



LEGISLATION COMMITTEE

September 1, 2009
10:30 A.M.

Agenda

651 Pine Street, Room 101, Martinez

Supervisor Susan A. Bonilla, District IV, Chair
Supervisor Mary N. Piepho, District III, Vice Chair

Agenda Items:

Items may be taken out of order based on the business of the day and preference of the Committee

1. **Introductions**
2. **Public comment on any item under the jurisdiction of the Committee and not on this agenda.**
(Speakers may be limited to three minutes.)
3. **Record of Action:** August 3, 2009
4. **State Budget Update**– Presenters: Lara DeLaney and Cathy Christian
5. **Delta Water Legislation Update**–Presenters: Lara DeLaney, Cathy Christian and Roberta Goulart
6. **Status of 2009 State and Federal Legislation**–Presenters: Lara DeLaney, Cathy Christian
7. **Federal Health Care Reform Update**– Presenter: Lara DeLaney
8. **Williamson Act Program Update**– Presenter: Patrick Roche
9. **Adjourn to the next regular meeting scheduled for Monday, October 5 at 10:30 a.m.**

☺ The Legislation Committee will provide reasonable accommodations for persons with disabilities planning to attend Legislation Committee meetings. Contact the staff person listed below at least 72 hours before the meeting. Access a telecommunications device for the deaf by calling 1-800-735-2929 and asking the relay service operator for (925) 335-1240.

📁 Any disclosable public records related to an open session item on a regular meeting agenda and distributed by the County to a majority of members of the Legislation Committee less than 96 hours prior to that meeting are available for public inspection at 651 Pine Street, 11th floor, during normal business hours.

✉ Public comment may be submitted via electronic mail on agenda items at least one full work day prior to the published meeting time.

For Additional Information Contact:

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Glossary of Acronyms, Abbreviations, and other Terms (in alphabetical order):

Contra Costa County has a policy of making limited use of acronyms, abbreviations, and industry-specific language in its Board of Supervisors meetings and written materials. Following is a list of commonly used language that may appear in oral presentations and written materials associated with Board meetings:

AB	Assembly Bill	HIPAA	Health Insurance Portability and Accountability Act
ABAG	Association of Bay Area Governments	HIV	Human Immunodeficiency Syndrome
ACA	Assembly Constitutional Amendment	HOV	High Occupancy Vehicle
ADA	Americans with Disabilities Act of 1990	HR	Human Resources
AFSCME	American Federation of State County and Municipal Employees	HUD	United States Department of Housing and Urban Development
AICP	American Institute of Certified Planners	Inc.	Incorporated
AIDS	Acquired Immunodeficiency Syndrome	IOC	Internal Operations Committee
ALUC	Airport Land Use Commission	ISO	Industrial Safety Ordinance
AOD	Alcohol and Other Drugs	JPA	Joint (exercise of) Powers Authority or Agreement
BAAQMD	Bay Area Air Quality Management District	Lamorinda	Lafayette-Moraga-Orinda Area
BART	Bay Area Rapid Transit District	LAFCo	Local Agency Formation Commission
BCDC	Bay Conservation & Development Commission	LLC	Limited Liability Company
BGO	Better Government Ordinance	LLP	Limited Liability Partnership
BOS	Board of Supervisors	Local 1	Public Employees Union Local 1
CALTRANS	California Department of Transportation	LVN	Licensed Vocational Nurse
CalWIN	California Works Information Network	MAC	Municipal Advisory Council
CalWORKS	California Work Opportunity and Responsibility to Kids	MBE	Minority Business Enterprise
CAER	Community Awareness Emergency Response	M.D.	Medical Doctor
CAO	County Administrative Officer or Office	M.F.T.	Marriage and Family Therapist
CCHP	Contra Costa Health Plan	MIS	Management Information System
CCTA	Contra Costa Transportation Authority	MOE	Maintenance of Effort
CDBG	Community Development Block Grant	MOU	Memorandum of Understanding
CEQA	California Environmental Quality Act	MTC	Metropolitan Transportation Commission
CIO	Chief Information Officer	NACo	National Association of Counties
COLA	Cost of living adjustment	OB-GYN	Obstetrics and Gynecology
ConFire	Contra Costa Consolidated Fire District	O.D.	Doctor of Optometry
CPA	Certified Public Accountant	OES-EOC	Office of Emergency Services-Emergency Operations Center
CPI	Consumer Price Index	OSHA	Occupational Safety and Health Administration
CSA	County Service Area	Psy.D.	Doctor of Psychology
CSAC	California State Association of Counties	RDA	Redevelopment Agency
CTC	California Transportation Commission	RFI	Request For Information
dba	doing business as	RFP	Request For Proposal
EBMUD	East Bay Municipal Utility District	RFQ	Request For Qualifications
EIR	Environmental Impact Report	RN	Registered Nurse
EIS	Environmental Impact Statement	SB	Senate Bill
EMCC	Emergency Medical Care Committee	SBE	Small Business Enterprise
EMS	Emergency Medical Services	SWAT	Southwest Area Transportation Committee
EPSDT	State Early Periodic Screening, Diagnosis and treatment Program (Mental Health)	TRANSPAC	Transportation Partnership & Cooperation (Central)
et al.	et ali (and others)	TRANSPLAN	Transportation Planning Committee (East County)
FAA	Federal Aviation Administration	TRE or TTE	Trustee
FEMA	Federal Emergency Management Agency	TWIC	Transportation, Water and Infrastructure Committee
F&HS	Family and Human Services Committee	UCC	Urban Counties Caucus
First 5	First Five Children and Families Commission (Proposition 10)	VA	Department of Veterans Affairs
FTE	Full Time Equivalent	vs.	versus (against)
FY	Fiscal Year	WAN	Wide Area Network
GHAD	Geologic Hazard Abatement District	WBE	Women Business Enterprise
GIS	Geographic Information System	WCCTAC	West Contra Costa Transportation Advisory Committee
HCD	(State Dept of) Housing & Community Development		
HHS	Department of Health and Human Services		

Schedule of Upcoming BOS Meetings

Sept. 15, 2009
 Sept. 22, 2009
 Oct. 6, 2009

Legislation Committee
Supervisor Susan A. Bonilla, Chair
Supervisor Mary N. Piepho, Vice Chair

Record of Actions

August 3, 2009, 10:30 a.m.
Room 108, 651 Pine Street, Martinez

1. Introductions

The meeting was called to order by Chair Bonilla. Supervisor Piepho was in attendance. Cathy Christian, state advocate, was on-line via conference call. Staff and the public introduced themselves.

2. Public Comment: None.

3. Record of Action of June 10, 2009 Meeting

Approved with no changes.

4. State Budget Update Report

Cathy Christian described the “gimmicky” budget which was signed by the Governor, which is considered precarious at best. She suggested that the Legislature may need to be back in session in October to re-balance it. What is being worked on by CSAC at this time is the issue of the gas tax (HUTA) deferral. With respect to Proposition 1A, the California Statewide Communities Development Authority (CSCDA), a Joint Powers Authority, is putting together a securitization program for cities, counties, and special districts to sell their repayment obligations from the State to California Communities. However, there is doubt about whether the language is adequate in the budget bill to be solid enough to allow Wall Street to loan against the guarantee.

In any event, there were limited options for the Legislature aside from cutting local government. Taxes were off the table so no revenue available; it had to be borrowing and cutting.

Supervisor Piepho asked Dr. Walker about the impact of the MediCal cuts. Dr. Walker reported that we know about the Health Families reduction, but we do not yet know the response from First Five or various Foundations. The waiting list for Healthy Families is growing. There are approximately 13,000 enrolled in Contra Costa County. If half lose eligibility, all of those become eligible for basic health care from the County. We are waiting to get Kaiser to open their Health Kids program. The State share of the federal Health Family premium is 30 cents to the federal government’s 70 cents. So the State is losing out on those additional resources with this cut.

In addition, with respect to MediCal, the Governor has asked for \$1 Billion federal flexibility to allow State funded programs to be matchable with federal funds. In addition, we are concerned about:

- \$323 unspecified Medi-Cal reduction
- Proposition 36 reductions
- Mental Health Managed Care cut by 50%

So there is a lot of uncertainty, but Health Families is our biggest target. Dr. Walker noted the irony of the federal discussion of expansion of Healthy Families while the state is cutting the program.

Supervisor Piepho would like information on what the economic impact of the IHSS cuts will be in terms of our basic health care obligations and Health Families impacts. Cathy would also like to provide information to legislators on the direct impacts of these reductions to Contra Costa County.

Mariana Moore, Human Service Alliance, asks Cathy Christian about potential political implications of joining Senator Steinberg's suit against the Governor over his line-item vetoes. The effort is trying to build momentum to roll back some of the Governor's cuts/blue pencil vetoes. Of course, anything restored is going to cause cuts in other areas. Cathy Christian advised being wary of participating - the education efforts about the reductions are most important.

Supervisor Bonilla reiterated the need for a public education effort locally. She suggested we need to be careful where cuts are coming from and why they are happening. It is important not to let the rhetoric be about blame, but to drive home local impacts, ripple effects. We would like to have the Contra Costa Council look at those impacts. Need to hit broader public, press. Cutting these programs doesn't always translate to savings. Know what the impact is to these cuts in terms of services. The County needs to keep an engagement process with the community. Can't get the public to turn off from all this news, turning against local government as they have turned against state government. We need community conversations.

5. Timeline of Budget Crisis

District V Intern, Dana Cruz, presented his report to the Committee. The report was his research project conducted during his internship stint in the CAO's office. Mr. Cruz researched the history of the budget crisis from the establishment of the state to the present. The Committee commended Mr. Cruz on his report and directed that it be sent to the Board of Supervisors. The Committee also requested that the report be distributed to the Legislation Committee mailing list.

6. Update on Status of 2009 State and Federal Legislation

Ms. DeLaney provided the Committee with a brief update of various pieces of state and federal legislation, noting the Delta Water legislative package in particular.

7. Indian Gaming Consultant Contracts

Ms. DeLaney provided the Committee with information about the consultant contracts for the County's Indian Gaming activities. The three existing contracts must be amended to accommodate additional activity. The Committee approved the contract amendment requests but wanted verification of the source of funding for the contracts.

8. Adjourn to the next meeting on September 1, 2009

**OFFICE OF THE COUNTY ADMINISTRATOR
CONTRA COSTA COUNTY**

TO: Legislation Committee
Supervisor Susan A. Bonilla, Chair
Supervisor Mary N. Piepho, Vice Chair

FROM: Lara DeLaney, Legislative Coordinator 

DATE: August 26, 2009

SUBJECT: **Agenda Item #4: State Budget Update**

RECOMMENDATION

RECEIVE the report and discuss impacts to and response from Contra Costa County.

REPORT

Corrections Package Pending in Assembly

The Assembly did not take up the Corrections package as expected on August 20 due to concerns within the Democratic caucus about many of the proposals. While the Assembly was scheduled to debate the bill on August 24, that vote has been postponed as well. The bill passed by the Senate includes the major reforms to the Corrections system outlined by the Governor in the Budget Revision Package adopted in July including the following:

- Creates a sentencing commission which would have the authority to set new sentencing guidelines for individuals convicted of various crimes.
- Creates an alternative custody option for lower-risk offenders which would include the following:
 - Inmates who have 12 months or less to serve on their term of confinement.
 - Inmates who are 60 years or older.
 - Inmates that are medically incapacitated with a medical condition that renders him or her permanently unable to perform activities of basic daily living.

(However, no specific are provided regarding how the medically incapacitated will be dealt with especially as they interact with counties. The bill does provide that the Secretary will provide reasonable rules and regulations for the program.)

- Creates the California Community Corrections Performance Incentives Program which incorporates the provision of SB 678 (Leno) into the bill.
- Changes some wobblers to misdemeanors which will provide that those convicted would be sentenced to county jail instead of state prison.
- Revises the credits awarded to prisoners for good behavior for inmates who enroll in and complete certain programs.
- Establishes the Parole Reentry Accountability Program which would provide that CDCR use a parole violation decision making instrument to determine the most appropriate sanctions for parole violators. CDCR has previously stated that this would target active parole supervision for those offenders with serious or violent commitment history and those assessed as high risk.
- Increases property value thresholds for a wide variety of crimes.

The Assembly has adopted several amendments to the bill passed by the Senate (ABx3 14) and placed those in SBx3 18, which makes the following changes:

- Eliminates the creation of alternative custody. This includes the provisions regarding releasing the medically incapacitated back to the county of last residence.
- Eliminates the changes to wobblers.
- Lowers the property crime threshold, including grand theft
- Makes several changes to the newly created Sentencing Commission including requiring that an affirmative vote by the commission must include at least two votes from the law enforcement representatives, and replaces the non-voting reformed ex-inmate with a representative of a community based organization.

It is unclear when the Assembly will take up the Corrections bills, and it is also unclear how these changes will be received in the Senate or by the Governor, if they are adopted.

Governor Calls Special Session on Education

The Governor has called a Special Session on Education, to deal specifically with California being able to qualify for federal funds under ARRA . These are the "Race to the Top" funds and changes need to be made to California law in order for California to qualify.

In addition, the Legislature held an informational hearing on the Race to the Top funds August 25, 2009. This hearing was intended to address how the state can become eligible for the federal funds.

IHHS Cuts Delayed

The Department of Social Services (DSS) has sent out an announcement to counties that it cannot meet the September 1st deadline requiring it to drop or cut aid for more than 100,000 individuals enrolled in the IHSS program.

Some of the advocate groups had previously sent letters to the DSS with concern over the fact that the Department had not clearly instructed counties regarding how to impose the cuts and had not informed the IHSS recipients of any upcoming change to their benefits.

Healthy Families Update

On August 13, the California Managed Risk Medical Insurance Board (MRMIB) adopted a motion to begin disenrolling children beginning October 1st. Even though California First 5 Commission indicated it would contribute \$81.4 million to the Healthy Families program, this infusion is still not enough to deal with the funding shortfall.

The shortfall was based on the \$124 million cut for fiscal year 2009-10 approved by the Legislature and an additional \$50 million line item veto by the Governor last month, for a total shortfall of \$174 million.

MRMIB was scheduled to meet twice in August to discuss other options, including changes in co-pays, premiums and covered services. The First 5 California board also pledged to meet twice more in August to discuss additional ways in which they could assist the program.

California Forward Recommendations

California Forward sent a letter to Governor Schwarzenegger and the Legislative leadership on August 13, 2009 with their finding and recommendations on how to renew California's leadership. Urban Counties Caucus would appreciate any feedback your county would have on these ideas, since this is an ongoing topic of discussion at the UCC Board Meetings. (See attached.)

Tax Reform Commission Update

The California Chamber of Commerce and 33 other business groups are telling the state's tax reform commission it should back away from three major tax system changes now under consideration as it nears a deadline for submitting its report to the Legislature.

The coalition does not support removing Proposition 13's property tax limits from business property and a proposed new "carbon tax," both of which have been promoted by the tax commission's liberal bloc. But it also is warning about the potentially negative effects of a "net business receipts tax," similar to a European-style value-added tax, that commission chairman Gerald Parsky champions.

The commission was appointed by Gov. Arnold Schwarzenegger and legislative leaders to propose major changes in the tax system to reduce revenue volatility, believed to be a big factor in the state's chronic budget problems. It was originally supposed to make its recommendations in April but has extended the deadline twice and is now due to make its proposal in late September. Schwarzenegger has said he will call a special legislative session to consider its proposals.

"The California business community has consistently stated that the solution to California's revenue problems will only come from robust economic growth and job creation," said today's letter to Parsky. "We believe the proposed split roll property tax and the energy tax would be extremely detrimental to California's economy. As for the business net receipts tax, we believe it is risky and inappropriate to move forward with dramatic changes to the tax structure without first fully vetting their impact on California jobs and the economy."

Parsky and several other commission members were pushing the net receipts tax as a substitute for the sales tax, coupled with a flattening of personal income tax rates and perhaps elimination of the corporate income tax. Then the commission's liberal bloc balked and insisted that the split roll, the carbon tax and other changes be placed on the agenda.

Steinberg Announces Lawsuit Over Governor's Vetoes

On August 7, Senator Steinberg announced that he would be filing a lawsuit that contends the Governor violated his constitutional authority in making line item vetoes to portions of the Legislature's budget revision bill in July.

The lawsuit is based on a Legislative Counsel opinion which concluded that the Governor had no right to unilaterally undo the budget agreement. In its opinion, the Legislative Counsel Bureau said that a Governor can only line item veto "appropriations," and what the Legislature sent him on July 24th were not "appropriations" – they were revised reductions in existing, previously enacted appropriations that the Legislature enacted in February.

The Governor's Office has responded with its own legal opinion that the Governor's vetoes were legal and has stated that the California's Constitution makes it clear in Article IV, Section 10 (e) that "the Governor may reduce or eliminate one or more items of appropriation while approving other portions of a bill." The Governor's Office contends that any time the Legislature presents an appropriation to the Governor he can reduce it or eliminate it.



our state, our solutions, our future

August 13, 2009

Governor Arnold Schwarzenegger
Senate President Pro Tempore Darrell Steinberg
Senate Republican Leader Dennis Hollingsworth
Assembly Speaker Karen Bass
Assembly Republican Leader Sam Blakeslee

Governor and Legislative Leaders:

We write today as Californians deeply concerned about the future of our state.

Over the last 18 months, *California Forward* has engaged citizens from every corner of the state in a vibrant civic conversation about how to get California back on the right track. Simply put, we've come together as citizens to develop a plan that will make our government work again.

California remains a beacon of innovation, opportunity and diversity. But we all must recognize that our government hasn't kept pace, and the global economic crisis has pushed our outdated methods right to the breaking point.

Our goal – shared by thousands of active supporters – is fundamental change: government that's small enough to listen, big enough to tackle real problems, smart enough to spend our money wisely in good times and bad, and honest enough to be held accountable for results.

We've examined dozens of policy options, culling the very best practices from our own communities and from states across the country. We've found – as you have – that California lacks many of the tools other states are using to better manage themselves in these challenging times.

Some of our proposals are controversial. Some have been attempted before, defeated by powerful forces that view every idea through the prism of their own narrow interests.

We believe that now is the time for bold and decisive action to get California back on track. We submit to you our findings and recommendations about how to renew California's leadership:

- Our plan gives our state's budget and fiscal systems the overhaul they desperately need – so we finally get responsible budgets on time.
- It gives the people we elect the tools to do their jobs right – and holds them accountable for results.
- And our plan calls for fundamentally rethinking the relationship between state and local government, with a strong preference for government that's closer – and more responsive – to the people.

We've drafted Constitutional and statutory language to enact each portion of our proposals, which we summarize below:

Responsible Budgets on Time

1. **Pay-As-You-Go.** Require that new programs identify a funding source for any new spending they require.
2. **Base Budgets on Results.** Require the Governor and lawmakers to set clear goals for programs, measure their results and effectiveness when making budget decisions, monitor performance to improve efficiency, and consider eliminating outdated and duplicative programs.
3. **Two-year Budget.** Require the Governor and Legislature to craft two-year budgets with midcourse correction authority, and provide long-term revenue forecasts and capital investment plans.
4. **One-Time Use of One-Time Revenues.** Reduce future budget shortfalls by prohibiting the use of unexpected spikes in revenues to increase spending on programs that continue year after year.
5. **Reduce the Budget Vote Requirement.** Reduce the likelihood of budget stalemates by changing the legislative vote requirement for state budget approval to a simple majority (to be adopted in conjunction with the plan's other fiscal reforms, and while retaining the two-thirds majority vote requirement for tax increases).
6. **Provide Certainty Regarding Passage of Fees.** Clarify the circumstances in which the Legislature and the Governor can impose fees without a two-thirds majority vote to those areas with a clear and justifiable nexus to the service provided.

Government that's Closer to the People

1. **Protect Local Revenue.** Give communities more control over community-related services and prevent the state from siphoning off local revenue by giving local governments legal ownership of specific funds for community services.
2. **Remove Barriers to Local Government Coordination.** Encourage community-level governments to coordinate, consolidate districts when this makes sense, and give county governments authority to redistribute local property taxes to improve efficiency, improve services and deliver better results.
3. **Foster and Fund Long-Term Regional Collaboration.** Allow cities, counties and school officials who craft long-term flexible plans to address community needs, to seek majority-vote approval to provide funds to pay for them, while retaining the vote thresholds established under Proposition 218.

Constituent Access and Accountability

1. **Term Limit Reform.** Reducing the total time newly-elected state legislators are allowed to serve from 14 years to 12 years, regardless of whether the time is spent in the Assembly or Senate.
2. **Constituent Access and Accountability.** Requiring legislators to spend part of every year in their district, in consultation with constituents and local leaders.

