal (SFM) are not.

SFM is responsible for implementation of the Uniform Fire Code, of which only a single section is part of the Unified Program. As a result, the fire marshal plays a small role in the oversight and implementation of the Unified Program.

OES, however, has statewide regulatory oversight for the Hazardous Materials Business Plan and the California Accidental Release Prevention Program, which are implemented by local Certified Unified Program Agencies (CUPAs).<sup>2</sup> Both of these programs are part of parallel federal programs implemented by the U.S. Environmental Protection Agency (U.S. EPA).<sup>3</sup> The U.S. EPA does not conduct separate programs in California; instead, it exercises some oversight of the program, but relies on the state's program to meet federal requirements.

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OES is also responsible to assure statewide consistency in the implementation of the Business Plan and the Accidental Release Program, including coordinating the programs with U.S. EPA's oversight. At the same time, state law makes the Secretary for Environmental Protection responsible for ensuring both the Business Plan and Accidental Release programs are coordinated with other Unified Program elements.

### ***The mission of the Office of Emergency Services***

The primary mission of OES is to coordinate overall state agency response to disasters in support of local government disaster response. The office is responsible for assuring the state is ready to respond to and recover from natural, manmade and war-related emergencies, and to assist local governments in their emergency preparedness, response and recovery efforts.

The implementation, maintenance, and oversight of the Business Plan and Accidental Release Program are not part of OES' primary disaster response coordination mission and, as a result, appear to be given lower priority.

### ***Office of Emergency Services' focus diverted by 9/11 needs***

On several occasions, members of OES's hazardous materials unit have been diverted from Unified Program work for extended periods to fulfill a disaster response role, including Y2K preparedness activities; the 2001–2002 energy crisis; the 2003 Southern California fires and related floods; and the 2004 San Simeon earthquake.

Since the terrorist attacks on September 11, 2001, OES has been focused on preparedness and response associated with potential terrorist acts in California, not on implementation of the regulatory programs discussed above. The need for OES to focus on its homeland security responsibilities requires that it redirect staff away from regulatory responsibilities. This leaves local agencies without the necessary program guidance, support and oversight needed to assure the program is implemented consistently throughout the state.

This OES redirection of staff results in inconsistent application of the Business Plan and California Accidental Release Prevention Program laws.<sup>4</sup> That observation was addressed in Cal-EPA's three-year program evaluation of the Certified Unified Program Agencies that implement hazardous material programs locally. Over the last three years, the evaluations have shown that 75 percent of local implementing agencies are conducting the programs for which OES serves as the lead, while 100 percent of the local agencies are implementing the four Unified Program elements under Cal-EPA's direct control.<sup>5</sup>

One explanation for this inconsistent program implementation is found in a letter from Michael Dorsey, Chair of the California CUPA Forum Board the representative body for all of the Unified Program agencies. In his June 2003 letter, Dorsey stated "...we are consistently hearing . . . from OES staff that they are being pulled away from Unified Program activities to address other OES functions such as legislation, bio-terrorism and homeland security to name



a few. In the meantime, local Unified Program Agencies are left with developing their own guidelines, training programs and coordinating legislative and regulatory issues related to HSC [Health and Safety Code] Chapter 6.95 with little or no support from OES.”<sup>6</sup> Recent budget reductions along with increased disaster response and preparedness responsibilities may compound OES’s inability to fully support the Unified Program.

### ***Office of Emergency Services is not a regulatory enforcement agency***

OES is not a regulatory enforcement agency; it has not developed enforcement capabilities to ensure businesses are in compliance with the Business Plan and Accidental Release programs, nor is it able to support the enforcement activities local programs are required to implement. Furthermore, legal interpretations necessary to implement, enforce and comply with the Business Plan and Accidental Release Prevention programs are routinely subject to delay because the Office of Emergency Services has only one attorney, and that attorney is primarily focused on disaster preparedness and response issues, not on the hazardous materials programs. The limited legal staff support at OES for this regulatory program is contrasted to Cal-EPA, which has 60 or more attorneys available to support the regulatory programs they help to implement.

### ***The California Environmental Protection Agency structure facilitates regulatory oversight***

Cal-EPA is organized to implement, maintain and oversee regulatory programs. The agency has “delegated authority” to implement federal programs and it maintains a close working relationship with both U.S. EPA and the local implementing agencies. Cal-EPA dedicates staff to regulatory activities, inspection and enforcement activities and other activities necessary to implement, maintain and oversee its regulatory programs.

For example, within Cal-EPA, the Department of Toxic Substances Control and the Water Board are responsible for Unified Program elements. The Water Board oversees underground petroleum tank regulations, providing guidance and direction to local unified programs daily. This proactive approach enables state and local agencies to effectively regulate more than 50,000 underground storage tanks. The Department of Toxic Substances Control is responsible for the Hazardous Waste Generator Program, providing similar daily guidance and oversight to local program personnel. The Hazardous Waste Generator Program encompasses more than 60,000 sites and addresses many of the same regulatory issues as OES’s Hazardous Materials Program.<sup>7</sup> In contrast to OES, all Cal-EPA programs conduct and implement regulatory programs that include regulatory functions such as permitting, inspecting and taking enforcement actions.

The active oversight and support of local unified programs by these two Cal-EPA departments has resulted in full program implementation. Having both of these departments under the

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Secretary for Environmental Protection also provides a higher level of accountability to ensure the programs are properly implemented.

### ***Recommendation***

**The Governor should work with the Legislature to amend appropriate sections of Chapter 6.95 of the California Health and Safety Code to transfer the authority and responsibility for the Business Plan and the Accidental Release Prevention programs from the Office of Emergency Services to the California Environmental Protection Agency, or its successor, including making conforming budgetary changes.**

This transfer of authority and responsibility will align the functions of the Office of Emergency Services and Cal-EPA with their respective missions and priorities. Transferring the Business Plan and Accidental Release programs to Cal-EPA will result in improved oversight of both programs and closely duplicate the organizational model of the federal hazardous material programs within U.S. EPA.

### ***Fiscal Impact***

The Business Plan and Accidental Release programs are funded by the Unified Program Account, a special fund that receives revenue from fees charged to regulated businesses. The transfer of authority and responsibility for the Business Plan and Accidental Release programs from OES to Cal-EPA will not result in any net savings or costs to the Unified Program Account. The positions responsible for administering these programs, along with funding from the Unified Program Account, would be moved from OES to Cal-EPA.

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## **Endnotes**

<sup>1</sup> *Health and Safety Code, Chapter 6.11, Sections 25404–25404.8.*

<sup>2</sup> *Health and Safety Code, Chapter 6.95, Article 2, Section 25543.*

<sup>3</sup> *Code of the Laws of the U.S.A. Title 42, Chapter 116.*

<sup>4</sup> *Letter from Michael Dorsey, Chairman, California Certified Unified Program Agencies Forum, to Larry Matz, Chief, Unified Program Section, California Environmental Protection Agency (June 21, 2003).*

<sup>5</sup> *California Environmental Protection Agency, “Annual Unified Program Report” (Sacramento, California, January 2004).*

<sup>6</sup> *Letter from Michael Dorsey.*

<sup>7</sup> *State of California, “Annual Unified Program Report,” Office of the Secretary (January 2004).*



# Improve the Timber Harvest Plan Development and Review Process

## **Summary**

Although the volume of timber harvested in California has declined over the years, the timber industry still plays an important role in California's economy. Multi-agency oversight combined with stringent environmental laws has made the process of reviewing and approving timber harvests on private lands increasingly complex, costly and contentious. Improvements are needed to streamline the process to ensure that departments focus on projects that pose the highest risk to wildlife and assess the cumulative environmental impacts of multiple timber harvests in the same area.

## **Background**

### **California's timber industry in decline**

The volume of timber harvested in California was cut in half—from 4 billion board feet to 2 billion board feet—from 1990 to 2000.<sup>1</sup> From 1997 until 2001, the cost to prepare a Timber Harvest Plan (THP) nearly doubled while the number of plans approved dropped by 30 percent, the number of acres logged dropped by 50 percent and the number of mills operating in California fell by 26 percent.<sup>2</sup> The number of plans approved over the last four years continued to decline, from 771 to 555, although the acreage being logged has increased from 170,000 acres to about 190,000 acres.<sup>3</sup>

Even if the acreage being logged has stabilized in recent years, the general decline of the timber industry in California has consequences. Population increases and the demand for new housing have increased California's need for lumber and, according to an investigative report by the Sacramento Bee: "The logging never really stopped; it just moved to Canada [where nine out of 10 forested acres is clear cut]."<sup>4</sup> Forestry Association representatives believe that California's process is the most stringent in the nation, more stringent even than forest management in the largest lumber producers in the United States—Oregon and Washington. From that perspective, California's environmental laws are more protective than the alternatives, they argue. And the decline in California timber operations will continue and may accelerate if the process is not streamlined.<sup>5</sup>

### **Multi-agency oversight**

Timber harvesting in California is overseen by multiple state agencies to address the variety of potential impacts logging has on the environment. The process starts with the preparation of a THP by a private registered professional forester who submits the plan to the California Department of Forestry (CDF) for review. The CDF serves as the lead agency and coordinates the THP review process with the Departments of Conservation and Fish and Game, and

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Regional Water Quality Control Boards. The Department of Conservation is concerned with hillside and slope stability to prevent slides and excessive erosion after the trees are harvested. The Department of Fish and Game is concerned with impacts to wildlife and wildlife habitat, and may issue permits for road construction across streams and incidental take permits when endangered species habitat is involved. Regional water boards are concerned with how the planned tree harvest impacts water quality.<sup>6</sup>

Although as many as 11 state, local and federal agencies may offer comments on THPs, California's forestry laws give CDF the ultimate authority to approve or deny timber harvesting.<sup>7</sup> That authority could be considered at odds with other provisions of state and federal law. For instance, the federal Clean Water Act and the state's Endangered Species Act provide California's State Water Resource Control Board and the Department of Fish and Game with principal responsibility for water quality and wildlife habitat, respectively, and both water quality and wildlife can be impacted by timber harvesting operations.<sup>8</sup>

### ***Past criticism of the timber harvest plan review process***

In 1994, the Little Hoover Commission (Commission) issued a report reflecting widespread dissatisfaction over the THP review process, indicating that the Department of Fish and Game thoroughly reviewed only 20 percent of THPs, and that the process was growing increasingly contentious. Among the complaints: uncoordinated multi-agency oversight and rising costs; a project-by-project approach to the planning process; and inadequate resources for conducting plan reviews.<sup>9</sup>

The Commission's 1994 report noted that Department of Fish and Game's approach to THP review was not systematic, and failed to focus on those plans that might represent the greatest risk to wildlife. THPs represent only a snapshot of a portion of the ecosystem, inhibiting any informed approach to the selective reviews Fish and Game officials say they must conduct. It also prevents assessment of cumulative impacts of multiple THPs in the same ecosystem.<sup>10</sup> The report characterized department and agency priorities as process-oriented and not focused on the actual outcomes of the environmental protection measures required in Timber Harvest Plans.<sup>11</sup>

According to interviews with logging interests, Fish and Game officials, regional water board representatives and CDF officials, things have not changed much in 10 years.<sup>12</sup>

The CDF officials say that they have instituted some extensive monitoring programs that show promise, but those programs are performed on a limited basis.<sup>13</sup> Today, Fish and Game officials say the department reviews all THPs for California's North Coast to determine which THPs require a fuller review, including site visits before and after timber harvesting. The Department of Fish and Game contends, however, that up to 40 percent of THPs for the North Coast region need a full review, even though only half that many can be done with existing resources.<sup>14</sup>



### **Legal impediments to a single authority**

Although CDF has final approval authority for THPs, the federal Clean Water Act places conditions on California's ability to vest water quality responsibility with any agency other than the State Water Resources Control Board. Authority for administering the Clean Water Act and meeting federal clean water standards is delegated to the State Water Board and its nine regional water boards.<sup>15</sup> So in order for California to transfer authority over water quality to the CDF for the purpose of approving timber harvesting plans, the state is required to have its forestry practices designated as "best management practices" by the U.S. Environmental Protection Agency (U.S. EPA). Despite attempts to receive U.S. EPA certification of California's forestry practices as best management practices, that certification has not been granted.<sup>16</sup> And U.S. EPA officials say certification is unlikely.<sup>17</sup>

While U.S. EPA certification was being sought, the mechanism used by the state to transfer authority over water quality for timber harvesting was a 1988 management agreement between the State Water Board and CDF. Under the agreement, regional water boards would comment on THPs, and, for approved THPs, provide a waiver of water discharge requirements.<sup>18</sup> This arrangement was made moot when legislation was enacted in 1999 requiring the State Water Board to review all waivers it was providing for water discharge permits—including the waivers provided under the 1988 management agreement for THPs. And in 2003, legislation was enacted prohibiting regional water boards from ceding authority over water quality determinations to CDF all together.<sup>19</sup>

Water quality officials report that 90 percent of the water bodies along California's North Coast are considered "impaired"—largely because of sediment.<sup>20</sup> Water bodies are considered impaired under state and federal law when they fail to support beneficial uses such as providing a healthy habitat for fish and wildlife, recreation and human consumption. Accelerated soil erosion, caused by the loss of trees and vegetation when timber is logged from hillsides is considered a possible major contributor to sediment loads in tributaries and rivers along the North Coast. The compromised water quality is impacting wildlife. The presence of endangered or threatened species, including the coho salmon, in particular raises concerns that water quality is being impacted by timber harvesting.<sup>21</sup>

### **Disputes and agreement**

While there is agreement on the need to address these environmental concerns, there is dispute about the degree to which timber harvesting poses a threat to the environment. And there is disagreement about whether conditions are improving or getting worse.<sup>22</sup> Industry representatives and state officials simultaneously make the case for an environmental planning process and its scientific approach that is unparalleled in the nation, and nascent in its understanding of water bodies. Representatives of the timber industry claim that California has the most sophisticated and validated hill-slope analysis methods in the nation.<sup>23</sup> But, water quality officials say the data used to judge the health of a water body, and techniques

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used to forecast progress toward clean water and to pinpoint the source of contamination are still being developed.<sup>24</sup>

The lack of long-term data and the reliance on professional judgment as the basis for making critical policy judgments means these disagreements are likely to persist.<sup>25</sup> Monitoring for water quality indicators will take time to determine the direction of water quality indicators (are things getting better or worse) and space (an adequate monitoring area to determine both the source of sediment and its cumulative effects). Regulators express concerns that using the current THP model to monitor water quality on a “parcel-by-parcel” basis does not provide enough “space” to develop accurate information about the cumulative impacts of different timber harvesting operations and other activities occurring in the same watershed.<sup>26</sup>

Despite fundamental disagreements over some issues, state officials and forestry industry representatives find common policy ground at times, including:

- The need for Timber Harvest Plan review to use a “watershed approach,”
- The need for monitoring, and
- The desire to use adaptive management tools.<sup>27</sup>

Achieving consensus on environmental standards to be used in assessing timber harvesting plans has been difficult.<sup>28</sup> There are, however, some private partnerships that have been forged between timber associations and environmental groups that have led to the development of standards that may serve as the basis for expedited reviews of timber harvesting plans. For instance, the American Tree Farm System, which claims 65,000 members nationwide and 7,000 volunteer foresters who provide private monitoring of certified tree farm operations, collaborates with the Environmental Defense organization.<sup>29</sup> Using its standards as a basis for a better framework for developing and evaluating THPs may streamline the review process, while better assessing the cumulative impacts that timber harvesting has on the environment.

## **Recommendations**

### **A. The Governor should work with the Legislature to amend the Z’Berg Nejedly Forest Practice Act of 1973 (Public Resources Code Section 4511 et seq.) to:**

- Exempt timber harvest operations deemed to have “low consequence” to help state agencies prioritize workload and focus on the projects that represent the greatest risk to the environment (exemptions should include Christmas tree farms; projects of one acre or less; projects of three acres or less when the land is already under the jurisdiction of a local land use agency; and nonindustrial timber of less than 10,000 acres;
- Extend the life of Timber Harvest Plans in recognition of the need to monitor operations over time and to allow a greater opportunity for the incorporation of adaptive management techniques;
- Consider accepting and approving Timber Harvest Plans drafted pursuant to a set of independently developed, environmental forestry standards; groups like the



American Tree Farm System and the Sustainable Forest Initiative can be looked to as examples.

**B. The Governor should direct the Secretary of the California Environmental Protection Agency, or its successor, and the Secretary of the Resources Agency or its successor to:**

- Establish a new agreement between the California Department of Forestry, or its successor, and the State Water Quality Control Board to ensure that the provisions of SB 810 of 2003, which provide water quality regulators with independent permitting authority, can operate within the context of the multi-agency review that existed prior to 2003; this will enable state agencies to coordinate activities and provide the timber industry with a single point of regulatory oversight.
- Incorporate adaptive management techniques that allow for changes in environmental mitigation measures or timber harvesting operations when monitoring data indicates that changes are warranted.

### ***Fiscal Impact***

The recommendations to exempt “low consequence” timber harvest operations and to use independently developed, environmental forestry standards to approve THPs would free staff and resources to focus on the projects that represent the greatest risk to the environment. The fiscal impact cannot be estimated at this time.

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### **Endnotes**

- <sup>1</sup> Interview with David Bischel, president, Mark Rentz, vice president of Legal Affairs, California Forestry Association (March 22, 2004 and April 12, 2004).
- <sup>2</sup> Interview with David Bischel and Mark Rentz.
- <sup>3</sup> California Department of Forestry, “Calendar Harvesting Information Through December,” (Sacramento, California, 2001 & 2003).
- <sup>4</sup> Tom Knudson, “Scaring the Boreal,” “Sacramento Bee” (April 27, 2003). “State of Denial,” special section, p. 11.
- <sup>5</sup> Interview with David Bischel and Mark Rentz.
- <sup>6</sup> Interview with Frank Reichmuth, assistant executive officer, and Catherine Kuhlman, executive officer, North Coast Region, Regional Water Quality Control Board (May 21, 2004).
- <sup>7</sup> Z’Berg Nejedly Forest Practice Act of 1973 (Public Resources Code Section 4582.7).
- <sup>8</sup> California Senate Office of Research. “Timber Harvesting and Water Quality.” “Forest Practices Rules Fail to Adequately Address Water Quality and Endangered Species” (Sacramento, California, December 2002), p. 3.
- <sup>9</sup> Little Hoover Commission, “Timber Harvest Plans: A Flawed Effort to Balance Economic and Environmental Needs, Report #126,” (Sacramento, California, June 8, 1994).
- <sup>10</sup> Little Hoover Commission, “Timber Harvest Plans: A Flawed Effort to Balance Economic and Environmental Needs, Report #126.”

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- <sup>11</sup> Little Hoover Commission, "Timber Harvest Plans: A Flawed Effort to Balance Economic and Environmental Needs, Report #126."
- <sup>12</sup> Interview with David Bischel and Mark Rentz; interview with Frank Reichmuth and Catherine Kuhlman; and interview with Ron Rempel, deputy director, Habitat Conservation Division, California Department of Fish and Game (April 20, 2004).
- <sup>13</sup> Interview with Dennis Hall, chief, Forest Practice, Department of Forestry (April 19, 2004).
- <sup>14</sup> Interview with Ron Rempel.
- <sup>15</sup> California Senate Office of Research. "Timber Harvesting and Water Quality." "Forest Practices Rules Fail to Adequately Address Water Quality and Endangered Species," pp. 4–5.
- <sup>16</sup> California Senate Office of Research. "Timber Harvesting and Water Quality." "Forest Practices Rules Fail to Adequately Address Water Quality and Endangered Species," p. 5.
- <sup>17</sup> Interview with Doug Eberhardt, chief, Clean Water Act Office of Standards and Permits, Region IX, United States Environmental Protection Agency (May 11, 2004).
- <sup>18</sup> California Senate Office of Research. "Timber Harvesting and Water Quality." "Forest Practices Rules Fail to Adequately Address Water Quality and Endangered Species," p. 6.
- <sup>19</sup> SB 390 (Chapter 686, Statutes of 1999) and SB 810 (Chapter 900, Statutes of 2003).
- <sup>20</sup> Interview with Frank Reichmuth and Catherine Kuhlman.
- <sup>21</sup> Interview with Frank Reichmuth and Catherine Kuhlman.
- <sup>22</sup> Interview with Frank Reichmuth and Catherine Kuhlman.
- <sup>23</sup> Interview with David Bischel (May 9, 2004).
- <sup>24</sup> Interview with Frank Reichmuth and Catherine Kuhlman.
- <sup>25</sup> Interview with David Bischel and Mark Rentz (March 22, 2004 and April 12, 2004); interview with Frank Reichmuth and Catherine Kuhlman; and interview with Ron Rempel.
- <sup>26</sup> Interview with Frank Reichmuth and Catherine Kuhlman.
- <sup>27</sup> Interview with David Bischel and Mark Rentz; interview with Frank Reichmuth and Catherine Kuhlman; and interview with Ron Rempel.
- <sup>28</sup> Dan Walters, "We want and need lumber, but balk at cutting trees," "Sacramento Bee" (July 7, 2004), p. A-3.
- <sup>29</sup> Environmental Defense, "Forest Landowner Funding Diverted and Cut," May 2004, <http://www.environmentaldefense.org/article.cfm?contentid=3774> (last visited June 14, 2004); and American Tree Farm System "Forests for Watershed and Wildlife, 2004," <http://www.treefarmssystem.org/conservationprojects/index.cfm> (last visited June 14, 2004).



# Promote Smart Growth Through Land Recycling

## **Summary**

Many properties in California remain idle or underutilized because of real or perceived contamination. Putting these properties back into productive use requires commitment of public and private sector resources an inventory of sites and changes to state law and regulation.

## **Background**

Land recycling is part of an overall “smart growth strategy” that discourages suburban sprawl in favor of “urban infill”—new development or redevelopment in urbanized areas. “Brownfields” (contaminated property sitting empty and idle because of pollution or perceived pollution) present the greatest challenge to urban infill, especially when the cost of cleanup and the threat of liability outstrip the profit or return on the purchase, required to put the property into productive use.

