



Agenda Page 13, Issue 251 **CALFED Bay-Delta Program Reorganization** **(Full Transfer of Funding and Positions From the** **California Bay-Delta Authority)—LAO Alternative Proposal**

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A. Fiscal and Position Authority Detail *(Dollars in Thousands)*

Issue	Department	Fund Source	Governor April/May Revise		Senate		Assembly		LAO Alternative	
			Amount	Positions	Amount	Positions	Amount	Positions	Amount	Positions
251	Secretary for Resources (0540)		\$30,954	68 ^a	\$5,828	25 ^a	\$5,827	25 ^a	\$12,790 ^b	33 ^a
		General Fund	(8,517)		(850)		(849)		(5,238)	
		Proposition 50	(5,552)		(2,948)		(2,948)		(5,552)	
		Reimbursements	(16,885)		(2,030)		(2,030)		(2,000)	
NIC	Forestry and Fire Protection (3540)		—	—	—	—	—	—	\$1,491	19
		General Fund	—		—		—		(1,491)	
NIC	Fish and Game (3600)		\$278	3	\$8,344	38	\$8,344	38	\$669	7
		General Fund	—		(6,300)		(6,300)		(391)	
		Proposition 50	(278)		(2,044)		(2,044)		(278)	
NIC	Department of Water Resources (3860)		—	—	\$1,951	6	\$1,951	6	\$1,172	10
		General Fund	—		(1,113)		(1,113)		(1,172)	
		Reimbursements	—		(838)		(838)		—	
NIC	State Water Resources Control (3940)		—	—	—	—	—	—	\$225	2
		General Fund	—		—		—		(225)	
NIC	Health Services (4260)		—	—	\$253	2	\$253	2	—	—
		General Fund	—		(253)		(253)		—	
Totals^c			\$31,232	71	\$16,376	71	\$16,375	71	\$16,347	71

^a Includes four temporary positions.

^b This amount is significantly higher than the Senate/Assembly proposals as reflected in the Department of Finance change book because it corrects a technical error in the change book that understated the amount of funding connected with the Senate/Assembly-approved transfer of the Science program to the Secretary. Under the LAO alternative, the \$12.79 million is broken down as follows: \$7.552 million for the Science program, \$2.616 million for overhead, \$1.237 million for Delta Action Plan, \$1.152 million for CALFED support, and \$233,000 for Watershed program.

^c Although not shown in the chart, all proposals also include (1) a reappropriation of \$21.9 million of Proposition 50 bond funds to the Secretary for Resources for the Science program and (2) a reappropriation of \$73.6 million of Proposition 50 and Proposition 204 bond funds to the Department of Fish and Game for the ecosystem restoration program. These are funds that were originally appropriated to the California Bay-Delta Authority.

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B. Components of LAO Alternative:

1. Program Management.

- As in Governor/Senate/Assembly proposals, transfers full program management responsibility for the CALFED Science program to the Secretary for Resources and for the CALFED ecosystem restoration program to the Department of Fish and Game (DFG). The latter transfer merely implements current law. Apart from the Science program transfer, all other CALFED programs (such as levees, water quality, and water use efficiency) will continue to be implemented by the implementing agencies designated under current law (the California Bay-Delta Authority Act).
- As a relatively modest change from the Senate/Assembly proposals, transfers two positions for watershed program coordination to the Secretary (as opposed to the Department of Water Resources [DWR]) and transfers two positions for the water quality program to the State Water Resources Control Board (as opposed to the Department of Health Services). The first transfer is made on efficiency grounds; the second transfer is based on programmatic fit. These transfers are consistent with current law that give responsibilities for these program elements to the secretary and the board, respectively.