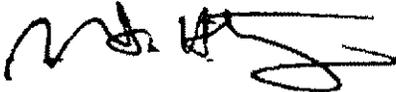
We are heartened that each of you has expressed interest in pursuing the kinds of reforms we believe are needed now, and we stand ready to work with you in pursuit of these goals.

We are eager to share with you the results of our efforts, the best thinking of many Californians, and the many options we explored in achieving consensus on this package. Our hope is that providing you with this framework will give you every opportunity to deliberate on these issues, and place before voters a comprehensive reform package in time for the next general election.

At the same time, we are mindful of the urgent need for action – as well as our own commitment to the many Californians who have joined our call for comprehensive reform now, whether it comes through legislative action or through the initiative process.

Thank you for your thoughtful consideration of these proposals.

Very truly yours,



Robert Hertzberg, Co-Chair
California Forward



Thomas V. McKernan, Co-Chair
California Forward

CC: All Senators and Assemblymembers

**OFFICE OF THE COUNTY ADMINISTRATOR
CONTRA COSTA COUNTY**

TO: Legislation Committee
Supervisor Susan A. Bonilla, Chair
Supervisor Mary N. Piepho, Vice Chair

FROM: Lara DeLaney, Legislative Coordinator 

DATE: August 26, 2009

SUBJECT: **Agenda Item #5: Delta Water Legislation Update**

RECOMMENDATION

RECEIVE the report and discuss impacts to and response from Contra Costa County.

REPORT

On Tuesday, August 25, the Senate Natural Resources Committee and Assembly Water Parks and Wildlife Committee held the second of three scheduled joint hearings on the state's water crisis. As you well know, the Democrats in the Assembly and Senate have introduced a package of water bills that seek to solve the crisis.

The August 25 hearing was held to discuss AB 39 (Huffman): Sacramento-San Joaquin Delta: Final Delta Vision Strategic Plan; SB 12 (Simitian): Delta Steward Council and SB 458 (Wolk): Delta Protection Commission: Sacramento-San Joaquin Delta Conservancy. On Wednesday, August 26, the Select Committee on Delta Stewardship and Sustainability will attempt to tackle a big issue in fixing California's water woes: funding.

Attachments A, B, and C are summary and comments for the three above-mentioned measures. Attachment D is the Delta Counties Coalition's "Specific Recommendations for Delta Package Legislation, August 21, 2009." Additional information will be distributed on the remaining measures as it becomes available.

The lobbyists of the Delta Counties Coalition met with Senator Wolk's staff on Monday, August 24 to go over testimony for Tuesday's hearing and develop talking points for a meeting scheduled with Senate President Pro Tem Darrell Steinberg, for Thursday, August 27. The talking points were developed with input from the Delta Counties Coalition's Technical Advisory Committee (TAC) and, at this point (still draft form), include the following, which are considered the "five bottom line issues that the Delta Counties must have" to support a Delta package of legislation:

1. Co-equal goals must include sustaining Delta communities

- We prefer the language: "Protecting and enhancing the unique cultural, recreational, agricultural and socio-economic values of the Delta."

2. Representation on governing bodies

The Delta Counties must be represented on the new Stewardship Council, in addition to the DPC Chair

- The Council should follow federal and state models, where other governing bodies include significant local participation.
- 5 members on Conservancy must stay as is.
- Delta Protection Commission authorities must stay as is.
- Locals can only be accountable if they participate in creation of the Delta Plan (as the Governor's cabinet has suggested).

3. Delta changes: BDCP cannot harm the Delta or its communities

- Plan cannot harm the Delta in order to benefit another part of the State.
- Delta Counties will need assurances on water rights, water quality and environmental protection similar to those built into prior Legislation such as SB 200/SCA 90 considered in the 1980's.
- Existing state policy must continue -- only surplus water can be exported, which means that flow issues; how much water is necessary for a healthy Delta (any given season in any given water year) must be determined prior to a determination of surplus.
- No action should be taken until there is first an analysis of impact on the Delta and its communities and funding in place to pay for mitigation.
- There must be legislative and Council oversight of any proposed large-scale (multi-billion dollar) projects.
- Meaningful, inclusive, substantial participatory local agency involvement in any projects or programs for the Delta, including BDCP and the Delta Plan.
- Financing mechanism must recognize Delta County water quality and quantity rights.
- Conservation and regional self-sufficiency must be practiced by all, reducing reliance on limited Delta water supply.

- The ecosystem and fishery must be protected/improved (assurances, funding guarantees) prior to new isolated conveyance facilities

4. **Economic Sustainability**

Economic sustainability for Delta communities must be a part of the Delta Plan and be a primary responsibility of the DPC and to some degree, of the new Conservancy. Delta communities have the right to thrive, just like So Cal.

5. **Funding**

There must be enough money in a bond to pay for one-time costs that sustain and mitigate harm to the Delta (not to be confused with mitigation required as part of BDCP). And there must be an ongoing source of funding to help sustain Delta communities in the long term.

- If the voters do not approve a bond, funds will need to be committed prior to improvements.

Previously Reached Areas of Agreement among Delta Counties

- Protect local governance and county prerogatives, including land use, revenues, public health and safety, economic development and agriculture stability.
- No redirected adverse environmental, economic or social impacts to counties.
- Provide full mitigation of negative impacts to the counties from changes in Delta management, including lost business and income, tax, assessments, and other revenues, increased costs of compliance with ESA/CESA, public and emergency services, transportation, flood control, water supplies, land conversion, loss of agriculture, and socio-economic impacts.
- Significant local agency involvement on any and all governing boards or commissions created for the Delta Governance for the Delta must include voting membership for local elected officials.
- Meaningful, inclusive, participatory local agency involvement in any projects programs for the Delta, including BDCP and the Delta Plan.
- Delta as Place as a tri-equal goal; absent this, language links on any reference to co-equal goals establishing importance and inclusion of DAP (DAP= multi-faceted socio-economic and agriculturally sustainable healthy delta). Any reference to Co-equal goals must include this language.

- The ecosystem and fishery must be protected/improved (assurances, funding guarantees) prior to new isolated conveyance facilities.
- Legislative (and Council) oversight of a peripheral canal.
- Conservation and regional self-sufficiency must be practiced by all, reducing reliance on limited Delta water supply.

Fixing Delta comes with high price tag

Costs could total \$54 billion, a consultant estimates.

by Mike Taugher, Contra Costa Times

Updated: 08/25/2009 08:57:08 PM PDT

The Delta fix supported by Gov. Arnold Schwarzenegger and many of the state's largest water agencies could carry a staggering price tag of \$23 billion to \$54 billion, a consulting economist was planning to tell lawmakers Tuesday.

The estimate, provided in a paper by Steven Kasower, appears to be the first time that potential costs of different pieces of the proposed fix — storing and moving water, offsetting environmental damage caused by those projects and restoring habitat — have been compiled in one place.

But he emphasized that the numbers were very preliminary and that lawmakers would be foolhardy to pass a package of bills before better numbers are available.

Some critics of Delta planning efforts have observed the state could end up committing money for new water and environmental solutions that could otherwise be used for programs that have been hit by budget cuts.

"It is astounding that at the same time the Legislature is slashing funding for education, health and public safety, they're considering a multibillion-dollar package with no critical analysis of how much it will cost," said Jonas Minton, a water policy analyst at the Planning and Conservation League, a conservation group.

The annual cost to finance such a massive public works project could run from \$1.5 billion to \$3.4 billion a year for projects that are most likely to be paid for through water rates and \$416 million a year from taxpayers to repay general obligation bonds, Kasower's report states.

A top water industry representative said the numbers were not surprising and a reasonable price tag considering earlier generations spent about \$50 billion in today's dollars to build the state's major water delivery projects.

Those projects were good for delivering water cheaply but were not designed to protect the environment. The next phase of investment is to modify the water delivery systems to work in a more environmentally friendly manner, said Tim Quinn, executive director of the Association of California Water Agencies.

"Water costs will go up, but it probably doesn't cost as much as cable television in this state," Quinn said. "It's going to be expensive, but our grandchildren will be better off for it."

The figures compiled by Kasower included \$4.2 billion to build a new aqueduct around the Delta and \$9.8 billion to maintain levees to allow water agencies to continue taking water from the Delta. They also include rough estimates for environmental projects and new dams. The high end, \$54 billion, would be reached if the state tunnels under the Delta to move Sacramento River water to the south instead of moving it through a new aqueduct.

Kasower came up with the very rough estimate that a Delta tunnel would cost \$33 billion by comparing the project to the cost of the Chunnel, which connects Britain and France beneath the English Channel.

The Delta is the largest remaining estuary on the West Coast and a key supply of water for much of California. Two million acres are irrigated by water delivered from the Delta major export pumps near Tracy and two in three residents get at least some of their water from the Delta, ranging from the Contra Costa Water District which is virtually 100 percent dependent on the Delta to Southern California, which gets about one-third of its water from the Delta.

Since 2000, water deliveries out of the Delta hit record highs and Delta fish populations collapsed. The diversions were a likely cause of the environmental decline but not the only cause. Pollution, particularly from sewage treatment plants, and invasive species are also culprits.

Lawmakers meant to address the twin water supply and environmental crises this year but their intentions were trumped by the budget mess. Now, in the waning days of the legislative session lawmakers are trying to come up with a fix in the coming weeks.

"I don't think that's realistic, not given these kinds of costs," said Sen. Lois Wolk, D-Davis, chairwoman of the Senate Select Committee on Delta Stewardship and Sustainability.

The package of bills addresses how the Delta's environment and water diversions would be balanced and policed; mandates that a new plan be

written to address the environment and water demands in the Delta; creates a conservancy to protect land in the Delta; sets statewide water conservation goals, and regulates groundwater.

It is unclear whether the package can pass, and if it can whether Schwarzenegger will sign it. He's threatened to veto it unless major changes are made, including that lawmakers meet his demand that financing be made available for new dams.

Wolk has scheduled a hearing for today on how to pay for the Delta plans.

She said the costs are so high, and the state is so strapped, that it might make sense to put off decisions on dams and canals and that those plans might have to be scaled back because the state might not be able to pay for them.

"The numbers are astronomical, and they're incomplete," she said. "Back to the drawing board."

Preprint SB 4 (SB 458 Content) by Senator Wolk.

Summary and Comments.

Bill Summary: Preprint Senate Bill No. 4 (PSB 4) would revise the provisions of the Delta Protection Act and would create the Sacramento-San Joaquin Delta Conservancy to advance the coequal goals of assuring a reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem and the unique cultural, recreational, and agricultural values of the Delta as an evolving place.

Specifically, this bill would:

- 1) Reconstitute the Delta Protection Commission (DPC).
 - a) Reduce the membership of the DPC from 23 to 15, eliminating several state agencies.
 - b) Designate the DPC chair as a voting member of the Delta Stewardship Council (council).
- 2) Add Provisions Regarding A Regional Economic Development Plan.
 - a) Require the DPC to develop a new regional economic development plan for the Delta region, based on local plans, that identifies ways to encourage recreational investment along the key river corridors, as appropriate.
 - b) Create the Delta Investment Fund in the State Treasury.
 - i) Any funds within the Delta Investment Fund would be available, upon appropriation by the Legislature, to the DPC for the implementation of the regional economic development plan.
 - ii) Delta Investment Fund could receive funds from federal, state, local, and private sources.
- 3) Revise Requirements for the DPC's Resource Management Plan (RMP).
 - a) Instead of listing required outcomes, the RMP would be required to include specific elements, such as public safety recommendations.
 - b) Add a requirement that the RMP be updated every 5 years in years ending in 1 or 6.
 - c) Add requirement that Council review RMP for consistency with the Delta Plan and require the Council to approve the RMP, if consistent with the Delta Plan.
 - d) Requires DPC to implement RMP.
 - e) Eliminate the Office of planning and Research from RMP review and comment process.

4) Require DPC to Propose Recommendations for Inclusion in the Delta Plan.

- a) Require the DPC to develop, for consideration and incorporation in the Delta Plan by the council, a proposal to protect, enhance, and sustain the unique and enduring cultural, historical, recreational, agricultural, and economic values of the Delta as an evolving ecosystem.
- b) Require the DPC to include the following in its proposal:
 - i) Relevant strategies described or recommended by Delta Conservancy's strategic plan.
 - ii) Plan to establish state and federal designation of the Delta as a place of special significance, which may include application for a federal designation as a National Heritage Area.
 - iii) Regional economic plan, for submission to the council, to support increased investment in agriculture, recreation, tourism, and other resilient Delta land uses.
- c) Require, to assist the DPC in its preparation of the proposal:
 - i) The Department of Parks and Recreation to prepare a proposal to expand within the Delta the network of state recreation areas, combining existing and newly designated areas. The proposal may incorporate appropriate aspects of any existing plans.
 - ii) The Department of Food and Agriculture to prepare a proposal, for submission to the commission, to establish market incentives and infrastructure to protect and enhance the economic and public values of Delta agriculture.
- d) Require the council to review and approve and incorporate the proposal, including RMP recommendations, into the Delta Plan, if the council determines that a DPC recommendation is feasible and consistent with the objectives of the Delta Plan,

5) Revise Provisions Regarding DPC Review and Approval of General Plans.

- a) Change the trigger for local governments to submit proposed general amendments for a consistency review:
 - i) *from* within 180 days of adoption by the DPC of a new or revised resources management plan,
 - ii) *to* within 180 days of adoption by the council of a Delta Plan, or a new or revised RMP, which ever comes first.
- b) Delete from the criteria for general plan reviews the criteria that the general plan, and any development approved or proposed that is consistent with the general plan, be consistent with the RMP.
- c) Add a requirement that if the DPC finds that a general plan is not consistent with the RMP:
 - i) The DPC would remand the general plan back to the originating local government with findings on items to be addressed.
 - ii) The local government would have 120 days to make changes and resubmit the revised general plan to the commission for review.
- d) Add a restriction that after the DPC approves a general plan or general plan amendment, no additional development could occur in the primary zone of the Delta unless the relevant proposed amendment to the general plan is determined to be consistent with the RMP.

6) Authorize DPC To Make Recommendations to Delta Stewardship Council.

- a) Authorize DPC to review, comment, and make recommendations to the council on any significant project or proposed project within the scope of the Delta Plan that may affect the unique cultural, recreational, and agricultural values within the primary and the secondary zones.
- b) Include in the review and comment authority all of the following:
 - i) Identifying impacts to the cultural, recreational, and agricultural values of the Delta.
 - ii) Recommending actions to avoid, reduce, or mitigate impacts to the cultural, recreational, and agricultural values of the Delta.
 - iii) Reviewing consistency of proposed project with the RMP and the Delta Plan.
 - iv) Identifying and recommending methods to address Delta community concerns regarding large-scale habitat plan development and implementation.
- c) Require the council to consider the recommendations of the DPC during a public hearing and to make findings regarding whether the recommendations will be incorporated into the project and whether the recommendations are consistent with the Delta Plan.

7) Make Other Miscellaneous Changes to the Delta Protection Act.

- a) Authorize the DPC to act as the facilitating agency for the implementation of a national heritage area designation in the Delta.
- b) Eliminate the Office of Planning and Research from the RMP review/comment process.
- c) Require the DPC, by January 1, 2012, to prepare and submit to the Legislature recommendations regarding the potential expansion of or change to the primary zone.
- d) Revise the requirements for the DPC's annual report to the Governor and Legislature:
 - i) *From* an evaluation of the effectiveness of *the RMP* in preserving agricultural lands, restoring delta habitat, improving levee protection and water quality, providing increased public access and recreational opportunities, and other functions as required.
 - ii) *To* An evaluation of the effectiveness of the *DPC* in undertaking its mandated functions, including:
 - (1) Determining the consistency of local general plans with the Delta Plan.
 - (2) Outcomes of appealed local land use decisions.
 - (3) Outcomes of reviews initiated by the commission.
 - (4) Facilitating regional economic development.
 - (5) Supporting other regional activities for the enhancement of Delta communities.

8) Create A New Sacramento-San Joaquin Delta Conservancy (Conservancy).

- a) Create in the Natural Resources Agency the Sacramento-San Joaquin Delta Conservancy,
- b) Charge the conservancy to work in collaboration and cooperation with local governments and interested parties.

- c) Require the conservancy to support efforts that advance both environmental protection and the economic well-being of Delta residents in a complementary manner.
 - d) Require the conservancy to undertake efforts to enhance public use and enjoyment of lands owned by the public.
- 9) Establish The Conservancy's Governing Board.
- a) Create a board that would consist of 11 voting members and five nonvoting members.
 - b) Designate the 11 voting members of the board:
 - i) The Secretary of the Natural Resources Agency, or designee.
 - ii) The Director of Finance, or designee.
 - iii) One member each of the board, or a designee, who is appointed by the Contra Costa, Sacramento, San Joaquin, Solano, and Yolo County Boards of Supervisors, who is a resident of each respective county.
 - iv) Two public members, appointed by the Governor.
 - v) One public member appointed by the Senate Committee on Rules.
 - vi) One public member appointed by the Speaker of the Assembly.
 - c) Designate the five nonvoting members:
 - i) A designee of the San Francisco Bay Conservation and Development Commission for coordination purposes.
 - ii) A designee of the State Coastal Conservancy for coordination purposes.
 - iii) A designee of the Suisun Resource Conservation District for coordination purposes.
 - iv) A Member of the Senate, appointed by the Senate Committee on Rules, who represents a district that encompasses a portion of the Delta.
 - v) A Member of the Assembly, appointed by the Speaker of the Assembly, who represents a district that encompasses a portion of the Delta.
 - d) Designate an additional four nonvoting liaison advisers who would serve in an advisory, nonvoting capacity:
 - i) One representative of the United States Fish and Wildlife Service.
 - ii) One representative of the United States National Marine Fisheries Service.
 - iii) One representative of the United States Bureau of Reclamation.
 - iv) One representative of the United States Army Corps of Engineers.
 - e) Establish the terms of the board members as follows:
 - i) The public member appointed by the Governor shall serve at his or her pleasure.
 - ii) The locally appointed members and alternates shall serve at the pleasure of the appointing board of supervisors.
 - iii) The public members appointed by the Senate Committee on Rules and the Speaker of the Assembly shall serve for a term of four years, with a two-term limit.
 - iv) The Members of the Senate and Assembly shall serve for a term of four years, with a two-term limit.
 - f) Require the voting members of the board to elect a chairperson and vice chairperson, and other officers as necessary, from among the voting members.
 - i) The chairperson must be from among county supervisor members.

- ii) If the office of the chairperson or vice chairperson becomes vacant, a new chairperson or vice chairperson would be elected by the voting members of the board to serve for the remainder of the term.

10) Provide the Conservancy Administrative Powers, including.

- a) The authority to hire staff, adopt rules and procedures for conduct of the Conservancy's business, establish advisory committees, enter into contracts, etc.
- b) Requirement that Conservancy hold two regular meetings in the Delta or Rio Vista.

11) Establish and Limit The Conservancy's Powers & Duties.

- a) Limit the jurisdiction and activities of the conservancy to the Delta and Suisun Marsh except if the board makes all of the following findings:
 - i) Project implements the ecosystem goals of the Delta Plan.
 - ii) Project is consistent with the requirements of any applicable state and federal permits.
 - iii) Conservancy has given notice to and receives and reviews any comments from affected local jurisdictions and the DPC.
 - iv) Conservancy has given notice to and reviewed any comments received from any state conservancy where the project is located.
 - v) Project will provide significant benefits to the Delta.
- b) Establish the Sacramento-San Joaquin Delta Conservancy Fund in the State Treasury, which may provide funding for ecosystem restoration projects consistent with the Conservancy's strategic Plan or for "regional sustainability" consistent with the Delta Protection Commission's "Regional Sustainability and Land Use Plan."
- c) Authorize the Conservancy, subject to specified conditions, to acquire, manage and transfer interests in property and water rights, except for title in fee, which the Conservancy is barred from acquiring.
- d) Authorize the Conservancy to accept funding from a broad range of sources, including creation and management of endowments.
- e) Require the Conservancy to develop a strategic plan consistent with the Delta Plan, Delta Protection Commission's Regional Sustainability and Land Use Plan, the Central Valley Flood Protection Plan, the Suisun Marsh Preservation Act, and the Habitat Management, Preservation and Restoration Plan for the Suisun Marsh.
- f) Authorize the Conservancy to collaborate with other organizations.
- g) Prohibits the Conservancy from regulating land-use, exercising power over water rights held by others, or exercising the power of eminent domain.

12) Include Other Miscellaneous Provisions Regarding the Conservancy.

- a) Define terms and make numerous findings and declarations regarding the Delta.
- b) Require DPC to conduct meetings in compliance with Bagley-Keene Open Meeting Act.
- c) Reduce the number of required advisory committees from 3 to 1.