An estimated 67,000 to 119,000 properties statewide remain idle or underutilized because of real or perceived environmental contamination.<sup>1</sup> A smart growth policy will require an aggressive rehabilitation program that includes: commitment of public and private resources; a comprehensive and accurate inventory of sites; and regulatory reform that encourages cleanup and reuse. When communities support the redevelopment of brownfields, it pays off in steady improvements in health and neighborhood safety, increased property values, new job opportunities and more efficient land use.<sup>2</sup>

## **Financing land recycling**

In areas with high market-value land, assessment and cleanup costs for contaminated property can be recovered from the property value increases resulting from development. In low market-value areas, public financing is needed to stimulate redevelopment. But California provides limited financial incentives for brownfields’ redevelopment compared to the federal government and other states.

## **State financing programs**

The state’s primary financial incentive is a forgivable loan of up to \$125,000 to assess property contamination through the Recycle Underutilized Sites (Cal ReUSE) Program. The Cal ReUSE program is a partnership between the State Treasurer’s Office of California Pollution Control Financing Authority, a nonprofit organization, a for-profit lending institution, and three city redevelopment agencies. In 2002, \$15 million was provided to Cal ReUSE for brownfields’ site assessment. The for-profit partner in this program is the California Environmental and

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Redevelopment Fund (CERF), a privately held lending institution backed by seven major banks. In addition to its partnership in the forgivable loan program for site assessments, CERF has a \$34.4 million fund that can expand to \$75 million for cleanup and cleanup-related purposes. CERF has loaned nearly \$20 million to public and private organizations for acquisition, cleanup, pre-development and construction at brownfields, in addition to assisting in providing forgivable loans worth \$1.25 million for site assessment through Cal ReUSE.<sup>3</sup>

Other brownfields' financial incentive programs include the Cleanup Loans and Environmental Assistance to Neighborhoods (CLEAN) and Financial Assurances and Insurance for Redevelopment (FAIR). Both programs are administered by the California Environmental Protection Agency's Department of Toxic Substances Control (DTSC), but both programs lack funding for new projects. The State Water Resources Control Board (State Board) provides limited funding to nine Regional Water Quality Control Boards (Regional Boards) and local agencies for cleaning up petroleum-contaminated sites from leaking underground storage tanks. The State Board also manages the Clean Water Revolving Fund that could sponsor brownfields' redevelopment under federal Title VI of the federal Clean Water Act.

### ***Local financing***

Some cities have used other funding sources for redevelopment. The city of Emeryville, for example, has used money from a Mello-Roos Community Facilities District to finance a broad range of capital improvement projects, including the cleanup of contaminated property.<sup>4</sup>

### ***Federal financing***

Federal funds play a key role in leveraging financial investments from the private sector to increase redevelopment activity.<sup>5</sup> Leveraging is typically done by issuing revenue bonds to increase the amount of funds available for projects. The Small Business Liability Relief and Brownfields Revitalization Act of 2002 expanded federal financial assistance for brownfields, including grants for assessment, cleanup, loans, and job training. Funding is provided to government, quasi-governmental agencies and non-profit organizations of up to \$1 million.<sup>6</sup>

### ***Grants***

Coalitions are allowed to apply for U.S. Environmental Protection Agency (U.S. EPA) revolving loan grants. The state could apply for a revolving loan fund grant by forming a coalition with regional or local entities, allowing the state to apply for a larger grant to be administered by the California Pollution Control Financing Authority.

Other brownfields' development grant opportunities are offered by the federal Department of Housing and Urban Development Brownfields Economic Development Initiative; the federal Economic Development Administration; the Federal Highway Administration; the federal Land and Water Conservation Fund; the federal Urban Park and Recreation Recovery



Program; the federal Urban Community Forestry Program; and the U.S. Army Corps of Engineers.<sup>7</sup>

### **Liability relief**

Another financial component of brownfields redevelopment is liability relief for prospective purchasers and innocent landowners. Recent federal reforms have focused on cleanup requirements and liability issues.<sup>8</sup>

Current state legislation, Senate Bill 493 introduced by Senator Cedillo, addresses liability issues by exempting prospective purchasers who did not contribute to contamination at the property and exempting owners of properties adjacent to contaminated sites from potentially expensive groundwater cleanup liability.<sup>9</sup> Opponents to the legislation fear the policy will limit potential funding sources to pay for groundwater cleanup. An alternative approach would be to provide developers with liability relief only when they acquire development rights through a long-term ground lease (typically 50 years or more), instead of purchasing the property.

For development purposes, long-term ground leases are an accepted alternative to actual purchase of a property. Under this “ground tenant” concept, ground-lease payment funding is used to support Internal Revenue Code Section 468B, tax-free settlement funding to pay for site cleanup costs.<sup>10</sup>

### **Financial incentives in other states**

Many states offer tax increment financing—from state income tax write-offs to anticipated sales tax revenue increase write-offs—and direct grants, low-interest revolving fund loans and bonds to local governments to finance brownfields redevelopment. Research shows that these economic incentives, coupled with liability relief and risk-based remediation, results in site cleanups and redevelopment.<sup>11</sup>

New Jersey’s tax incentive program encourages redevelopment agreements that allow for recovery of up to 75 percent of the cleanup costs for a contaminated site. The reimbursement comes from new state tax revenues generated by the project.<sup>12</sup> Twenty-five other states offer three or more financial incentives for brownfields’ redevelopment.<sup>13</sup> Michigan provides tax increment financing by Brownfields Redevelopment Authorities (BRA) through site-remediation revolving funds that gather funds from the tax revenues generated from property when its value increases after it is redeveloped to cover expenses on other properties within the jurisdiction.<sup>14</sup>

The tax increment model has not been tried in California, and some redevelopment agencies are reluctant to pursue the policy for brownfields cleanup. Cities are reluctant to surrender potential increases in property tax revenue to the state, and taking out a loan based on that potential tax revenue to fund cleanup is considered too risky.<sup>15</sup> But, as other states have

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demonstrated, using future revenue to fund a local revolving loan fund to pay all or a portion of cleanup costs is a successful tool that could be used in California.

There is no single strategy that will work for every project. Redevelopment projects are pursued when funding is available to developers.<sup>16</sup> Redevelopment of contaminated property is the same as any other real estate venture; if the project is not economically feasible or the developer cannot obtain financing, the project will not move forward. A recent New York University Environmental Law Journal article evaluating financial incentives for brownfields' redevelopment, evaluated various incentive programs, including property tax abatement, grants and low-interest loans for assessment and cleanup, and grants for site acquisition, building renovation and remediation. The case studies demonstrated that financial incentives do not always provide an adequate profit margin for redevelopment. The study concluded policymakers need to tailor incentives to meet the market-based realities of brownfields' redevelopment.<sup>17</sup> California should pursue all feasible financial incentive options for public and private sector developers to create a "toolbox" of brownfields financial incentives to be matched with identifiable properties amenable to public and private redevelopment.

### ***Inventory of sites***

California has an estimated 67,000 to 119,000 contaminated sites. The actual number is unknown because the information is not tracked by any state agency. DTSC and the State Water Board oversee cleanup of brownfields, but neither agency has a database that tracks the number of brownfields, the intended land use for cleaned up property, or any land use restrictions placed on contaminated or clean properties. By comparison, seven states now utilize Internet-based mapping systems available to the public that identify brownfields sites for redevelopment. Pennsylvania offers grants up to \$50,000 for cities and redevelopment authorities to conduct brownfields inventories. California's capacity to identify and track sites is not limited by technology; California simply lacks an agreed upon definition of a brownfield site.<sup>18</sup>

This situation may be changed soon; California recently received \$205,000 from a U.S. EPA brownfields grants to develop an inventory of brownfields sites.<sup>19</sup> These funds could be leveraged by forming a coalition with public and private entities for completing a brownfields' inventory. The coalition could develop a plan for how cities and counties would identify and report brownfields sites. This plan could also determine how additional funding could be obtained from U.S. EPA in subsequent grant funding cycles to achieve a complete inventory of petroleum and hazardous waste brownfields sites.

The Sacramento Area Council of Governments (SACOG), County of Sacramento, and City of Sacramento could be used as partners in a pilot project for collecting the information using SACOG's I-PLACE3S software. The I-PLACE3S software is an innovative planning tool that includes a mapping system to the parcel level in the six counties serviced by SACOG; the



system already provides computer-assisted quantification tools that help communities develop land-use plans, business development plans and transportation plans.<sup>20</sup>

### **Regulatory focus**

Historically, state and federal regulatory officials have looked at all contaminated sites in the same way, requiring developers to clean sites to pristine conditions or so-called “background levels.” This pursuit of complete eradication of all traces of contamination is almost always a costly, lengthy process.

In addition to its stringent standards, California employs an extremely fragmented regulatory framework for site cleanup. More than 100 local, state and regional agencies might serve as the principal regulatory agency responsible for overseeing environmental cleanup. This can lead to confusion and costly delays. One developer cited a 30-month delay in completing a housing project because the multiple local and state regulatory agencies could not come to an agreement on the necessary mitigation for potential future contamination that might affect the uncontaminated property.<sup>21</sup> The developer’s direct additional costs were \$200,000, with carrying costs of \$1.2 million more.

The state has 11 potential agencies with “primary” responsibility for overseeing contaminated site cleanup: DTSC, the State Water Board, and nine Regional Water Quality Control Boards. In addition, the California Integrated Waste Management Board oversees cleanup at some landfills that do not contain hazardous waste and the radiological unit at Department of Health Services (DHS) oversees radiological waste cleanups. Except for DHS, all of these state agencies oversee a multiplicity of local agencies that have the ability and authority to implement state requirements.

The State Water Board manages a contract with 50 local agencies known as Local Oversight Programs (LOPs) to oversee cleanup of leaking underground petroleum storage tanks. All petroleum releases from leaking tanks are the responsibility of one of the nine regional water boards or a LOP.<sup>22</sup> The regional boards also have program authority over chemical releases that threaten water quality and provides a cost reimbursement program for oversight costs. DTSC has a similar voluntary program.

This fragmentation of responsibility and overlapping and duplicative authority is not without costs—to the public and to the state. In February 2000, the Cal-EPA Secretary reported to the Legislature that “the degree of enmity between Boards, Departments and Offices varies and it is most severe between . . . those most directly involved with site licensing and clean-up activities.”<sup>23</sup>

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## **Recommendations**

### **A. Financing Land Recycling**

- A-1.** The Governor should request that the State Treasurer's California Pollution Control Finance Authority Cal ReUSE program apply for U.S. EPA Revolving Loan Fund Grants collaboratively with the Sacramento, Los Angeles, San Francisco Bay, and San Diego Regional Area Council of Governments. This could add \$5 million to the existing Cal ReUSE program in Fiscal Year 2005–2006.
- A-2.** The Governor should work with the Legislature to transfer \$13 million of unexpended, unencumbered recycling fees from the Litter Reduction and Bottle and Can Recycling program to the Pollution Control Finance Authority to provide a 20 percent guarantee on loans for brownfield properties and \$2 million to provide subsidies as part of the Financial Assurances and Insurance for Redevelopment (FAIR) environmental insurance program.
- A-3.** The Governor should work with the Legislature to transfer \$5 million in surplus funds from used oil recycling fees to clean up hazardous waste sites that are contaminated from petroleum releases.
- A-4.** The California Environmental Protection Agency (Cal-EPA), or its successor, to partner with local governments that have successfully used Mello-Roos tax dollars and tax increment financing to create local revolving loan funds for property acquisition and clean up, offering training in FY 2005–2006, for other cities that have not used this approach.
- A-5.** The Governor should work with the Legislature to establish a tax incentive program for brownfields redevelopment that allows for cost recovery of 75 percent of the cleanup costs through tax revenue generated as a result of increased property values.
- A-6.** The State Water Resources Control Board (SWRCB), or its successor, should modify its Underground Storage Tank Cleanup Fund criteria to make redevelopment a high priority for receiving reimbursement, to reimburse only risk-based cleanup levels appropriate for the anticipated land use, and to reimburse only for semi-annual groundwater monitoring beginning FY 2005–2006.
- A-7.** The Governor should work with the Legislature to allow public and private third-party entities to apply for reimbursement of cleanup costs from the Underground Storage Tank Cleanup Fund.<sup>24</sup>



- A-8. The SWRCB, or its successor, should expand the Clean Water Revolving Loan Program in FY 2005–2006, to include brownfields redevelopment, using the California Environmental and Redevelopment Fund (CERF) as the financial institution for linked deposit loans.
- A-9. The Governor should work with the Legislature to amend Senate Bill 493 this legislative session to provide groundwater cleanup liability relief for developers who acquire development rights through long-term ground leases with the ground lease payments used as an income stream to pay for groundwater cleanup without impacting the developer’s financial return on the development.

**B. Inventory of Sites**

- B-1. Cal-EPA, or its successor, should adopt the U.S. EPA’s definition of a brownfield by July 2004 to comply with a Bureau of State Audits finding recommending a standard definition of brownfield as a necessary prelude to creating an accurate database inventory of contaminated sites.<sup>25</sup> The state should develop an inventory and marketing strategy for reuse of contaminated properties by July 2004.
- B-2. Cal-EPA, or its successor, should use the \$205,000 grant it received from the U.S. EPA to upgrade its brownfields data management system to fund a pilot project with Sacramento Area Council of Government (SACOG), Sacramento County, and the city of Sacramento leveraging already available software, I-PLACE3S, to identify and catalog site data from Cal-EPA with current parcel data in Sacramento County in FY 2004–2005.<sup>26</sup>

**C. Regulatory Focus**

- C-1. The Governor should work with the Legislature to consolidate cleanup functions.
- C-2. Cal-EPA, or its successor, should use the California Unified Program Assistance (CUPA) and Local Oversight Programs (LOP) to allow capable and willing local agencies to make risk decisions based on review of a properly prepared site assessment. Cal-EPA should retain an audit function for those CUPAs and LOPs that participate in these activities starting in Fiscal Year 2005–2006.
  - Regulators for land recycling projects should be trained in basic real estate investment finance and development issues to better understand a developer’s perspective in Fiscal Year 2005–2006.

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- Developers and property owners should be allowed to pay for contractors to perform necessary environmental review for brownfields properties while retaining final approval authority for all cleanup projects at the state level, starting in Fiscal Year 2004–2005. This is likely to accelerate the redevelopment process without requiring the state to hire more staff under current fiscal constraints.

### ***Fiscal Impact***

#### A. Financing Land Recycling

A-1. This recommendation could increase federal funding for Cal ReUSE by \$5 million in Fiscal Year 2005–2006.

A-2, 3. These recommendations could increase special fund expenditures for brownfield and hazardous waste site cleanup programs by \$20 million in Fiscal Year 2005–2006. There are sufficient fund balances in the Beverage Container Recycling Fund and the Used Oil Recycling Fund for this purpose. These increases would be ongoing only to the extent that these surplus balances continue to be available for redirection.

A-4. This recommendation would have no fiscal impact.

A-5. The fiscal impact of this recommendation cannot be determined at this time.

A-6. This recommendation would reprioritize existing expenditures of Underground Storage Tank Cleanup Fund monies. As a result, there would be no fiscal impact.

A-7. The cost of providing cleanup reimbursements would be limited to the amount available in the fund for this purpose. As a result, there would be no fiscal impact.

A-8. This recommendation would increase the demand on the Clean Water Revolving Fund.

A-9. This would have no fiscal impact.

#### B. Inventory of Brownfield Sites

B-1, 2. The costs of these recommendations cannot be estimated at this time.

#### C. Regulatory Focus

C-1. Special fund cost savings could be achieved by reducing the number of administrative, executive and supervisory positions in the combined program



and by aggregating subordinate units into larger sections, branches, and divisions. This consolidation also will incur one-time relocation costs for headquarters staff housed in Sacramento. Full year savings would begin to be achieved in FY 2005–2006.

- C-2. This recommendation would result in significant costs for local government. However, these costs could be funded through fees. The auditing function of the state is estimated at \$200,000 for personnel costs; one position for northern California, one for southern California. However, this proposal also would result in savings to the state government due to reduced workload. These savings would offset the costs of the auditing function.

This recommendation would result in minor special fund costs to provide the necessary training. Approximately 200 staff would need to receive one day of training in FY 2005–2006. Future costs would be minimal as only new hires would need to be trained. In addition, the curriculum for this training has already been developed and is available from non-profit organizations.

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## Endnotes

- <sup>1</sup> California Center for Land Recycling (CCLR), “Background on the Need for Brownfields Remediation Financing Programs in California” (San Francisco, June 1999), p. 6.
- <sup>2</sup> Getting Ahead, “Urban Sprawl, Economic and Environmental Concerns Drive Land Recycling Activities Nationwide” (November 2002), [http://www.ewire.com/display.cfm?wire\\_id=1392](http://www.ewire.com/display.cfm?wire_id=1392) (last visited March 8, 2004).
- <sup>3</sup> California Environmental Redevelopment Fund, “Reasons to Invest in CERF: An Innovative Fund Providing Financial Solutions for Brownfields and Environmental Cleanup,” Sacramento, California, p. 2 (PowerPoint Presentation, 2002).
- <sup>4</sup> Interview with Ignacio Dayrit, project director, Department of Economic Development, City of Emeryville, Emeryville, California (March 4, 2004).
- <sup>5</sup> Cheryl Runyon, “National Conference of State Legislatures,” Financing Brownfields Cleanup and Redevelopment” (April 2003), <http://www.ncsl.org/programs/esnr/slr284.htm> (last visited June 21, 2004), p. 5.
- <sup>6</sup> United States Environmental Protection Agency, “Summary of the Small Business Liability Relief and Brownfields Revitalization Act,” <http://www.epa.gov/brownfields/html-doc/2869sum.htm>, pp. 1, 3–4 (last visited May 17, 2004).
- <sup>7</sup> Cheryl Runyon, “National Conference of State Legislatures,” (April 2003), <http://www.ncsl.org/programs/esnr/slr284.htm>, p. 5 (last visited June 21, 2004).
- <sup>8</sup> United States Environmental Protection Agency, “Summary of the Small Business Liability Relief and Brownfields Revitalization Act,” <http://www.epa.gov/brownfields/html-doc/2869sum.htm>, p. 1 (last visited May 17, 2004).
- <sup>9</sup> Senate Bill 493, Cedillo, Hazardous Materials, Liabilities, last amended January 26, 2004, p. 2.
- <sup>10</sup> Interview with Kevin Daehnke, Daehnke and Cruz, Irvine, California (May 19, 2004).

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- <sup>11</sup> National Round Table on the Environment and the Economy "Cleaning Up the Past and Building the Future, A National Brownfields Redevelopment Strategy for Canada" (Ottawa, Ontario, Canada, November 2003), <http://www.nrtee-trnee.ca> (last visited May 4, 2004).
- <sup>12</sup> Interview with Terry Smith, Environmental Liability Management, Princeton, New Jersey (April 23, 2004).
- <sup>13</sup> Charles Bartsch, and Rachel Deane, "Brownfields State of the States An End-of-Session Review of Initiatives and Program Impacts in the 50 States," Northeast-Midwest Institute (December, 2002), pp. 1–106.
- <sup>14</sup> Michigan Department of Environmental Quality, "Tax Increment Financing under the Brownfields Redevelopment Financing Act, 1996 PA 381, as Amended," [http://www.michigan.gov/deq/0,1607,7-135-3311\\_4110\\_23246---,00.html](http://www.michigan.gov/deq/0,1607,7-135-3311_4110_23246---,00.html) (last Visited May 4, 2004).
- <sup>15</sup> Interview with Ignacio Dayrit, project director, Department of Economic Development, City of Emeryville, Emeryville, California, March 4, 2004, and Steve Andrews, Los Angeles Redevelopment Agency (March 24, 2004).
- <sup>16</sup> Interview with Raymond L. Richardson, United States Housing and Urban Development, Los Angeles Regional Office (March 17, 2004).
- <sup>17</sup> Scott Sherman, "Government Tax and Financial Incentives in Brownfields Redevelopment: Inside the Developer's Pro Forma," "N.Y.U. Environmental Law Journal" (March 2003), p. 322.
- <sup>18</sup> California State Auditor, Bureau of State Audits, "California Environmental Protection Agency: Insufficient Data Exists on the Number of Abandoned, Idled, or Underused Contaminated Properties, and Liability Concerns and Funding Constraints Can Impede Their Cleanup and Redevelopment," Report 2002-121, July 2003, p. 57; Senate Bill 493, Cedillo, Hazardous Materials, Liabilities, last amended January 26, 2004, p. 2.
- <sup>19</sup> Letter from Dorothy Rice, deputy director, Department of Toxic Substances Control, to Melinda Taplin, Grants Management Section, United States Environmental Protection Agency (May 30, 2003).
- <sup>20</sup> California Energy Commission, "PLACE3S Information," <http://www.energy.ca.gov/places> (last visited June 2, 2004).
- <sup>21</sup> Interview with Lydia Tan, division vice president, Bridge Housing Corporation (March 12, 2004).
- <sup>22</sup> Health and Safety Code Chapter 6.7, and/or Water Code, Division 7.
- <sup>23</sup> California Environmental Protection Agency, "A Structural and Fiscal Review of the California Environmental Protection Agency," February 2000, p. 19.
- <sup>24</sup> Letter from Bob Wenzlau, P.E., Terradex, Inc., to California Performance Review (March 25, 2004).
- <sup>25</sup> California State Auditor, Bureau of State Audits Report 2002-121, p. 57.
- <sup>26</sup> Letter from Dorothy Rice, deputy director, Department of Toxic Substances Control, to Melinda Taplin, Grants Management Section, United States Environmental Protection Agency (May 30, 2003).



# Eliminate the Need for the California Integrated Waste Management Board to Approve Solid Waste Facility Permits

## **Summary**

The California Integrated Waste Management Board (Waste Board) performs an unnecessary role in the solid waste facility permitting process. Specifically, although local governmental entities have the legal authority and are certified by the Waste Board to issue solid waste facility permits, the Waste Board's concurrence is still needed before a permit is issued. Moreover, the Waste Board's role in the permitting process adds time and money on the part of local governmental entities and permit applicants without adding any significant value.