2. The Administrative Function. Reorganizes the CALFED administrative functions differently than the Governor/Senate/Assembly proposals:

- First, the LAO alternative would transfer the traditional administrative support functions that assist the Secretary in carrying out its duties under the reorganized structure—such as human resources, contracting, information technology, and accounting—to the Department of Forestry and Fire Protection, which serves as the current contracted fiscal services agent for the Secretary. (This function was transferred to DFG under the Senate/Assembly proposals.)
- Second, under the LAO alternative, DWR would provide the staff support for program tracking, assessment, and reporting of the CALFED implementing agencies' actions. (This function was similarly transferred to DFG under the Senate/Assembly proposals.) This latter transfer is intended to be an interim solution until future, more comprehensive governance legislation addresses the responsibility for independent oversight of CALFED.

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3. Recommend Trailer Bill Language (See Attached). In order to minimize the potentially disruptive impacts on employees, contracting, and other matters due to the reorganization, we recommend the adoption of trailer bill language that clearly enumerates the entities that will provide the staff and administrative support for the various current duties, rights, and obligations of the California Bay-Delta Authority pursuant to the California Bay-Delta Authority Act (Division 26.4 of the Water Code). It is important to note that under the Governor/Senate/Assembly/LAO proposals, the California Bay-Delta Authority board, and the public processes connected with the board, continue to exist. The LAO alternative is best seen as an interim solution to the governance problems that have been identified. More comprehensive governance legislation in the future will be needed to address the structure for independent oversight, public participation, and legislative oversight, among other matters.

4. Recommend Budget Bill Language Allowing for Technical Corrections (See Attached). Recommend the adoption of budget bill language under the multiple appropriations affected by this reorganization proposal that allows the Department of Finance to correct technical errors related to the reorganization upon legislative notification.

5. Recommend Adoption of the Following Other Language Approved by Both Senate and Assembly:

(1) Trailer Bill Language

- Directing the Secretary for Resources to develop a long-term Delta vision and action plan to create a sustainable Delta. This plan should include the definition of a sustainable Delta, measurable goals and objectives, the necessary institutional structures to implement the plan, a strategic financing plan, a contingency plan, and adaptive management strategies.
- Expediting short-term science contracts related to the Pelagic Organism Decline.
- Expressing legislative intent that all public processes currently part of the CALFED Bay-Delta program will continue unless legislation is enacted to change these processes. (Note: this is covered in LAO-recommended “successor agency” trailer bill language.)

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(2) **Supplemental Report Language**—Requiring the Secretary for Resources, by October 1, 2006, to report on the actions it will take, other than study, in the next fiscal year to stabilize the ecosystem in the Delta and to address the Pelagic Organism Decline.

(3) **Budget Bill Language**—Requiring the Secretary for Resources to submit the report on actions being taken to address the Pelagic Organism Decline before funds in this item may be allocated for construction or acquisition related to the South Delta Improvement Program.

LAO-Recommended Trailer Bill Language

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SEC. 1. Section xxxxx is added to the Water Code, to read:

xxxxx. (a) Except as provided otherwise in this section, the agencies designated in section 79441 of the Water Code as the implementing agencies for particular elements of the CALFED Bay-Delta Program continue to be the implementing agencies for those program elements.

(b) In enacting this section, it is the intent of the Legislature that all public processes that are currently part of the CALFED Bay-Delta Program as of the date of enactment will continue, unless legislation is enacted to change these processes.

(c) The Secretary for Resources is hereby declared to be the successor to the California Bay-Delta Authority for implementing the CALFED Science Program.

(d) The Secretary for Resources shall provide staff support to the board of the California Bay-Delta Authority in exercising the board's duties as established pursuant to Division 26.4 of the Water Code, including, but not limited to:

- (1) Providing accountability to the Legislature, Congress, and interested parties for the program's performance.
- (2) Promoting the implementation of the program in a balanced manner.
- (3) Providing the use of sound, consistent science across all program elements.
- (4) Coordinating existing and new government programs to meet common goals, avoid conflicts, and eliminate redundancy and waste.
- (5) Overseeing coordinated implementation of the California Bay-Delta Program in a manner that is consistent with the mission statement, goals, and objectives of the CALFED Bay-Delta Program Record of Decision, dated August 28, 2000, or as it may be amended.
- (6) Promoting the development and implementation of regional programs to advance the program elements.