Comments

A. Delta Protection Commission: Relationship to Council and Local Governments.

DPC and the Delta Stewardship Council.

- **The Delta Plan:** This proposal would require the DPC develop “a proposal to protect, enhance, and sustain the unique and enduring cultural, historical, recreational, agricultural, and economic values of the Delta as an evolving ecosystem.” The council would be required to consider the recommendations of the DPC, including the recommendations included in the RMP. If the council determined that a recommendation of the DPC is feasible and consistent with the objectives of the Delta Plan, the council would be required to adopt the recommendation.

However, what would happen if the DPC made a recommendation that was consistent with the *objectives* of the Delta Plan, but was in conflict with specific programs, projects, or elements of the Delta Plan? More specifically, what if the Delta Plan included the Bay-Delta Conservation Plan (BDCP) and the BDCP included a peripheral canal *to improve water supply reliability* (one of the objectives of the Delta Plan)? Further, what if the DPC, in order to “protect, enhance ...”, instead recommended more aggressive water recycling and ocean desalination to improve water supply reliability? As this proposal is written, the council would likely be required to dump the BDCP and instead go with the DPC recommendation.

- **The RMP:** This proposal would require the council to review the RMP for consistency with the Delta Plan and to approve the RMP. Two issues:

What would happen if the council were to find a proposed RMP was not consistent with the Delta Plan? Could the Council revise the RMP? Or would it be required to return the RMP to the DPC for direction for how it should be revised? This proposal is silent as to what would happen.

Also, this proposal does not give the council a specific time within which to approve or disapprove the RMP. Some sort of time requirement seems appropriate

- **Local/General Plans:** This proposal would revise the requirements for the DPC to review and approve local general plans and general plan amendments.

The principle requirement appears to be consistency with the RMP. It might make sense to also add a requirement that DPC also include determining consistency with the Delta Plan.

- **Criteria:** In a number of instances, this proposal requires the council to determine whether recommendations, proposals, or plans are consistent with the Delta Plan. However, it is silent as to what criteria the council would be required to use to determine such consistency.

One way to resolve this would be to establish specific criteria in statute. Another would be to direct the council to develop regulations to govern such consistency findings.

DPC and Local Governments.

- **State/Federal Participation:** The Delta Vision Committee Implementation Report (a.k.a. the Chrisman Report), dated December 31, 2008, recommends “that the Delta Protection Commissioners include: five county supervisors, one from each Delta County selected by its Board of Supervisors, three representatives of Delta cities, selected by Councils of Governments, and three representatives of Delta Reclamation Districts or water agencies.” The Report also states that “consistent with the recommendation of the Task Force, the DPC may invite state and federal agencies to participate as non voting members.”

This measure would reduce the membership of the DPC from 23 to 15 members, removing many of the non-local government members and adding the Secretaries for the Natural Resources and Business, Transportation, and Housing Agencies. However, PSB 4 continues to have the non-local government commissioners as voting members.

- **Economic Elements:** This measure would require DPC to develop a RMP that includes information on the “economic elements of local general plans and other local economic efforts.” Typically cities and counties do not create “economic elements” in the general plans; however, they do often establish “economic development policies” for their communities that are reflected in the seven required elements of their general plan. The Conference Committee may wish to adjust this language for purposes of clarity.
- **Timing of DPC Review:** This measure would require all local governments, within 180 days from the date of the Council’s adoption of the Delta Plan *or* DPC’s adoption of the RMP, *whichever event occurs first*, to submit to the DPC proposed general plan amendments and land use elements to make their general plans consistent with the RMP with respect to land in the primary zone. Two issues:

How would a local government adopt a general plan amendment that is consistent with the RMP if the council adopts a Delta Plan before the DPC adopts the RMP? Or, what if the DPC adopts the RMP, but the council finds the RMP is not consistent with the Delta Plan? One solution would be for the trigger to be the council’s approval of the DPC’s RMP (this is similar to the requirement in existing law).

Also, there is no need to state that a local government must submit their amended general plan and land use element. Since the land use element is part of the general plan the proposal should only reference the submission of the general plan amendments.

- **Review Standards:** This proposal repeals the existing Section 29763.5, regarding the standards the Commission must use when reviewing and approving general plans and replaces it with two new sections, Sections 29763.1 and 29763.2. However, in separating the previous section into two sections, this proposal appears to have removed the requirement the DPC find that general plan and general plan amendments meet a series of environmental and other criteria. Instead, the proposal would require DPC only have to make written findings as to the potential impact of the proposed amendments on those criteria. The Conference Committee may wish to reestablish the link between those criteria and DPC’s ability to approve the proposed general plans and general plan amendments.

- **RMP Requirements:** This proposal repeals and replaces the existing Section 29760. That section establishes the requirements for the RMP. The new Section 29760 in this proposal appears to move away from an *outcomes based* set of requirements, such as “protect and preserve the cultural values” and “preserve and protect delta dependent fisheries”, and appears to move to an *included elements* approach, such as “public safety recommendations” and “economic elements of local general plans”.

The preprint includes a [PLACEHOLDER] for other required elements of the RMP. Consequently, the language is not clear as to what other changes the author intends to make to the requirements of the RMP.

Nonetheless, the proposed requirement for the RMP to include public safety, economic development, and flood management recommendations is, for some, a significant departure from the existing function of the RMP as a land use policy document. While the Delta Vision Strategic Plan recommended creating a regional economic development plan, it did not suggest transforming the RMP into such a plan. The Conference Committee may wish to consider whether the RMP should include these broader policies that local General Plans would then need to be consistent with.

B. Conservancy: Scope of Authority.

- **Mission:** This proposal creates the Delta Conservancy as a “state agency to work in collaboration and cooperation with local governments and interested parties.” However, the proposal does not identify the overarching mission or purpose of the Conservancy. The Legislature created most state conservancies with the primary purpose of conserving, restoring or enhancing natural resources. Delta Vision recommends the creation of a conservancy “for implementing and coordinating Delta ecosystem enhancement and related revitalization projects.” The Conference Committee may wish to consider stating the mission or primary purpose for the Conservancy.
- **Connection to Council:** The Delta Vision Strategic Plan recommends specific responsibilities and legal authorities for the Conservancy, including consistency with the policies and plans adopted by the Council. In particular, it recommends that the conservancy be charged with “[c]oordinating state ecosystem-related and urban waterfront projects in the Delta, Suisun Marsh, and local plan areas. The Suisun Marsh area is regulated by the Bay Conservation and Development Commission, so integration of its authority and that of the Conservancy should be given first priority.”

This proposal includes two connections – consistency between the Conservancy's Strategic Plan and the Delta Plan (as well as several other plans), and discretion to act outside the Delta/Suisun Marsh if implementing the goals of the Delta Plan. It does not include any provision for the Conservancy to follow direction from the Council, integrate its actions with the Bay Conservation and Development Commission, or implement the ecosystem restoration part of the Delta Plan.

- **DPC/Conservancy Chair:** This proposal specifies that only a Delta County Supervisor may chair the Conservancy board. To some, this appears unduly restrictive with no apparent rational or policy basis. The Conference Committee may wish to consider whether all voting members of the board are co-equals without regard to geographic origin and, therefore, whether all voting member should be eligible to chair the board.

- **Terms/At Pleasure:** This proposal specifies that the Governor's and the county appointments to the Conservancy board are *at pleasure* appointments but the Legislative appointments, both public members and members of the Legislature, are for fixed 4-year terms. Moreover, this proposal states that the members of the Legislature may serve two terms. Two points:
 - 1) Pleasure appointments tend to lead appointees to closely follow the direction of their appointing power, instead of exercising independent judgment. It is not unheard of for pleasure appointees to be abruptly removed for making technically correct, but politically unpopular decisions. It is not clear why the Governor's appointees should serve at pleasure, but the Legislature's public appointees should serve fixed terms.
 - 2) While the proposal calls for Legislative members to serve fixed 4-year terms, those appointments do not necessarily align with legislative terms. This is especially true in the Assembly, where term limits allow members to serve only 6 years, making two 4-year term appointments impossible. The Conference Committee may wish to consider which appointments should be at pleasure and which should be fixed terms.
- **Board Hires:** This proposal requires the board to appoint an executive officer and employ other staff as necessary. It is unusual for a board to hire staff; the board typically hires the executive officer who then has hiring authority, as the executive officer would have day-to-day management of and provide direction to staff.
- **Land Acquisition:** This proposal authorizes the Conservancy to acquire an interest in real property. However, it prohibits the Conservancy from acquiring a fee interest (e.g., holding absolute ownership) of property.

All state conservancies, with the exception of the Sierra Nevada Conservancy, are authorized to acquire a fee interest in property; such authority constitutes one of the most important and fundamental conservation tools for entities whose primary mission is to conserve natural resources. Many view a Delta Conservancy as playing a critical role in the implementation of the Bay Delta Conservation Plan or ecosystem elements of the Delta Plan "...given the scope, urgency and need for effective integration among multiple ecosystem restoration efforts," as stated in the Delta Vision Committee's Implementation Report.

Previous versions of this proposal authorized the Conservancy to acquire a fee interest and transfer it within two years. As an alternative, this approach could be resurrected, but consideration should be given to allowing the Conservancy a longer period of time to transfer the interest, e.g. at least five years. The Conference Committee may wish to consider whether to grant the Conservancy authority to acquire a fee interest of property and if so, under what conditions if any.

Additionally, while this proposal expressly prohibits the Conservancy from acquiring a fee interest in property it is unclear whether grantees may do so. Section 32364 authorizes an entity to apply for a grant to acquire an interest in real property but does not specify whether this includes a fee interest. The Conference Committee may wish to consider clarifying that grantees have this authority.

- **In Lieu of Taxes:** This proposal requires a grant applicant wishing to purchase an interest in real property to demonstrate how payments in lieu of taxes, assessments, or charges otherwise due to local government will be provided. While this might address the concern

that certain land acquisitions may reduce or eliminate property tax assessments and thus county revenues, this appears to be an unprecedented requirement that may effectively stymie such acquisitions (and the goals of the Conservancy), especially if the funding mechanism (e.g., bonds) does not expressly permit or authorize such payments.

The above requirement is not sensitive to the fact that different acquisitions impact property tax assessments differently. According to the Civil Code, the creation of a conservation easement itself does not result in an automatic reduction in the assessed value of the property subject to the easement. Moreover, the conveyance of this interest does not generally constitute a change in ownership of the underlying property (only a change in ownership would trigger a reassessment).

At the same time, nothing in the bill authorizes the Conservancy to deny a grant application absent such a demonstration nor does the bill provide any criteria or guidance to the Conservancy when reviewing this provision. With respect to lands acquired for agricultural preservation, existing law requires the Coastal Conservancy to “take all feasible action to return [these lands] to private use or ownership.” If the Coastal Conservancy leases agricultural lands to a private individual, it may transfer 24 percent of the gross income to the county in which the lands are located. These requirements could serve as models for a Delta Conservancy.

C. Conservancy: Ecosystem Restoration & Economic Development.

- **"Complementary":** This proposal requires the Conservancy to support efforts that advance both environmental protection and economic well-being in a complementary manner. It further lists examples of these efforts, including protection and enhancement of habitat, preservation of agriculture, promotion of Delta communities and economic vitality, and protection of water quality.

Because the above mandate requires the satisfaction of two objectives in a complementary fashion, a persuasive argument can be made that riparian restoration or protection of water quality, for example, may not advance the economic well-being of Delta residents. The Conference Committee may wish to consider setting a “primary” mission for the Conservancy, consistent with the other conservancies, for ecosystem restoration.

- **Public Use:** This proposal requires the Conservancy, when undertaking one of the above “efforts” to enhance public use and enjoyment of lands owned by the public. This subdivision is vague and could be interpreted as limiting the creation or enhancement of recreational opportunities to lands only owned by public agencies. If so, this could be unnecessarily restrictive.

Other Issues:

As the Conference Committee begins deliberating this bill, it also may want to consider technical amendments to address the following:

- Granting the following authorities to the Conservancy in order to maximize conservation or preservation opportunities and to ensure appropriate use of public resources or bond proceeds. One or more of the existing conservancies have these authorities.

- Authorize the Conservancy to require a grantee to enter into an agreement with the Conservancy on terms and conditions specified by the Conservancy.
 - Authorize the Conservancy to require a cost-share or local funding requirement for a grant, contingent upon, for example, the total amount of funding available, fiscal resources of the applicant, urgency of the project. The Conservancy should also be authorized to waive cost-share requirements.
 - Authorize the Conservancy to sell, rent, or exchange an interest in real property to a person or entity subject to appropriate terms and conditions (the bill only authorizes the Conservancy to improve, lease or transfer an interest).
 - Authorize the Conservancy to enter into an option to acquire an interest (with an appropriate cap). Proceeds from a sale or lease of lands should be deposited in the Conservancy Fund.
 - Authorize the Conservancy to fund or award grants for plans and feasibility studies consistent with its strategic plan or the Delta Plan. The bill only authorizes the Conservancy to award grants to facilitate “collaborative planning” efforts.
 - Authorize the Conservancy to seek repayment or reimbursement of funds granted on terms and conditions it deems appropriate. Proceeds of repayment shall be deposited in Conservancy Fund.
 - Exempt an acquisition of an interest in real property to the Property Acquisition Law, consistent with the Delta Vision Strategic Plan recommendations.
 - Require any funds over and above eligible or approved project or acquisition costs to be returned to the Conservancy and available for expenditure when appropriated by the Legislature.
 - Authorize the Conservancy to sue and be sued.
- Clarifying under existing law who is the responsible party for the appropriate environmental review of the RMP.
 - Assessing whether all the findings and declarations are necessary for aiding in determining Legislative intent regarding how the provisions of the proposal should be implemented.
 - This proposal has been heavily amended as it has evolved. It would benefit from double check references, eliminate redundant provisions, edit awkward phrases, and refine references, e.g., the *Regional Sustainability and Land Use Plan* cited in Section 32360 is undefined.

*The following policy committees collaborated in preparing this Summary & Comments:
 Assembly Local Government, Assembly Natural Resources, Assembly Water, Parks & Wildlife,
 Senate Local Government, and Senate Natural Resources and Water.*

Preprint SB 1 (SB 12 content) by Senator Simitian

Summary and Comments

Summary: Preprint Senate Bill No. 1 (PSB 1) would establish the Delta Stewardship Council to advance the *coequal goals* of assuring a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem and enhancing the unique cultural, recreational, and agricultural values of the Delta as an evolving place.

Specifically, this proposal would enact the Sacramento-San Joaquin Delta Reform Act of 2009. This Act would:

- 1) Establish State policies for the Delta, including:
 - a) Setting the *coequal goals* of “assuring a reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem and the unique cultural, recreational, and agricultural values of the Delta as an evolving place” as the standard for long-term management of Delta water and environmental resources.
 - b) Setting the policy to reduce dependence on water from the Delta watershed, over the long-term, for statewide water supply reliability.
 - c) Restating – but not changing – the longstanding constitutional principle of reasonable use and the public trust doctrine as the foundation of state water management policy and as particularly important and applicable to the Delta.
- 2) Create the Delta Stewardship Council:
 - a) The Council would consist of 7 members:
 - i) 4 members appointed by the Governor and confirmed by the Senate
 - ii) 1 member appointed by the Senate Committee on Rules
 - iii) 1 member appointed by the Speaker of the Assembly
 - iv) The Chairperson of the Delta Protection Commission
 - b) Council members would be required to possess diverse expertise and reflect a statewide perspective.
 - c) The initial term of office of each member of the Council would be two, four, or six years and all subsequent terms shall be eight years.
 - d) The chairperson would serve full time. Other members would serve one-third time.
 - e) The Council would meet once a month in a public forum. At least two meetings each year would be required to take place at a location within the Delta.
- 3) Provide the Council standard administrative powers, including the power to sue or be sued, enter into contracts, employ the services of public, nonprofit, and private entities, etc.

4) Establish requirements for consistency with a Delta Plan

- a) The Council, by regulation, would be required to adopt a consultation process, that includes remedies, with all state agencies, departments, boards, and commissions that have specified responsibilities to develop, implement, monitor, and adhere to all or part of the Delta Plan.
- b) The Council would be required to identify those state agency plans that should be reviewed by the Council, and if necessary amended to be consistent with Delta Plan.
- c) The Council would be required to act on proposed state agency plan or plan amendments within 60 days from the date of submittal of the proposed plan or plan amendments.
- d) Proposal states that nothing in these requirements affect the authority of the Department of Fish and Game (DFG) or the State Water Resources Control Board (SWRCB).

5) Establish process to authorize Delta water conveyance

- a) Council would be required to authorize any water conveyance facility proposed to be constructed within or around the Delta consistent with Council's obligation to comprehensively address the coequal goals.
- b) Before taking any action to authorize the construction of any water conveyance facility within or around the Delta, the Council would be required to make the following determinations:
 - i) SWRCB has adopted instream flow determinations for the Sacramento River and waterways within the Delta that provide the volume, quality, and timing of water required for a healthy Delta ecosystem under different conditions, including seasonal, annual, and interannual bases, and including an assessment of increased spring and fall outflow and increased San Joaquin River inflow.
 - ii) Each water agency that relies on water exports from the Delta watershed has submitted to the Council a contingency plan for Delta water supply curtailments and drought, consistent with SWRCB's instream flow requirements, and a long-term plan for reducing reliance on those exports.
 - iii) The proposed water conveyance facility will be operated in a manner consistent with achieving the coequal goals.

6) Establish a Delta Water Master

- a) SWRCB would be required to appoint a special master for the Delta, whose title shall be "the Delta Watermaster."
- b) Council would be required to submit to SWRCB a list of at least one candidate to serve as Delta Watermaster. The Council would be required to recommend individuals who have extensive knowledge and experience in one or more of the following areas:
 - i) Water rights laws or water rights enforcement.
 - ii) Water quality laws or water quality enforcement.
 - iii) State Water Project (SWP) or federal Central Valley Project (CVP) operations.
 - iv) State or federal endangered species laws or endangered species enforcement.

- c) SWRCB would be required to select one individual from the list provided by the Council to act as the Delta Watermaster, within 60 days of receipt of the list. If SWRCB found that none of the candidates met the requirements under this proposal, SWRCB would be required to notify the Council of that finding and that a vacancy exists.
 - d) The Delta Watermaster would be an agent of SWRCB, and would be vested with all of the statutory enforcement authority granted to SWRCB as to daily operations of all surface water diversions within the Delta watershed.
 - e) The Delta Watermaster's authority would include, but not be limited to, the duty to:
 - i) Enforce water rights for diversions.
 - ii) Exercise the state's public trust responsibilities.
 - iii) Enforce the California Endangered Species Act as to diversions.
 - iv) Make judgments as to reasonable use pursuant to the California Constitution.
 - v) Enforce water quality objectives established in the Delta Water Quality Control Plan.
 - vi) Consider and decide on petitions for changes – with a duration of 90 days or less – in water right permits or licenses for diversions within the Delta watershed.
 - f) SWRCB would be required to amend terms and conditions of water right permits or licenses for diversions within the Delta watershed to delegate authority to the Delta Watermaster to act on SWRCB's behalf.
 - g) Delta Watermaster decisions could be appealed to an administrative law judge, which would be appointed by SWRCB to consider such appeals.
- 7) Establish a Delta Independent Science Board
- a) The Delta Independent Science Board (Science Board) would have no more than 11 members, and could include employed or retired scientists from federal and state agencies not having major project or regulatory authority over the Delta, the University of California, the California State University, and nongovernmental organizations.
 - b) Science Board would be required to develop a scientific program which would include:
 - i) Research critical scientific issues of both the physical Delta and elsewhere in the state relevant to Delta management.
 - ii) Organize, assess, and synthesize best available science for policymakers and Council.
 - iii) Review major projects undertaken to advance the goals of Delta Vision, upon request of other specified agencies, including the Council.
 - c) Conduct independent science and engineering reviews of work of government agencies or consultants upon request of the Council or other state agencies.
 - d) Science Board would be required to prepare an annual report for submission to the Council on scientific issues related to the Delta. The report would include scientific and technical findings regarding the management of the Delta and recommended actions of the Council, an identification of short-term and long-term matters for research, and a description of the relevance of these matters to achieving the coequal goals.