## **Background**

Local government agencies, known as local enforcement agencies (LEAs), issue permits to solid waste facilities including landfills, material recovery facilities/transfer stations, composting facilities and transformation facilities that burn solid waste to produce heat or electricity.<sup>1</sup> LEAs review permit applications for completeness and adequacy, write permits with conditions that protect public health and safety, and ensure compliance with the California Environmental Quality Act (CEQA). LEAs, certified by the Waste Board, and have the public and environmental health background and expertise to deal with pests such as mosquitoes and rodents, nuisances, daily operational issues and landfill gas. LEAs conduct monthly inspections of solid waste facilities and enforce permit terms and conditions; and the Waste Board inspects facilities every 18 months.<sup>2</sup>

The LEA permitting process is lengthy and thorough, including local land-use decisions, zoning, CEQA compliance and public hearings. Long before a facility can apply for a permit, it must be considered as part of an extensive local planning process. State law requires each county to prepare a Countywide Integrated Waste Management Plan (Waste Management Plan).

One component of the Waste Management Plan is a Countywide Siting Element identifying the types and possible locations of new or expanded solid waste facilities needed to provide a minimum of 15 years of permitted disposal capacity. Affected governmental agencies, the solid waste industry, environmental organizations, the general public and special districts have an active role in this planning process for solid waste programs and facilities in the region.<sup>3</sup>

In addition to the local role in permitting solid waste facilities, local air quality management districts deal with air quality impacts and the State Water Resources Control Board, through its

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Regional Water Quality Control Boards, have jurisdiction over water quality issues. All landfills are required to have permits issued by a regional board for waste discharge requirements, which govern significant design aspects of the landfill, such as leachate control, and regulate the disposal of wastes to land.<sup>4</sup>

### ***California Integrated Waste Management Board***

The six-member Waste Board works with local governments and the waste industry to manage the estimated 76 million tons of solid waste generated in California each year. The Waste Board's goal is to reduce waste, promote the management of all materials to their highest and best use, and protect public health and safety and the environment. The Waste Board has the legal authority to concur or object to the issuance of solid waste facility permits. To object to a permit, four board members must vote not to concur. If fewer than four members object, or if the Board does not act within 60 days, the LEA can issue the permit.<sup>5</sup>

By statute, the Waste Board has limited grounds on which it can object to a permit.<sup>6</sup> It can find that a permit is not consistent with state minimum standards; however, this is a determination that has already been made by the local agencies. It can also object if a facility does not comply with requirements of the regional water board, but, this is an issue the Regional Water Quality Control Boards already directly enforces.<sup>7</sup>

Over the past five years, the Waste Board concurred in 264 of the 272 solid waste facility permit applications it considered. Of the remaining eight, the Waste Board took no action within the 60 day time period, effectively concurring with the LEA.<sup>8</sup> In some cases, objections to permits have been raised by Waste Board members driven by issues related to landfill siting, rather than state minimum standards or water quality issues that are within the statutory purview of the Waste Board's decision-making authority.<sup>9</sup>

The Waste Board's involvement in the permit approval process adds unnecessary time and costs on local governments and permit applicants without adding value. The Waste Board has the authority to review CEQA documents for solid waste facilities and can raise concerns about these facilities during this process. In addition, the Waste Board can address inadequacies in the LEAs' performance such as writing permits that are not in the protection of public health and the environment, conducting inadequate inspections and allowing violations of state minimum standards, as part of its LEA certification authority.<sup>10</sup>

### ***Recommendation***

**The Governor should work with the Legislature to eliminate the requirement for the California Integrated Waste Management Board to concur in the issuance of solid waste facility permits.**



### **Fiscal Impact**

The Waste Board's state Fiscal Year 2004–2005 budget proposes 27 personnel years and \$2 million for permitting functions. The program is funded primarily from the Integrated Waste Management Account which is supported by fees paid to the state by solid waste facilities. Eliminating the concurrence function of the board would reduce 20 personnel years. Seven positions would be retained to assist LEAs with permit-related issues and required inspections of solid waste facilities.

### **SPECIAL FUND** (dollars in thousands)

<b>Fiscal Year</b>	<b>Revenue</b>	<b>Costs</b>	<b>Net Revenue</b>	<b>Change in PYs</b>
2004–05	\$1,481	\$0	\$1,481	(20)
2005–06	\$1,481	\$0	\$1,481	(20)
2006–07	\$1,481	\$0	\$1,481	(20)
2007–08	\$1,481	\$0	\$1,481	(20)
2008–09	\$1,481	\$0	\$1,481	(20)

Note: The dollars and PYs for each year in the above chart reflect the total change for that year from FY 2003–04 expenditures, revenues and PYs.

### **Endnotes**

- <sup>1</sup> Title 14 CCR, Division 7, Chapter 5, Article 2.2 and Public Resources Code Sections 43200(b) and 43209.
- <sup>2</sup> PRC Division 30, Part 4, Chapter 2, Sections 43218 and 43220.
- <sup>3</sup> Title 14 CCR, Division 7, Chapter 9, Article 6.5 and Public Resources Code Sections 41700, 41701, 41702 and 41721.
- <sup>4</sup> California Water Code Section 13260.
- <sup>5</sup> PRC Division 30, Part 4, Chapter 3, Section 44009(a)(1).
- <sup>6</sup> PRC Division 30, Part 4, Chapter 3, Section 44009(a)(2).
- <sup>7</sup> PRC Division 30, Part 4, Chapter 3, Section 44009(b).
- <sup>8</sup> E-mail from Howard Levenson, deputy director, Permitting and Enforcement Division, California Integrated Waste Management Board, to California Performance Review (March 19, 2004).
- <sup>9</sup> California Integrated Waste Management Board, Board Meeting Transcripts, (San Bruno Transfer Station), Sacramento, California, February 23, 2004; and Board Meeting Transcripts (Highway 59 Solid Waste Facility), Sacramento, California, January 23, 2001.
- <sup>10</sup> PRC Division 30, Part 4, Chapter 2, Section 43218.





# Abolish the Registered Environmental Assessor Program

## **Summary**

The Registered Environmental Assessor (REA) program was created to provide experienced and educated professionals to help businesses comply with environmental standards. Interest in the program has been limited and it has not produced any measurable enhancements in environmental protection for the state. Businesses use other means to help them comply with environmental standards making the REA program unnecessary.

## **Background**

The Department of Toxic Substances Control administers the REA program, which began in 1986 as a way to register environmental technicians who could help small and medium-size businesses comply with environmental laws and regulations.<sup>1</sup>

Originally, the program was a simple self-certification program. Applicants were required to have a college degree and practical experience in some facet of environmental protection. The program expanded in 1995 to add an REA II certification, a new class of assessors capable of independently investigating potential hazardous substance release sites for cleanup.<sup>2</sup> The program expansion was modeled after a Massachusetts program, which licenses professionals to oversee the investigation and cleanup of oil, gasoline and hazardous materials contamination. In Massachusetts, a board of registration administers written examinations to test applicants' technical and regulatory knowledge, and licensees must take continuing education courses. The board of registration also polices the licensees and takes appropriate enforcement actions where warranted.<sup>3</sup> This is how licensing programs are usually administered by states in order to provide protection to the public from unscrupulous operators.<sup>4</sup>

Unlike the Massachusetts program, there is no rigorous testing or continuing education requirements for California's program, nor is a license issued. California requires licensing for the other disciplines that are involved with supervising hazardous waste cleanups, including engineers, geologists and geophysicists. The REA application process merely involves submittal of a resume and four letters of reference. An REA program staff person contacts the references and verifies the academic degree.<sup>5</sup> The program is largely ministerial—processing credit card payments, updating the database, mailing reminders to existing environmental assessors to renew their certification and issuing new certifications.<sup>6</sup> There are 2,280 REA Is and 220 REA IIs.<sup>7</sup>

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State law provides for audits to validate the quality of the assessors' work. But because of staffing limitations, no audits have ever been conducted.<sup>8</sup> The program allows cleanup project proponents to file complaints against REAs for substandard work. Approximately 40 complaints have been received by the program, but none have been subjected to an official investigation.<sup>9</sup> During the same time period, the State Board of Geologists and Geophysicists has conducted almost a dozen enforcement actions against REAs for violations of the Business and Professions Code.<sup>10</sup>

With hundreds of sites being cleaned up each year, with thousands of professionals licensed and certified under the Department of Consumer Affairs available to assist the public in their cleanups, there is little justification to continue the REA program. The program's value as a service to the public is negligible and can end with no loss in environmental protection.

### ***Recommendation***

**The Governor should work with the Legislature to abolish the Registered Environmental Assessor program by amending Health and Safety Code Sections 25570–25570.4.**

### ***Fiscal Impact***

There will be no fiscal impact because the REA program is 100 percent fee supported. The fees will be eliminated and the positions redirected to other programs within the Department of Toxic Substances Control, which has funding available in the Hazardous Waste Control Account to support these positions.

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## **Endnotes**

<sup>1</sup> *Environmental Quality Assessment Act of 1986, SB 1785 (Craven), Health & S.C. Sections 25570–25570.4.*

<sup>2</sup> *California Expedited Remedial Action Reform Act of 1994 AB 1876, (Richter).*

<sup>3</sup> *Mass. Gov, "Board of Registration of Hazardous Waste Site Cleanup Professionals," <http://www.mass.gov/lsp> (last visited June 13, 2004).*

<sup>4</sup> *Interview with Paul Sweeney, executive officer, Board of Geologists and Geophysicists, Sacramento, California (April 15, 2004).*

<sup>5</sup> *Interview with Richard Bailey, unit chief, REA Program, Department of Toxic Substances Control, Sacramento, California (March 3, 2004).*

<sup>6</sup> *Interview with Linda Janssen, program manager, REA Program, Department of Toxic Substances Control, Sacramento, California (March 10, 2004).*

<sup>7</sup> *Interview with Richard Bailey.*

<sup>8</sup> *Interview with Linda Janssen.*

<sup>9</sup> *Interview with Richard Bailey.*

<sup>10</sup> *Interview with Paul Sweeney.*



# Streamline and Eliminate Duplicative Reporting for the Environmental Protection and Resources Agencies

## **Summary**

The California Environmental Protection Agency (Cal-EPA) and the Resources Agency are required by law to prepare hundreds of reports on program activities and accomplishments, many of which are duplicative, focus on programs or projects that are obsolete, or are of little or no interest to the Legislature or the public. These reports should be eliminated. Reports that continue to provide important information to the Legislature and the public should be posted on the Internet or published on compact discs, thereby reducing costs associated with a manual, paper-based process and making the information more readily available.

## **Background**

The boards, commissions, departments, and offices of Cal-EPA and the Resources Agency are required by state law to report to the Legislature, Governor's office, and control agencies on program-specific information. Some of this information is already reported by other agencies, is available on the Internet, or is obsolete. Some required reports include programs that are no longer funded, such as the Department of Toxic Substances Control's (DTSC) Cleanup Loans and Environmental Assistance to Neighborhoods (CLEAN) program. Other reports require information that has become obsolete such as the California Energy Commission's quarterly reporting of the amount of Methyl-tert Butyl Ether (MTBE) in gasoline, even though gasoline sold in California no longer contains MTBE.

Most reports were required to be done at a time when information was not readily available to interested parties on the Internet. Printing hard copies of reports uses large amounts paper and other resources, and the costs can easily run into the thousands of dollars for each report.<sup>1</sup>

Cal-EPA sponsored legislation to amend and repeal specific code sections related to environmental protection, and to require the California Integrated Waste Management Board to complete guidelines for all state agencies on how to best convert reports from paper to electronic format.<sup>2</sup> The bill has passed the Assembly and is currently in the Senate Environmental Quality Committee.

The following table was compiled from information submitted to the California Performance Review by Cal-EPA and Resources Agency staff. The table lists the code section, agency, and savings associated with repealing some legislative and executive reports.<sup>3</sup>

## California Environmental Protection Agency Reports to Repeal

Code Section	Entity	Description	Occurrence	Savings GF	Savings SF	Recipient	Personnel Years (PYs)	Notes
FAC 113144	DPR	Pesticide Contamination Prevention Act—Report on status of groundwater protection data gaps and the results for products screened by the specific numerical values.		\$625	\$1,875			
HSC 25174 (d)	DTSC	Program Accountability for Budget Act Appropriation—Summary of money and PY to operate specific DTSC programs.	Annually	3,500				
HSC 25244.11	DTSC	Hazardous Waste Reduction: Recycling and Treatment Grants—Summary of the status, funding, and results of all demonstration and research projects funded by specific DTSC grants for the research and development of waste reduction, recycling, or treatment technologies.	Annually	1,500				
HSC 25395.32	DTSC	Cleanup Loans & Environmental Assistance to Neighborhoods (CLEAN)—Annual program status reports.	Annually	1,500				
HSC 39604	ARB	Air Quality Conditions and Trends—Report on statewide air quality conditions and trends, and on the status and effectiveness of state/local air programs.		2,160	5,840			
HSC 39607.5	ARB	A review of Air District Emission Reduction and Air Credit Trading Programs—ARB report summarizes efforts to ensure compliance with ARB's accounting methodology.		50,000				


**California Environmental Protection Agency Reports to Repeal** (continued)

Code Section	Entity	Description	Occurrence	Savings GF	Savings SF	Recipient	Personnel Years (PYs)	Notes
HSC 39619.5 (b)	ARB	Airborne Fine Particle Air Pollution Monitoring Program—Report on the status and results of the PM2 monitoring program.			8,000			
HSC 41712 (e)(2)	ARB	Emissions of Reactive Organic Compounds from Health Benefit Products—Report on any proposed regulations governing health benefit products.		7,400	12,600			
HSC 41865 (n)	ARB	Progress Report of the Phasedown of Rice Straw Burning on the Sacramento Valley						
HSC 44100 (e)(1)	ARB	Funding Needs for Emission Reduction Program—Report and recommendations on strategies and funding needs for meeting the emission reduction requirements of the market oriented approaches reflected in the CA SIP (M-1 Strategy) of the 1994 SIP.		7,400	12,600			
HSC 44104.5 (b)	ARB	DMV Pilot Program Evaluation—Progress report is done in conjunction with TCA to measure program performance.			No cost			
HSC 44104.5 (c)	ARB	Removal of High Polluter Vehicles and Accelerated Light-Duty Vehicle Retirement Program—Report evaluates program performance.			100,000			
PRC 42889.1	IWMB	Tire Recycling Program: Expenditures for Grants, Loans, and Contracts—Analysis of tire recycling program expenditures.			5,000			

**California Environmental Protection Agency Reports to Repeal** (continued)

<b>Code Section</b>	<b>Entity</b>	<b>Description</b>	<b>Occurrence</b>	<b>Savings GF</b>	<b>Savings SF</b>	<b>Recipient</b>	<b>Personnel Years (PYs)</b>	<b>Notes</b>
PRC 42889.4	ARB	Air Emissions from Tire Burning Facilities—Summarizes the types and quantities of air emissions from facilities permitted to burn tires during the previous year.		50,000				
WC 13292	SWRCB	RWQCB Public Participation—Conduct review of public participation procedures in the regions.		10,000				
GC 12812.5, Section 5 HNC 63.6	SWRCB Boating and Waterways	Environmental Technology Program  The operations of the department for the preceding biennium.	Biennially	11,000		Gov/Leg		Post on website.
HSC 43024	CEC	Reports on the amount of MTBE used in CA gasoline	Quarterly					MTBE is not being used in CA
Budget Act 2001, 3540-001-001	DFFP	Computer-Aided Dispatch Report	Semi-annually	3,500		To director		
FG 8610.10	DFG	Annual Marine Resources Protection Act-Proposition 132, 1990						
PRC 2203	DOC	Report of the State Geologist	Annually	4,519			0.05	
SAM Sec. 4841.1 and 4845	DOC	Department Designation Letter	Annually	121		DOF	0	Redundant — Incorporate with annual certification of ORP (SAM Sec. 4843.1 and 4845)
SAM Sec. 4903.2	DOC	Information Management Costs	Annually	7,963		DOF	0.1	No useful purpose



**California Environmental Protection Agency Reports to Repeal** (continued)

Code Section	Entity	Description	Occurrence	Savings GF	Savings SF	Recipient	Personnel Years (PYs)	Notes
SAM Sec. 4903.4 and 4989.4	DOC	Workgroup Computing Policy (WCP) and Certification	Annually	4,004		DOF		Redundant — Significant changes should trigger when a report should be submitted.
SAM Sec. 4903.2	DOC	Information Management Costs	Annually	7,963		DOF		No useful purpose
GC 14746 & 14760	DPR	Annual Progress Report on Records Management	Annually	500,000		DGS		
PRC 5097.994 (e)(6)	DPR	California Indian Cultural Center and Museum Task Force Progress Report	Annually	1,000				
WC 80250	DWR	Quarterly CERS report re Electric Power Fund	Quarterly	15,000		Gov/Leg		Keep annual report.
WC 165	DWR	State Water Resources Development System/The California Water Commission reports on the progress of construction and operation of the State Water Project	Annually	10,000		Leg		
WC 79575	Resources Agency	Proposition 50 Annual Report by Each Department Expending Proposition 50 funds	Annually	52,000				Redundant. Information will be consolidated on Prop 50 website.
GC 16724.4	Resources Agency	Reporting requirements on lead state agency for all bonds passed after January 1, 2004	Annually	52,000				Information should be placed on website.
PRC 5096.686	Resources Agency	Summary report of all Proposition 40 departments and their expenditures	Annually	52,000		DOF		Bond requires audit, which is done by DOF and posted on their website.

**California Environmental Protection Agency Reports to Repeal** (continued)

<b>Code Section</b>	<b>Entity</b>	<b>Description</b>	<b>Occurrence</b>	<b>Savings GF</b>	<b>Savings SF</b>	<b>Recipient</b>	<b>Personnel Years (PYs)</b>	<b>Notes</b>
PRC Ch 736	Resources Agency	Report of major funding sources made available for watershed projects in California since 1995	Every 3 years	10,000				Joint MOU between Resources and Cal-EPA on watershed coordination efforts and information per AB 2534 (Pavley)
GC 14683	SLC	Public Land Ownership in California	Every 10 years	No cost		Public		

**Totals**

**\$865,155    \$145,915**

**Acronyms:**

**Code Section:** FAC=Food and Agriculture Code; HSC= Health and Safety Code; PRC= Public Resources Code; HNC=Harbors and Navigation Code; GC=Government Code; FG=Fish and Game; SAM= State Administrative Manual; WC= Water Code.

**Cal-EPA Acronyms:** DPR=Department of Pesticide Regulation, DTSC=Department of Toxic Substances Control, ARB=Air Resources Board, IWMB=Integrated Waste Management Board, and SWRCB=State Water Resources Control Board.

**Resources Agency Acronyms:** CEC=California Energy Commission, DOC=Department of Conservation, DPR=Department of Parks and Recreation; DWR=Department of Water Resources, SLC=State Lands Commission.

**Recipient:** Gov=Governor; Leg=Legislature; DOF=Department of Finance.

**Recommendations**

- A. The Governor should work with the Legislature to allow state agencies to follow the guidelines to be developed by the California Integrated Waste Management Board for converting reports and other state documents from paper to electronic format.**
  
- B. The Governor should work with the Legislature to repeal the reports listed in the above table and any others, which it deems to be duplicative or unnecessary.**



### **Fiscal Impact**

The Cal-EPA and the Resources Agency indicate that elimination of the reports listed above would result in annual savings of \$865,000.

#### **GENERAL FUND** (dollars in thousands)

<b>Fiscal Year</b>	<b>Savings</b>	<b>Costs</b>	<b>Net Savings (Costs)</b>	<b>Change in PYs</b>
2004–05	\$865	\$0	\$865	0
2005–06	\$865	\$0	\$865	0
2006–07	\$865	\$0	\$865	0
2007–08	\$865	\$0	\$865	0
2008–09	\$865	\$0	\$865	0

Note: The dollars and PYs for each year in the above chart reflect the total change for that year from FY 2003–04 expenditures, revenue and PYs.

#### **SPECIAL FUND** (dollars in thousands)

<b>Fiscal Year</b>	<b>Savings</b>	<b>Costs</b>	<b>Net Savings (Costs)</b>	<b>Change in PYs</b>
2004–05	\$145	\$0	\$145	0
2005–06	\$145	\$0	\$145	0
2006–07	\$145	\$0	\$145	0
2007–08	\$145	\$0	\$145	0
2008–09	\$145	\$0	\$145	0

Note: The dollars and PYs for each year in the above chart reflect the total change for that year from FY 2003–04 expenditures, revenue and PYs.

### **Endnotes**

- <sup>1</sup> E-mail from Don Wallace, assistant secretary, Resources Agency, dated April 1, 2004.
- <sup>2</sup> Assembly Bill 2701, Runner, Environmental Protection, Reports, referred to the Senate Committee on Environmental Quality June 3, 2004.
- <sup>3</sup> Memorandum from California Environmental Protection Agency to Paul Miner, Chief Deputy Cabinet Secretary, California Environmental Protection Agency's Submittal for "The California Performance Review" (January 20, 2004); e-mails from Don Wallace, Resources Agency, dated March 26, March 29, March 30, and April 1, 2004.





# Improving Database Management and e-Government Systems

## **Summary**

The California Environmental Protection Agency and the Resources Agency lack consolidated and integrated database systems, which prevents a seamless exchange of data between the organizations. A centralized information technology program should be developed within each agency to enable data sharing among regulatory programs and between the agencies.

## **Background**

The California Environmental Protection Agency (Cal-EPA) is responsible for protecting public health and the environment by preventing contamination of the air, water and land. The Resources Agency is responsible for the protection and stewardship of California's natural resources including water, habitat, minerals and land. Both conduct regulatory monitoring programs that impact businesses and individuals. Both agencies have limited e-government capabilities, provide little or no public access to electronic data via the Internet, and lack the capability to receive critical program data electronically from those businesses regulated by the agencies.<sup>1</sup>

## **California's use of technology lags despite mandates**

The Governor, the Legislature, and public and program managers need reliable information to make good decisions. The availability of comprehensive, accurate and timely information would give those responsible for implementing the state's environmental and resource protection programs a valuable tool to protect public health and the environment.<sup>2</sup>

In the last 20 years, incredible technological advancements in information management and dissemination have occurred. Cal-EPA and the Resources Agency could benefit by using these technological innovations to complete business transactions via the Internet, to allow regulated entities to submit data electronically, and to allow the public to view records online.