(e) The department shall provide staff support to the board of the California Bay-Delta Authority for program tracking, assessment and reporting of the CALFED implementing agencies' individual and cumulative actions.

(f) The California Department of Forestry and Fire Protection shall provide administrative support to assist the Secretary for Resources in carrying out the duties assigned to the secretary in this section. Such administrative support includes, but is not limited to: contracting and purchasing; budgeting and accounting; information technology; business services; and human resources.

(g) All contracts, grants, leases, or agreements of the California Bay-Delta Authority are hereby assigned to the

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Secretary for Resources, except those contracts, grants, leases, or agreements directly related to implementation of the ecosystem restoration program which are assigned to the Department of Fish and Game. Any California Bay-Delta Authority contracts, grants, agreements or amendments transferred to the Secretary for Resources or the Department of Fish and Game shall not be subject to review and approval of the Department of General Services.

(h) No contract, lease, license, or any other agreement to which the California Bay-Delta Authority is a party on the date of the transfer as described in subdivision (g) shall be void or voidable by reason of this section, but shall continue in full force and effect. The Secretary for Resources shall assume from the California Bay-Delta Authority all of the administrative rights, abilities, obligations, and duties of the California Bay-Delta Authority, except those rights, abilities, obligations, and duties assigned to the Department of Fish and Game as part of this section. This assumption of rights, obligations, and duties shall not affect the rights of the parties to the contract, lease, license, or agreement.

(i) All books, documents, records, and property of the California Bay-Delta Authority shall be assigned to the Secretary for Resources.

(j) All positions transferred from the California Bay-Delta Authority in the Budget Act of 2006 shall be used to support the CALFED Bay-Delta Program. Any changes to employee classifications or duties by any receiving department shall require prior consultation of the Secretary for Resources. The status, position, and rights of any officer or employee shall not be affected by this transfer and all officers and employees shall be retained pursuant to the applicable provisions of the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5), except as to any position that is exempt from civil service.

(k) It is the intent of the Legislature that the transfer of the duties, powers, purposes, responsibilities, jurisdiction and staff of the California Bay-Delta Authority pursuant to this section shall be retroactive to the passage and enactment of the Budget Act of 2006 and that existing employees of the California Bay-Delta Authority shall not be negatively impacted by the reorganization and transfer conducted pursuant to this section.

SEC. 2. Section 79452.3 of the Water Code is amended as follows:

79452.3. (a) Notwithstanding any other provision of law, ~~the lead scientist of the California Bay-Delta Authority, appointed pursuant to Section 79452 of the Water Code,~~ the Secretary for Resources may, in collaboration with the Director of Fish and Game, directly or indirectly enter into contracts with scientific experts for the purpose of conducting studies of delta fisheries and for carrying out the mission of the program. A contract entered into pursuant to this section shall terminate no later than January 1, 2008 2012, and shall be exempt from Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code, Section 19130 of the Government Code, and any rules or regulations adopted pursuant to any of those provisions.

(b) This section shall remain in effect only until January 1, 2008 2012, and as of that date is repealed, unless a later enacted statute that is enacted on or before January 1, 2008 2012, deletes or extends that date.

LAO-Recommended Budget Bill Language—Authorizing Technical Corrections to Budget Bill Appropriations

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Place the following budget bill language under all relevant CALFED-related appropriations:

1. Notwithstanding any other provision of law, the Department of Finance may adjust this item of appropriation to correct any technical errors related to the California Bay-Delta Authority reorganization plan enacted as part of this budget act not sooner than 30 days after notification in writing of the necessity therefor to the chairperson of the committee in each house of that Legislature that considers appropriations and the Chairperson of the Joint Legislative Budget Committee, or not sooner than whatever lesser time the chairperson of the committee, or his or her designee, may in each instance determine.
2. Notwithstanding any other provision of law, the Department of Finance may augment this item to provide authority to spend funds encumbered prior to 2006-07 by the California Bay-Delta Authority for the ongoing support of the CALFED Bay-Delta Program.