8) Direct Early Actions In The Delta

- a) Upon appointment of a quorum, Council would assume responsibility for overseeing implementation of early actions, with authority to identify early actions in addition to those specifically identified in this proposal pertaining to transportation, utilities, recreation, water supply, ecosystem improvements, and flood control.
- b) Within 60 days of appointment of a quorum, Council would be required to request a list of nominees to serve on Science Board from University of California, U.S. Geological Survey, and appoint Science Board within 30 days of receiving the list.
- c) Within 120 days of appointment of a quorum, Council would be required to
 - i) Develop and implement strategy to appropriately engage federal agencies with responsibilities in the Delta.
 - ii) Begin developing information necessary to develop the Delta Plan.
- d) Council would be required to develop an interim plan of recommendations for early actions, projects, including:
 - i) interim finance strategy for developing Delta Plan and taking early actions
 - ii) study of transfer of SWP to a separate public agency or utility
 - iii) designation of Department of Water Resources (DWR) and DFG to implement near-term restoration projects, including Dutch Slough tidal marsh restoration, Meins Island tidal marsh restoration, and floodplain improvements in the Yolo Bypass
 - iv) direction to DFG to submit recommendations as to the Delta's instream flow needs to SWRCB by April 1, 2010, based on existing information that DFG deems reliable
- e) DWR would be required to do all of the following:
 - i) Conduct a study of the Middle River Corridor Two-Barrier pilot project.
 - ii) Evaluate the effectiveness of the Three Mile Slough Barrier project.
 - iii) Construct demonstration fish protection screens at Clifton Court Forebay.
 - iv) Assist DFG in implementing early action ecosystem restoration projects.
- f) SWRCB would be required to establish effective system of Delta watershed diversion data collection and reporting, and determine Delta's instream flow needs, as follows:
 - i) States legislative intent for accelerated process to facilitate Delta planning decisions
 - ii) Requires SWRCB to make determinations, in consultation with the DFG, by June 30, 2010, for ecosystem and water quality purposes.
 - iii) Prohibits granting of any petition to change a point of diversion in the Delta for SWP or CVP until instream flow needs are determined.
 - iv) Requires SWRCB to charge DWR for the costs of this analysis and determination.
 - v) Requires DWR to obtain reimbursement for those charges from the State Water Project contractors and federal government.
 - vi) Requires SWRCB to give Council instream flow need determinations within 30 days.
 - vii) Limits judicial review of determinations to review by Court of Appeals, based on SWRCB record and the "arbitrary and capricious" standard.
- g) SWRCB, by December 31, 2010, would be required to submit prioritized schedule to complete instream flow need determinations as to Delta and high priority rivers in Delta watershed by 2012, and for all major rivers/streams outside Delta by 2018.

9) Establish a Delta finance structure

- a) Delta Plan would be required to apply “beneficiaries pay” principles.
- b) Council would be required to develop and adopt a multi-year estimate covering an unspecified period, in annual increments, of all federal and state funds reasonably expected to be available during that unspecified period to implement the Delta Plan.
- c) Council would be required to develop finance plan that ensures necessary funding to fulfill goals of the Delta Plan and to mitigate the impacts of implementing the Delta Plan.
- d) State Water Project contractors and federal Central Valley Project contractors would be required to pay the entire costs of the following actions and projects:
 - i) Environmental review, planning, design, construction, and operation of any new Delta water conveyance facility
 - ii) Necessary mitigation to reduce environmental damage caused by water export operations and to produce higher quality water for purposes of export
- e) Council would be required to impose an annual fee on each person or entity that holds a right, permit, or license to divert water within the watershed of the San Francisco Bay/Sacramento-San Joaquin Delta. Fee would apply to all holders of water rights.
- f) Until December 31, 2012, the Council would establish fees, by emergency regulation, to provide only for funding necessary to complete the Delta Plan, establish the Council, and implement the early actions.
- g) Beginning January 1, 2013, Council would, by regulation, set the fee schedule so that the total revenue collected from fees equals the appropriate proposed annual budget; or, total revenue equals amount needed in the Council’s judgment to pay for both:
 - i) Costs of facilities and program activities intended to mitigate damage to fish populations and other natural resources in the Delta and its tributaries reasonably related to the diversion of water and other activities of the holder of water rights.
 - ii) Costs of Council activities financed pursuant to this part, including all costs incurred to establish, administer, defend or collect the authorized fee.
- h) Council would set fee schedule to bear a fair and reasonable relationship to those charges.
- i) Council would review the fees each fiscal year and revise as necessary.
- j) Council would be authorized to issue revenue bonds

10) Provide for other miscellaneous issues

- a) Proposal includes numerous “savings” clauses, including "area of origin," Natural Community Conservation Planning Act, state liability for flood protection.
- b) Proposal includes legislative findings regarding history and importance of the Delta

Comments

NOTE: While this proposal raises a number of issues associated with co-equal goals, early actions, instream flow determinations and Bay-Delta Conservation Plan requirements and approvals, these issues are largely the same as those raised in Preprint Assembly Bill 1 (PAB 1). Consequently, such issues are addressed in the Summary and Comments on PAB 1.

A. Governance: Council Structure & Authority

- **Council Membership:** This proposal would form a 7 member Council. Council members would be required to possess diverse expertise and reflect a statewide perspective. However, this proposal would also designate the chair of the Delta Protection Commission as a member of the Council *ex officio*.

Delta Vision suggested the Council should have no slots set aside for persons with specific characteristics. Others suggest that there must be specific slots for persons with specific characteristics, such as, representing Delta interests, environmental interests, exporter interest, etc. This proposal appears to be a hybrid of the two approaches, with membership appointed as follows:

- 4 members appointed by the Governor and confirmed by the Senate,
- 1 member appointed by the Senate Committee on Rules,
- 1 member appointed by the Speaker of the Assembly, and
- The Chairperson of the Delta Protection Commission.

Delta Vision suggested the Council should all be appointed by the Governor, subject to Senate confirmation, with no *ex officio* members. That approach would rely solely on the Senate confirmation process to ensure the Governor's appointments fairly balanced state and local interests. This proposal provides the Senate and Assembly an additional method to ensure balance, at least from the Senate and Assembly's perspectives, by allowing each to appoint a member to the Council.

- **DPC Chair:** This proposal would designate the chair of the Delta Protection Commission as a member of the Council *ex officio*. However, another preprint in this package, Preprint Senate Bill 4 (PSB 4), gives the Delta Protection Commission specific responsibilities for making recommendations to the Council for inclusion in the Delta Plan. The Council would then be required to review the recommendations for consistency with the Delta Plan, and if it found consistency, the recommendations would be required to be included. There are other provisions as well where the Delta Protection Commission is required to make findings or recommendations, with Council review for consistency.

The question arises as to whether a conflict would arise when the Chair of the Delta Protection Commission, as a member of the Council, would be required to review the actions of the Delta Protection Commission. It is difficult to imagine a situation where the Chair of the Delta Protection Commission, as a member of the Council, would find against a finding of the Delta Protection Commission. The Conference Committee may wish to review and consider resolving such a conflict.

- **Staggered Terms:** This proposal would stagger the initial terms, but the subsequent terms would be for 8 years. Some have suggested that a shorter term would be more appropriate.

- **Science Board:** This proposal establishes a Science Board, and describes in some detail how the science board would be organized. However, it is largely quiet about the science program itself. In addition, the proposals appear to replace many of the current duties of the CalFed Independent Science Program. The Conference Committee may wish to consider expanding on the description of the science program and reconciling that program with the CalFed Independent Science Program.

B. Governance: Water Master Authority

- **Concept:** This proposal would require SWRCB to appoint a “Delta Watermaster” who would be an agent of SWRCB, and would be vested with all of the statutory enforcement authority granted to SWRCB to direct daily operations of all surface water diversions within the Delta watershed. This proposal appears to be directed to ensure someone is responsible for ensuring all the laws and regulations regarding water diversions within the Delta watershed are enforced – essentially, the Delta Cop.

This approach differs from efforts within the Bay Delta Conservation Program. There, the strategy appears to be to have state and federal wildlife agencies and the project operators self-police the daily operations of the future water projects consistent with water supply and environmental objectives. Some would question how such a process would have a different result than that under the old CalFed program.

- **Expertise:** This proposal would require the Delta Watermaster to have a background in one or more of the following.
 - Water rights laws or water rights enforcement.
 - Water quality laws or water quality enforcement.
 - State Water Project or federal Central Valley Project operations.
 - State or federal endangered species laws or endangered species enforcement.

While expertise in water project operations would clearly be useful, questions of conflict of loyalties might arise if the Delta Watermaster’s immediately previous job was with the CVP, SWP or a CVP/SWP contractor. The Conference Committee may consider adding provisions to eliminate such appearance of conflict.

- **Responsibilities:** This proposal would provide the Delta Watermaster broad responsibilities, including operations of all projects in the watershed. That’s a tall order for a new position.

The Conference Committee might wish to consider providing the Delta Watermaster some initial priority focus, such as on CVP and SWP operations, in-delta water users, and in-delta water dischargers, or perhaps establishing a phase in of such responsibilities. Another option would be to direct SWRCB to establish such priorities.

This proposal would provide the Delta Watermaster authority to do all of the following:

- Enforce water rights for diversions.
- Exercise the state’s public trust responsibilities.
- Enforce the California Endangered Species Act as to diversions.
- Make judgments as to reasonable use pursuant to the California Constitution.
- Enforce water quality objectives established in the Delta Water Quality Control Plan.
- Consider and decide on petitions for changes, with a duration of 90 days or less, in water right permits or licenses for diversions within the Delta watershed.

Some have suggested that to enforce all relevant laws, the Delta Watermaster may need additional authorities, especially regarding provisions of the Fish and Game Code. The appeal process for Watermaster actions also may require additional authorities.

C. Water Conveyance Decision

- **Council Authority:** This proposal would require the Council to authorize any water conveyance facility proposed to be constructed within or around the Delta consistent with the Council's obligation to comprehensively address the coequal goals, including, but not limited to, water supply reliability. To do so, the Council would need to make a series of specific determinations.

Some have questioned the wisdom of providing this authority to an appointed board. A number of CVP and SWP contractors, for example, assert that DWR already has the authority to construct "delta facilities" and to the extent that such a decision on conveyance would have environmental impacts, the Bay Delta Conservation Plan will appropriately address them. Others have suggested that by delegating the decision making authority to an appointed board, the Legislature has abrogated its legislative responsibilities.

- **Conditions:** This proposal would require the Council, before taking any action to authorize the construction of any water conveyance facility within or around the Delta, to make the following determinations:
 - SWRCB has adopted instream flow determinations for the Sacramento River and waterways within the Delta that provide the volume, quality, and timing of water required for a healthy Delta ecosystem under different conditions, including seasonal, annual, and inter-annual bases, and including an assessment of increased spring and fall outflow and increased San Joaquin River inflow.
 - Each water agency that relies on water exports from the Delta watershed has submitted to the Council a contingency plan for Delta water supply curtailments and drought, consistent with SWRCB's instream flow requirements, and a long-term plan for reducing reliance on those exports.
 - The proposed water conveyance facility will be operated in a manner consistent with achieving the coequal goals.

Some have suggested that these conditions are unnecessarily expansive, others have suggested they are incomplete at best.

D. Delta Finance

- **Diversion Fee:** This proposal requires the Council to impose an annual fee on each person or entity who holds a right, permit, or license to divert water within the watershed of the San Francisco Bay/Sacramento-San Joaquin Delta. The proposal further states that the proceeds are to be initially used to establish the Council, develop the Delta Plan, and implement the early actions. Beginning in 2013, the fees would be adjusted to cover the costs of facilities and program activities intended to mitigate damage to fish populations and other natural resources in the Delta and its tributaries that are reasonably related to the diversion of water and other activities of the holder of water rights, and a fair share of administrative costs.

Separately, this proposal would require SWP contractors and CVP contractors to pay the entire costs of the environmental review, planning, design, construction, and operation of any new Delta water conveyance facility, and any necessary mitigation to reduce environmental damage caused by water export operations. This raises a number of issues:

- The Delta Plan will include other programs and projects beyond conveyance and mitigation reasonably related to diversion of water. While the proposal also included revenue bond authority, it is not clear, for example, what the funding source would be for wetlands restoration, for example, or flood easements.
 - Council has broad authorities to define its Delta Plan, and has fee authority to cover much of its costs. It is not clear who, if anyone, has the authority to review the Delta Plan for its cost effectiveness or to reign in wasteful spending plans.
 - Fees paid by each person or entity are to bear a fair and reasonable relationship to those charges. It is not clear whether or not that means the fees are to be charged volumetrically, by capacity of diversion, seniority of right, or some other basis. Presumably, such issues would be determined by the regulation setting process. The Conference Committee might wish to provide some statutory guidance.
- **Finance Plan:** This proposal also requires the Council to develop a finance plan for implementation of the Delta Plan, which may identify additional sources for funding. These other sources are not specified, but may include general obligation bonds, federal funding, or funding "volunteered" pursuant to the BDCP or other regulatory agreements.

Other Issues:

As the Conference Committee begins deliberating this proposal, it also may want to consider technical amendments to address the following:

- What About the California Bay-Delta Authority? This proposal would leave intact the California Bay Delta Authority Act. That act was enacted to oversee the implementation of the CalFed Bay Delta Program. Among other things, that Act created the California Bay Delta Authority (CBDA). The CBDA has not met in over two years because of inability to get a quorum. It is not clear whether this proposal is intended to completely replace CalFed, supplement CalFed, or operate independently from CalFed.
- Definition of the Delta needs to be cleaned up. For example, § 85058 refers to the "Delta estuary as defined in Section 12220," but § 12220 does not include the word "estuary"
- Section 85215 requires the council to review specified plans for consistency with the Delta Plan, including "all annual water project operation plans." It is not clear whether this includes just the SWP and CVP, Contra Costa's operations, Central and South Delta Water District operations, or those upstream in the upper watershed.
- It is not clear why the Council should have to meet at least twice in the Delta.

The Assembly Water, Parks & Wildlife Committee and the Senate Natural Resources & Water Committee collaborated in preparing this analysis.

Preprint AB 1 (AB 39 content) – Assemblyman Huffman

Summary & Comments

SUMMARY: Establishes new legal framework for Sacramento-San Joaquin Delta policy, requires near-term actions, and requires development of a new Delta Plan. Specifically, this proposal:

- 1) Establishes “coequal goals” of improving statewide water supply reliability and restoring the Delta ecosystem as the overarching management objectives for the Delta.
- 2) Requires development of comprehensive Delta Plan as centerpiece of state policy and investments in the Delta, as specified, by 2011 (with report to the Legislature by 3/31/12).
 - a) Requires council to consult with federal, state, and local agencies with responsibilities in the Delta, and consider state agency proposals for the Delta Plan. Authorizes the council to appoint state agencies to contribute to development of the plan.
 - b) Requires council to develop the Delta Plan consistent with federal law allowing the State to influence federal agency actions in the Delta (*e.g.* Coastal Zone Management Act).
 - c) Requires council to review and revise the plan every five years.
 - d) Specifies required components of Delta Plan, consistent with Strategic Plan goals:
 - i) Proposal developed by Delta Protection Commission to protect the Delta as an evolving place, with specified state agencies contributing portions.
 - ii) Ecosystem restoration to achieve, upon implementation, restoration of the Delta ecosystem, as defined and with scope of plan extending to first dam on the tributaries.
 - iii) Statewide water conservation, efficiency, and sustainable use, with recommendations to Legislature necessary to implement those actions.
 - iv) Options for water conveyance, water storage, and improved reservoir operations to achieve the Coequal Goals, and to integrate flood and water supply operations.
 - v) Reduced risks from Delta levee failures, including effective emergency preparedness, priorities for State levee investments, and local flood protection plans.
 - e) Requires the Delta Plan to be based on best available scientific information, and include quantified targets for achievement, effective adaptive management, and participation by the Delta Independent Science Board.
- 3) Preserves and does not supersede, preempt or amend existing environmental or water laws, including “area of origin” laws, California Endangered Species Act, water rights, and the Natural Community Conservation Planning (NCCP) Act.

- 4) Requires specified early actions, including actions related to governance, water supply reliability, instream flow determinations, and ecosystem restoration.
- 5) Requires that the Administration's "Bay Delta Conservation Plan," which is currently in development, comply with standards and requirements in the NCCP Act and the "habitat conservation plan" (HCP) provisions of federal Endangered Species Act (ESA).
 - a) Requires Department of Water Resources (DWR) to develop (including completion of an environmental impact report/EIR) , in consultation with the council, and propose an NCCP-compliant plan to the Department of Fish & Game (DFG) and states legislative intent that the plan also be developed as an HCP under ESA.
 - b) Requires the Delta Independent Science Board to review the EIR and submit findings to the council within 60 days of receipt.
 - c) Requires DWR to submit the final EIR to the council and authorizes the council, exclusively, to certify the final EIR.
 - d) Requires the Council to incorporate the Bay Delta Conservation Plan (BDCP) into the Delta Plan *if* the Council determines, in writing and after at least one public hearing, that:
 - i) BDCP is based on best available science and comprehensive investigation/analysis of:
 - (1) volume, quality, and timing of water required for a healthy Delta estuarine ecosystem under different conditions
 - (2) full range of Delta conveyance alternatives, including impacts to ecosystem
 - (3) full range of capacity/design options for conveyance alternatives, including a lined canal, unlined canal and pipelines
 - (4) potential effects of climate change
 - (5) potential impacts on migratory fish and aquatic resources
 - (6) potential impacts on Sacramento River and San Joaquin River flood management
 - (7) resilience and recovery in the event of catastrophic loss by natural disaster
 - (8) probability of achieving current Delta water quality for conveyance alternatives
 - ii) BDCP includes:
 - (1) objective to achieve goals in existing species recovery plans
 - (2) science-based and formal adaptive management program, as specified
 - e) Requires Delta Independent Science Board to evaluate BDCP achievements annually.
- 6) Defines certain terms for application to new Division 35 of the Water Code, including:
 - a) "Co-equal Goals" mean "the two goals of assuring a reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, and agricultural values of the Delta as an evolving place."
 - b) "Council" means the new Delta Stewardship Council.
 - c) "Delta" means the legal Delta, Suisun Marsh and the Yolo Bypass.

- d) “Delta Plan” means the comprehensive plan described in this proposal.
 - e) “Early actions” means the actions required before completion of the Delta Plan.
 - f) “Strategic Plan” means the Delta Vision Blue Ribbon Task Force's Strategic Plan and the Delta Vision Committee's Implementation Report, with priority to the Task Force plan.
- 7) Allows the council to incorporate other completed plans related to the Delta, to the extent such plans promote the Coequal Goals.
- 8) Makes proposal contingent upon enactment of other unspecified bills.

Comments

This proposal includes four key components for resolving the current Delta crisis and reforming Delta policy – legal framework, early actions, Delta Plan, and Bay Delta Conservation Plan. Each one of these components raises important issues for the committees’ consideration.

A. Legal Framework

- **Coequal Goals:** This proposal includes two parts also contained in Preprint Senate Bill 1 (Simitian) (PSB 1) – General Provisions and Early Actions. The one difference between these parts in the two proposals is the definition of “Coequal Goals.” This term is defined in the definitions chapter and then referenced throughout the Delta legislation, thereby avoiding defining the term differently in different parts of any of the proposals. This proposal defines that term as:

the two goals of assuring a reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, and agricultural values of the Delta as an evolving place

PSB 1 defines the term as:

the goals of assuring a reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem and the unique cultural, recreational, and agricultural values of the Delta as an evolving place

This proposal emphasizes “the two goals” of water supply reliability and ecosystem restoration, while secondarily providing for protection of the Delta “as an evolving place.” This definition is consistent with the Delta Vision Strategic Plan. In contrast, while the language in PSB 1 includes language similar to this proposal on the two goals, it also appears to elevate the objective of protecting, restoring, and enhancing the Delta “as an evolving place” to that of a third coequal goal.

According to PAB 1's author, *the PSB 1 definition merges a third concept in a way that may dilute the ecosystem goal and confuse the meaning of "co-equal goals."* It appears to condition ecosystem restoration on protection of the Delta as place. *Protecting agricultural values, for example, may not always be consistent with ecosystem restoration.*

The Delta Vision Strategic Plan proposed a definition very similar to that used in this PAB 1. Regarding the focus on just ecosystem restoration and water supply reliability, the Strategic Plan noted "They are co-equal because neither restoring the ecosystem nor creating a reliable water supply can be achieved without the other." However, the Strategic Plan also observed that is also necessary to "[r]ecognize and enhance the unique cultural, recreational, and agricultural values of the California Delta as an evolving place, an action critical to achieving the co-equal goals." In other words, while ecosystem restoration and water supply reliability are the twin objectives, protecting the Delta as an evolving place is a critically necessary condition for success. Water exporters and some environmental interest groups support this approach. They assert that to elevate protecting the Delta as an evolving place to that of ecosystem restoration and water supply reliability would defuse focus on those two objectives while possibly introducing additional conflicts among the goals unnecessarily.

PSB 1 reflects the perspective that as most of the proposed actions will occur in or directly affect the Delta, and as Delta Vision recognized, protecting the Delta as an evolving place is critical to success, it makes sense to elevate protecting the Delta up front to ensure that such a critical element to success is kept front and center. Delta interests and others support this approach.