The programs that comprise Cal-EPA and the Resources Agency have made considerable hardware improvements in information technology systems, but still lag far behind accepted industry standards. These information systems do not provide optimal customer service and fail to meet the goals for development of comprehensive information systems outlined in state law.<sup>3</sup>

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During the last decade, new statutes were enacted that require the Cal-EPA secretary to develop information management systems that would combine data from its regulatory programs and also allow the regulated community to comply with environmental data reporting requirements online.<sup>4</sup> These requirements have not been met because there is no single point of accountability. Rather, information technology entities separately report to independent boards, commissions or departments that have other priorities and interests than consolidating information technology effort and resources. These organizational barriers have created obstacles to meeting these information management systems requirements.

***The federal government and states collaborate to build integrated systems***

In a March 2002 presentation before the Congressional Subcommittee on Technology and Procurement Policy, Randolph C. Hite, Director of the U.S. General Accounting Office's Information Technology Architecture Issues commented that: "Without enterprise architectures to guide and constrain IT investments . . . stovepipe operations and systems can emerge, which in turn can lead to needless duplication, incompatibilities, and additional costs."<sup>5</sup> In this case, "enterprise architecture" describes the structural activities of a government function that crosses more than one agency, such as permit management. Hite's comments and observations regarding federal information technology systems appear as relevant to state government operations as they are for the federal government.

In 1999, the U.S. Environmental Protection Agency (U.S. EPA) recognized the need to change its data management practices. It realized the need for central responsibility and authority over its information management services. An Office of Environmental Information was created to lead the effort to integrate data, enhance data quality, foster information-based decision-making, reduce costs, and expand the public's ability to exercise its right to know about the environment.

A key feature of U.S. EPA's efforts was the Facility Registry System (FRS), which provides a unique identification number to each facility, site or place.<sup>6</sup> The Registry number provides Internet access to a single source of comprehensive information about facilities, sites or places subject to environmental regulation or interest. The FRS also includes location information, providing accurate mapping that is easily employed using an "EnviroMapper" application over the Internet.<sup>7</sup>

Other states also have recognized the need to consolidate environmental information in integrated systems. The U.S. EPA has completed projects linking state agency master records into their Facility Registry System.<sup>8</sup> The Registry currently hosts more than 1.5 million unique facility records. Through its Exchange Network Grant Program, U.S. EPA continues to assist states with efforts to build integrated environmental data systems compatible to the national system.



U.S. EPA has already completed building Internet access to state agency inspection and permitting databases that allow the public to easily obtain detailed information about particular sites or search for information about facilities in their neighborhood. These systems often are linked with geographical information systems (GIS) so that mapping of the data is possible. Among the most impressive state programs are the Oregon Department of Environmental Quality and the Texas Commission on Environmental Quality, both of which provide simple, straight forward Internet-based access to all permitting, inspection and enforcement data.<sup>9</sup>

***California's environmental agencies fail to coordinate information technology efforts***

Essentially all of the 31 boards, departments, offices and commissions within Cal-EPA and the Resources Agency maintain independent information systems, with little or no integration or sharing of data. This lack of integration prevents program information from being coordinated; does not allow for the sharing of costs; does not provide businesses with comprehensive e-government services; fails to provide easy access to environmental data for the public; and slows development of coordinated databases that can share information on activities regulated by both agencies.

At the same time, each of these departments provides the same basic information technology services within the respective organizations. Each entity conducts regulatory activities for different public health, resource management, and environmental protection programs that collect information about regulated businesses, regulatory activities and environmental monitoring. Additionally, each entity supports information technology business needs by maintaining personal computers, printers, e-mail systems, and central data storage. While all of the programs provide the same type of services, licenses for software and equipment are purchased separately.

The lack of coordination between these departments prevents using the departments' combined buying power to get the best price for hardware and software purchases, and fails to allow for shared development of new data management systems. The operation of multiple systems is costly and inefficient and results in some programs having enough funding and other programs being under-funded.

The capability of programs varies greatly due to this disparity in funding. Some regulatory programs have information systems that are so outdated the system users are unable to easily answer even basic questions about who they regulate and the regulatory activities that apply to a specific business. A consolidated information technology organization within both Cal-EPA and the Resources Agency would allow resources to be used more equitably and effectively to purchase hardware, software and to develop new information management systems.

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### ***E-government processes***

The divisions within Cal-EPA and the Resources Agency have few information systems that provide access to data or e-government services to the regulated community and the public. Most of the business transactions conducted by both agencies are completed on paper and submitted through the U.S. Postal Service. A regulated entity cannot submit required permit and reporting information online or pay fees using a credit card. Most of the work completed by the agencies' staff cannot be recorded into an information system, forcing regulatory agencies to rely on paper files for much of its work.

Automating manual, paper-based processes could improve the agencies' ability to increase productivity. For example, the Cal-EPA and its divisions, as well as local government regulatory partners, contract with hundreds of thousands of businesses requiring submission of data on regulated hazardous materials activities. This information is generally submitted and processed on paper, which may or may not be manually entered into an electronic database.<sup>10</sup> The development of a coordinated, consolidated and integrated information system for all programs within the agencies will not only automate this process and provide better information to governmental bodies, but it could create a "one-stop" permitting capability for regulated businesses.

Automation also can improve state licensing activities, including the Department of Fish and Game's paper licensing system used to issue fishing and hunting licenses. This paper-based process is not only inefficient and cumbersome for the department and the public, it does not allow the department to collect and analyze the wildlife management data necessary for the department to do its job.<sup>11</sup>

The establishment of consolidated e-government processes will allow regulated businesses and the public to submit and maintain required information electronically and to purchase licenses over the Internet. The programs that could realize the greatest benefits from automated processes include the stormwater permitting program; the unified hazardous materials and underground storage tank programs; the hazardous waste manifest program; the issuance of hazardous waste generator ID numbers; and the pesticide-use reporting program.<sup>12</sup>

### ***Recommendations***

- A. The California Environmental Protection Agency (Cal-EPA) and the Resources Agency, or successors, should consolidate all information technology entities into a centralized information technology program for each agency.**

For each agency, there should be an Agency Information Office (AIO) that reports directly to the secretary. All of the information technology staff within agency divisions should report to the AIO.



- B. The Agency Information Office for each agency, or the successors, should develop a common agency-wide information technology plan that provides the strategies for development of a consolidated and coordinated unified information technology program. This plan should be completed and submitted to the agency secretary by July 1, 2005.**

The plan should include strategies for implementing data sharing between regulatory programs and the agencies, development of a timeline for e-government processes including the submittal of permit information and reports by regulated business, and Internet access to Cal-EPA and Resource Agency data by the public and regulated community via the Internet.

- C. The Agency Information Office for each agency, or the successors, should complete a plan that outlines how and when the following improvements will be made. This plan is to be completed by January 1, 2005, and contain the following.**

- Define and standardize required data elements for all program areas and consolidate those data elements into a single agency-wide data dictionary;
- Develop e-government processes to allow businesses to submit and maintain permit and reporting data online via the Internet;
- Develop a single Geographic Information System platform for layering and consolidating all data within both agencies;
- Develop and institute data exchange protocols for all data collected by Cal-EPA and the Resource Agency divisions, including local government partners, so this information may be exchanged;
- Develop a process and protocols to assign a unique facility record number for each regulated location/activity to allow data on a regulated activity from multiple programs to be consolidated and available as a complete regulatory record; and
- Develop within each agency a statewide data node that allows access to all environmental and resources data collected by the Cal-EPA, the Resource Agency and their local government partners.

- D. The Agency Information Office for each agency, or the successors, should develop a funding strategy and budget for the centralized information technology program by January 1, 2005.**

The agency information technology program should be funded, in part, through service agreements with the agency divisions, and processes should be in place for the divisions to pay for the services received. A basic level of service for such things as e-mail and personnel computer maintenance should be provided. The development of software applications and the operation of data systems will be financially supported by the program receiving the benefit.

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- E. The information technology program for each agency or the successor, must be responsible for the development and implementation of information technology contracts and master service agreements for hardware and software. These master service agreement formats should be developed by July 1, 2005.
- F. Cal-EPA and Resources Agency, or the successors, should direct the Agency Information Office in their respective departments to develop a process to continually compare the cost of contracting out for information technology services with the cost of conducting the activity in-house, and to contract for off-the-shelf services whenever it is economically advantageous.
- G. The Agency Information Office for each agency, or the successors, should develop a long-term strategic plan by July 1, 2005 to complete all of the following:
- Implementation of an agency-wide document management system;
  - Implementation of an agency-wide data architecture and enterprise-wide information technology business management system encompassing all business functions, including fiscal, human resources and purchasing; and
  - Implementation of a technology refresh budget plan.

This strategic plan should be made with the participation and review by outside consultants selected for their expertise in these areas.

- H. Within the long term strategic plan the Agency Information Office for each agency, or the successors, should prioritize the strategic plan to develop the following critical information systems:
- Unified Hazardous Materials system required by Health and Safety Code Section 25404(e);
  - Automated license system for the Department of Fish and Game; and
  - Brownfields information management system
- I. The Agency Information Office for each agency or the successors, should immediately investigate the feasibility of forming a partnership with U.S. EPA for technology projects.

### ***Fiscal Impact***

The management information systems recommended above could be developed using a combination federal funds and user fees. The total costs of these systems and the resulting impact on user fees cannot be determined at this time.



Within Cal-EPA and the Resources Agency, there are 18 different information technology operations. These operations have more than 500 positions and a budget that exceeds \$40 million. The recommended consolidation would result in a reduction in the number of managers needed for administering these disparate programs and savings in hardware and software purchases. These savings could be reinvested in information technology to offset the cost of the other recommendations outlined in this paper.

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## Endnotes

- <sup>1</sup> California Environmental Protection Agency, "A Structural and Fiscal Review of the California Environmental Protection Agency (California February 2000)," pp. 6–8, 50–53.
- <sup>2</sup> California Environmental Protection Agency—California Resources Agency, "Environmental Protection Indicators for California (EPIC)" (California, April 2002).
- <sup>3</sup> Pub. Res. C. Sections 71050–71068; and Health & S. C. Section 25404(e).
- <sup>4</sup> Assembly Bill 3537 (Sher), Sacramento, California, 1994; and Health & S. C. Section 25404(e).
- <sup>5</sup> U.S. General Accounting Office, "Turning the Tortoise into the Hare," GAO-02-389T (Washington, D.C., March 21, 2002).
- <sup>6</sup> U.S. Environmental Protection Agency, "About OEI" (May 17, 2004), <http://www.epa.gov/oei/about.htm> (last visited June 16, 2004).
- <sup>7</sup> U.S. Environmental Protection Agency, "Facility Registry System, Overview" (May 17, 2004), <http://www.epa.gov/enviro/html/facility.html> (last visited June 16, 2004).
- <sup>8</sup> U.S. Environmental Protection Agency, "Welcome to the Facility Registry System," <http://www.epa.gov/frs/index.htm> (last visited June 16, 2004).
- <sup>9</sup> Oregon Department of Environmental Quality, "Databases, GIS and Mapping Applications" (May 17, 2004) <http://www.deq.state.or.us/news/databases.htm> (last visited June 16, 2004); and Texas Commission on "Environmental Quality, Texas Commission on Environmental Quality," <http://www.tceq.state.tx.us/index.html> (last visited June 16, 2004).
- <sup>10</sup> Interview with Paul Blais, chief information officer, Department of Toxic Substances Control, Sacramento, California (March 5, 2004).
- <sup>11</sup> Interview with Renee Renzwick, deputy director, Department of Fish and Game, Sacramento, California (May 7, 2004).
- <sup>12</sup> California Environmental Protection Agency, Unified Environmental Statute Commission, "Unifying Environmental Protection in California" (California, January 1997), pp. 4–6, A17–A27.





# Reduce Mandates for Solid Waste Diversion Reporting for Rural Communities

## **Summary**

Local governments must engage in an expensive and time-consuming process to collect, analyze and submit solid waste disposal data to the California Integrated Waste Management Board (Board) demonstrating progress towards reducing solid waste disposal rates. However, with limited financial resources and an extremely small share of the state's total waste, rural communities should be allowed to demonstrate compliance with waste diversion and recycling laws based on program implementation rather than by calculating waste diversion rates.

## **Background**

The Integrated Waste Management Act required local jurisdictions to meet waste diversion goals of 25 percent by 1995 and 50 percent by 2000, and established a framework for program implementation, solid waste planning and facility compliance.<sup>1</sup> Diversion goals and requirements are carried out through a disposal-based reporting system with state oversight.<sup>2</sup> To ensure the waste diversion mandate is met, the California Integrated Waste Management Board has developed an extensive process for collecting, reviewing and evaluating information. Each year, cities and counties must submit an annual report to the state detailing their waste diversion programs and annual diversion rate (meaning the amount of solid waste diverted from being added to the landfill through recycling or by reducing the amount of waste that is created in the first place). Every two years, the Board conducts an independent biennial review of each jurisdiction's progress toward achieving the 50 percent diversion requirement.<sup>3</sup>

Calculating waste diversion rates is a labor-intensive, expensive process. A jurisdiction that does not meet the 50 percent diversion requirement and does not receive a time extension or a "good faith effort" finding by the Board will be issued a compliance order and could be subject to fines up to \$10,000 per day.<sup>4</sup> Four jurisdictions were fined in 1998 for not submitting proper waste diversion plans.<sup>5</sup> The city of Gardena was fined \$70,000 in 2003 for not meeting its waste diversion mandates.<sup>6</sup> Even if they are not fined, local governments incur additional costs by investing more of their time and staff resources for data collection and analysis, more meetings with board staff, and new compliance activities and programs to increase the diversion rates.

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There has been an ongoing debate about whether compliance with waste diversion requirements should be judged based on program implementation or achievement of numerical quotas. The Board has continuously maintained they are more interested in the “good faith efforts” being made by local jurisdictions to develop successful recycling programs and less concerned about “bean-counting” in order to demonstrate mathematical compliance with the law.<sup>7</sup> However, all jurisdictions, regardless of size, are still required to compute and defend the accuracy of their annual diversion rates. An increasing number of cities and counties are undertaking new waste generation studies that are costly and time-consuming to ensure accurate reporting. In fact, the accuracy of waste diversion rates and the willingness of a jurisdiction to conduct new studies to more accurately determine its 1990 recycling rates are regularly used by the Board to determine whether good faith efforts have been made.<sup>8</sup>

Since the state’s waste diversion requirements were enacted in 1989, many communities have achieved high diversion levels but the data indicates these levels can be expensive to attain. High achieving communities typically have larger populations than average and it may be relatively more difficult and expensive for rural areas, communities with populations with language difficulties or lower income levels, climate considerations, and demographic or community challenges, to comply with the goals.<sup>9</sup> However, rural jurisdictions generate less than 5 percent of the state’s overall waste and can qualify for rural reductions to the required waste diversion rate. To qualify for an alternative diversion rate, however, rural jurisdictions must achieve a high level of numerical accuracy to demonstrate ‘rural relief’ to the Board.<sup>10</sup>

In 2002, the Board issued a report identifying many problems related to the state’s waste diversion and recycling laws.<sup>11</sup> Stated in the report, “Many jurisdictions are concerned that there is too much emphasis on the numerical achievement of a diversion rate, especially when the measurement system has the potential to significantly under- or overestimate the rate. This emphasis causes jurisdictions to expend significant resources on tracking numbers, addressing measurement errors which may be difficult to resolve, or on documenting amounts for new base-level studies.”<sup>12</sup>

The Board also recognized in the report that the diversion rate measurement system is particularly problematic for rural and small counties because, “. . . inherent difficulties are associated with obtaining accurate waste disposal and diversion rates for rural counties. Small and rural counties have limited resources to correct inaccuracies through new base year studies and documenting diversion.”<sup>13</sup> The current waste diversion goal measurement system tends to be less accurate for rural jurisdictions because of the small size and dispersed nature of the waste stream in rural jurisdictions and “the small size of the waste involved perhaps do not merit the extra effort that may be needed on the part of both local and state solid waste staff to address errors.”<sup>14</sup>



The report contained a recommendation of an alternative to the current method of relying on diversion rates to determine rural jurisdiction compliance state law. Specifically, the recommendation was to “Allow rural jurisdictions to demonstrate AB 939 compliance by program implementation and effectiveness instead of spending resources on fixing numerical issues.” To do this, the report recommended changing regulations and statute to address issues of numerical accuracy for rural jurisdictions up front, rather than relying on a good faith effort determination that is made at the end of the state’s current review process.<sup>15</sup>

When the Integrated Waste Management Act was adopted, the estimated waste diversion rate in rural counties was less than 10 percent. Based on the Board’s annual reports for the year 2000, the collective rural county diversion rate has increased to about 35 percent. Although there are statutory and regulatory provisions in place to assist rural jurisdictions comply with state law, more needs to be done. The state should move forward with efforts to provide rural jurisdictions with greater opportunities to manage solid waste diversion and recycling programs in a more cost-effective and efficient manner.

### ***Recommendation***

**The Governor should work with the Legislature to amend the Integrated Waste Management Act to provide more flexibility to determine rural jurisdictional compliance with mandated waste diversion goals.**

- In determining “good faith efforts,” California Integrated Waste Management Board, or its successor should be able to apply reasonable criteria that consider the particular challenges facing rural jurisdictions. Currently, all jurisdictions in the state, regardless of size, are subject to the same criteria in order to demonstrate their “good faith efforts.”
- The required “degree of numerical accuracy” should be lessened for rural jurisdictions in consideration of their limited waste volumes and the relatively high per capita costs associated with conducting new waste generation studies.

### ***Fiscal Impact***

Streamlining and making more flexible waste diversion and recycling laws for small, generally, rural waste management jurisdictions will result in reduced workload for the Diversion, Planning and Local Assistance Program within the CIWMB. The Diversion, Planning and Local Assistance Program has a staff of 66 and an annual budget of over \$5.1 million. Of these staff, 43 personnel years (PYs) provide local assistance to and review data for the waste diversion and recycling mandates. Since the affected jurisdictions comprise 18 percent of all jurisdictions, this recommendation affects up to 14 PYs.

Adopting a less prescriptive approach for small, largely rural, jurisdictions to demonstrate compliance with solid waste diversion requirements would reduce the workload by an unknown amount for up to 14 program staff, which results in unknown, possibly significant, savings to the state.

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Local waste management jurisdictions to which this proposal applies would achieve unknown but probably significant savings over time resulting from the streamlined review and reporting requirements.

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## Endnotes

- <sup>1</sup> *Integrated Waste Management Act, Assembly Bill 939 (Chapter 1095, Statutes of 1989).*
- <sup>2</sup> *Pub. Res. C. Sections 41821.5 and 41821.2.*
- <sup>3</sup> *Pub. Res. C. Sections 41821(f) and 41825. The annual report is a jurisdiction's self-evaluation of its waste diversion performance for the previous calendar year. The biennial review is conducted by the California Integrated Waste Management Board, which performs an independent evaluation of the jurisdiction's waste diversion performance based on documents filed by the jurisdiction.*
- <sup>4</sup> *Pub. Res. C. Sections 41780 and 41850.*
- <sup>5</sup> *California Integrated Waste Management Board, "State Waste Board Fines Jurisdictions for Violating Waste Diversion Planning Law," Sacramento, California, January 30, 1998 (press release).*
- <sup>6</sup> *California Integrated Waste Management Board, "Agenda Item 12, Findings & Order" (September 16–17, 2003) <http://www.ciwmb.ca.gov/Orders/Planning/2003/Gardena.pdf> (last visited June 16, 2004); and interview with Mitchell Lansdell, City manager, city of Gardena, Gardena, California (April 9, 2004).*
- <sup>7</sup> *Calaveras County, Department of Public Works, "Recycling Goals," [http://www.ccsolidwaste.org/Recycling\\_Goals.htm](http://www.ccsolidwaste.org/Recycling_Goals.htm) (last visited April 22, 2004).*
- <sup>8</sup> *Interview with Jim Hemminger, Regional Council of Rural Counties, Sacramento, California (April 19 and June 6, 2004).*
- <sup>9</sup> *Skumatz Economic Research Associates, Inc. (SERA), "Achieving 50% in California: Analysis of Recycling, Diversion and Cost-Effectiveness" (Superior, Colorado, April 1999). Analysis prepared for California Chapters of Solid Waste Association of North America (SWANA).*
- <sup>10</sup> *Interview with Jim Hemminger.*
- <sup>11</sup> *California Integrated Waste Management Board, "A Comprehensive Analysis of the Integrated Waste Management Act Diversion Rate Measurement System" (Sacramento, California, November 13, 2001). Analysis prepared pursuant to Senate Bill 2202 (Chapter 740, Statutes of 2000).*
- <sup>12</sup> *California Integrated Waste Management Board, "A Comprehensive Analysis of the Integrated Waste Management Act Diversion Rate Measurement System," pp. 3–5.*
- <sup>13</sup> *California Integrated Waste Management Board, "A Comprehensive Analysis of the Integrated Waste Management Act Diversion Rate Measurement System," pp. 3–23.*
- <sup>14</sup> *California Integrated Waste Management Board, "A Comprehensive Analysis of the Integrated Waste Management Act Diversion Rate Measurement System," pp. 3–6.*
- <sup>15</sup> *California Integrated Waste Management Board, "A Comprehensive Analysis of the Integrated Waste Management Act Diversion Rate Measurement System," recommendation ATNC-3.*



# Reorganize the 54 District Agricultural Associations and the California State Exposition and Fair as Public Corporations

## **Summary**

California's state agency fairs are revenue generating enterprises that must compete against other entertainment and events businesses to attract patrons. These organizations need the flexibility to operate as business enterprises outside of the state's procurement, contracting, and personnel management rules that were designed to manage the activities of traditional state entities. In addition, fairs are community events that should be managed at the local level for the benefit of their community. California's 54 district agricultural associations and the California Exposition and State Fair (Cal Expo) should be converted from state entities to public corporations.