The definition of coequal goals is central to this and the other proposals in the Delta package. The definition must be the same in each of the proposals. The Conference Committee will need to reconcile these differences.

Another question is what is meant by "assuring a reliable water supply for California"? The phrase is not defined in any of the proposals in the package, and it too is central to this and the other proposals in the Delta Package. Does it mean increasing maximum diversions? Does it mean keeping maximum diversions at current levels or lower, but receiving that quantity of water more regularly than in the past? Does it mean replacing "lost" yield from other sources? There are a number of potential interpretations.

CALFED left the definition of water supply reliability undefined, and in doing so led to countless hours of fruitless debate among partisans on all sides of each potential interpretation. The Conference Committee might wish to consider defining the term to bring greater clarity to the co-equal goals.

- **Delta Policies:** This proposal adopts several new Delta policies related to both water and land, which traditionally have not been connected. These policies recognize the inherent factual connection between the two natural resources and attempt to balance the State's management and investment in both. The policies also explicitly preserve long-standing legal principles, such as "area of origin" protections for water rights. The proposal does not supersede or preempt other regulatory authorities now held by existing state agencies, such as water rights, water quality, and the California Endangered Species Act, but the Conference Committee may wish to include language more explicitly affirming this point.

B. Early Actions

- **Instream Flow Needs:** In recent years, much of the Delta debate has centered on instream flow needs for the Delta ecosystem, particularly its fishery resources. Some of that debate arises out of the State's current policy of moving freshwater from the Sacramento River through the Delta's existing channels to the State Water Project (SWP) and the federal Central Valley Project (CVP) water export pumping facilities in the South Delta. This north-south freshwater course acts as a barrier to saltwater incursion from San Francisco Bay. In some cases, this movement causes Delta streams to flow backwards, which led to some of the recent federal court restrictions on pumping.

The State Water Resources Control Board (SWRCB) and the BDCP process have been considering this instream flow issue. BDCP also is considering changes to how SWP/CVP convey water. If BDCP ultimately concludes that a new point of diversion on the Sacramento River is necessary to meet the needs of the ecosystem, then SWP/CVP will have to get a permit to move their diversion, which would require SWRCB to impose bypass flow requirements (*i.e.*, instream flows downstream of the new point of diversion). Future decisions as to Delta water will therefore require determinations, to put it simply, of how much water the Delta needs, for ecosystem and water quality purposes. DWR currently plans to seek SWRCB permits after the BDCP is completed.

This proposal would require both interim and final determinations as to the Delta's instream water flow needs. The interim "instream flow needs determinations" (§ 85086) are explicitly intended as a planning tool as the State develops the Delta Plan and considers other changes. These determinations, in consultation with DFG, would be based on existing scientific information, not a new study of Delta needs. The proposal provides for funding of those determinations and expedited judicial review if necessary. Pursuant to the Delta Vision Strategic Plan, the proposal also requires formal instream flow determinations by 2012.

Preprint SB 1 also includes language related to instream flows. The Conference Committee may wish to consider how to make the different provisions consistent and set a realistic timeline for completion.

C. Delta Plan

- **Statewide Water Management:** This proposal requires the Delta Plan to "promote statewide water conservation, efficiency, and sustainable use." This is consistent with the linkage drawn in the Strategic Plan between statewide water efficiency and the Delta in its Goal 4 – "Promote statewide water conservation, efficiency, and sustainable use." Another proposal in this year's package, PAB 2 (Feuer/Huffman), promotes water conservation statewide, but has not been integrated into the council. The Conference Committee may wish to consider how to better clarify the relationship between PAB 2 and statewide water management goals in the Delta Plan.

- **Bay Delta Conservation Plan – NCCP Compliance:** State and federal agencies, water contractors, and some environmentalists began developing the BDCP in 2006. They now have set an ambitious timeline to issue a draft by the end of this year and finalize the plan by next year. Members of the BDCP Steering Committee have indicated that they plan to comply with the state NCCP Act, which has a higher conservation standard than Section 10 of the federal ESA and more procedural requirements for plan development. Their planning agreement, however, explicitly provides that BDCP is not required to be an NCCP.

This proposal would require BDCP to satisfy the higher environmental standards, process requirements, and other elements necessary to qualify as an NCCP. The NCCP Act has typically been applied to terrestrial – not aquatic – ecosystems. Applying the Act to BDCP therefore may require some additional specification as to the nature of the analysis and the plan, which is why this proposal provides some of that additional specification.

- **Bay Delta Conservation Plan – Decision Process:** BDCP has developed with the support and funding from the so-called “potentially regulated entities” or “PREs.” While DWR has assumed the legal responsibility as “lead agency,” much of the development work is performed by contractors hired by the PREs. While the Steering Committee (agencies, PREs, and environmentalists) is nominally “in charge,” a separate “management committee” – which includes PRE but not environmental representatives – actually directs the consultants' work. When references are made to BDCP taking action, it is not clear who takes that action and is held accountable for the outcomes.

This proposal makes DWR responsible for all BDCP development work. The proposal also shifts authority for certifying the EIR – which usually would be the responsibility of DWR as lead agency – to the new Delta Stewardship Council. The proposal requires the council to make a decision on whether to incorporate BDCP into the larger Delta Plan, based on specified requirements. Finally, in addition to requiring compliance with NCCP requirements for independent science, the proposal specifies how the Delta Independent Science Board reviews the BDCP EIR.

According to the author, the objective of these changes is to ensure that the council – which has broader responsibilities for the Coequal Goals (not just water supply) – makes the final cut on reviewing the environmental impacts and deciding whether BDCP makes sense for the Delta as a whole. The author further states that it is important to provide a direct point of accountability for BDCP by requiring DWR – not the PREs – to prepare an EIR and propose a conservation plan to DFG. Some stakeholders have raised technical/legal concerns about having the Council, which is not acting as lead agency for BDCP, certify the EIR. Others argue that shifting the jurisdiction of this planning process mid-course and altering its goals are potential threats to its success.

The Conference Committee may wish to consider alternatives to having the Council certifying the EIR, such as allowing DWR, DFG, or some other state agency to certify the EIR while reserving final decisions regarding funding, authorization, and incorporation into the Plan – *i.e.*, determinations as to whether BDCP actually proceeds – for the Council after the EIR is certified.

Other Issues:

As the conference committee begins deliberating this proposal, it also may want to consider technical amendments to address the following:

- process for the council to consider and adopt DPC recommendations as to the plan for protecting the Delta “as an evolving place” (this proposal has no provision for such recommendations; however, PSB 4 (Wolk) includes a provision expressly requiring DPC recommendations to be incorporated into the Plan).
- BDCP's role as only one part of the more comprehensive ecosystem restoration plan, which is intended to achieve results that meet or exceed goals in existing species recovery plans, as well as the state/federal salmon doubling goal
- conditions for SWRCB issuing a change in place of diversion for SWP/CVP
- ensuring that all appropriate ecosystem types in the Delta, in addition to estuarial systems, are addressed in the Delta plan and in the proposal.
- ensuring that the BDCP NCCP is coordinated with surrounding terrestrial NCCPs and that the NCCPs be harmonized before approval

The Assembly Water, Parks & Wildlife Committee and the Senate Natural Resources & Water Committee collaborated in preparing this analysis.

Delta Counties Coalition
Specific Recommendations for Delta Package Legislation
DRAFT - August 21, 2009

SB 458 (Wolk) Establishes Conservancy pre-print SB3	SB 12 (Simitian) Establishes Council pre-print SB1	AB 39 (Huffman) Ecosystem/water supply pre-print AB1
<ul style="list-style-type: none"> Section 29702 language re goals for the Delta and DAP; language needs to revert to language contained in prior bills; should read: Protecting and enhancing the unique cultural, recreational, agricultural and socioeconomic values of the delta. Context, bill author removed the word socioeconomic, and the addition of the words, "as an evolving place" are grounds for opposition. Section 29702 b-d does not reflect agreed-upon changes to the DPC orientation from resources components to the socioeconomic aspect of land use, which also clouds responsibilities of the Commission as opposed to the Conservancy, and specified areas in which they would work together. In addition (d) talks about flood control improvement as a responsibility of the Commission. Language in 29702 b-d should, at the very least, specify the Commission to work with agencies for which flood is the primary responsibility, on designated tasks relative to land use aspects of flood. Other components (socioeconomic responsibilities should be added in this section). Section 29735; Counties should have a member of Conservancy on Board, and have DPC Board member on the 	<ul style="list-style-type: none"> Section 85001. C indicates the desire to develop a legally enforceable California Delta Ecosystem and Water Plan, however nowhere in the legislation is this defined. Is this the same as the Delta Plan (Section 85059)? Section 85003 declares several findings which (may be incorrect and) seem irrelevant other than to set the stage for a more saline Delta ecosystem, as noted at the end of part C. Does this mean X2 will shift or the concept of X2 as a management strategy eliminated? Section 85020b.2 indicates the Delta should be protected as an evolving place. If X2 is eliminated then outflows could be reduced resulting in a further decline in the ecosystem, The question is what will it evolve into. (Related: Huffman bill specifies evolving ecosystem P12 S 85301a). It also appears from the bill language to be evolving into a more saline environment. In addition, Section 3 indicates the Delta ecosystem should be restored. The question is: restored to what standard - to a more saline ecosystem? The bill needs to give a nod to Delta as Place - identify the restoration objective of a fresh water ecosystem. (6) language problematic re: balance between water for public trust and ecosystem, water for other purposes 	<ul style="list-style-type: none"> Part One and Part Two are the same as in Senate Bill 1, see comments on SB 1. Section 85300 indicates that the Delta Plan components shall be implemented by various State agencies. It is unclear what would happen if an action falls between two State agencies or if there is any overlap between two State agencies or if there is no State agency that covers a particular action. There should be a clear, enforceable process outlined to achieve this and/or linkages to other bills where this is described (agencies submittal process outlined in Simitian Plan, p 15 (Section 85215), remedies outlined on p14, section 85212) Section 85301 describes co-equal goals, the watered down language re: protect, enhance, sustain cultural, agriculture and economic values of the Delta as an evolving ecosystem. It should state at the very least "protecting and enhancing the unique cultural, recreational, agricultural and socioeconomic values of the Delta." Section 85301 provides a framework for the Delta Protection Commission's regional economic plan and indicates in Section D that the Council <u>may</u> approve the Commission's proposal into the

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<p>Conservancy Board</p> <ul style="list-style-type: none"> Section 29756.5; DPC as facilitator for implementation of Joint habitat restoration or enhancement programs: should be role of conservancy There is a conspicuous absence of Section 29762, which called for the Council to take recommendations from the Commission to incorporate into to Plan, and for the Council issue findings as necessary. This language should be reinserted. Section 29763.3; 120 days is not sufficient to change and resubmit revised General Plan Section 29765 a: findings must be made before local agencies can approve 'development' in PMZ (prior to Commission approval of Gen Plan amendment) Section 29773.5 Potential expansion of Primary Management Zone: this is significant departure from any prior discussions or documents and would most likely NOT be supported by the counties Section 29780; update of the Resources Management Plan using the old plan will 	<ul style="list-style-type: none"> Section 85022D.1 states a desire to protect, maintain and enhance natural and artificial resources. It is unclear what "artificial" resources entail. Does it mean such things as highways and utilities? If yes, then specify in the legislation. Section 85023 indicates the principle of "reasonable use" and "public trust doctrine" should be used for water management policy. Will this conflict with historical water rights? Or does section 85031 provide overarching water rights protection. Section 85031 speaks to 'protection' of water rights; relationship to S 85023; check section references. Section 85054 lumps the Delta ecosystem and Delta as a place into one co-equal goal. This will pit one of our primary goals against one of our other primary goals, leaving water supply as its own freestanding goal. The bill needs to state 3 equal goals. Section 85084, early actions should include defining the restoration objective for the Delta as a freshwater ecosystem. Also these actions should include stockpiling rock for levee repair, and other early actions (levee rehab etc). Part D specifies 	<p>Delta Plan. The Council should be required to incorporate the Commission's proposal into the Delta Plan or remand it back to the Commission with findings (needs to be consistent with Section 29761.5B of Wolk's bill).</p> <ul style="list-style-type: none"> Section 83501 C2 gives the Department of Food and Ag responsibility for economic 'refocus' of ag. No mention here or in section C1 re: how Parks and Rec and Food & Ag will interface with the Conservancy and the Commission, respectively. Section 85302 outlines the restoration of the Delta. A map will be needed of Section B to understand the extent of the restoration area. The Council should also have the authority to approve projects and programs below (downstream) of the Delta if it benefits the Delta. It also appears that certain channels will be identified for migration corridors which would leave the rest of the channels subject to abandonment, especially if they are non-project levees. Section 85302 boundaries are inconsistent with those of the conservancy to some extent; recognition and explanation of would be helpful here.

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<p>create confusion as to responsibilities of DPC vs Conservancy</p> <ul style="list-style-type: none"> Section 32330: Need local representation in voting and non-voting membership of the Conservancy. SB 3 should include a safety clause or provision regarding potential unconstitutional taking determination (e.g. Federal Court decision on Delta Coves) that enables a local government to take corrective action without running afoul of Delta Protection Commission's determination on consistency with the Resource Management Plan. <p><u>Conservancy Portion</u></p> <ul style="list-style-type: none"> Section 32322; unclear as to Conservancy responsibility as opposed to DPC; rather large responsibility; 7 requires economic assistance; if language remains, it should say "work with the DPC on..." Section 32330; we should consider the DPC on the conservancy, rather than BCDC! Section 32360 (and 32376) some direct linkage to Conservancy implementing BDCP ecosystem improvements and mitigation should occur. 	<p>that information on instream flow needs submitted by F&G to Board shall include only reliable info in its possession (other info, agencies, orgs).</p> <ul style="list-style-type: none"> Section 85086C.1 requires analysis to determine inflow needs from the Sacramento River only, not San Joaquin, by June 30, 2010. This will set up the information necessary to design the peripheral canal. This is not a realistic timeline. The Science Board must be able to review and comment on this perhaps most pivotal action. However, the Science Board probably will not be operative by 10/1/10. The bill needs to give more time for thoughtful deliberation on this issue or the balance between reasonable use and public trust doctrine will be skewed. Also Section E establishes inflows and outflows for the Delta by 2010 and 2012. The question is: if we find out later that more water is needed, can the flow regime controlled by the Delta WaterMaster make those changes? (Related Huffman bill AB1 includes an Adaptive Management Strategy, but it is unclear how long it would take to make changes given new data. A strategy often connotes a high level plan, not an implementation directive.) Section 85086(g) indicates judicial review should be based on the administrative record only, and whether the board's 	<ul style="list-style-type: none"> Section 85303 focuses on water reliability and does not mention the other goal of ecosystem and Delta as a place. This is the only section that discusses Council recommendations for legislation and should include both co-equal goals. Statute should authorize Council to make recommendations for legislation needed on any Delta Plan issue. Section 85305C includes an investment on privately owned levees which is good although there may be no funds remaining after funding project levees per 85305a. Strategic and priorities language related to levee investments is very troubling, in terms of ability to obtain funds in the future for levees not important to the state. Section 85306 includes an Adaptive Management Strategy. It should be clear this is for corrections to long term strategies. Short term operational changes would rest with the Delta Water Master. In Section 6 it is unclear what timeline the strategy will be allowed to use to make changes in the Delta Plan. For example, if data shows that additional inflow is needed to have a sustainable ecosystem, how will the Adaptive Management Strategy be used to change inflow standards in the Delta Plan and then modify the Delta

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<ul style="list-style-type: none"> • In findings, section 32301(f), include Clarksburg's wine industry. • Governor's appointees need terms instead of serving at pleasure of Governor. • Funds for regional sustainability should be available for projects in DPC's regional economic plan <i>and local economic plans</i>. • In Section 32360.5, clarify that projects outside Delta are limited to habitat. • Meeting schedule and locations need clarification. <p><u>DPC</u></p> <ul style="list-style-type: none"> • In SB 3 the term "development" should cite the following definition of "development" and "development project", CA Govt. Code § 65927-65928, as follows: <p>65927. "Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including,</p>	<p>decision was arbitrary and capricious. Is "arbitrary and capricious" an appropriate threshold to make a determination on a decision of such a technical nature? Does use of an administrative law judge preclude or limit the ability to sue?</p> <ul style="list-style-type: none"> • Section 85200 (b)1 ; the Governor should be able to appoint three members and the Chair of the Conservancy should also serve on the Council, as a measure to increase coordination among entities. Section (c) is unduly complicated, results in DPC members serving a two-year term. Section (e) indicates the chair shall serve up to a 4 year term. The term of the chair should be for one year. • Section 85201 outlines the creation of a new bureaucracy. Paid Board members may be extreme, esp. in this budgetary climate (e.g. Integrated Waste Management Board), depending on payment provisions. Prefer those who choose to serve without payment (meeting stipend only) • Section 85210i indicates the Council can adopt regulations. If the Council is a regulatory entity, will it issue permits and for what activities will permits be issued? Who and what they will be regulating? The council should <u>not</u> be a regulatory body. The council should maintain a strategic 	<p>WaterMaster and other State agency practices to actually change the inflows in the field?</p> <ul style="list-style-type: none"> • Section 85320A states the BDCP will make recommendations for water supply reliability. How does an HCP make recommendations on water supply? This language should be struck. • Section 86320 1A on page 17 talks about volume, quality and timing of water for ecosystem purposes. Volume, quality and timing should also be applied to water quality considerations for human consumption as well. • Section 85320 H on page 17 indicates the Science Board will review the final EIR and submit findings to the Council. It would be more efficient for the Science Board to also review the draft EIR and provide comments before it becomes final. The ISB should also review the mitigation monitoring and reporting plan given the need to ensure all proposed mitigation measures are designed to be effective and provide accountability. • Section 85320 H on page 18 should state the probability of achieving <u>needed</u> (instead of "current") Delta water quality <u>standards</u> for each of the conveyance facilities. Water quality "standards"

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<p>but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511 of the Public Resources Code).</p> <ul style="list-style-type: none"> • As used in this section, "structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line. • Nothing in this section shall be construed to subject the approval or disapproval of final subdivision maps to the provisions of this chapter. • "Development" does not mean a "change of organization", as defined in Section 	<p>perspective and not get lost in the weeds on regulation. It should keep its oversight of other departments/agencies by law without regulation.</p> <ul style="list-style-type: none"> • Section 85212 indicates conflicts between agencies will be resolved through a "remedy." How will the remedy be developed, for example, the Council tells DWR to do one thing and existing statute tells DWR to do something else? A clear and enforceable process needs to be outlined to modify conflicting legislation. • Section 85215 ensures effective coordination and consistency with the Delta plan. However there appears to be no follow-up. The Council should review these coordinated State agency plans every five years along with its Delta Plan (add to Section 85300D?), to ensure overall planning and operational consistency with the Delta Plan. Very few plans programs laid out here (DPC at forefront; seems like CA Water Plan, CV Flood Control plan would be important here to name a few of many). • Section 85217 should be changed to require the Council to remand the plan with findings on why it is being remanded. This will allow the agency to modify the plan with a greater success in meeting Council expectations. 	<p>should be stressed, not just water quality. Also Section B includes an adaptive management program within the BDCP. This adaptive management program must be coordinated with the overall Delta Plan adaptive management strategy.</p> <ul style="list-style-type: none"> • There is no process for public comment in developing the Delta Plan other than attending council meetings and commenting at the meeting as elements of the plan are developed and discussed by staff. • Comments on Sections 85000-85086 are listed on the Simitian comment column • Little or no meaningful, effective, input to Delta Plan by DPC • Requires DPC's Plan to incorporate DVBRTF strategies, which is problematic. • Requires incorporation of BDCP into Delta Plan upon weak, State-controlled, determinations • Delta definition includes the Suisun Marsh & Yolo Bypass – this is unacceptable.

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<p>56021 or a "reorganization", as defined in Section 56073.</p> <ul style="list-style-type: none"> 65928. "Development project" means any project undertaken for the purpose of development. "Development project" includes a project involving the issuance of a permit for construction or reconstruction but not a permit to operate. "Development project" does not include any ministerial projects proposed to be carried out or approved by public agencies. <p><u>Unconstitutional Taking Provision for SB 3</u></p> <p>Nothing in this bill shall be construed or interpreted in such a manner as to operate to deprive any Primary Zone landowner of substantially all of the market value of his or her property or otherwise constitute an unconstitutional taking without compensation. If application of any of the provisions of this bill to any specific project or landowner would create an unconstitutional taking, then the local government (either the board of supervisors or city council) may allow additional land uses, otherwise adjust permit requirements or take such other actions to the extent necessary to avoid what otherwise might be construed to be a taking. Any such additional land uses or other adjustments shall be designed to carry out the goals and provisions of this bill to the maximum extent feasible.</p>	<ul style="list-style-type: none"> Section 85319A(85219) gives the Council the authority to approve a peripheral canal – this should be taken out. This section also only refers to water supply reliability and does not refer to the other co-equal goal. All goals should be mentioned. Section 85220 indicates the authority of Fish and Game and the Water Board are not changed. However, some of the remedies required in Section 85212 may require administrative or legislative change to these entities to resolve conflict. Which section will prevail? Section 85230 outlines a 90 day process to develop a job description & recruit for a Delta WaterMaster. A typical impartial government process would normally take 6 months. The timeline should be expanded. Section 85230 How would WaterMaster relate to ISO (p18) Given the duties outlined by Section 85231, the Delta WaterMaster will have significant responsibility will need to have quite a few staff. Section 85232 has the Delta Watermaster decisions appealed to an Administrative law judge appointed by the board. Since the board would be appointing the appeal body for decisions of its own employee, this is a 	<ul style="list-style-type: none"> Expansion of SWRCB authority a problem. Imposes new fees and penalties that are not clearly defined. Includes an accelerated process to determine instream flow needs of the Delta and its tributaries which could include Putah Creek. Completely fails to include, recognize or address in-Delta concerns, including no analysis or response to Delta economic issues, no mitigation plans, no enforcement of mitigation Includes "floodplain improvements in the Yolo Bypass" as early action ecosystem restoration project(s) to be done by DFG and DWR – unacceptable. DFG is directed to approve BDCP if it complies with NCCP act – this is a bad idea as it removes discretion from regulatory agency. If trying to force BDCP to attain NCCP standard, say that. Section 85020 - Define "achieve water quality objectives" Not clear if creates a moratorium on

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<p><u>Agricultural Operation Provision in SB 3</u></p> <p>SB 3 should include a provision that clearly establishes agriculture on agricultural land as an allowed use in the Primary Zone that is deemed consistent with the Resource Management Plan. SB 3 should explicitly exempt agriculture operation or agricultural processing operation within the Primary Zone from any further or future consistency determination by the Delta Protection Commission. The following terms or definitions should be used to determine what is meant by agriculture in the Primary Zone:</p> <p>(1) "Agricultural land" in the Primary Zone means all that real property within the unincorporated area of the county currently used for agricultural operations, zoned for agricultural use, designated for agricultural purposes by the county general plan, or upon which agricultural operations may in the future be established, including publicly-owned land designated for park, recreation, open space, watershed, or other public purposes.</p> <p>(2) "Agricultural operation" in the Primary Zone means and includes the present and future application and use of agricultural technology, according to proper and</p>	<p>conflict of interest.</p> <ul style="list-style-type: none"> • Section 85280; Independent Science Board; using existing science board (CALFED Science Board) may help address short timelines for board to be created and to act and review Early Actions. Also, there is no process for peer review or for providing input into the Science Board in their research and scientific reporting. Science Board meetings should be noticed public meetings. • Section 85281A.5 refers to a Public Advisory Group, but the duties of this group are not defined anywhere in the legislation. It would be very helpful if this group existed, actively contributing to Council activities and outreach. (transparent public process) • Section 85404A.1 indicates that CVP and SWP contractors must pay for the peripheral canal including alternatives in the BDCP EIR. However, it is unclear if that would include project mitigation. It should be stated more clearly that all adopted mitigation measures are included in the project cost. Section 85404 should be changed so that project proponents should pay cost of projects, rather than all users, that do not benefit. Some CVP and SWP participants do not benefit from the peripheral canal. 	<p>applications for diversion from Sac River watershed</p> <ul style="list-style-type: none"> • Instream flow determinations inconsistent, sometimes for Delta watershed, sometimes for Delta • 85003 (a) "Originally, the Delta was a shallow wetland with water covering the area for many months of the year." --This is factually incorrect. • 85021 "...Each region that depends on water from the Delta shall improve its regional self-reliance for water through investment in water-use efficiency, water recycling..." This should not apply to the Delta. • 85066--Giving authority to the DVBRTF recommendations over the Delta Vision Committee is problematic. • 85085 (d) Does not have components to provide mitigations to locals. • 85302 (d)(1)(A) Define "large areas" of interconnected habitats. (d)(1)(D) "Improve water quality to meet drinking water, agriculture (add--including in-Delta) and ecosystem long-term goals. • 85305 (f) There are more than three state highways--SR 4, 12, 113, 220, 84 and 15

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<p>accepted customs and standards, for, but not limited to, the cultivation and tillage of the soil; dairying; the production, irrigation, frost protection, cultivation, growing, harvesting, and processing of any agricultural commodity, including viticulture, horticulture, timber or apiculture; the raising of livestock, fur-bearing animals, fish or poultry; and any commercial agricultural practices performed incident to or in conjunction with such operations, including preparation for market, delivery to storage or to market, or delivery to carriers for transportation to market.</p> <p>(3) "Agricultural processing operation" within the Primary Zone means and includes the canning or freezing of agricultural products, the processing of dairy products, the production and bottling of wine, the processing of meat and egg products, the drying of fruits and grains, the packing and cooling of fruits and vegetables, and the storage or warehousing of any agricultural products, and shall include processing for wholesale or retail markets of agricultural products.</p> <p>(4) "Continuous operation" agricultural operation within the Primary Zone means at least thirty days of agricultural processing operations per year.</p> <p>(5) "Proper and accepted customs and</p>	<ul style="list-style-type: none"> • Section 85405 will collect a fee from each entity that diverts water from any watershed draining into the Delta. The fee is to be used to pay costs of facilities and programs to mitigate damage in the Delta and its tributaries but does not cover downstream San Francisco Bay, which could become relevant for fish and ecosystem work • The schedule of required actions is completely unrealistic. It will take 6 months just to get staffed up. • The only public comment process mentioned is in reviewing all of the State agency plans within the Delta and developing a coordinated effort between State agencies. There is no other public comment process identified. A transparent and very public process is recommended and should be included in the bill for all actions of the Council. • Include the following language in section 85405: "The legislation indicates that it will be guided by the principle of "beneficiaries pays". • In Section 85405, a water fee will be collected by all entities diverting water from the Delta. It is appropriate that everyone pay for Council program and activities that could potentially benefit all water users. 	<ul style="list-style-type: none"> • 85306 (6) (B) This should include outcomes. • Chapter 3 85350 "The council may incorporate other completed plans, such as Delta LTMS and CV Flood Protection Plan

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<p>standards" means compliance with all applicable state and federal statutes and regulations governing agricultural operations or agricultural processing operations.</p> <ul style="list-style-type: none"> • Section 29741: First meeting of the DPC to be held no later than 1/31/2010... this timeline must be extended. • Section 29741: should read: "All meetings must be held in a City within the Delta (lines 33-37)." • Section 29763.1: Within 180 days of adoption of either the Stewardship Council's plan or the DPC's plan, all local governments must submit their land use elements and GP amendments to the DPC for a review of consistency with the DPC's RMP. The 10 specific consistency findings include: <ul style="list-style-type: none"> o no wetlands or riparian loss o no water quality degradation o no increase in non-point source pollution o no degradation to Pacific Flyway habitat o no reduced public access or impacts to property rights o no increased flood hazards o no impacts to AG land in the form of vandalism or trespass o no impacts to the levees 	<p>However, specific projects will benefit certain segments of water users. Section 85404 provides that contractors that use the SWP and CVP Delta pumps pay for all costs and adopted mitigation measures for their projects. This section should reflect that project proponents that benefit from specific facilities shall pay for all costs and mitigation measures associated with those facilities. The financial element of the Delta Plan pursuant to 85403.5 must include specific text to ensure that Delta Plan costs that benefit the all water users are paid by the fees and that Delta Plan costs that benefit project proponents are paid by the proponents."</p> <ul style="list-style-type: none"> • Pg 11: Establishes the 7 member Stewardship Council... There should be more local government representation. • Pg 21: The Stewardship Council will have the authority to establish and impose a fee on persons and entities holding a water rights permit to divert water from within the San Francisco Bay/Sacramento-San Joaquin Delta watersheds (lines 21-31). The bill is silent on a specific (per acre-foot) fee and the details of the methodology for establishing this fee. • There is no storage discussed in the bill • Requires maintaining only "strategic" 	

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<ul style="list-style-type: none"> o protection of navigation o no impacts to AG production in the primary zone. • Section 29763.1: DPC would have 60 days to review local GP and provide findings. GP amendments land use element found to be inconsistent will be returned to the local jurisdiction, which will have 120 days to make changes. The bill is silent on the next steps or ramifications should the jurisdiction choose not to make changes and resubmitted to the DPC. Timeline could also be problematic in terms of satisfying CEQA requirements if subsequent GP amendments or changes require environmental assessment. • Section 29764: Land use projects in the Primary zone can be processed and approved prior to the DPC finding a local GP is consistent, provided the local government can make the same 10 finding listed in Section 29763.2 (a-j). • Sec. 32301(i)(6) Change language to "Reduce the risk of natural disasters such as flood or seismic event." • In Sec. 32301(f). Agriculture preservation should be added to the list of principal charitable purposes. • Sec. 32340 should be changed to say 	<p>levees</p> <ul style="list-style-type: none"> • Requires only that early actions be initiated, not completed and evaluated, before adoption of Delta Plan • Adopts and validates DVBRTF Strategic Plan as basis for Delta Plan - this is problematic. That plan is not the Bible, as noted in joint hearing. • Fee language inconsistent with "beneficiary pays" concept • No requirement to complete cost analysis of actions called for by legislation • No requirement for completion detailed analysis of costs of legislation proposed or required actions and no requirement of detailed analysis of necessary mitigation, and costs thereof, resulting from allowed or required actions under the legislation • Discussion of constitutional reasonable use and public trust doctrine may be used to challenge otherwise valid senior water rights. • Public benefit not defined. • 85403.5 does not directly address mitigation funding for counties and should 	

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<p>"Delta or Rio Vista."</p> <ul style="list-style-type: none"> • Section 32360.5 clarify that projects outside Delta are limited to habitat. • Section 29759(a) requires the regional econ plan to be in accordance with Section 85301 of the Water Code, which is created in Huffman bill. • 29759(c) recreational investment should be in the Delta, not just along river corridors. 	<p>also include an enforcement mechanism to assure mitigation is done.</p> <ul style="list-style-type: none"> • Intro page 2 "The bill would require the council to impose an annual fee on each person or entity that holds a right, permit, or license to divert water within the watershed of the San Francisco Bay/Sacramento-San Joaquin Delta." This language negatively impacts all area of origin water rights holders. • The second paragraph on page 2 refers to a board without specifying which it is referring to. • 85003 (b) That property ownership, and the exercise of associated rights, continue to depend on the landowners' maintenance of those privately owned levees and do not include any right to state funding of levee maintenance or repair. --This is wrong, see CWC Sec 12980-12995 • 85022 (c) (2) That the permanent protection of the Delta's natural and scenic resources (add--communities and agriculture) is a paramount concern to present and future residents of the state and nation. • 85084 (c) Language should include provision of mitigation for impacts of floodplain improvements to the Yolo Bypass. 	

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	<ul style="list-style-type: none"> The first 10 pages are almost same as Huffman bill – there should be conformity, especially on including Delta as equal goal 	

**OFFICE OF THE COUNTY ADMINISTRATOR
CONTRA COSTA COUNTY**

TO: Legislation Committee
Supervisor Susan A. Bonilla, Chair
Supervisor Mary N. Piepho, Vice Chair

FROM: Lara DeLaney, Legislative Coordinator 

DATE: August 26, 2009

SUBJECT: **Agenda Item #6: Status of 2009 State and Federal Legislation**

RECOMMENDATION

ACCEPT the report on state and federal legislative matters.

BACKGROUND

Attached to this report is information about various bills in which the County may have an interest or on which the County has already taken a position. (*Attachment A: CSAC Legislative Bulletin, August 21, 2009; Attachment B: County Health Executives Association of California Hot Sheet #16.*) Additional information may be provided to the Committee regarding any of these bills or activities.

STATE LEGISLATIVE ACTIVITY

Supervisor Uilkema has requested that the Legislation Committee consider SB 250 (Florez): Dogs and Cats: Spaying and Neutering. (*Attachment C is the text of the bill and a letter from a concerned constituent.*) This bill restricts the ownership of unsterilized dogs and cats and requires surgical sterilization of the animal in specified circumstances.

According to the author, it costs California taxpayers approximately \$250 million each year to house and euthanize dogs and cats. The author contends that part of the problem is that there are few incentives for pet owners to license their animals - which would ensure fewer lost or roaming pets. In addition, local animal shelters are overwhelmed by the state's pet overpopulation problem (approximately one million dogs and cats enter our shelters each year) because there are few laws which discourage over-breeding and no existing laws that encourage sterilization of non-breeding animals.

The author believes that SB 250 would help reduce the number of unwanted pets that roam the streets and end up in shelters, as well as encourage responsible pet ownership by requiring owners to license and sterilize their animals or purchase an unaltered license if they intend to keep their pets intact.

In opposition to the bill, the California Farm Bureau Federation writes, "The specific challenges created by SB 250 relate to the provision that allows intact licenses to be denied for owners who have 'violated a state law, or a city, county, or other local governmental provisions relating to the care and control of animals.' For example, a dog guarding livestock that chases away a predator from the flock may leave the property in that chase and could be found to be running at large. One violation would be grounds to deny the dog owner from ever owning dogs for breeding and would force the sterilization of dogs that may possess valuable working traits. Farm Bureau is also concerned about the potential for overzealous enforcement actions taken against our members who may leave their dogs in the back of a pickup while running errands." The bill is also opposed by California Rescue Dog Association, Save Our Dogs, the Western States Police Canine Association, and Canine Companions for Independence.

SB 250 has passed out of the Senate and is pending in the Assembly Appropriations Committee, where it is expected to be heard on August 27, 2009.

FEDERAL LEGISLATIVE ACTIVITY

WASHINGTON BRIEFS SECOND QUARTER 2009

With half of 2009 in the books, Democratic congressional leaders have marshaled a significant portion of their agenda through various stages of the legislative process. To date, committee and/or floor action has been completed on a number of high-profile issues, including climate change and renewable energy legislation, transportation reauthorization, and the fiscal year 2010 budget.

Negotiations on other issues also have advanced, including progress on health care reform. Although major legislative action has yet to take place, Democratic leaders have readied key proposals that would significantly alter the nation's health care system.

On the budget front, Congress adopted this past quarter the fiscal year 2010 budget resolution (S Con Res 13) without one Republican in either chamber voting for the measure. A handful of conservative Democrats joined their GOP colleagues in voting against the budget blueprint.

The \$3.56 trillion budget resolution sets the framework for the 12 annual appropriations measures for the fiscal year that begins October 1. It also includes reconciliation instructions, which could allow a number of President Obama's initiatives to pass through Congress without the threat of a Senate filibuster. Notably, health care reform is

among the issues that could be considered under the budget reconciliation process if Democratic congressional leaders choose to employ such an option.

To date, appropriators in the House and Senate have made significant strides toward approving a new budget. In the House, the Appropriations Committee has cleared nine fiscal year 2010 appropriations bills, with floor action completed on four of the measures. In the upper chamber, the Appropriations Committee has cleared six of next year's spending bills. Based on their progress thus far, appropriators have expressed optimism that Congress will be able to pass all 12 spending measures separately, thus avoiding the need for a massive catch-all omnibus spending package later this year.

CLIMATE CHANGE-RENEWABLE ENERGY

In late June, the House narrowly approved comprehensive global warming legislation (HR 2454), handing President Obama and House Democratic leaders a key victory. The final vote on the bill was 219-212, with eight Republicans voting for the measure and 44 Democrats opposing it.

The centerpiece of the House legislation is a proposal that would cap the emissions of greenhouse gases (GHGs) at 17 percent below current levels by 2020. The emissions cap would increase to 42 percent in 2020 and 83 percent in 2050. To achieve the emissions reduction targets, HR 2454 would implement a cap-and-trade system whereby companies that emit GHGs – such as electric utilities and refineries – would have to reduce their pollution output or buy allowances. The emissions allowances would be traded on an open market.

The bill also would require utilities to produce 15 percent of the nation's electricity from renewable energy sources by 2020, with another five percent of energy savings coming from improved efficiency. Under the measure, states could petition to bring the renewable energy standard down to 12 percent, with eight percent achieved through efficiency measures.

As passed by the House, the bill includes a broadened definition of "renewable biomass." With regard to non-federal lands, the legislation would classify as renewable biomass residues and byproducts from wood, pulp, and paper products facilities. The measure also expands the types of biomass eligible from federal lands, including dead, severely damaged, and badly infested trees from late successional stands.

On a related matter, the House measure would arrange for a National Academy of Sciences study to evaluate how sources of renewable biomass contribute to energy independence and environmental protection goals. In turn, and if deemed appropriate by the Department of Agriculture, the bill would allow the definition of renewable biomass to be revised for the Renewable Fuels Standard and the Combined Efficiency and Renewable Electricity Standard. In addition, federal agencies would be allowed to promulgate a rule to modify the definition of renewable biomass from federal lands.

Now that HR 2454 has cleared the House, attention has turned to the upper chamber where Senator Barbara Boxer (D-CA) – the chairwoman of the Environment & Public Works (EPW) Committee – is working with moderate Democrats in an effort to forge a compromise cap-and-trade measure. Boxer's committee is holding a series of climate change hearings in early July, and could markup a bill prior to the August recess.

It should be noted that Senate Majority Leader Harry Reid (D-NV) has indicated his intention to combine the Senate's cap-and-trade bill with the draft renewable energy package that was recently approved by the Senate Energy and Natural Resources Committee. The Senate's renewable energy title would mandate that 15 percent of the nation's power come from renewable sources by 2021, including up to four percent from improved efficiency. The measure also would allow the federal government to use the authority of eminent domain, if necessary, to overrule local authorities in choosing the location of new power lines for renewable energy.

REAUTHORIZATION OF SAFETEA-LU

In late June, the House Transportation & Infrastructure (T&I) Committee's Highways and Transit Subcommittee approved by voice vote a draft version of a bipartisan, six-year surface transportation authorization bill. Although full committee consideration of the measure has not yet been officially scheduled, committee leaders are planning to conduct a markup session in late July.

In a victory for CSAC, the draft bill includes language that would allow California to continue to participate in the Surface Transportation Project Delivery Pilot Program. Specifically, the draft enumerates that any state that is participating in the program on September 30, 2009 does not need to reapply in order to participate in future years.

It should be noted Congressman Gary Miller (R-CA) – a key champion of the program and one of the original architects of the initiative – noted at the subcommittee markup of the House draft that the pilot program language needs to be clarified. Mr. Miller pointed out that the pilot program is slated to terminate in 2011 pursuant to the U.S. Code but that the draft bill does not include language addressing the termination clause. In response, T&I Committee Chairman James Oberstar (D-MN) indicated that the intent of the bill is to allow states to participate through the life of the new authorization period and that he would work with Mr. Miller to ensure that the language of the bill satisfies the committee's intent. Additionally, Chairman Oberstar stated his intention to work with Mr. Miller to expand the program to allow projects that are partially funded with Federal Transit Administration dollars to also be eligible under the rules of the pilot program.

Overall, the House bill proposes spending \$500 billion on surface transportation programs, including \$450 billion for highway, highway safety, and transit investment. The proposed spending represents a 38 percent increase over the current funding level of \$326 billion. The bill leaves unanswered, however, the question of how to finance the increases in transportation investment.

In contrast to House transportation leaders, the Obama administration is calling for an 18-month extension of SAFETEA-LU. The White House's rationale for proposing the short-term extension is to provide Congress and the administration with sufficient time to address the impending revenue shortfall in the Highway Trust Fund (projected to be in the \$5 billion to \$7 billion range by this summer).

For her part, Chairwoman Boxer – whose EPW panel has jurisdiction over highways – has endorsed the administration's calls for an 18-month extension of SAFETEA-LU. EPW staff is currently drafting an extension bill.

INDIAN GAMING

Both the House Natural Resources Committee and the Senate Indian Affairs Committee have held hearings to review the legal implications of the recent U.S. Supreme Court decision in *Carcieri v. Salazar*. Under the Court's holding, the authority of the Secretary of Interior to take land into trust for tribes extends only to those tribes under federal jurisdiction in 1934, when the Indian Reorganization Act was enacted.

Because the Court did not define the term "under federal jurisdiction," observers expect Congress to consider legislation that would clarify the *Carcieri* decision. While some tribes favor legislative intervention, others oppose any congressional action on this matter.