## **Background**

California has been conducting fairs for more than 140 years, with the first state agency fairs established in law before the Civil War.<sup>1</sup>

Today, the state's network of fairs includes 81 fairs operating under a variety of governance structures, including 54 district agricultural associations (state agency fairs); 23 county fairs (18 of which are operated by nonprofit organizations through a contract with the county); two citrus fruit fairs (independent nonprofit organizations with state oversight); and Cal Expo, also a state agency fair.<sup>2</sup>

California's fairs are well attended and have a significant impact on California's economy. In 2002, fair-time attendance exceeded 11.1 million people, with interim events attracting another 21.6 million people.<sup>3</sup> According to a study conducted by KPMG LLP, direct spending by patrons at fairs and interim events totaled \$963 million in 2002, which translates to a \$2.55 billion overall impact on California's economy.<sup>4</sup>

The Department of Food and Agriculture (CDFA) oversees California's network of fairs, including managing revenues from a pari-mutuel wagering tax levied on horseracing. CDFA collects the wagering tax and distributes it to the fairs (state agency fairs, county fairs, citrus fruit fairs, and Cal Expo) based upon their size. Small fairs, most of which are located in rural communities with few opportunities for sponsorship, interim rentals, or increased attendance, receive the largest annual allocation of horseracing revenue. For some of these fairs, the annual

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allocation represents up to 70 percent of their budget. The largest fairs receive the smallest allocation, representing less than 1 percent of their budgets.<sup>5</sup>

Although some state agency fairs have been part of the state for more than a century, there are two reasons why the state should transition the district agricultural associations to local control. The first is that the state's system of administrative controls is making it increasingly difficult for state agency fairs to compete against other entertainment and events businesses that are not subject to these requirements. The second reason is that state agency fairs are community events that should be managed at the local level for the benefit of their communities.<sup>6</sup>

State agency fairs are business enterprises that must operate in a competitive environment against other entertainment and events businesses. As state agencies, however, they are subject to the state's structure of regulatory and administrative controls governing procurement, contracting, and personnel management. Although these rules and regulations serve a useful purpose for controlling the activities of traditional state agencies, they place fairs at a competitive disadvantage relative to other entertainment and events businesses that do not have to follow such rules.<sup>7</sup>

Similar to other entertainment businesses, fairs face rapidly fluctuating staffing requirements to host different events. The state's personnel policies and practices, however, are not designed to accommodate a fair's cyclical and urgent hiring patterns, specialized market-driven staffing needs for special events, and the cost of living variances that would enable productive recruitment and retention practices.<sup>8</sup> Recognizing that fairs are businesses with unique operating requirements, most counties (18 of 23) have created non-profit organizations to operate their fairs.<sup>9</sup>

Second, state agency fairs are community events that should be managed at the local level for the benefit of their community. Fair organizations enrich their communities in ways that go beyond conducting an annual fair. As institutions, they collaborate with families, schools, community-based organizations, and local government to enhance community life. According to CDE, volunteer firefighters, church groups, cultural community organizations, and service clubs raise more than 50 percent of their annual revenue on fairgrounds. Literally hundreds of nonprofit groups raise millions of dollars by operating food and craft booths at fairs, much of which stays in the community.<sup>10</sup>

Recognizing that fairs are local events, some might argue the state should simply get out of the fairs business by transferring or devolving state agency fairs to the counties. Although devolution to the counties would provide more local control, it would also raise several issues. For example, it would create jurisdictional disputes and asset ownership issues between the counties receiving the fairs and the cities where the fairs are located. Several cities own the land on which state agency fairs reside and have much stronger legal claims and cultural ties



to the fairs than the counties. Several district agricultural associations encompass multiple counties. In these cases, which county should get the fair? Finally, many rural counties may not willingly accept state agency fairs because of the legal and financial obligations that come with them.

In contrast, reorganizing state agency fairs as public corporations would shift management of the fairs to the local level while avoiding many of the issues discussed above. For example, it would allow district agricultural associations to reorganize in the way that best meets local needs, such as consolidating with a county or city, organizing as a special district, operating under a joint powers agreement, or organizing as a nonprofit organization (similar to citrus fruit fairs). It would allow the fairs to operate more like businesses by relieving them of the bureaucratic burdens that complicate operating a fair (county rules and regulations would be just as onerous as state rules and regulations). It would avoid complications associated with the transfer of assets by leaving the state as the trustee for the real property, which would hold it in trust for its beneficial owner, the district agricultural associations.

One other state that manages its fairs through public corporations is Minnesota. The Minnesota State Fair is one of the largest fairs in the country and serves as a model for fairs throughout North America. The Minnesota State Agricultural Society conducts the annual Minnesota State Fair and manages the maintenance, control and improvement of the state fairgrounds. The society is a semi-state agency, autonomous and self-governing. As a public corporation, the society is not subject to the state departmental process of budgeting, dedicated funding or appropriations. The Minnesota State Fair is financially self-sufficient, with fair revenue funding operations, maintenance and capital improvements to the physical plant. The Minnesota State Fair submits annual reports to the governor, the legislature and the media, and the state auditor examines its books annually.<sup>11</sup>

Another successful model that California's state agency fairs can emulate is the state's two citrus fruit fairs. Citrus fruit fairs are nonprofit organizations that have many of the same powers as district agricultural associations, but are instrumentalities of the state rather than state agencies.<sup>12</sup> This organizational structure provides citrus fruit fairs with the administrative flexibility to operate as businesses (i.e., outside of the state's administrative controls) while still being entities of the state. As entities of the state, citrus fruit fairs share in the allocation of horseracing revenue and their assets revert to the state upon their dissolution.

### ***Recommendation***

**The Governor should work with the Legislature to amend the Food and Agricultural Code to convert the 54 district agricultural associations and Cal Expo from state entities to public corporations acting as political subdivisions of the state that are created to administer a part of the affairs of the state, similar to municipal corporations, special districts, and other local agencies and authorities.**

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This recommendation would transfer control to local communities for managing these local events, providing the flexibility and autonomy that fairs need to succeed as entertainment and events businesses in a competitive marketplace. It would allow district agricultural associations to reorganize in the way that best meets local needs, including consolidation with a county or city, organizing as a special district, operating under a joint powers agreement, or organizing as a nonprofit organization (similar to citrus fruit fairs). It would allow the fairs to operate more like a business by relieving them of the bureaucratic burdens that complicate operating a fair. It would avoid complications associated with transferring assets by leaving the state as the trustee for the real property, holding it in trust for its beneficial owner, the district agricultural associations. Finally, it would eliminate 495 gubernatorial appointments.

Although under this proposal the state would no longer manage state agency fairs, CDFA would continue to oversee California's network of fairs, including allocating horse racing licensing revenues to the district agricultural associations, county fairs and citrus fruit fairs.

### ***Fiscal Impact***

Converting state agency fairs to public corporations would have no General Fund savings from fair operations since the district agricultural associations are self-financed through various enterprise funds, including gate admissions, parking fees, concessions, horse racing licensing fees, satellite wagering, and fair rental activities. Money from these activities funds both the operating costs of the fairs themselves and CDFA's administrative costs to oversee the state's network of fairs.

Eliminating 495 gubernatorial appointments would, however, save the Governor's office a significant amount of time and energy that it now spends making fair board appointments.

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### **Endnotes**

- <sup>1</sup> Department of Food and Agriculture, "Network of California Fairs: 2002 Board of Director's Overview," (Sacramento, California); and Food & Agri. C. Section 3801 et seq.
- <sup>2</sup> Department of Food and Agriculture, "Network of California Fairs: 2002 Board of Director's Overview."
- <sup>3</sup> Department of Food and Agriculture, "Fairs: Exploring a California Goldmine" (Sacramento, California, 2003).
- <sup>4</sup> Department of Food and Agriculture, "Fairs: Exploring a California Goldmine."
- <sup>5</sup> Department of Food and Agriculture, "Network of California Fairs: 2002 Board of Director's Overview."
- <sup>6</sup> Interview with Kim Myrman, deputy secretary, and John Dyer, senior staff counsel, Department of Food and Agriculture, and Stephen Chambers, executive director, Western Fairs Association, Sacramento, California (April 9, 2004).
- <sup>7</sup> Interview with Kim Myrman, John Dyer, and Stephen Chambers; Western Fairs Association, "California's Network of Fairs: Recommendations to the California Performance Review," Sacramento, California (April 9, 2004); and California Department of Food and Agriculture, "District Agricultural Associations: What are they, What are their powers, What are the powers of CDFA & DGS with respect to them?" Sacramento, California, June 14, 2000.



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- <sup>8</sup> Interview with Kim Myrman, John Dyer, and Stephen Chambers; and Western Fairs Association, "California's Network of Fairs: Recommendations to the California Performance Review."
- <sup>9</sup> Interview with Stephen Chambers, executive director, Western Fairs Association, Sacramento, California (May 14, 2004).
- <sup>10</sup> Department of Food and Agriculture, "Fairs: Exploring a California Goldmine."
- <sup>11</sup> Minnesota State Agricultural Society, "Minnesota State Agricultural Society (Minnesota State Fair)," <http://www.yellowpages.state.mn.us/mnyp/yellowpages.nsf/58ff101d11e1f3d786256b2900205e6a/2c4f3c03c712949d86256b050075ce5e?OpenDocument&Highlight=0,fairs> (last visited May 18, 2004).
- <sup>12</sup> Food & Agri. C. Sections 4602 and 4701.





# Reorganize California's Commodity Boards as Public Corporations

## **Summary**

California's commodity marketing programs levy mandatory assessments on commodity producers and handlers to fund generic marketing, research, and quality standards activities. In the past decade, several law suits have successfully challenged the right of commodity boards to levy these assessments. To date, the state has spent more than \$8 million defending the commodity boards against legal challenges, with several more cases pending in federal and state courts. The state should restructure the commodity boards as public corporations to reduce the state's future legal costs, limit its potential liability and reduce its oversight role.

## **Background**

California's commodity marketing programs or commodity boards, including commissions, marketing orders, and councils, provide agricultural producers and handlers with a government-sanctioned organizational structure for collective problem solving. Commodity boards' authorized activities include promoting commodities, conducting research and establishing and maintaining quality standards. Some of the programs carry out all three functions while others carry out one or two, depending on the needs of each industry. None of the commodity boards engage in volume control or cooperative price controls.<sup>1</sup>

The California Department of Food and Agriculture (CDFA) oversees state marketing programs. Each marketing program is governed by an appointed board of industry members. Some boards also have public members. Commodity boards are industry-initiated and usually do not go into effect without approval by an industry vote. Since all affected producers and handlers benefit from a commodity board's activities, state law requires all to abide by a board's statutory provisions and share the cost of funding the board's operations.<sup>2</sup>

There are currently 50 active state commodity boards representing 40 agricultural commodities, including 25 marketing orders, two marketing agreements, 20 commissions, and three councils. A marketing order is an order issued by CDFA that prescribes the rules and regulations governing the marketing, processing, distribution, or handling of commodities. Marketing agreements are less stringent forms of marketing orders.<sup>3</sup> Commodity boards fund their own operations—including CDFA's oversight costs—through mandatory assessments levied on commodity producers and handlers in that industry. No General Fund revenues are used to support commodity board operations. Although commodity boards do not use General Fund revenue, they do use the taxing power of the state to collect the mandatory assessment.<sup>4</sup>

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The activities of commodity boards have changed over the years. Early efforts were primarily directed toward managing surpluses, commodity grading and unfair trade practices. Today, research and promotion are the major activities of most marketing programs. Most commodity boards fund and conduct a diverse range of projects, such as the biological control of pests and diseases, reduction of environmental damage, water use efficiency, improved production practices, development of new products and uses, nutritional education for consumers, and promotions in both domestic and global markets. A few programs also establish quality standards and support inspections to ensure quality levels are maintained.<sup>5</sup>

Commodity boards play an important role in California's farm economy. First, they help supply the state and the nation with an abundant supply of affordable, high quality food, fiber and material. Several commodities represented by commodity boards comprise 99 percent or more of the nation's total production of that commodity, including almonds, artichokes, clingstone peaches, dates, figs, kiwifruit, nectarines, olives, persimmons, pistachios, dried plums (prunes), raisins, and walnuts.<sup>6</sup> Second, commodity boards improve the market position of one of California's largest industries.<sup>7</sup> According to CDFA, the 1998 value of traditionally tracked agricultural commodities covered by state marketing programs was about \$15.6 billion, representing more than 60 percent of California's \$26 billion agricultural industry.<sup>8</sup> Third, commodity boards promote and improve some of California's most important agricultural products through common generic advertising, production and market research, quality standards, nutritional education, agricultural education, and purity of strain standards.<sup>9</sup>

Despite the important role they play, recent court cases have put the commodity boards, and through them the state, at a legal crossroads. Over the last 18 years, a few commodity producers and handlers have challenged the mandatory assessments that underpin these organizations, arguing that these assessments violate their first amendment rights.<sup>10</sup> In the last five years, some courts have begun to agree, and their decisions contain a common theme that these organizations serve no legitimate public policy purpose independent of the financial interests of the assessment payers. Other court opinions attack them on public policy grounds, arguing that the government should not be involved in the marketplace.<sup>11</sup> To date, the state has spent more than \$8 million (so far mostly paid through assessments) defending the commodity boards against these challenges, with several more cases pending in federal and state courts.

With the outcome of these cases uncertain and the state's legal costs mounting as new cases arise, the state should restructure the commodity boards as political subdivisions to better insulate the state from the legal issues the commodity boards are experiencing. As public corporations or political subdivisions, commodity boards would be responsible for their own legal destiny. Reorganizing the commodity boards as political subdivisions would also allow CDFA to eliminate several time-consuming tasks that it currently performs. For example, it



would eliminate 800 secretarial appointments, 100 annual CDFA-sponsored nomination meetings, and 48 annual CDFA budget reviews. In addition, it would eliminate state oversight of commodity board advertising programs and operations and generally reduce CDFA's dependence on industry funds to support programs for which CDFA is responsible.<sup>12</sup>

### **Recommendation**

**The Governor should work with the Legislature to amend the Food and Agricultural Code to reorganize the state's commodity boards from state entities to agricultural authorities (public corporations).**

This proposal would convert the commodity boards from state entities to political subdivisions of the state. It would allow commodity boards to choose a structure of governance that best meets their particular needs. It would reduce the state's connection to the commodity boards while leaving them within a comprehensive regulatory scheme. It would limit the state's future legal costs and may limit its potential liability. Finally, it would eliminate several administrative tasks and reduce the state's oversight role.

### **Fiscal Impact**

This proposal would produce minimal, if any, General Fund savings because the commodity boards and CDFA's oversight costs are funded through assessments on commodity producers and handlers. It may, however, save the state millions of dollars if the state is held liable for assessments that must be refunded to assessment payers should a commodity board be unable to pay those obligations. It also may save the state substantial sums of money if the cost of representing the commodity boards in pending and future suits exceeds the commodity boards' financial resources to pay these fees.

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## **Endnotes**

- <sup>1</sup> Department of Food and Agriculture, "What are Marketing Programs?" <http://www.cdfa.ca.gov/mkt/mkt/mktb-1.html> (last visited May 18, 2004).
- <sup>2</sup> Department of Food and Agriculture, "What are Marketing Programs?"
- <sup>3</sup> Food & Agri. C. Section 58601 et seq.
- <sup>4</sup> Department of Food and Agriculture, "How many Marketing Programs are there? Who pays for them?" <http://www.cdfa.ca.gov/mkt/mkt/mktb-2.html> (last visited May 18, 2004).
- <sup>5</sup> Department of Food and Agriculture, "What do Marketing Programs do—who benefits from them?" <http://www.cdfa.ca.gov/mkt/mkt/mktb-4.html> (last visited May 18, 2004).
- <sup>6</sup> Department of Food and Agriculture, "Resource Directory: 2003" (Sacramento, CA, 2003).
- <sup>7</sup> Department of Food and Agriculture, "CPR Summary: Commodity Board Restructure," April 9, 2004.
- <sup>8</sup> Department of Food and Agriculture, "What do Marketing Programs do—who benefits from them?"
- <sup>9</sup> Department of Food and Agriculture, "CPR Summary: Commodity Board Restructure," April 9, 2004.

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- <sup>10</sup> Department of Food and Agriculture, "CPR Summary: Commodity Board Restructure," April 9, 2004; see also Department of Food and Agriculture, "Commodity Boards," April 9, 2004.
- <sup>11</sup> Department of Food and Agriculture, "CPR Summary: Commodity Board Restructure," April 9, 2004; see also California Department of Food and Agriculture, "Commodity Boards," April 9, 2004.
- <sup>12</sup> E-mail from John Dyer, senior staff counsel, Department of Food and Agriculture (June 3, 2004).



# Streamline Activities of the San Francisco Bay Conservation and Development Commission

## **Summary**

The San Francisco Bay Conservation and Development Commission's (BCDC) permitting functions for sand mining, maintenance dredging and routine repairs on docks duplicate those of other local, state and federal agencies that also have responsibility for these activities. This slows down the permit process for essential bay maritime activities, causes additional costs, and creates uncertainty over business activities and necessary construction. BCDC permitting practices for these activities should be reviewed and the findings reported to the Resources Agency Secretary.

## **Background**

The San Francisco BCDC was created by the Legislature in 1965 in response to broad public concern over the future of San Francisco Bay.<sup>1</sup> The commission is charged with regulating all filling and dredging in San Francisco, San Pablo and Suisun Bays, sloughs, creeks, and tributaries that are part of the bay system, as well as salt ponds and certain other areas that have been diked-off from the bay. In addition, the commission plays a role in protecting the Suisun Marsh; regulating new development within the first 100 feet inland from the bay; minimizing pressures to fill the bay; administering the federal Coastal Zone Management Act within the bay; and participating in California's oil spill prevention and response planning program.<sup>2</sup>

State law provides that BCDC may not set standards or adopt regulations that duplicate regulatory controls established by any existing state agency.<sup>3</sup> The State Water Resources Control Board (SWRCB) and the Regional Water Quality Control Board (RWQCB) have primary responsibility for coordination, control and enforcement of water quality in San Francisco Bay.<sup>4</sup> The Department of Fish and Game (DFG) and the Fish and Game Commission are primarily responsible for the establishment and control of wildlife and fishery management programs in the Bay.<sup>5</sup> The State Lands Commission (SLC) has primary responsibility for protection of state-owned lands.<sup>6</sup> BCDC may not establish or impose any controls that duplicate or exceed the regulatory controls of the primary agencies.<sup>7</sup> According to the Bay Planning Coalition, an organization that advocates the balanced use and regulation of San Francisco Bay-Delta resources to ensure the economic prosperity and environmental protection of the region, the commission has, in some instances, overstepped its regulatory authority and contradicted other agencies that have primary responsibility for certain activities, such as the recent adoption of the Subtidal Areas Policy.<sup>8</sup>

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A BCDC permit must be obtained prior to any of the following activities within the commission's jurisdictional boundaries: build or repair docks, pile-supported or cantilevered structures; dispose of material or moor a vessel for a long period in the Bay or in certain tributaries that flow into the Bay; dredge or extract material from the Bay bottom; substantially change the use of any structure or area; construct, remodel or repair a structure; or subdivide property or grade land.

### ***Examples of duplication and overregulation***

According to the Bay Planning Coalition, the purview of BCDC today extends far beyond its original intent. The BCDC is extensively involved in the permitting of maintenance dredging, sand mining and routine repair and maintenance of docks and related shoreline construction. These activities are already appropriately overseen and regulated by numerous other state and federal agencies including the San Francisco Regional Water Quality Control Board, the State Lands Commission, the U.S. Army Corps of Engineers (USACE), the National Oceanic and Atmospheric Administration (NOAA) Fisheries, the U.S. Fish and Wildlife Service (USFWS) and the Department of Fish and Game (DFG). All of these agencies have regulations that protect the environmental assets of the bay, and they also have well-trained personnel with specific expertise to ensure permit compliance.