For its part, CSAC is urging key lawmakers to take into account the interests of local governments if *Carcieri*-related legislation is considered. At this point, it is unclear if the Natural Resources Committee/Indian Affairs Committee will take up such a bill.

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August 21, 2009

Corrections Cost-Cutting Measure Clears the Senate, Stalls in the Assembly

By Paul McIntosh, Executive Director
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Yesterday, the Senate took up AB3X 14 (Arambula), a 239-page measure that would carry out a range of policy changes to achieve costs savings in the state's correctional system. After lengthy debate and narrowly reaching the majority vote threshold (21-19), the Senate shipped the measure to the Assembly.

Many anticipated that the Assembly would have difficulty approving the Senate plan and, indeed, the afternoon and evening hours elapsed with the Assembly in negotiations to reformulate the package. In the end, the Assembly adjourned for the weekend without taking action on prison population and cost reduction plan.

Keep in mind the backdrop. The Legislature is facing rather significant pressure in finding sizeable savings in the prison budget. Recall, of course, that the Governor imposed a \$400 million unallocated reduction to the Department of Corrections and Rehabilitation (CDCR) budget when the initial 2009-10 budget was enacted in February. The revised 2009-10 budget package approved in July carried out an additional cut of nearly \$800 million — for a total cut of \$1.2 billion. But the specific framework for applying these reductions was left for the Legislature's determination when the houses regrouped after the summer recess. Before the Legislature returned, however, two events turned up the heat on these discussions. First, in early August, the federal three-judge panel in the prison overcrowding case issued its final opinion and order which directs the state to reduce its prison population by approximately 40,000 over the next two years. Further, a riot at a CDCR reception center in Southern California resulted in injuries and significant facility damage, requiring the displacement of inmates, and aimed a spotlight on the difficult and explosive conditions that currently exist within the prison system.

The Legislature now is challenged to find an approach that will produce dramatic savings in one of the most expensive and controversial areas of state government operations. Below, we outline key elements of the Senate's cost-savings plan, which incorporates many of the policy components that have been under consideration for some time:

- Alternative Custody Program - creates a new custody status in the community for three eligible populations: (1) those with less than 12 months left on sentences; (2) those aged 60 or older; and (3) the medically infirm/incapacitated; participants in the alternative custody program would be on home arrest, GPS, or some other type of enhanced monitoring.
- Adjustments to property crime thresholds – increases property crime thresholds for a variety of crimes primarily to account for inflation.
- Community Corrections Performance Incentives Fund (CCPIF) – incorporates the provisions of SB 678, a measure by Senators Leno and Benoit sponsored by the chief probation officers and supported by CSAC, which – based on a county's reduction in new prison admissions from among the felony probationer population – would direct state prison savings back to counties for investment in the adult probation system.
- Conversion of Wobblers to Misdemeanors – specifies that three specific offenses (check kiting, receiving stolen property, and petty theft with a prior) are misdemeanors and punishable by a term in county jail rather than state prison.
- California Public Safety Commission – creates a 13-member commission to review and develop a plan to revise sentencing guidelines by July 2012.
- Summary parole/banked caseloads – establishes the Parole Reentry Accountability Program that will focus parole resources on more high-risk offenders; lower to moderate risk offenders will be placed on banked caseloads, subject to search and seizure, but not eligible for

parole revocation.

- Credit earning enhancements – incentivizes completion of rehabilitation, vocation, education, and other programs with provision of enhanced credits.

A number of other savings – including, among others, commutation of sentences for undocumented criminal inmates and reduction of prison rehabilitation programming – can be achieved by CDCR either with its own administrative powers or those granted to the Governor in the Constitution and are not included in AB3X 14

As the language of the cost-cutting measure came to light, various interests groups raised concerns or opposition about pieces and parts of the bill. CSAC has focused its attention — outlined in a coalition letter cosigned by a variety of county affiliates and individual counties — primarily on the alternative custody program based on a variety of practical and operational concerns. In addition to apprehensions as to whether the status of individuals on "alternative custody" would, by definition, make them ineligible for Medi-Cal, Medicare, and/or SSI/SSP, counties also were concerned about the process and protocol for handing off the elderly and medically infirm.

While at this point it is very difficult to confirm where the Assembly stands in terms of its approach to reducing the state corrections budget, we have heard from a variety of sources that the following elements remain under discussion and could be altered or eliminated: (1) the alternative custody program; (2) the conversion of wobblers to misdemeanors; (3) the Public Safety Commission; and (4) updating property crime thresholds.

CSAC will keep you apprised of developments upon the Legislature's return next week.

Counties are well aware that shedding state prison population costs is only one part of the equation. These costs have to go somewhere. And whether direct or indirect, many of the financial pressures will come to counties. In addition to public safety considerations, there will surely be additional pressures to an already strained social service system (mental health, substance abuse, indigent health, and general assistance, as a few examples). We understand that many of these folks would be coming back to our communities in any event – more than 95 percent of all state prisoners eventually get out of prison and are released into the community at some point. However, an unanswered question at this point is the extent to which the collective impact of the corrections package may indeed result in significant inmate population reduction over two years (and, hence, more folks in our communities with potentially significant unmet housing, employment, and social service needs). We continue to work to advocate in the best interests of counties, recognizing that this package – in whole or in part – will have reverberations in our communities.

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Major Reform Efforts Move Forward

Over the last several days, two efforts to make major changes to California's government structure have taken important steps forward. In the first, California Forward sent an open letter to Governor Schwarzenegger and legislative leaders outlining their much-anticipated plan for reforms. In the second, the California Attorney General's office issued titles and summaries for two citizen initiatives that would allow the citizens to call a Constitutional Convention, actually call the Convention, and govern the structure of a Convention; the proponents may now begin collecting signatures.

California Forward

California Forward, a bipartisan group backed by major foundations, has been working now for a year and a half to gather input from a wide array of Californians and put together a comprehensive package of reforms to the state's budget and fiscal system, the state's governance system, and the relationship between the state and local governments. In a letter last week addressed to the Governor and the legislative leadership, the group finally outlined that plan. A PDF copy of the letter is [here](#).

The 11-point plan includes strong language to protect local revenues from the state by giving locals "legal ownership of specific funds." It would also implement a way for locals to redistribute property taxes among themselves. Another item would "allow cities, counties and school officials who [collaboratively] craft long-term flexible plans to address community needs, to seek majority-vote approval to provide funds to pay for them, while retaining the vote thresholds established under Proposition 218."

One element that is sure to spark significant debate is the effort to lower the legislative vote threshold for passing the budget to a majority, while leaving intact the 2/3 legislative vote requirement for raising taxes. The letter takes pains to point out that this reform would only be adopted in conjunction with other fiscal reforms that limit certain types of spending.

Other provisions in the California Forward plan would slightly alter legislative term limits, require one-time use of one-time revenues, base the state's budgets on results, and require new programs to identify their funding sources.

The strongly bipartisan group has long planned to first give the Legislature a chance to place these proposals on the ballot, which would require a 2/3 vote of each house. However, failing that, they are also prepared to gather signatures to put the reforms up for election as citizen initiatives.

California Forward has not yet made specific language available, but counties can find out more about the group and its plan, along with endorsement forms and other information, at www.caforward.org.

Constitutional Convention

While the Bay Area Council, a business-sponsored, public policy advocacy organization, is the group that initially ignited interest in calling a Constitutional Convention, another group has beaten them to the punch of actually filing initiatives with the Secretary of State. That group is called the California Action Network, or CAN, and seems to have been created specifically for this purpose. Gathering information about CAN besides what is presented on their Web site is difficult, because the site (www.californiaactionnetwork.com) neither names any members of the group, nor gives any contact information besides a San Francisco street address.

The measures' titles and summaries are [here](#) (allows voters to call a Convention) and [here](#) (calls a Convention and governs its structure), and the text of the respective measures are [here](#) and [here](#). To qualify them for the ballot, the proponents will have to gather and submit nearly 700,000 valid signatures by January 11, 2010.

The measures contain some surprising details. For example, the election of the 400 delegates that would serve in the Convention would have to take place on "open voting systems," but no open voting systems are currently certified by the Secretary of State or by the federal government. One company does have a system pending approval at the federal level.

The candidates to become delegates could only use public financing; anyone found to break this rule would be disqualified. Within three or four months of the election of delegates, and before the winners are publicly announced, the California Highway Patrol would gather up the winners and transport them to the Asilomar Conference Center in Pacific Grove. They would be sequestered there until their work was done, though the delegates collectively would have subpoena power. The purpose of these provisions is to shield the delegates from any lobbying. The Convention would be closed to the public, but all proceedings would be recorded for posterity.

The other group exploring a Constitutional Convention, Repair California (www.repaircalifornia.org), continues to hold town hall meetings around the state. They have not yet filed any ballot measures with the Secretary of State.

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Administration of Justice

For more information, please contact Elizabeth Howard at 916/650-8131, orehoward@counties.org, or Rosemary Lamb at 916/650-8116, or rlamb@counties.org.

Restrictive Covenants

AB 985 (De La Torre) – Amendments Requested As Amended July 9, 2009

As detailed in previous Legislative Bulletins, AB 985, by Assembly Member Hector De La Torre, would expand the existing process for seeking redaction of offensive and discriminatory language that exists in certain properties' covenants, conditions, and restrictions (CC&Rs). As presently drafted, this measure would expand the current process by which a property owner can request a modification to restrictive covenants by giving a title or escrow company, real estate broker or agent, or any other person the ability to make such a request. It sets out procedures and expected duties for county boards of supervisors, county recorders and county counsel. The bill imposes a three-month deadline on county counsel for the review and return of the document modifying the restrictive covenant. AB 985 authorizes – with approval of the board of supervisors – the charging of a fee of up to \$3 for each first-page recording of documents to support the activity outlined in the bill.

CSAC and the Regional Council of Rural Counties (RCRC) identified a number of concerns in the July 9 version of the measure and are seeking amendments to mitigate what could present fiscal and operational difficulties for counties. We are currently working with the author's office to secure the following revisions to this measure:

1. Elimination of the Board of Supervisors approval for the fee;
2. Clarification that counties' effort to implement the covenant modification program is limited to those funds available, as generated by the fee;
3. Requirement that the requestor seeking the CC&R modification to flag and strike the discriminatory language to focus the county counsel review and limit costs;
4. Immunity provisions for the county counsel, similar to those offered for recorders already in the measure; and
5. Greater specificity that the fee is intended to cover all county costs associated with the bill.

We are awaiting receipt of the redrafted language, but our discussions with the author's office and other stakeholders have been generally positive and, it is hoped, will result in a revised measure that largely will address the concerns counties have identified. AB 985 is presently on the Senate Appropriations Committee suspense file and will be heard on Thursday, August 27.

Probation Performance Incentives
SB 678 (Leno and Benoit) – Support
As Amended on June 25, 2009

SB 678, by Senators Mark Leno and John Benoit, would enact the California Community Corrections Performance Incentive Act. The key objective of the measure is to create performance incentives for local governments to develop community corrections strategies that reduce prison commitments. With increased supervision, monitoring, and intermediate sanctions, probation departments would be better positioned to decrease criminal activity and manage this population locally. Based on a jurisdiction's success — measured in the reduction of felony probationers who are sent to prison — the state would share its savings derived from the lowered prison population.

The Chief Probation Officers of California are the sponsors of SB 678. The measure passed out of the Assembly Appropriations Committee on August 17 as part of the committee's consent calendar. Further, an amendment was taken at CSAC's request that the broad county perspective could be represented by either a supervisor or county administrative officer on the local community corrections partnership; the partnership would sit as a multiagency advisory body to the probation department for purposes of implementing the programs to support the goals of SB 678. As it had made its way through the legislative process, SB 678 has garnered unanimous, bipartisan support.

Be sure to note, however, that the provisions of SB 678 in their entirety were incorporated into the corrections cost-cutting measure, AB X3 14, which passed the Senate yesterday. Presuming that the contents of SB 678 are enacted in the corrections reform bill, SB 678 would not, of course, move forward as the vehicle to enact this important policy change.

Missing Persons: DNA Database
AB 275 (Solorio) – Support
As Amended on March 24, 2009

AB 275, by Assembly Member José Solorio, would delete the sunset date for the \$2 increase on death certificates issued by a local government agency or the State of California, and would further clarify statute relating to medical examiners and coroners and the submittal of DNA samples for the purpose of identifying unknown human remains.

AB 275 passed out of the Senate Appropriations Committee and is now on the Senate's Third Reading File, awaiting the action of the full house.

Vehicle Theft
AB 286 (Salas) – Support
As Amended on June 23, 2009

AB 286, by Assembly Member Mary Salas, is a reintroduction of her AB 860 from last year, which sought to extend the sunset date on county authority to impose additional fees on vehicle registration to fund local programs relating to vehicle theft crimes. AB 860 was vetoed by the Governor in his blanket veto message stating that the measure did not meet a priority threshold for the year, given the limited amount of time available to him to review legislation in the context of protracted budget negotiations.

AB 286 is again sponsored by the California State Sheriffs' Association, and CSAC is in support. The measure passed out of the Senate Appropriations Committee on August 17 and is now on the Senate's Third Reading File, awaiting the action of the full house.

August 21, 2009

Agriculture and Natural Resources

Energy
AB 64 (Krekorian) – Oppose
As Amended on June 23, 2009

AB 64, by Assembly Member Paul Krekorian, has moved to the Senate Appropriations Suspense File. As previously reported, this bill would increase California's Renewable Portfolio Standard (RPS) to require all retail sellers of electricity and all Publicly Owned Utilities (POUs) to procure at least 33 percent of electricity delivered to their retail customers from renewable resources by 2020. The bill would also establish the Energy Planning and Infrastructure Coordinating (EPIC) Committee to develop a strategic plan to identify and rank renewable energy development zones, along with the needed transmission and distribution necessary to access those zones. CSAC has joined with the League of California Cities (League) in opposing a provision in the bill that would transfer the responsibility of siting renewable energy facilities between 5 megawatts and 50 megawatts from local governments to the newly created Energy Planning and Infrastructure Coordinating Committee. CSAC and the League have indicated to the author that this siting authority has long been the purview of local governments and we do not believe this authority should be taken away.

Solid Waste
AB 479 (Chesbro) – Request for Comments
As Amended on August 17, 2009

AB 479, by Assembly Member Wes Chesbro, would require the California Integrated Waste Management Board to increase the existing statewide diversion goal of 50 percent to 75 percent by 2020. In addition, recent amendments would require cities and counties to implement a commercial recycling program, but would not require the jurisdiction to revise its source reduction and recycling element if the jurisdiction adds or expands a commercial recycling program to meet this requirement. The bill also amends a section of law that addresses modification of solid waste facility permits, and proposes changes to the amendment process for non-disposal facility amendments. AB 479 was sent to the Assembly Appropriation Committee's Suspense File on August 17.

Fire
SB 505 (Kehoe) – Oppose
As Amended on July 13, 2009

SB 505, by Senator Christine Kehoe, has moved to the Assembly Appropriations Suspense file. As previously reported, this bill would amend the general plan safety element requirements for state responsibility areas (SRA) and very high fire hazard severity zones. It would also attempt to strengthen the development review process under California Environmental Quality Act (CEQA) by expanding the initial study checklist to address fire hazard impacts of projects. CSAC, along with the Regional Council of Rural Counties (RCRC), is opposed to this bill because of the potential implementation costs, which will be in the thousands of dollars depending on the amount of public outreach, controversy, and environmental review.

Water

A joint hearing of the Assembly Water Parks and Wildlife Committee and the Senate Natural Resources Committee met on Tuesday to review the package of Delta bills, currently in pre-print format. The hearing was a general overview of the package, and consisted of multiple presentations and discussion panels by bill authors and stakeholders, including a panel of county supervisors. Presenters focused on a variety of issues at stake in a Delta debate, including water quality, governance, supply issues, the Delta communities and environmental concerns. However, all parties recognized the need for action and the inadequacy of the status quo.

The package contains six "pre-prints" bills, covering the various issues relating to the Delta and water conservation and water use. The Legislature has signaled that water policy will be a central focus in the final month of this year's legislative session. Copies of the bills may be found at the following Web address: <http://www.assembly.ca.gov/acs/newcomframeset.asp?committee=26>.

Additional joint informational hearings have been scheduled for next week, including a hearing on August 25, 2009 at 1:30 p.m. in the State Capitol Building, Room 4202 and a hearing on August 27, 2009 at 1:30 p.m. in the State Capitol Building, Room 4202.

Employee Relations

For more information, contact Eraina Ortega at 916/327-7500, ext. 521, oreortega@counties.org, or Faith L. Conley at 916/327-7500, ext. 522, or fconley@counties.org.

CalPERS Directs Staff to Organize Meetings with Members and Stakeholders to Discuss the Future of Pension Benefits

At its August 18 board meeting, the CalPERS Board of Administration (the Board) included in its agenda an action plan that would direct CalPERS staff to organize a series of future meetings to discuss the sustainability of pension benefits and the administration of these benefits. The meetings will include CalPERS members as well as stakeholders and employee representatives, and is in response to the Board meeting on July 27, at which several industry experts discussed topics related to pension benefit sustainability, including:

- Future benefit costs.
- Financial market downturn and the current economic climate.
- Employer contribution rates.
- The current pension debate and proposals.

The action plan would occur in two phases. Phase I will involve small discussions between key CalPERS members and employer group representatives regarding participation, format and timing for future dialogue and developing principles to facilitate such dialogue. Phase II would involve a larger group of members, stakeholders and employer group representatives discussing the current state of retirement security and future pension terms.

The intended results of the action plan are:

- To engage meeting participants in constructive dialogue.
- To move forward on the topic of future retirement benefits.
- To ensure CalPERS has a clear understanding of the positions meeting participants have regarding retirement benefits.
- To inform CalPERS, for the purposes of future planning for retirement benefit administration.

CSAC will provide updates on the progress of these meetings as they occur.

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Government Finance and Operations

For more information, contact Jean Kinney Hurst at 916/327-7500, ext. 515, orjhurst@counties.org or Geoffrey Neill at 916/327-7500, ext. 567, or gneill@counties.org.

Local Revenue

SB 10 (Leno) – Support As Amended on July 8, 2009

SB 10, by Senator Mark Leno, would allow counties to put a measure before their voters to impose an assessment on vehicles owned by county residents. The imposed rate, combined with all state rates, could not exceed 2 percent. The measure would require counties to contract with the state Department of Motor Vehicles (DMV) to administer the assessment.

The Assembly Appropriations Committee considered SB 10 at their meeting on Wednesday, and put it on their Suspense File. The Committee has scheduled a hearing for Thursday, August 27, to take up suspense items.

SB 684 (Cogdill) – Support As Amended on June 22, 2009

SB 684, by Senator Dave Cogdill, would end an unfair and unintended consequence of laws passed 30 years ago.

In the wake of Proposition 13, the Legislature passed a number of local government "bailout" bills, AB 8 chief among them. Unfortunately, the complex formulas used to calculate the bailout amounts for each specific jurisdiction resulted in six counties actually losing revenue to the state, via schools.

SB 684 would not end these "negative bailouts," as they are called. Rather, it would take the more modest step of capping the size of the negative bailouts to prevent them from growing beyond their 2011 levels. The counties that would directly benefit from this bill are Alpine, Lassen, Mariposa, Plumas, Stanislaus, and Trinity.

The Assembly Appropriations Committee considered SB 684 at their meeting on Wednesday, and put it on their Suspense File. The Committee has scheduled a hearing for Thursday, August 27, to take up suspense items.

**ACA 9 (Huffman) – Support
As Amended on June 26, 2009**

ACA 9, by Assembly Member Jared Huffman, would put a measure before California voters that would reduce the voter approval requirement for local taxes and bonds to 55 percent.

Currently, counties have neither the financial resources to operate state programs and also meet local needs, nor the ability to predict service levels beyond each legislative session. In order to meet each community's unique needs, counties must be given greater fiscal independence from the state and federal budget processes, including the authority to offer the voters the option of approving revenues at a level sufficient to provide the degree of local services the community desires.

ACA 9 is currently on the Assembly Appropriations Committee's Suspense File. The Committee has scheduled a hearing for Thursday, August 27, to take up suspense items.

Disaster Relief

**AB 15 (Fuentes) – Support
As Amended on May 21, 2009**

**AB 50 (Nava) – Support
As Amended on June 24, 2009**

**AB 79 (Duvall) – Support
As Amended on May 21, 2009**

These three disaster relief bills, which would reimburse counties for property tax losses related to several different wildfires from last year, are all currently on the Senate Appropriations Committee's Suspense File. The Committee has scheduled a hearing for Thursday, August 27, to take up suspense items.