The following examples of duplication and overregulation were provided by the Bay Planning Coalition:

- **Site Cleanup at Bay West Cove, South San Francisco**—A 42-acre commercial development was planned at the site of a former U.S. Steel facility which was within BCDC's bay fill and 100-foot shoreline band area of permit jurisdiction. It was also within the jurisdictions of the state RWQCB and the USACE. A mitigation plan for contaminated sediments was prepared in accordance with the requirements of the RWQCB, and permits were obtained from the RWQCB, USACE and local government. The mitigation plan to remediate contaminated sediment, using a combined approach of spot dredging and containment under a constructed wetland, was agreed to and permitted by the RWQCB and USACE, but denied by BCDC, which asserted its jurisdiction over capping (the placement of clean soil (mud or dirt) over contaminated soil) and wetland construction. BCDC also maintained that an environmental impact study was required for the fill remediation project, opposing the statutory exemption granted by the RWQCB which had primary responsibility for the project;
- **Routine Repair Issue**—A permit currently is required from BCDC for any remodel, repair or construction of a structure in the shoreline band when materials exceed a value of \$20, because state law defines this as bay fill.<sup>9</sup> Conversely, removing a dock within this jurisdiction is regulated as extraction of fill. Thus, the simple and necessary



task of repairing a floating dock already in place requires a BCDC permit. This is an example of overregulation;

- **Tanker Traffic**—In 2003, a Bay Area refinery was not able to bring a crude oil tanker directly to their dock due to BCDC delays in dredge permitting. This delay forced the refinery to use a smaller tanker to make several trips from the big tanker to the dock to deliver the crude; a process called lightering. Lightering adds significant costs to the crude delivery, increases the possibility of spills, and would have been entirely unnecessary if BCDC had not delayed issuing the permit; and
- **Sand Mining**—Under its Subtidal Areas Policy, BCDC has determined that it will veto sand mining in the San Francisco Bay unless permit applicants can prove that it is not economically feasible to obtain the sand needed for Bay Area infrastructure and construction projects any other way. This veto would occur even if other state and federal agencies conclude that no environmental impacts would occur from the sand mining and even where the SLC has determined it is appropriate and consistent with its mission to lease the state’s lands for that purpose. There is no reasonable basis for such duplicative second-guessing of other agencies’ decisions.<sup>10</sup>

### ***Negative effects of duplication and overregulation***

According to the Bay Planning Coalition, BCDC’s permitting duplication and overlap produces a far-reaching economic ripple effect throughout the region, impacting the maritime industry, refineries and recreational users alike as detailed below:

1. **Maritime Industry**—Unforeseen delays in agency permitting for dredging projects can, and have, stalled necessary dredging for up to a full year. The effects include:
  - Specialized dredging workforce and equipment may sit idle resulting in enormous down-time cost and the indirect inability to retain qualified workforce and contractors;
  - Many large dredging contractors have left the Bay Area resulting in an increasingly uncompetitive bidding environment. Because dredging contractors have made a high capital investment in expensive dredging equipment, the equipment needs to be working full-time to pay for itself. Consequently, some machines (such as hopper dredges—the most productive and economical) have left the area entirely. The cost of moving a dredge fleet to another West Coast location is estimated at \$250,000 to \$1.25 million and significantly higher to move a fleet to the east coast. These costs are passed on to the consumer;

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- Costly demobilization and remobilization of work crews and equipment. Navigation channels must be maintained to safe and navigable depths, otherwise ships carry less cargo and/or are stalled in the delivery and shipping of goods. The economic impact of this reaches every consumer. At the Port of Oakland, the fourth largest container port in the U.S., every foot of channel depth lost means 2,350 tons less cargo, or 100 containers per vessel. Including the expense of cargo handling, this amounts to potential lost revenue of \$500,000 per week per carrier. The port has 33 ocean carriers making over 1,800 vessel calls per year; and
2. Refineries—Contra Costa County is home to four oil refineries, related oil terminals, and a great number of industries which utilize federal navigation channels as a fundamental transportation link. The Ports of Stockton and Sacramento also transport bulk product and other commodities, all basing operations on the federally authorized depth of 35 feet. Severe economic repercussions occur when maintenance dredging of these channels is delayed. Permits have been delayed in recent times causing the grounding of an oil tanker. When this occurs, so does the possibility of an oil spill. Further, recent dredging permit delays have caused oil tankers to decrease their loads inside the Bay before traversing the channel. The economic implications are that every cubic foot of cargo space not utilized equals a loss of approximately \$300,000.
  3. Recreational Users—The recreational boating industry depends on maintenance dredging and dock repair for consumer safety and service. There are approximately 20,000 berths throughout the Bay Area with uses ranging from sport and commercial fishing, local and international boat racing and recreational sailing and motor boating. This industry is supported by thousands of Bay Area residents and supports countless businesses generating in excess of \$1.3 billion in direct spending, taxes and employment.<sup>11</sup>

### ***Recommendations***

- A. **The Governor should direct the Department of Finance, Office of State Audits and Investigations (OSAE), to perform a review of BCDC’s permitting functions for sand mining, maintenance dredging and routine repairs on docks to determine whether it has overstepped its authority.**
- B. **The OSAE should evaluate the issues identified in this paper and develop recommendations, which may include amendments to Government Code Sections 66600 through 66682.**
- C. **The OSAE should report to the Secretary of the Resources Agency, or its successor, its recommendations for reducing the duplication and overlap of permitting functions**



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**for sand mining, maintenance dredging and routine repairs on docks, including recommendations to change existing law and regulation to reduce this duplication.**

The implementation of these recommendations would allow BCDC to refocus on its authorized mission. It would allow commission staff to be more efficient in reviewing permit applications and issuing permits timely. The efficiencies gained from this would improve the Bay Area's overall business climate and enhance revenue.

***Fiscal Impact***

The proposed OSAE review would result in minor one-time costs to the BCDC.

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**Endnotes**

- <sup>1</sup> Gov. C. Section 66000 et seq.
- <sup>2</sup> San Francisco Bay Conservation and Development Commission, "What are the Responsibilities of the Commission," <http://www.bcdc.ca.gov/other/faq/faq.htm> (last visited May 24, 2004).
- <sup>3</sup> Pub. Res. C Section 29301.
- <sup>4</sup> Gov. C. Section 66646.1.
- <sup>5</sup> Pub. Res. C. Section 29306.
- <sup>6</sup> Pub. Res. C. Section 29307.
- <sup>7</sup> Pub. Res. C. Section 29306.
- <sup>8</sup> Letter from Ellen Johnck, executive director, Bay Planning Coalition to Debbie Sareeram, California Performance Review (May 21, 2004).
- <sup>9</sup> Gov. C. Section 66632.
- <sup>10</sup> Letter from Ellen Johnck, executive director, Bay Planning Coalition to Debbie Sareeram, California Performance Review (May 21, 2004).
- <sup>11</sup> Letter from Ellen Johnck, executive director, Bay Planning Coalition to Debbie Sareeram, California Performance Review (May 21, 2004).





# Establish State Mitigation Property Standards and Registry

## **Summary**

Federal and state laws require public and private developers to dedicate undeveloped land to mitigate environmental damage caused by their projects. There are no uniform standards used to evaluate the appropriate amount of mitigation property that must be dedicated and there is no single registry of properties available for mitigation.

## **Background**

The California Environmental Quality Act (CEQA) requires all public and private developers of environmentally sensitive land, such as wetlands or endangered species habitats, to dedicate other land that can be used to offset the damage caused by the project to lessen the effect to the environment.<sup>1</sup> This is known as “mitigation.” Two critical components of mitigation are determining the appropriate amount of mitigation and finding acceptable land to use as mitigation.

## **Mitigation Standards**

Each state and local agency authorized to review and permit public and private projects can develop its own mitigation standards. In many cases the same project is subject to several agencies’ mitigation requirements.<sup>2</sup>

Establishing the appropriate amount of mitigation is now a project by project, subjective procedure. For example, a 1996 report by the Bay Area Council cites the case of a major manufacturing company in the Bay Area, which had proposed an expansion at its current location. While the city was the lead agency, a state department concluded that since there was one burrowing owl on the expansion property, five acres of land should be donated as mitigation. This was based on input from an environmental “save the owls” group and the belief that since the company was a major corporation, it could afford it. The owl is not an endangered species, but it is a “species of concern.” After intercession by the former State Trade and Commerce Agency, regulators agreed that providing two off-site owl burrows would mitigate the impact on the loss of the one owl burrow.<sup>3</sup> Undeveloped industrial land in the Bay Area sells for at least \$25,000 an acre. The company involved saved a minimum of \$100,000.<sup>4</sup>

Mitigation is often very expensive. For example, the California Department of Transportation (Caltrans) negotiated a 3 to 1 replacement ratio to develop a mitigation bank in the Sacramento area; for every one acre of wetlands destroyed by highway construction, three acres would be

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dedicated. The total cost of developing the 142 acre mitigation bank was \$1.8 million, including the endowment fund for future maintenance, about \$43,000 per acre.<sup>5</sup>

Representatives of both the private and public sector have called for uniform, consistent standards to be used by all agencies that determine mitigation.<sup>6</sup> This applies to both determining the level of impact or damage that must be reached before mitigation is required and the amount of property to be dedicated to mitigation. Having clear standards would speed the initial study process, provide for review consistency and allow project sponsors to include appropriate mitigation steps in their original proposals.<sup>7</sup> This will also make budgeting for public and private projects more certain, as the mitigation costs can be calculated within the original cost estimates.<sup>8</sup>

### ***Updating CEQA Guidelines***

The regulations that interpret and implement CEQA are defined as guidelines. The law requires that these guidelines be updated every two years. The latest set of updates to the guidelines are due by August 2004.<sup>9</sup> Those updates have already been published and are awaiting approval.<sup>10</sup> The next updates are scheduled for no later than August 2006.

### ***Mitigation Registry***

There is no central listing, or register, of suitable properties available to be acquired for mitigation.<sup>11</sup> The lack of such a registry causes public and private developers to bear additional costs of searching for mitigation sites for every project. It also causes environmentally desirable property to be overlooked. For example, a county park may want to acquire adjacent wetlands to add to the park, but may not have the funding. At the same time, a developer may be searching for mitigation wetlands property. Without a central register, it is only by happenstance or word of mouth that they might learn they are in a position to help each other.<sup>12</sup>

Some moves toward a central registry have already occurred. Caltrans has developed its own list of mitigation areas because of the difficulty in finding other mitigation properties.<sup>13</sup> The California Department of Fish and Game maintains a list on its website, but that list is limited to its approved mitigation banks.<sup>14</sup> A more complete list of available mitigation properties was discontinued by the Resources Agency in 1996. The agency has now indicated a willingness to develop a complete registry, if funding is available.<sup>15</sup> Caltrans has indicated a willingness to help with that funding if the list will be comprehensive and regularly updated.<sup>16</sup>

### ***Recommendations***

- A. The Governor should work with the Legislature to amend the California Environmental Quality Act guidelines to provide uniform mitigation standards.**



- B. The Resources Agency or its successor should create a register of all available mitigation banks and properties, suitable properties available for purchase, and parcels that public, private and non-profit agencies would like to add to their holdings and regularly update the register.**

### ***Fiscal Impact***

The Resources Agency is required to update the CEQA guidelines every two years. Including mitigation standards in that update will not increase costs.

The Resources Agency estimates it would cost \$130,000 to develop an interactive register of mitigation properties with an annual maintenance of \$35,000.<sup>17</sup>

Both public and private developers will realize considerable savings as a result of the time and money saved from not having to separately negotiate the amount of mitigation for every project and from more easily locating appropriate mitigation properties. These savings should help stimulate California's economy. They also may offset the cost of the register. The savings, however, cannot be estimated at this time.

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### **Endnotes**

- <sup>1</sup> *Pub. Res. C. Section 21002.*
- <sup>2</sup> *Bay Area Council Task Force on the Relationship of Government Operations and Regulations to Economic Competitiveness, "Report of the CEQA Work Group" (San Francisco, California, February 1996), p. 3. [www.bayareacouncil.org/opinions/CEQAworkgrprpt.pdf](http://www.bayareacouncil.org/opinions/CEQAworkgrprpt.pdf) (last visited May 5, 2004).*
- <sup>3</sup> *Bay Area Council Task Force on the Relationship of Government Operations and Regulations to Economic Competitiveness, "Report of the CEQA Work Group," p. 3.*
- <sup>4</sup> *City Feet.COM, "Commercial Real Estate Listings and News," [www.cityfeet.com](http://www.cityfeet.com) (last visited, May 19, 2004).*
- <sup>5</sup> *Interview with John Webb, coordinator, Beach Lake Mitigation Bank, California Department of Transportation (District 3), Sacramento, California (April 30, 2004).*
- <sup>6</sup> *Interview with Maxine Ferguson, assistant chief counsel for environmental law, Department of Transportation, Sacramento, California (April 22, 2004); and Bay Area Council Task Force on the Relationship of Government Operations and Regulations to Economic Competitiveness, "Report of the CEQA Work Group," p. 8; and Caltrans Division of Environmental Analysis, "CEQA/Other Modification Suggestions" (Sacramento, California, March 23, 2004).*
- <sup>7</sup> *John Landis, Rolf Pendall, Robert Olshansky, and William Huang, "Fixing CEQA: Options and Opportunities for Reforming the California Environmental Quality Act," (California Policy Research Center, University of California, Berkeley, November 1995).*
- <sup>8</sup> *Interview with Bruce Behrens, acting chief deputy director, California Department of Transportation, Sacramento, California (April 28, 2004).*
- <sup>9</sup> *Pub. Res. C. Section 21087, et seq.*

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- <sup>10</sup> *California Office of Administrative Law, "California Regulatory Notice Register," Register 2003, No. 34-Z (Sacramento, California, August 22, 2003), p. 1295.*
- <sup>11</sup> *Interview with Debbie McEwan, Habitat Planning Conservation Branch, California Department of Fish and Game, Sacramento, California (April 29, 2004).*
- <sup>12</sup> *Interview with John Webb.*
- <sup>13</sup> *Interview with John Webb.*
- <sup>14</sup> *California Department of Fish and Game, Habitat Conservation Planning Branch, "Conservation and Mitigation Banks in California approved by the Department of Fish and Game" (Sacramento, California).*
- <sup>15</sup> *Interview with Chris Porter, wetlands coordinator, California Resources Agency, Sacramento, California (April 30, 2004).*
- <sup>16</sup> *Interview with Sheila Mone, Division of Environmental Analysis, California Department of Transportation, Sacramento, California (May 5, 2004).*



# Broaden the Use of Environmental Fee Collections to Address Unmet Needs

## **Summary**

The state collects a vast amount of money to administer some environmental and resource management programs, but the use of that money is narrowly defined. This has led to program priorities being set to match the resources instead of establishing priorities based on public health-risk needs. Broadening the use of the money would help address unmet, high-priority environmental needs.

## **Background**

The sources of funding for environmental and resource management programs come from 149 distinct funding sources, accounts or subaccounts, including the General Fund. Fees charged to the public are generating vast sums of money, but the purposes for which the funds are spent are relatively narrow.

Two principles tend to drive environmental and resource management fiscal policy: 1) polluter pays, which means that generators of pollution pay to prevent it, mitigate it, or clean it up; and 2) fee-for-service, which means that fees are collected to render a service or administer a program connected to the fee being charged. Because fees can be legally challenged on the basis that they do not have a connection to the purpose or program for which they are collected, these principles tend to insulate expenditures and program performance from scrutiny. In the case of four specific programs—waste tire recycling; Smog Check; used oil recycling; and bottle and can recycling—these principles and the legal structure of the programs serve as an obstacle to policymakers, use of the funds to address unmet, high-priority environmental and resource management needs.

## **Common features, similar outcomes for narrowly drawn programs**

The common elements that these four programs share are:

- They are funded by broad-based fees charged to the public at large;
- They generate significant amounts of money;
- They tend to be process-oriented instead of outcome-based;
- Each program has existed for more than a decade, but despite some progress, the problems they are designed to address still loom large; and
- Program expenditures tend to be narrowly focused and constrained by prescriptive statutes.

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## **Waste Tire Recycling**

Californians pay a \$1 per tire fee for each tire purchased to support the California Integrated Waste Management Board's (CIWMB) Tire Recycling Program. This program aims to increase waste tire recycling, set standards for waste tire facilities, provide grants and loans to local governments and businesses for tire management, and promote market development. The Tire Recycling Management Fund is scheduled to provide \$31 million in funding for the board's budget in Fiscal Year 2004–2005.<sup>1</sup>

But a November 2003 report issued by the State Senate's Advisory Committee on Cost Control in State Government criticized the planning and funding approach of the program as "piecemeal" and "lacking . . . farsightedness." The report went on to say: "Furthermore, the key objective for the [Waste Board] appears to be how to get the money out fast enough. Generally, a budget for the program is created in order to fund that program. The waste tire fund has more money now than it needs because the board struggles to spend the money it takes in."<sup>2</sup>

In contrast to that critique, the Waste Board's most recent program report and its five-year plan show the percentage of tires diverted away from landfills has more than doubled between 1990 and 2002. Nearly 75 percent of tires are diverted from landfills.<sup>3</sup> But a close look at the statistics calls into question the program's true impact on those diversion rates. The 24.6 million tires diverted in 2002 (out of net 33.1 million generated and imported) were distributed in the following manner:

- 14.7 million tires recycled and made into other products such as playground mats, rubber products and rubberized asphalt;
- 1.5 million tires resold because they still have legal tread left on them;
- 2.3 million tires retreaded for resale;
- 6.1 million tires used as fuel for kilns at three cement plants and an electric cogeneration facility; and
- 8.5 million tires disposed at landfills.<sup>4</sup>

These statistics indicate that 9.9 million tires claimed as "diverted" from landfills cannot be credited to program activities because businesses used the tires in some manner, thus the tire never entered the recycling stream. So while the CIWMB's report cites a 75 percent "diversion rate," the program-related recycling rate appears to be less than 44 percent.<sup>5</sup> Over the last decade, based on the report's statistics, there does appear to be a significant increase in the number of tires being recycled. In 1990, the board's report shows only 600,000 tires being recycled; by 2002, CIWMB cites 14.7 million tires being recycled—a 2,400 percent increase.<sup>6</sup>

Despite the progress, program performance continues to come under criticism for ignoring a single strategy—using waste tires as a component in road paving or rubberized asphalt—that critics believe is the most promising option for resolving the waste tire problem.<sup>7</sup>



Based on the statistics provided by the CIWMB, the waste tire program will take in \$1 per tire and spend about \$2 for each tire recycled. But in the CIWMB's five-year report, a direct relationship between the expenditure of funds and actual waste tire recycling is made in only a very few cases.<sup>8</sup>

The concerns of the State Senate's Advisory Committee on Cost Control in State Government speak to the fundamental problem of an isolated, specialized program fund: a lack of accountability for outcomes, and program priorities driven primarily by a "need" to spend funds. The program is fundamentally a process-oriented program that emphasizes allocating grants to local governments and others instead of a performance-based program that promotes recycling and market development.<sup>9</sup>

### **Smog Check Program**

Californians pay \$8.25 every two years for a smog check "certificate" to check their car's emission control equipment. More than 12 million vehicles a year are "smogged." The vast majority of cars (80–85 percent) run clean enough to pass a smog check.<sup>10</sup> In real terms then, the fees paid by most drivers are charged just to detect the small minority of vehicles causing a disproportionate share of the air quality problem.

The Smog Check program is budgeted at \$115 million in FY 2004–2005 and supports 551 authorized positions.<sup>11</sup> Almost \$95 million of Smog Check certification fee revenue is devoted to the Bureau of Automotive Repair's Vehicle Inspection and Repair Fund, which pays for activities that do not directly prevent, abate or eliminate air pollution such as electronically processing smog certificates, maintaining information technology and database functions, reviewing and certifying Smog Check equipment and conducting consumer protection programs related to both the Smog Check program and automotive repair generally. The remainder of the Smog Check funding is directed to the Air Resources Board's mobile source division (\$11.2 million) and the Bureau of Automotive Repair's High Polluter Repair or Removal Account (\$20.8 million).<sup>12</sup>

The Air Board's mobile source division is responsible for reducing air pollution from cars, trucks and a variety of other mobile sources. The High Polluter Repair Account is a subsidy program for vehicle owners whose vehicles fail the Smog Check program. Low-income drivers that fail Smog Check can pay \$20 toward repair costs and receive a \$500 state subsidy for the balance of the costs to repair the vehicle so it passes a smog check. Vehicle owners who are not low-income qualified, but who are targeted based on a computer model showing the likelihood that the vehicle they own will fail a smog check can also receive up to a \$500 subsidy after paying the first \$100 of repair costs.<sup>13</sup> These expenditures directly impact air quality by ensuring the program is designed properly and by funding repairs of high-polluting vehicles so that those vehicles emit less pollution and pass the Smog Check test.

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Based simply on the resource allocation, the Smog Check program is focused on process-oriented functions, with 20–25 percent of the program’s total funding spent for actual clean air benefits, while 75–80 percent of the funding is spent on testing “clean cars.”

Program funding for remote sensing—using technology to detect high-polluting vehicles that are in need of repairs in between mandatory, biennial Smog Checks—and vehicle “buy backs” that purchase generally older, higher polluting vehicles to accelerate vehicle turnover in favor of newer, cleaner cars are programs that a number of states, including California, have experimented with as options to the less focused process of testing mostly clean cars.<sup>14</sup>

### **Used Oil Recycling Program**

The Used Oil Recycling Program generates revenue from a 16-cent per gallon surcharge on oil sales. Based on the most recently published data from the California Integrated Waste Management Board, the fund should have generated more than \$25.5 million in revenue from sale of 159.5 million gallons of lubricating oil in FY 2000–2001.<sup>15</sup> Board staff reports that requests for refunds for oil shipped to California initially but sold elsewhere typically total \$2 million to \$4 million, reducing actual funding to \$21 to \$24 million a year.<sup>16</sup> Virtually the entire \$21 million budget for 2003 was allocated through four grant programs:

- Block grants to local government awarded on a 31-cent per capita basis;
- Awards for nonprofit organizations;
- Competitive grants for local government; and
- Research, testing and demonstration grants of up to \$300,000 (\$2 million available).<sup>17</sup>

Recycling rates for used oil have increased from 46 percent to 52 percent from Fiscal Year 1993–1994 to FY 2000–2001 with an additional 1.7 million gallons of oil being recycled in FY 2000–2001 compared to FY 1993–1994.<sup>18</sup> It is unclear how much of that increase in recycling can be attributed to the program, however. As noted in board material on future program plans, half of the cars in the United States now get oil changes from “fast lube” services. These businesses have onsite oil collection and ship the oil to be recycled; fast lube services are not cited by the board as contributing to the problem or the focus of its programs. This is a clear indication that these businesses are disposing of the oil accumulated onsite properly at recycling facilities. This is also an indication, however, that the growth of these businesses may be contributing to increased recycling rates for used oil.

Fundamentally, the Used Oil Recycling Program is not designed, nor administered, to focus on outcomes. The program elements, some of which are dictated by statute, focus on allocation of grants based on who receives the grant (whether it is a nonprofit or government entity), the geographic distribution of grants and marketing strategies favored by the board rather than on outcomes, such as the number of gallons of recycled oil.<sup>19</sup> There is some data suggesting that the program takes account of outcomes. For instance, privately owned auto parts stores that volunteer to serve as used oil collection facilities, which are encouraged through local government grants, collected as much as 3.7 million gallons of used oil—250 percent more oil



than was collected at curbside recycling and other collection centers. But this data is hard to find and it is unclear whether these findings are driving the program's focus. Board staff indicates that more attention is being focused on outcomes recently. A profile is now being developed of the most successful programs—those that contribute to actual increases in oil recycling—for this decade-old program.<sup>20</sup>

Nonetheless, outcomes still have yet to be incorporated as a primary focus of the program. The end users of recycled oil—recyclers and re-refiners—receive no subsidy from the program. The board does not indicate any new uses or markets have been developed as a result of its research and development grant funding. The focus seems to be on public education. And those programs are difficult to link to actual outcomes, board staff acknowledges.<sup>21</sup>

### ***Litter Reduction and Bottle and Can Recycling Program***

California's bottle and can recycling program in the Department of Conservation is funded from a California redemption value for beverage containers that generates enormous revenue. The Department of Conservation's budget includes \$837 million in recycling and processing fund for the FY 2004–2005.<sup>22</sup> And fund balances typically remain at the end of the fiscal year because consumers and processors are not collecting the redemption value for every container. In fact, under its current structure, if the recycling rate reaches 65 percent, the fund will still show an unencumbered balance of \$40 million. The current rate of recycling, according to the Department of Conservation is 58.2 percent.<sup>23</sup> It is a program designed to operate far below "full capacity."<sup>24</sup>

Over the past five years, recognition of the revenue generating capacity of the fund led to more than \$280 million in loans to the General Fund and three significant legislative changes to reallocate revenue out of the fund. In addition, the program maintains three legislatively mandated reserves that total almost \$100 million.<sup>25</sup> But the inordinate size of the required reserves, the General Fund borrowing, and legislative changes to reallocate funding have not prevented the program from fulfilling its mandated purpose, according to department staff.<sup>26</sup>

The Litter Reduction and Bottle and Can Recycling program was recently expanded to include new types of containers. This further increased its revenue-generating capability.<sup>27</sup> Despite legislative "tinkering," the program continues to generate more revenue than it expends to promote recycling.

### ***Unmet, high-priority environmental needs***

Some of the vast amount of money generated through existing environmental programs might benefit any number of other critical environmental needs, including toxic waste site cleanup and shortfalls in meeting air quality standards. More than 50 toxic waste sites have been abandoned or "orphaned" where public and private funding is not available for cleanup costs; the estimated cleanup costs is nearly \$150 million.<sup>28</sup> Additional public funding for high-priority sites could prevent potential public exposure to these contaminated sites and might

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enable the land to be put back into productive use. In California’s Central Valley, local air district officials are seeking to downgrade the Valley’s air quality designation from “severe” to “extreme.”<sup>29</sup> Until now the Los Angeles/Orange County metropolitan area, with the worst air pollution in the nation as measured by federal standards, was the only air basin designated as “extreme.”<sup>30</sup> Unlike air basins in California that are making progress toward clean air standards, this request is an indication that air quality improvements in the Central Valley region could be stalling.

Other high-priority environmental needs include funding a statewide rubberized asphalt program, accelerated vehicle retirement programs or other air quality incentive programs to accelerate retirement of diesel engines, such as the Carl Moyer program, and water quality improvement programs.

Without giving policy-makers some flexibility to use funding for high-priority needs, California will base program decisions on how revenue is generated, not on relative need, risk, public health or program accountability. Decisions will continue to be made to maximize the expenditure of funds—for a worthy purpose and with good intent—but without regard to program performance toward an ultimate goal.

### ***Recommendations***

- A. The Governor should work with the Legislature to amend the relevant sections of the Public Resources Code and the Health and Safety Code that impede use of program funds for purposes related to broader environmental protection goals.**

Specific code sections include, but are not limited to, Public Resources Code Section 42885 (et seq.); Health and Safety Code Section 44060 (et seq.); Public Resources Code Sections 47200 (et seq.) and 48650 (et seq.); and Public Resources Code Section 14580 (et seq.).

- B. The Governor should work with the Legislature to amend the relevant sections of the Public Resources Code and the Health and Safety Code to allow greater discretion for allocation of grants based on performance outcomes by including in the law performance-based measures as the basis for grant awards and to allow for one-time funding outside narrow program areas based on high-priority needs when appropriate.**

Specific code sections include, but are not limited to, Public Resources Code Sections 14581, 47200 and 48653; Health and Safety Code Section 44062.1; and Public Resources Code Sections 42885.5 and 42889.



- C. The Governor should direct the California Environmental Protection Agency, the Consumer Services Agency, or successors to adopt regulations to create performance-based audit mechanisms as a requirement for all grant allocations and work with the Legislature to amend the law to make this requirement a permanent fixture of these programs.**

### ***Fiscal Impact***

These recommendations would allow programs to compete for surplus balances in dedicated accounts based on priority and performance. Although these funds can not be estimated with certainty, potential funds or programs that may generate surplus balances include:

- Beverage Container Fund—To the extent that the recycling rate increases, surplus funds will become available at year end.
- Used Oil Recycling Program—\$6.9 million was available to be allocated on a discretionary basis in 2003.
- Tire Fee Fund—The CIWMB was directed to increase the fees for this fund by 400% as a result of SB 876 (Chapter 838, Statutes of 2000). Depending on the specified uses of the funds, it is anticipated that surplus funds will be available.
- Smog Check Program—It is anticipated that as new vehicle quality continues to improve over the next few years, less of this funding will be needed for vehicle repairs for high-polluters. Potentially, surplus funding will be available.

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### **Endnotes**

- <sup>1</sup> Department of Finance, "Governor's Budget, 2004–05" (Sacramento, California, January 2004).
- <sup>2</sup> Senate Advisory Committee on Cost Control in State Government, "CIWMB's Administration of the Waste Tire Recycling Management Program" (Sacramento, California, November 2003), p. 19.
- <sup>3</sup> California Integrated Waste Management Board, "Five Year Plan for the Waste Tire Recycling Management Plan" (July 2003), [www.ciwmb.ca.gov/Tires/FiveYearPlan](http://www.ciwmb.ca.gov/Tires/FiveYearPlan) (last visited June 15, 2004).
- <sup>4</sup> California Integrated Waste Management Board, "California Waste Tire Generation, Markets, and Disposal, 2002 Staff Report" (Sacramento, California, October 2003), p. 5.
- <sup>5</sup> California Integrated Waste Management Board, "Five Year Plan for the Waste Tire Recycling Management Plan."
- <sup>6</sup> California Integrated Waste Management Board, "California Waste Tire Generation, Markets, and Disposal 2002 Staff Report" (Sacramento, California, October 2003).
- <sup>7</sup> Senate Advisory Committee on Cost Control in State Government, "CIWMB's Administration of the Waste Tire Recycling Management Program," p. 21.
- <sup>8</sup> California Integrated Waste Management Board, "California Waste Tire Generation, Markets, and Disposal, 2002 Staff Report."
- <sup>9</sup> California Integrated Waste Management Board, "Five Year Plan for the Waste Tire Recycling Management Plan."
- <sup>10</sup> Interview with Pat Dorais, former chief, Bureau of Automotive Repair, Sacramento, California (March 12, 2004).
- <sup>11</sup> Department of Finance, "Governor's Budget, 2004–05."

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- <sup>12</sup> Department of Finance, "Governor's Budget, 2004–05."
- <sup>13</sup> Interview with Pat Dorais.
- <sup>14</sup> Interview with Joel Schwartz, Reason Foundation, Los Angeles (March 10, 2004).
- <sup>15</sup> Integrated Waste Management Board, "Used Oil Recycling Rate, Biannual Report, Fiscal Year 2000–2001" (Sacramento, California).
- <sup>16</sup> Interview with James Lee and staff, Integrated Waste Management Board, Sacramento, California (April 6, April 12 and April 29, 2004).
- <sup>17</sup> California Integrated Waste Management Board, "Agenda Item 2 with Attachments 1–5," Sacramento, California, November 18–19, 2003; and interview with James Lee and staff.
- <sup>18</sup> California Integrated Waste Management Board, "Used Oil Recycling Rate Annual Report: 2002," [www.ciwmb.ca.gov/UsedOil/RateInfo/default.htm](http://www.ciwmb.ca.gov/UsedOil/RateInfo/default.htm) (last visited June 15, 2004).
- <sup>19</sup> Pub. Res. C. Section 48653; California Integrated Waste Management Board, "Grant Information," [www.ciwmb.ca.gov/HHW/Grants.htm](http://www.ciwmb.ca.gov/HHW/Grants.htm) (last visited June 15, 2004); and interviews with and written material submitted by James Lee and staff. Grant program descriptions.
- <sup>20</sup> Interview with James Lee and staff.
- <sup>21</sup> Interview with James Lee and staff.
- <sup>22</sup> Department of Finance, "Governor's Budget, 2004–05."
- <sup>23</sup> Department of Conservation, Division of Recycling, "Californians Recycle," <http://www.consrv.ca.gov/DOR/index.htm> (last visited June 15, 2004).
- <sup>24</sup> Interview with Jim Ferguson, program manager and staff, Department of Conservation, Sacramento, California (April 28, 2004).
- <sup>25</sup> Interview with Jim Ferguson, program manager and staff; and Department of Finance, "Governor's Budget, 2004–05."
- <sup>26</sup> Interview with Jim Ferguson, program manager and staff; and Department of Finance, "Governor's Budget, 2004–05." SB 332 (Chapter 815, Statutes of 1999).
- <sup>27</sup> California State Auditor, California Environmental Protection Agency: "Insufficient Data Exists on the Number of Abandoned, Idled or Underused Contaminated Properties, and Liability Concerns and Funding Constraints Can Impede Their Cleanup and Development, Report No. 2002-121" (July 2003), <http://www.bsa.ca.gov/bsa/pdfs/2002-121.pdf> (last visited June 21, 2004), cover letter. State Auditor Elaine Howle's cover letter contains summary information.
- <sup>28</sup> Senate Committee on Environmental Quality, "SB 709 Analysis (Florez, 2003)," [http://info.sen.ca.gov/pub/bill/sen/sb\\_0701-0750/sb\\_709\\_cfa\\_20030509\\_184305\\_sen\\_comm.html](http://info.sen.ca.gov/pub/bill/sen/sb_0701-0750/sb_709_cfa_20030509_184305_sen_comm.html) (last visited June 15, 2004).
- <sup>29</sup> University of Southern California Environmental Health Sciences Center, "Air Pollution and Children's Health," [http://hydra.usc.edu/scehsc/coep/coep\\_atlaschap.asp](http://hydra.usc.edu/scehsc/coep/coep_atlaschap.asp) (last visited June 15, 2004).



# School Land Bank Fund Balance Transfer to the State Teachers' Retirement System

## **Summary**

A surplus balance of more than \$50 million exists in the School Land Bank Fund. These funds should be transferred to the State Teachers' Retirement System for investment and to offset a General Fund obligation.

## **Background**

The State of California owns approximately 476,000 acres of land and holds the fee ownership of mineral interests in another 790,000 acres of school lands that are held in trust for fiscal support of the public school system. The federal government granted California these lands upon the state's entry into the Union. About 90 percent of the properties were sold prior to the State Lands Commission (Commission) assuming responsibility for the lands in 1938. The proceeds from the sale of those properties were used mainly for school construction. The remaining lands are to be managed by the Commission to generate revenue for the public school system.<sup>1</sup>

A trust for school lands was created in 1984, known as the School Land Bank Fund (SLBF). The legislation directed the State Lands Commission to consolidate and retain state school lands for revenue generation.<sup>2</sup> Revenue is primarily generated from geothermal, oil and gas development, and mining activities. Other, lesser sources of revenue include land leasing, interest income and timber.<sup>3</sup> Revenues from the use of school lands are to be deposited in the State Treasurer's Office to the credit of the State Teachers' Retirement System (STRS).<sup>4</sup> Revenues from the sale of school lands or "lieu lands," which are properties purchased with the proceeds from the sale of school lands, are also deposited in the Treasurer's Office and held as surplus money in the Surplus Money Investment Fund (SMIF) for investment by the Commission.<sup>5</sup> For the last 20 years the Commission has allowed the deposits from land sales and interest from the SMIF to remain in the SMIF earning short-term rates.<sup>6</sup>

More than \$50 million resides in the School Land Bank Fund (SLBF) as surplus (a reserve) from land sales and interest earned on the principle.<sup>7</sup> The federal Bureau of Land Management has paid California more than \$14 million over the past 10 years for school lands acquired through the 1994 California Desert Protection Act, and anticipates paying an additional \$26.5 million.<sup>8</sup> The \$50 million reserve in the SLBF will continue to grow.

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The SLBF can only be used to acquire new school lands or for investing in property that will provide revenue to STRS for enhancing STRS members' purchasing power. Two sources of funds that provide purchasing power protection for STRS benefit recipients are the School Lands Revenue through the SLBF and the Supplement Benefit Maintenance Account (SBMA). If the revenue from the SLBF is not sufficient to boost the STRS recipients' purchasing power to 80 percent of a recipients' purchasing power at the time of retirement, the SBMA makes up the difference using money from the state's General Fund.<sup>9</sup> The School Land Bank Fund net revenue for STRS cost-of-living raises for Fiscal Year 2002–2003 was \$3.9 million. The General Fund contribution to the SBMA for FY 2004–2005 is \$26 million, to make up the difference between the School Lands Revenue contributions and the actual cost of enhancing the STRS recipient's purchasing power.<sup>10</sup>

### ***Recommendations***

- A. The Governor should work with the Legislature to amend the appropriate sections of the Public Resources Code to direct that the current balance and future proceeds from the sale of school land and in-lieu lands be deposited in the State Treasury for credit to the State Teachers' Retirement System.**
  
- B. A portion of the current balance in the School Land Bank Fund should be used to pay the General Fund contribution for Fiscal Year 2005–2006. The remaining balance in the fund should be invested and managed by the State Teachers' Retirement System to generate future revenue that will benefit the fund.**

According to the Legislative Analyst's Office, STRS has the staff expertise and organizational structure to best manage the investment of these funds.<sup>11</sup> The average rate of return on the SLBF in the Surplus Money Investment Fund for the last 10 years is 5.3 percent.<sup>12</sup> The average rate of return on STRS investments for the last 10 years is 8.1 percent. The real estate investments for the STRS portfolio earned up to an 11 percent return over the last decade.<sup>13</sup> Based on these percentages, STRS management of the School Land Bank Fund surplus would have generated at least 50 percent more revenue than was earned in SMIF.

The surplus money in this fund should be transferred to STRS to accomplish the legislative intent of the 1984 School Bank Fund Act, which is to generate revenue for STRS.

### ***Fiscal Impact***

Assuming that the General Fund contribution to STRS is the same in FY 2005–2006 as it was in FY 2004–2005, this proposal would result in a one-time General Fund savings of \$26 million in FY 2005–2006.



**General Fund**  
(dollars in thousands)

Fiscal Year	Savings	Costs	Net Savings (Costs)	Change in PYs
2004–05	\$0	\$0	\$0	0
2005–06	\$26,000	\$0	\$26,000	0
2006–07	\$0	\$0	0	0
2007–08	\$0	\$0	0	0
2008–09	\$0	\$0	0	0

Note: The dollars and PYs for each year in the above chart reflect the total change for that year from FY 2003–04 expenditures, revenues and PYs.

## Endnotes

- <sup>1</sup> California State Land Commission, "Annual Staff Report on the Management of State School Lands Fiscal Year 2002–2003," (Sacramento, California, Fall 2003), p. 1.
- <sup>2</sup> California Pub. Res. C. Sections 8700–8716.
- <sup>3</sup> California State Land Commission, "Annual Staff Report on the Management of State School Lands Fiscal Year 2002–2003," p. 28.
- <sup>4</sup> California Pub. Res. C. Section 6217.5.
- <sup>5</sup> California Pub. Res. C. Section 6217.7.
- <sup>6</sup> Legislative Analyst's Office, "Analysis of the 2001–02 Budget Bill, State Lands Commission" (Sacramento, California, February 21, 2001), p. 2.
- <sup>7</sup> Legislative Analyst's Office, "Analysis of the 2001–02 Budget Bill, State Lands Commission," p. 1.
- <sup>8</sup> California State Teachers' Retirement System, "Overview California State Teachers' Retirement System and Related Issues" (Sacramento, California, January 1, 2001), [http://www.calstrs.com/help/forms\\_publications/printed/0001overview/entire.pdf](http://www.calstrs.com/help/forms_publications/printed/0001overview/entire.pdf). (last visited June 15, 2004), pp. 28–29 and 33; and United States Code, Title 16, Section 410aaa–77, California State School Lands.
- <sup>9</sup> California State Teachers' Retirement System, "Overview California State Teachers' Retirement System and Related Issues," pp. 33–34.
- <sup>10</sup> California Department of Finance, "Governor's Budget 2004–05, Education" (Sacramento, California, January 2004), p. E 32.
- <sup>11</sup> Legislative Analyst's Office, "Analysis of the 2001–02 Budget Bill, State Lands Commission," p. 2.
- <sup>12</sup> California State Controller's Office, Division of Accounting and Reporting, "Pooled Money Investment Account Earnings Yield Rate, <http://www.sco.ca.gov/ard/pooled/pmia.pdf>. (last visited June 15, 2004).
- <sup>13</sup> California State Teachers' Retirement System, "Investment Consultant Report," [http://www.calstrs.com/Help/forms\\_publications/printed/currentcafr/invest.pdf](http://www.calstrs.com/Help/forms_publications/printed/currentcafr/invest.pdf), (last visited May 13, 2004), p. 51.





# Improve Collection of Department of Fish and Game Fees for Reviewing Environmental Reports

## **Summary**

The Department of Fish and Game is not receiving up to \$8 million in fees annually for reviewing environmental reports. General Fund resources subsidize these operations. The fee structure is not designed to offset the costs of the review process and many projects are improperly exempted from paying the fees. Minor amendments to the Fish and Game codes will result in greater fee collection with a corresponding reduction in the need for General Fund resources.

## **Background**

One of the Department of Fish and Game (DFG) responsibilities is to protect California's natural resources through the review of Environmental Impact Reports (EIR) for proposed development. Agencies responsible for approving or denying land-use permits (e.g., city councils for building permits) are required to assess environmental impacts under the California Environmental Quality Act and serve as the "lead agency" for preparing environmental reports describing the impacts of land-use projects. The permitting fees paid by project proponents are intended to cover the cost for overseeing the preparation and review of EIRs. One reason for conducting environmental reviews and issuing EIRs is to identify the effects of development and land-use projects on the state's natural resources, including impacts to ecosystems (fish, wildlife, plants and habitat). In reviewing the EIRs, DFG is required to determine whether an environmental report adequately identifies the project impacts and to propose any mitigation measures it deems necessary to reduce or prevent harm to ecosystems.<sup>1</sup>

## **Fees for environmental review mandated**

In 1990, legislation was enacted authorizing the DFG to charge \$850 for a review of an EIR and \$1,250 for a Negative Declaration.<sup>2</sup> Negative Declarations are documents that purport to show that a project has no significant impact on the environment. Revenues generated by the fees would be used, in part, for consulting with other public agencies (e.g., Department of Forestry on timber harvest plans), reviewing environmental documents, recommending mitigation measures and developing monitoring requirements for purposes of the California Environmental Quality Act. The fee can also be used to pay for natural resource restoration projects.<sup>3</sup> The legislation also authorized lead agencies to make an initial determination that a project has *de minimus* (minimal) impact on the environment and exempt the project from

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review and the fee. Because DFG makes the final determination on a project's environmental impact, however, it can reverse the lead agency's *de minimus* finding and require the project proponent to file the appropriate environmental reports and pay the required fee.<sup>4</sup>

### ***Legal challenges temporarily put fee collection on hold***

After one year of operation, the legislation establishing the fees for reviewing EIRs was challenged in court on the basis that it imposed a tax that had failed to receive the required two-thirds approval of the Legislature to be enacted. During the time of the lawsuit, DFG put fee collection activities in a "maintenance mode," meaning that they continued to review environmental reports but did not aggressively pursue either fee collections or question *de minimus* determinations. In April 2000, the Court of Appeals ruled that the fee was constitutionally valid—that it was not a tax. The State Supreme Court refused to overrule the Court of Appeals decision in July 2000.<sup>5</sup>

According to DFG, during the first full year of fee collections, about \$8 million in fees was collected. However, during the legal challenge, revenue collection plummeted to no more than half that amount in any give year. And, even after the case was decided in favor of the state, revenue generation continues to drop—to about \$1.8 million annually. DFG receives approximately 6,800 environmental documents annually but collects fees to support evaluating about a third of them.<sup>6</sup>

In April 2002, the Legislative Analyst's Office issued a critique of DFG's environmental review and fee collection practices. In its report, the LAO expressed several concerns about the lack of an automated tracking system to record the type and number of environmental documents that DFG received each year. One concern was that the lack of automated systems might cause DFG to fail to review high-priority projects. Another concern was the potential that fee collection was artificially low because local planners were incorrectly labeling projects as *de minimus*. The LAO also stated that without an audit of local practices, it was impossible to determine if the practice of mislabeling projects as *de minimus* was widespread.<sup>7</sup>

To address the LAO's concerns, DFG installed a database in 2002 to track environmental documents and audited environmental reports received in 2001 through 2003 to determine if lead agencies had mislabeled environmental documents as *de minimus*. Based on the audit, the department estimates that as many as 50 percent of *de minimus* projects have been inappropriately exempted from the fee.<sup>8</sup> The department is pursuing payment from project proponents whose project was inappropriately designated as *de minimus*.<sup>9</sup>

### ***General Fund subsidizing environmental reviews***

Because DFG is not receiving nearly the amount of fee revenues as originally estimated at the inception of the program, it cannot meet all of its responsibilities given to it under the California Environmental Quality Act. It has also prevented the department from pursuing standardized policies for mitigation measures for projects to help guide local government and



project proponents. Developing standard mitigation measures will help streamline the environmental review process, provide certainty for local planners and project proponents and provide more consistent environmental protection.<sup>10</sup> The department has had to rely on General Fund resources to pay costs that should have been paid by fee collections in the amount of \$27 million over the past several fiscal years.<sup>11</sup>

### ***Fees not based on complexity of the review***

Fees are charged based on the type of environmental review document filed, not the complexity of the review or the potential harm caused by the project. This flat fee approach creates a perceived inequity in the fee since all projects, despite their size or the complexity of the review, pay the same fee as long as they receive either a Negative Declaration or functional equivalent designation as provided by the Act.<sup>12</sup> In addition, environmental filing fees from water rights applications are dedicated to paying for stream flow analysis and monitoring aimed at protecting riparian habitat and fish populations are inadequate to fund the stream flow analysis program. As a result, the Department curtailed the stream flow analysis and monitoring program.<sup>13</sup>

Finally, not all state departments that have lead agency responsibilities remit to DFG environmental filing fees. For instance, DFG is not collecting fees from the Department of Pesticide Regulation or the California Energy Commission, and the State Water Resources Control Board (SWRCB) has exempted most projects.<sup>14</sup>

### ***Recommendation***

**The Governor should work with the Legislature to amend the appropriate sections of the Fish and Game Code to ensure that sufficient revenue is received to administer the provisions of the California Environmental Quality Act.**

- The fee structure should consider a project's size, scope and complexity.
- The definition that a project has *de minimus* impact on the environment should be based solely on a finding of fact that the project is exempt from the provisions of the California Environmental Quality Act.
- Require project proponents to remit fees to the state, not a lead agency; or allow lead agencies, other than a state agency, to add a surcharge onto the filing fee as an incentive to collect and remit filing fees to the state. Surcharge money would be placed in a trust account to be used for the implementation of projects to improve wildlife habitat within the local jurisdiction where the project is approved.

### ***Fiscal Impact***

The actual cost for environmental review is approximately \$11 million annually. The filing-fee revenue generated \$2 million in Fiscal Year 2003–2004, creating the need for a \$9 million General Fund subsidy. The Department estimates an added incentive for fee collection would generate \$6.25 million savings to the General Fund.

**General Fund**  
(dollars in thousands)

Fiscal Year	Savings	Costs	Net Savings (Costs)	Change in PYs
2004–05	\$0	\$0	\$0	0
2005–06	\$0	\$0	\$0	0
2006–07	\$6,250	\$0	\$6,250	0
2007–08	\$6,250	\$0	\$6,250	0
2008–09	\$6,250	\$0	\$6,250	0

Note: The dollars and PYs for each year in the above chart reflect the total change for that year from FY 2003–04 expenditures, revenues and PYs.

**Endnotes**

- <sup>1</sup> *Legislative Analyst’s Office, “Better Protections of Fish and Wildlife: Improving Fish and Game’s CEQA Review” (Sacramento, California, April 30, 2002).*
- <sup>2</sup> *Legislative Analyst’s Office, “Better Protections of Fish and Wildlife: Improving Fish and Game’s CEQA Review.”*
- <sup>3</sup> *Fish & G.C. Section 711.4 et seq.*
- <sup>4</sup> *Interview with Marcy Larson JD, attorney, Department of Fish and Game, Sacramento, California (June 15, 2004).*
- <sup>5</sup> *“California Association of Professional Scientist v Department of Fish and Game,” 79 Cal. App. 4<sup>th</sup> 935 (2000).*
- <sup>6</sup> *Department of Fish and Game, “CEQA Review—Program Evaluation,” report to Legislature, (Sacramento, California, January 10, 2004).*
- <sup>7</sup> *Legislative Analyst’s Office, “Better Protections of Fish and Wildlife: Improving Fish and Game’s CEQA Review.”*
- <sup>8</sup> *Interview with Scott Flint, program manager, Environmental Review and Permitting, Department of Fish and Game, Sacramento, California (June 4, 2004).*
- <sup>9</sup> *Interview with Ryan Broderick, director, Department of Fish and Game, Sacramento, California (May 7, 2004).*
- <sup>10</sup> *Interview with Scott Flint.*
- <sup>11</sup> *Interview with Scott Flint.*
- <sup>12</sup> *Interview with Scott Flint.*
- <sup>13</sup> *Interview with Ryan Broderick.*
- <sup>14</sup> *Interview with Ryan Broderick.*



# Increase Efficiency in Using Existing Bond Funds for Environmental Enhancement

## **Summary**

State land acquisition for resource conservation projects results in unnecessary costs to the state. In addition, state purchase of private land for these projects results in an unnecessary loss of property taxes to local governments and limits California's share of federal conservation funds. Existing state resources bonds should be used to more efficiently manage and enhance state conservation projects and increase use of public-private partnerships.

## **Background**

California voters have approved numerous ballot measures to fund state projects to protect and improve open space, wildlife and water. The projects are often funded through the sale of bonds, as specified in the ballot measure. These ballot measures are referred to as "resources bond measures."

Protecting and improving open space, wildlife and water can be accomplished in essentially two ways. One way is for the state to purchase land (called "fee title acquisitions"). The other is by establishing public-private partnerships among state and federal agencies, and willing landowners and local conservation groups to manage private lands for multiple objectives. Under these partnerships, the land continues to be privately owned.

## **Fee title acquisitions**

Resources bond measures recently approved by voters have made almost \$3 billion available for state land acquisitions. Of this amount, all but \$900 million has already been dedicated to specific projects, which have largely employed a fee-title acquisition strategy. One drawback to fee title acquisitions is they often need a lot of money to develop and maintain the land long-term.<sup>1</sup> The state, however, often does not appropriate sufficient funds for this purpose so the land is frequently not maintained appropriately.

## **Opposition to fee title acquisitions**

Fee title acquisitions can also generate significant opposition from local interest groups and landowners, although this has not always been the case. For example, one of the first wildlife refuges in the state was established in 1929 in the Sacramento Valley to provide attractive waterfowl habitat and reduce damage to rice crops caused by birds. The refuge was the result of a strong partnership between wildlife conservationists and agriculturalists. This is not true today. Many agricultural landowners and local government representatives oppose government land acquisitions in their area.

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State and federal government land acquisitions for wildlife habitat protection and restoration represent a significant public investment. Californians have generally supported these efforts by approving resources bond measures. Recent fee title acquisitions of highly productive agricultural land, however, have resulted in significant opposition by surrounding landowners, local government representatives and agricultural groups who object to the loss of agricultural land.<sup>2</sup> The loss in associated property tax revenues and other economic activity, such as employment and sales tax revenues, contribute to the opposition. Other factors contributing to the opposition of state fee title acquisitions is a perception that the state is increasing its control of local resources.

### ***Fee title acquisitions result in lost revenue to local governments***

State and federal agencies are supposed to reimburse local governments for lost property taxes resulting from government land acquisitions, but full reimbursement usually does not occur. According to a 2003 study from the University of California, Berkeley, Congress appropriated only 46 percent of the amount owed in 1998 to local governments for reimbursement of lost property tax revenue from federal land acquisitions. These federal “payments-in-lieu-of taxes” (PILTs) have since fluctuated greatly. From 1999 through 2002, congressional appropriations for PILTs have ranged from 41 to 60 percent of the amount owed.<sup>3</sup>

Until recently, California fully reimbursed local governments for lost property tax revenues associated with state fee title acquisitions. It has not, however, issued PILTs for state-owned lands since 2001 and, given the significant budget problems faced by the state, it is not likely PILT will be funded in the near future.<sup>4</sup>

Studies show a loss in other local economic activity when the state acquires land for conservation projects, especially agricultural land. For example, a study of the socioeconomic impacts of wildlife habitat restoration in the Sacramento River Conservation Area estimates the loss of economic activity due to the conversion of agricultural land to wildlife habitat is approximately \$1,100 per acre per year.<sup>5</sup> The study estimates economic benefits resulting from activities to improve and maintain wildlife habitat conditions on acquired land and increased recreational activities to be approximately \$300 per acre per year. The study assumes full PILT payments from state and federal agencies, and that full funding for improvements and maintenance is available. The net result is a loss to the local economy of \$800 per acre. The actual loss is greater, however, because the state is not currently paying PILTs.

### ***Poor management of state-acquired lands***

It is increasingly difficult to manage state-acquired lands without secure funding. The experience of the Yolo Wildlife Area is a good example. The annual budget to maintain the Yolo Wildlife Area was recently reduced from \$400,000 to \$30,000.<sup>6</sup>



The state acquired 16,000 acres for this project. Much of the newly acquired land (13,000 acres) was leased for continued agricultural production (rice, tomatoes and cattle grazing), which generated a net income of \$300,000.<sup>7</sup>

This income was then used to support improvements and maintenance of the remaining 3,000 acres. For example, \$100,000 was used to purchase the electricity necessary to pump water to flood the land and create early winter habitat for waterfowl. Agricultural proceeds also supported vegetation and water management activities needed to control floods and mosquitoes.<sup>8</sup>

Land assets are often acquired without sufficient funds available to develop a management plan or to maintain the land. As a result, the land may sit idle, presenting a nuisance to adjacent landowners as a source of unwanted animals, insects, weeds and diseases. These idle lands may also cause seepage, flooding or water quality problems for adjacent landowners. Without sufficient maintenance, these lands may not even provide valuable wildlife habitat as intended. Prospect Island and Liberty Island in Solano County are two land acquisition projects that have generated many of these negative results due to lack of funding to adequately develop, improve and maintain the lands.<sup>9</sup>

When maintenance funds are available, they are frequently insufficient to cover all costs. For instance, long-term needs for moving water, restoring land and vegetation, controlling mosquitoes, and replacing equipment and buildings as necessary are often not factored into operations and maintenance costs. Additionally, government wildlife habitat management can be less efficient than privately managed lands. It is estimated that the management ratio on state-owned land is one person per 1,000 acres, while the management ratio on privately owned land is one person per 250 acres. The state is also often less innovative and result-oriented in maximizing wildlife habitat performance on its land than are private landowners.<sup>10</sup>

### ***Public-private partnerships***

Public-private partnerships are an economical and efficient alternative to fee title acquisitions. Public-private partnerships among state and federal agencies, willing landowners and local conservation groups effectively manage private lands for multiple objectives. These objectives include producing crops, managing floods and water supplies, improving water quality and establishing and protecting wildlife habitat.

With a public-private partnership, lands continue to be privately owned. The landowner enters into agreements with state and federal agencies and local conservation groups to cooperatively manage the land. The landowner is compensated for allowing the land to be used for activities other than agricultural production, such as establishing wildlife habitat or flood management. The agreements may or may not include land conservation easements, which compensate landowners for giving up certain land development rights.

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Public-private partnerships can be a cost effective strategy that avoids or minimizes many of the adverse impacts identified with fee title acquisitions. The California Range Land Trust estimates that public-private partnerships cost 30 to 60 percent less than fee title acquisitions.<sup>11</sup> An example is the Mapes Ranch in Stanislaus County. This ranch grows corn and provides pasture for its beef cattle operation. The ranch is also the premier Aleutian Canada Goose winter habitat on the west coast and provides flood management on the San Joaquin River. The owners have contracts with government wildlife agencies for land conservation easements and management that maximize economic and wildlife objectives for each party.

Another benefit of using public-private partnerships is that several federal agencies offer financial assistance to support them. The programs specifically offer funding to private landowners who are willing to use their property for resource conservation purposes. Some programs provide financial assistance to projects involving conservation easements, while others support development and maintenance of conservation projects.<sup>12</sup>

Unlike other states, California has not used its money from resources bond measures and other state programs to maximize these federal funds. As a result, California is not receiving its fair share of federal conservation dollars. In 2002, California received about \$10 million out of a total of \$227 million available nationally in federal Environmental Quality Incentive Program (EQIP) funds. Texas and Colorado received \$21 million and \$11 million respectively even though California agricultural value is double that of Texas and six times that of Colorado.<sup>13</sup>

### ***Recommendations***

- A. The Governor should direct the Resources Agency, or its successor, to dedicate available resources bond measure funds to protecting and improving open space, wildlife and water through public-private partnerships and conservation easements, where appropriate.**

Fee title acquisitions should not be precluded. Policy guidance should be provided that results in more efficient use of limited bond dollars, and maximizes opportunities to meet multiple objectives.

- B. The Governor should direct the Resources Agency, or its successor, to coordinate state efforts to maximize federal funds available from the United States Departments of Agriculture and the Interior to supplement existing state resources bond measure funds and to develop a plan to sufficiently fund development, operations and maintenance costs for state-owned land used for conservation purposes.**

### ***Fiscal Impact***

In addition to doubling the amount of acres that can now be purchased, this recommendation will result in millions of dollars in ongoing savings. Given the history of bond expenses, it is anticipated all bond funds will be expended prior to July 1, 2005. Assuming \$4,000 per acre



land costs, 225,000 acres could be acquired with the \$900 million dollars of available funds. As part of this proposal, \$1,000 per acre is used for development costs and \$100 per acre is used for operation and maintenance costs. Property taxes are estimated at \$40 per acre per year.

A fee title acquisition program for 225,000 acres would cost \$900 million in land acquisition, \$225 million in development costs (one-time costs), and \$22.5 million in operation and maintenance costs. Assuming a PILT rate of 50 percent, state PILT payments of \$4.5 million per year will be avoided.

A partnership program with private landowners would incur the following state costs, assuming purchase of permanent conservation easements on 450,000 acres at \$2,000 per acre, state development cost share of \$250 per acre, matched with federal funds of \$500, matched by landowners' in-kind contribution of \$250 per acre. Operations and maintenance costs of \$100 per acre would be shared; (\$20 state, \$20 federal), and \$60 per acre per year by the landowner. In addition to saving the state \$112.5 million in land development costs in Fiscal Year 2005–2006, this proposal is also anticipated to save \$13.5 million in operations and maintenance costs and \$9 million in avoided PILTs on an ongoing basis.

**Total Savings—All Funds\***  
(dollars in thousands)

Fiscal Year	Savings	Costs	Net Savings (Costs)	Change in PYs
2004–05	\$0	\$0	\$0	0
2005–06	\$130,500	\$0	\$130,500	0
2006–07	\$18,000	\$0	\$18,000	0
2007–08	\$18,000	\$0	\$18,000	0
2008–09	\$18,000	\$0	\$18,000	0

Note: The dollars and PYs for each year in the above chart reflect the total change for that year from FY 2003–04 expenditures, revenues and PYs.

- \* Allocation of savings between General Fund and Special Funds cannot be determined at this time. Savings include one-time savings of land development costs and ongoing savings for operations and management and PILTs.

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## Endnotes

- <sup>1</sup> State Legislative Analyst's Office, *Analysis of the 2004-05 Budget Bill—Resources*, [http://www.lao.ca.gov/analysis\\_2004/resources/res\\_03\\_cc\\_resourcebonds\\_anl04.htm](http://www.lao.ca.gov/analysis_2004/resources/res_03_cc_resourcebonds_anl04.htm) (last visited June 13, 2004).
- <sup>2</sup> Bharvirkar, Ranjit, et al, UC Berkeley, *Reducing Dissatisfaction with the Economic Impact of Habitat Acquisition Policies in the Sacramento River Conservation Area*, prepared for the CALFED Bay-Delta Program, May 2003, p. 12.
- <sup>3</sup> Bharvirkar, Ranjit, et al, UC Berkeley, *Reducing Dissatisfaction with the Economic Impact of Habitat Acquisition Policies in the Sacramento River Conservation Area*, prepared for the CALFED Bay-Delta Program, May 2003.
- <sup>4</sup> Dave Smith, California Department of Fish and Game, telephone interview (May 21, 2004).
- <sup>5</sup> Jones and Stokes Environmental Consulting, et al, *Socioeconomic Assessment of Proposed Habitat Restoration within the Riparian Corridor of the Sacramento River Conservation Area*, prepared for The Nature Conservancy, funded by CALFED, March 2003.
- <sup>6</sup> "Wildlife Area Reopens in Tough Budgetary Times," *"Davis Enterprise"* (April 14, 2004), p. A-1.
- <sup>7</sup> "Wildlife Area Reopens in Tough Budgetary Times," *"Davis Enterprise"* (April 14, 2004), p. A-1.
- <sup>8</sup> "Wildlife Area Reopens in Tough Budgetary Times," *"Davis Enterprise"* (April 14, 2004), p. A-1.
- <sup>9</sup> Margit Aramburu, executive director, Delta Protection Commission, telephone interview (June 4, 2004).
- <sup>10</sup> Dave Smith, California Department of Fish and Game, telephone interview (May 21, 2004).
- <sup>11</sup> Nita Vail, California Range Land Trust, telephone interview (June 4, 2004).
- <sup>12</sup> United States Department of Agriculture—Natural Resources Conservation Service. <http://www.nrcs.usda.gov/programs>; United States Fish and Wildlife Service, <http://partners.fws.gov/pdfs/PFW03factsheet.pdf> (last visited June 6, 2004).
- <sup>13</sup> California Department of Food and Agriculture, September 2002.



**Resource Conservation and Environmental Protection**

**Fiscal Impact Table**

(Dollars Displayed in Thousands)

Issue Number	Issue Description	2004-05		2005-06		2006-07		2007-08		2008-09		5-Year Cum. Total All Funds
		Savings/General Fund	(Costs)/Revenue Other Funds									
RES 01	Establish a Single Point of Contact for All Public Inquiries to the California Environmental Protection Agency	CBE	CBE	CBE								
RES 02	Consolidate Cleanup, Spill Prevention and Emergency Response Programs	\$0	\$244	\$0	\$575	\$0	\$1,975	\$0	\$1,975	\$0	\$1,975	\$6,744
RES 03	Consolidate Waste Management Programs	\$0	\$0	\$0	\$487	\$0	\$487	\$0	\$487	\$0	\$487	\$1,948
RES 04	Consolidate Pollution Prevention Programs	\$0	\$0	\$0	\$975	\$0	\$975	\$0	\$975	\$0	\$975	\$3,900
RES 05	Consolidate Pest Control Licensing and Regulatory Programs	\$0	\$0	\$0	\$512	\$0	\$512	\$0	\$512	\$0	\$512	\$2,048
RES 06	Consolidate Funding Programs for Clean Water Infrastructure	\$0	(\$311)	\$0	\$395	\$0	\$395	\$0	\$395	\$0	\$395	\$1,269
RES 07	Reduce Overhead Costs of the California Environmental Protection Agency	\$25	\$480	\$374	\$6,561	\$817	\$15,530	\$817	\$15,530	\$817	\$15,530	\$56,481
RES 08	Consolidate the State's Geologic Programs	\$0	\$17	\$0	\$108	\$0	\$108	\$0	\$108	\$0	\$108	\$449
RES 09	Centralize California Heritage Programs	CBE	CBE	CBE								

## Resource Conservation and Environmental Protection

### Fiscal Impact Table

(Dollars Displayed in Thousands)

Issue Number	Issue Description	2004-05		2005-06		2006-07		2007-08		2008-09		5-Year Cum. Total All Funds
		Savings/General Fund	(Costs)/Revenue Other Funds									
RES 10	Consolidate State Field and Regional Offices	CBE	CBE	CBE								
RES 11	Consolidate Real Estate Services into One Organization	(\$157)	(\$157)	\$445	\$444	\$445	\$444	\$445	\$444	\$445	\$444	\$3,242
RES 12	Restructure Funding and Governance for Certain Land Conservancies	\$0	\$1,041	\$0	\$2,082	\$0	\$2,082	\$0	\$2,082	\$0	\$2,082	\$9,369
RES 13	Consolidate Resource Land Acquisition Processes	CBE	CBE	CBE								
RES 14	Streamline Permitting to Reduce Petroleum Infrastructure Bottlenecks	CBE	CBE	CBE								
RES 15	Use Technology to Streamline the State-Level Environmental Review Process	\$0	\$0	(\$48)	\$0	\$1	\$0	\$58	\$0	\$115	\$0	\$126
RES 16	Streamline the Department of Pesticide Regulation's Registration Process	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
RES 17	Simplify Process for Interagency Work Authorizations	\$1,095	\$1,095	\$1,095	\$1,095	\$1,095	\$1,095	\$1,095	\$1,095	\$1,095	\$1,095	\$10,950
RES 18	Establish a Risk-Based, Multi-Media, Environmental Compliance Assurance Program	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0



**Resource Conservation and Environmental Protection  
Fiscal Impact Table**

(Dollars Displayed in Thousands)

Issue Number	Issue Description	2004-05		2005-06		2006-07		2007-08		2008-09		5-Year Cum. Total All Funds
		Savings/General Fund	(Costs)/Revenue Other Funds									
RES 19	Enact Pending CEQA Guideline Amendments	\$376	\$1,904	\$376	\$1,904	\$376	\$1,904	\$376	\$1,904	\$376	\$1,904	\$11,400
RES 20	Consolidate Responsibility for Hazardous Materials and Hazardous Waste Under One Agency	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
RES 21	Improve the Timber Harvest Plan Development and Review Process	CBE	CBE	CBE								
RES 22	Promote Smart Growth Through Land Recycling	CBE	CBE	CBE								
RES 23	Eliminate the Need for the California Integrated Waste Management Board to Approve Solid Waste Facility Permits	\$0	\$1,481	\$0	\$1,481	\$0	\$1,481	\$0	\$1,481	\$0	\$1,481	\$7,405
RES 24	Abolish the Registered Environmental Assessor Program	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
RES 25	Streamline and Eliminate Duplicative Reporting for the Environmental Protection and Resources Agencies	\$865	\$145	\$865	\$145	\$865	\$145	\$865	\$145	\$865	\$145	\$5,050
RES 26	Improving Database Management and e-Government Systems	CBE	CBE	CBE								

## Resource Conservation and Environmental Protection

### Fiscal Impact Table

(Dollars Displayed in Thousands)

Issue Number	Issue Description	2004-05		2005-06		2006-07		2007-08		2008-09		5-Year Cum. Total All Funds
		Savings/General Fund	(Costs)/Revenue Other Funds									
RES 27	Reduce Mandates for Solid Waste Diversion Reporting for Rural Communities	CBE	CBE	CBE								
RES 28	Reorganize the 54 District Agricultural Associations and the California State Exposition and Fair as Public Corporations	CBE	CBE	CBE								
RES 29	Reorganize California's Commodity Boards as Public Corporations	CBE	CBE	CBE								
RES 30	Streamline Activities of the San Francisco Bay Conservation and Development Commission	CBE	CBE	CBE								
RES 31	Establish State Mitigation Property Standards and Registry	CBE	CBE	CBE								
RES 32	Broaden the Use of Environmental Fee Collections to Address Unmet Needs	CBE	CBE	CBE								
RES 33	School Land Bank Fund Balance Transfer to the State Teachers' Retirement System	\$0	\$0	\$26,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$26,000



**Resource Conservation and Environmental Protection  
Fiscal Impact Table**

(Dollars Displayed in Thousands)

Issue Number Issue Description	2004-05		2005-06		2006-07		2007-08		2008-09		5-Year Cum. Total All Funds
	Savings/General Fund	(Costs)/Revenue Other Funds									
RES 34 Improve Collection of Department of Fish and Game Fees for Reviewing Environmental Reports	\$0	\$0	\$0	\$0	\$6,250	\$0	\$6,250	\$0	\$6,250	\$0	\$18,750
RES 35 Increase Efficiency in Using Existing Bond Funds for Environmental Enhancement	\$0	\$0	CBE	\$130,500	CBE	\$18,000	CBE	\$18,000	CBE	\$18,000	\$184,500
<b>Resource Conservation and Environmental Protection</b>	<b>\$2,204</b>	<b>\$5,939</b>	<b>\$29,107</b>	<b>\$147,264</b>	<b>\$9,849</b>	<b>\$45,133</b>	<b>\$9,906</b>	<b>\$45,133</b>	<b>\$9,963</b>	<b>\$45,133</b>	<b>\$349,631</b>

The amounts shown for each year in the above chart reflect the total change for that year from Fiscal Year 2003-04

CBE - Cannot Be Estimated