August 21, 2009

Health & Human Services

For more information, contact Kelly Brooks at 916/327-7500, ext. 531, orkbrooks@counties.org, or Farrah McDaid Ting at 916/327-7500, ext. 559, or fmcdaid@counties.org.

Health

**AB 244 (Beall) – Support
As Amended on May 5, 2009**

AB 244 would require Knox-Keene licensed health plans to expand mental health coverage to include the diagnosis and treatment of any mental health condition or disorder as defined in the Diagnostic and Statistical Manual IV (DSM-IV) (or subsequent editions), including substance abuse conditions. AB 244 builds upon the original California mental health parity legislation, AB 88 (Thomson, Chapter 534, Statutes of 1999), which requires health plans to provide coverage for the diagnosis and medically necessary treatment of severe mental illnesses of a person of any age, and serious emotional disturbances of children, under the same terms and conditions applied to other medical conditions.

AB 244 was passed by the Senate Appropriations Committee on August 17 and now goes to the Senate floor.

**AB 710 (Yamada) – Support
As Amended on July 15, 2009**

AB 710, by Assembly Member Mariko Yamada, would create the Veterans' Substance Abuse and Mental Health Services Fund (Fund) for the purpose of receiving federal Substance Abuse and Mental Health Services Administration (SAMHSA) grant money.

AB 710 was amended with technical fixes on July 15; the Senate Appropriations Committee placed the bill on their suspense file on August 17.

**AB 754 (Chesbro) – Support
As Amended on June 2, 2009**

AB 754, by Assembly Member Wes Chesbro, clarifies the obligations and timeframes for the Department of Mental Health (DMH) and the Department of Health Care Services (DHCS) to reimburse county mental health plans for their Medi-Cal claims.

The state has delayed payments due to counties, sometimes for as long as several years. For this reason, CSAC supports Assembly Member Chesbro's bill.

The Senate Appropriations Committee placed AB 754 on their suspense file on August 17.

**AB 1048 (Torrice) – Oppose Unless Amended
As Amended on July 16, 2009**

AB 1048, by Assembly Member Albert Torrice, would expand the Safely Surrendered Baby statute's time period from 72 hours after birth to 30 days.

The benefits of expanding current law to 30 days as envisioned by AB 1048 are not supported by research on baby abandonment, run counter to the policy of anonymity for women who surrender their babies, and would bypass a variety of more appropriate existing methods and programs for helping parents in need.

Please recall that CSAC was neutral on Assembly Member Torrice's measure from last year – AB 2262 – which extended the safe surrender period to seven days.

AB 1048 was passed by the Senate Appropriations Committee on August 17 and now goes to the Senate floor.

**AB 1571 (Committee on Veterans Affairs) – Support
As Amended on July 23, 2009**

CSAC, along with the California Mental Health Directors Association (CMHDA), has taken a support position on AB 1571 as amended on July 23.

The bill would require a county's local stakeholder group involved in the planning of county mental health programs to include veterans and representatives from veterans' organizations and would require the Department of Mental Health, when it reviews the county plan, to inform the Department of Veterans Affairs of any outreach programs specifically for veterans.

CSAC and the California Mental Health Directors Association worked with the Veteran's committee on the reporting requirements associated with veterans to better clarify the intent to identify the number of veterans served. All parties agree that better data about veterans is sorely needed on a statewide basis and will continue to work with relevant state and community based organizations on how best to meet that shared goal.

AB 1571, as amended, was heard by the Senate Appropriations Committee on August 17; the committee placed the bill on the suspense file.

Human Services

**AB 295 (Ammiano) – Support
As Amended on June 1, 2009**

AB 295, by Assembly Member Tom Ammiano, would eliminate the pilot status of the existing wraparound services program that is already operating in 40 counties. It also allows counties participating in a second pilot program aimed at increasing adoptions of older foster children to spend the project funding over a longer period.

The wraparound that seeks to maintain seriously emotionally disturbed children safely in their own homes instead of treatment facilities has repeatedly been shown to be successful and cost-effective.

The Senate Appropriations Committee placed AB 295 on the suspense file at their August 17 meeting.

**AB 1058 (Beall) – Support
As Amended on June 1, 2009**

AB 1058, by Assembly Member Jim Beall, would make two key changes to CalWORKs program eligibility rules, allowing applicants and recipients to own reliable cars and build a small amount of savings. These changes will promote work participation and self-sufficiency, respectively. The current allowed vehicular value has not changed since the program's inception and dates to a 1977 Food Stamp rule.

These changes will make it more likely that a CalWORKs recipient is able to find work, and that once they are self-sufficient and out of the program, one minor catastrophe (health, for instance) doesn't put them right back into the program.

The Senate Appropriations Committee placed the bill on its suspense file on August 17.

AB 1324 (Bass) – Support
As Amended on August 17, 2009

AB 1324, by Speaker Karen Bass, would provide assistance to foster youth who may have been victims of identity theft.

Foster youth who are victims of identity theft find increased difficulty in obtaining housing and accessing other financial services once they are emancipated. AB 1324 requires them to be referred to a government or nonprofit organization that provides information and assistance to victims of identity theft.

The Senate Appropriations Committee passed the bill as amended on August 17 and it now goes to the Senate floor.

AB 1325 (Cook) – Support
As Amended on May 6, 2009

AB 1325, by Assembly Member Paul Cook, would add a new, culturally appropriate permanency option for Native American children in foster care, known as tribal customary adoption. While similar to traditional adoption in that biological parents no longer have day-to-day custody, a tribal customary adoption does not completely terminate parental rights. Tribal customary adoption is recognized by the federal government and has been used in other states with success. This option would be considered along with traditional adoption and guardianship. AB 1325 sets forth considerations for the tribe in developing the tribal customary adoption order, as well as provisions for the resolution of disagreements that may arise. The bill sets a four-year sunset of its provisions.

The Senate Appropriations Committee will hear the bill on Monday, August 24.

August 21, 2009

Housing, Land Use and Transportation

For more information, contact DeAnn Baker at 916/327-7500, ext. 509, ordbaker@counties.org, or Kiana Buss at 916/327-7500, ext. 566, or kbuss@counties.org.

Public Works Administration
SB 802 (Leno) – Oppose
As Introduced on February 27, 2009

SB 802, by Senator Mark Leno, would require that contract retention proceeds not exceed 5 percent of the payment of all contracts entered into after January 2010, between a public entity and an original contractor, between an original contractor and a subcontractor, and between all subcontractors. This bill removes the authority of public entities to decide the appropriate amount of retention.

Local agencies must accept the lowest responsible bidder and the flexible retention rate helps to ensure timely and budget-conscious project completion. Local agencies commonly reduce retention to 5 percent at the half-way point of project completion, if adequate progress is being made and the contractor is acting in good faith. However, SB 802 would require local agencies to limit retention to 5 percent regardless of the progress or good faith of the contractor, thus protecting potential bad actors either unknown or even known to the public agency, and placing public interests and public funds at risk.

SB 802 was passed out of the Assembly Appropriations Committee on August 19 by a unanimous vote and now awaits action by the entire Assembly.

August 21, 2009

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August 21, 2009

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CHEAC Hot Sheet #16 – 2009

August 21, 2009

Bill Number Author Subject	Bill Status	Description	CHEAC Position
ASSEMBLY BILLS			
AB 54/Jeffries <i>EMS</i>	<i>Location:</i> In Assembly Governmental Organization. *2-Year Bill	Requires the Department of Forestry and Fire Protection, Office of State Fire Marshall, State Board of Fire Services, Department of California Highway Patrol, the California Conservation Corps, and the Emergency Medical Services to form a working group to prepare a Governor's Reorganization plan to transfer the authorities and duties of the aforementioned departments to the California Emergency Management Agency.	O-3
Last amendment 3/26/09			
AB 57/Price <i>Hospitals</i>	<i>Location:</i> On Senate Floor.	Requires DPH to establish a procedure for the collection and review of written staffing plans (excluding nurses) from UC hospitals.	Watch w/ Concerns
AB 217/Beall <i>Medi-Cal Alcohol/Drug</i>	<i>Location:</i> In Senate Appropriations Committee on the Suspend File. <i>Hearing:</i> Set for hearing 8/27/09 .	Establishes the Medi-Cal Alcohol and Drug Screening & Brief Intervention Services Program to allow local funds to draw down federal funds via CPE. Funding obtained to be used to provide alcohol and drug screening and brief intervention services to Medi-Cal beneficiaries who are pregnant women or women of childbearing age. Requires any public entity drawing down FFP to reimburse the state their costs for creating and administering the program.	S-3
Last amendment 6/1/09			
AB 221/Portantino <i>HIV/AIDS</i>	<i>Location:</i> On Senate Floor.	Would exempt trained-and-supervised HIV counselors who are trained in rapid HIV test proficiency and universal infection control precautions and who also work under a licensed physician or surgeon from phlebotomist certification requirements.	S-3
Amended 8/17/09			
AB 233/Smynth <i>Animal Control</i> Last amendment: 5/4/09	<i>Location:</i> In Assembly Appropriations Committee held on the Suspend File. *2-Year Bill	Allows a tax write off by a California taxpayer who adopts a pet from a qualified animal rescue organization (including county shelters).	S-2
AB 242/Nava <i>Animal Control</i> Last amendment 6/1/09	<i>Location:</i> On Senate Floor.	Increases the penalties assessed for the act of watching a dogfight.	S-3

Bill Number Author Subject	Bill Status	Description	CHEAC Position
Last Amendment AB 342/Bass <i>Medi-Cal</i> <i>Hospitals</i> Last amendment 5/18/09	<i>Location:</i> In Senate Health Committee.	Requires DHCS to submit a waiver to CMS to implement a demonstration project to strengthen the safety net, expand coverage and improve health outcomes.	Special Interest Bill
AB 486/Chesbro <i>Health Officers</i> <i>PHEP</i>	<i>Location:</i> Signed by Governor. Chapter 6, Statutes of 2009.	Extends the review period by the Board of Supervisors of a local state emergency declared by a health officer from 14 or 21 days to 30 days.	S-2
AB 517/Ma <i>Public Health</i>	<i>Location:</i> In Senate Appropriations Committee. <i>Hearing:</i> Set for hearing <u>8/24/09</u> .	Repeals existing state law on the practice of tattooing, body art and piercings. Would require all body art practitioners to annually register with local EH departments enforcement agencies and require these practitioners to comply with specific requirements including the completion of a blood borne pathogens exposure control training program (with annual updates). Facilities are also required to have valid health permits issued annually by EH local enforcement agencies and must have infection prevention and control plans in place. Allows LHJs local enforcement agencies to collect fees sufficient to pay for the administration of these programs. Local enforcement agency is defined as a county or city health agency. For those jurisdictions where EH is not within the health department, the jurisdiction must designate who is the local enforcement agency (health or EH).	S-3
Amended 8/18/09 AB 543/Ma <i>Public Health</i> Last amendment 7/16/09	<i>Location:</i> On Senate Floor.	Allows the Nurse Family Partnership Program to use their grant money as match for other state programs. Permits DPH to accept federal grants for the purposes of the program.	S-3
AB 861/Ruskin <i>Simplified Contract</i> Last amendment 5/5/09	<i>Location:</i> In Senate Appropriations Committee on the Suspense File. <i>Hearing:</i> Set for hearing <u>8/27/09</u> .	Requires DPH, within existing resources, to develop and implement, in consultation with LHJ reps, a model consolidated and streamlined administration and contracting process with LHJs for programs in both the Center for Infectious Disease and the Center for Family Health.	S-2

Bill Number Author Subject	Bill Status	Description	CHEAC Position
Last Amendment AB 911/Lieu EMS	<i>Location:</i> On Senate Floor.	Requires all licensed general acute care hospitals to assess the condition of their emergency rooms every four hours and then calculate and record a NEDECS overcrowding score. If a hospital does not record a NEDECS overcrowding score over 60 in level four or higher for the previous 30 days, it may assess its ER every eight hours; however, if it records a NEDECS overcrowding score over 60 of four or higher, it must revert to the four hour schedule. Also requires hospitals to develop and implement a full-capacity protocol for each category on the overcrowding scale. Hospitals with emergency rooms must file these protocols must be filed with OSHPD.	Watch w/ Concerns
Amended 7/23/09 AB 1076/Jones <i>Medi-Cal</i>	<i>Location:</i> In Senate Appropriations Committee.	As part of the existing Disease Management Waiver DHCS must seek, the disease management benefit shall now also include a designation of a primary care provider as a patient's medical home. Also directs the DHCS director if such a program is implemented to expand the program to include Medi-Cal beneficiaries who meet certain conditions.	S-3
Last amendment 5/5/09 AB 1199/Ammiano <i>Health Care Master Plans</i> Last amendment 4/13/09	<i>Location:</i> In Assembly Health Committee. *2-Year Bill	Requires counties to establish a working group to create a local health care master plan to consider among other things equitable distribution of health care services, including services provided by hospitals, clinics and other providers within the county.	Watch w/ Concerns
AB 1201/M.Perez <i>Immunizations</i> Last amendment 4/28/09	<i>Location:</i> In Assembly Appropriations Committee held on the Suspense File. *2-Year Bill	Compels health plans or insurers to fully reimburse physicians for their childhood immunization vaccine costs.	S-3
AB 1205/Logue <i>Injury Prevention</i>	<i>Location:</i> In Assembly Transportation Committee. Failed passage; reconsideration granted. *2-Year Bill	Exempts drivers, 18 years or older who has either completed a motorcyclist safety training program or has been issued a class M1 license from wearing a safety helmet while operating a motorcycle, motor-driven cycle or motorized bicycle.	O-2
AB 1269/Brownley <i>Medi-Cal</i> Last amendment 4/14/09	<i>Location:</i> In Senate Appropriations Committee on the Suspense File. <i>Hearing:</i> Set for hearing 8/27/09 .	Extends Medi-Cal eligibility for the disabled who become unemployed for an additional 26 weeks if FFP is provided.	S-3

Bill Number Author Subject	Bill Status	Description	CHEAC Position
Last Amendment AB 1445/Chesbro <i>Medi-Cal</i>	<i>Location:</i> In Senate Appropriations Committee.	Allows reimbursement for a max of two visits to an FQHC or RHC on the same day and at the same location if the patient suddenly suffers and illness or injury subsequent to the first visit or if the patient has a medical visit and “another health visit” – meaning a face-to-face encounter with a clinical psychologist, licensed clinical social worker, dentist, dental hygienist or registered dental hygienist in alternative practice.	S-3
Last amendment 6/1/09		Increases the fee that can be charged to an inmate’s account for medical visits from \$3 to \$6.	SIA
AB 1487/Hill <i>Jail Medical</i> Last amendment 6/22/09	<i>Location:</i> In Senate Public Safety Committee.		
AB 1503/Lieu <i>EMS</i>	<i>Location:</i> In Senate Health Committee.	Creates a new physician and surgeon pricing policy for uninsured visits to the emergency room. Ties Maddy Fund reimbursements to these new provisions.	Watch w/ Concerns
SENATE BILLS			
SB 1/Steinberg <i>Children’s Health Expansion CCS</i>	<i>Location:</i> In Senate Health Committee. *2-Year Bill	Expands children’s health insurance. Please note: CHEAC has concerns with the CCS provisions in the bill.	Watch w/ Concerns
SB 4/Oropeza <i>Public Health</i> Last amendment 7/13/09	<i>Location:</i> On Assembly Floor.	Bans smoking at state parks and beaches.	S-3
SB 114/Liu <i>Medi-Cal</i> Last amendment 5/19/09	<i>Location:</i> In Senate Appropriations Committee held on the Suspense File. *2-Year Bill	Would deem independent foster children eligible for Medi-Cal upon their 18 th birthday without interruption in their benefits.	S-3
SB 124/Oropeza <i>Public Health</i> Last amendment 4/30/09	<i>Location:</i> On Assembly Floor.	Codifies current regulations on school bus idling into statute with the aim of reducing public exposure to diesel exhaust particulate matter.	S-3
SB 152/Cox <i>Medi-Cal Mental Health</i> Last amendment 4/14/09	<i>Location:</i> In Assembly Health Committee.	Would require DMH to send a reimbursement claim to the Controller for fee-for-service county mental health managed care contractors within 90 days. Interest accrues on unpaid claims and would come out of DMH’s budget.	S-3
SB 208/Steinberg <i>Medi-Cal Hospitals</i>	<i>Location:</i> In Assembly Health Committee.	Requires DHCS to submit a waiver to CMS to implement a demonstration project to strengthen the safety net, expand coverage and improve health outcomes.	Special Interest Bill

Bill Number Author Subject	Bill Status	Description	CHEAC Position
Last Amendment SB 318/Calderon <i>Animal Control</i> Last amendment 5/28/09	<i>Location:</i> On Assembly Floor.	Provides procedures for the forfeiture of property connected with the crime of dog fighting.	S-3
SB 400/Corbett <i>Tobacco</i> Last amendment 7/23/09	<i>Location:</i> In Assembly Appropriations Committee.	Adds electronic cigarettes to the definition of "tobacco products" for both the Stop Tobacco Access to Kids Enforcement Act (STAKE) and the California Cigarette and Tobacco Products Licensing Act of 2003.	S-3 Watch
SB 600/Padilla <i>Tobacco</i> Last amendment 6/9/09	<i>Location:</i> In Senate Revenue & Taxation Committee on the suspense file.	Increases existing tobacco taxes by \$1.50 per pack. 85% of the funds raised are directed to the state GF into the newly created Tobacco Tax General Fund Account. The remaining 15% is disbursed in four areas: 45% to DPH for tobacco prevention and control programs including funds for LHJs, 10% to the Department of Education for prevention programs, 10% to UC for medical research on the effects of tobacco use and for prevention and treatment of tobacco related diseases and 20% to UC for the establishment of a Lung Cancer Early Detection and Treatment Research Program. The remaining 15% is apportioned to law enforcement efforts to combat cigarette smuggling, tobacco tax evasion by law enforcement, the State Board of Equalization, the Attorney General's Office and DPH for local law enforcement activities. Does provide for the backfill of revenue losses to both Prop 99 and Prop 10.	S-3
SB 601/Padilla <i>Tobacco</i> Last amendment 5/18/09	<i>Location:</i> In Senate Appropriations Committee held on the Suspense File. *2-Year Bill	Restricts new retail tobacco licenses for businesses located within 600 feet of public or private elementary or secondary schools.	S-2
SB 769/Alquist <i>Public Health</i> Last amendment 7/14/09	<i>Location:</i> In Assembly Appropriations Committee on the Suspense File. <i>Hearing:</i> Set for hearing <u>8/27/09</u> .	Provides that for FY 09/10 federal funding received pursuant to the federal Supplemental Appropriations Act for state and local public health and emergency response infrastructure for pandemic flu be-subject to appropriation by the Legislature for allocation by DPH pursuant to the CDC grant agreement. Requires DPH to use funds to expand CAHAN capacity for hospitals and clinics.	Special Interest Bill

Bill Number Author Subject Last Amendment	Bill Status	Description	CHEAC Position
SB 810/Leno <i>Health Care Reform</i> Last amendment 4/23/09	<i>Location:</i> In Senate Appropriations Committee held on the Suspend File. *2-Year Bill	Establishes the California Healthcare System to be administered by the newly created CA Healthcare Agency under the control of an elected Healthcare Commissioner. Makes all CA residents eligible for specified health care benefits under the system, which would, on a single-payer basis, negotiate for or set fees for health care services provided through the system and pay claims for those services. Requires the commissioner to seek all necessary waivers, exemptions, agreements or legislation to allow various existing federal, state and local health care payments to be paid to the system. Creates a health insurance policy board. Allows the Healthcare Commissioner to determine city and county contributions to the program. Other provisions.	SIA
SBX3 24/Alquist <i>Medi-Cal</i>	Signed by Governor. Chapter 24, Statutes of 2009.	Repeals the change from annual to semi-annual Medi-Cal eligibility determinations for children in order to qualify for the enhanced FMAP funding in the federal stimulus package.	S-1
SBX3 26/Alquist <i>HFP</i> Last amendment 4/16/09	<i>Location:</i> In Senate Rules Committee.	Would allow for the creation of a dental-only coverage option offered by the Healthy Families Program.	S-2

*2-Year Bill – A bill that has not passed out of its house of origin policy or appropriations committee by designated deadlines in the first year of a two-year legislative session. Must be then passed out of its house of origin by January 31, 2010, or it becomes a dead bill. (Please note all deadlines may be waived by Legislative leadership.)

Definitions of Legislative Terms

Chaptered – A bill passed by the Legislature and signed into law by the Governor.

Concurrence – The approval by the house of origin of a bill that was amended in the opposite house.

Dead Bill – A bill that has not passed out of its house of origin by the end of January of the second-year of the two-year legislative session. (Please note all deadlines may be waived by Legislative leadership.)

Failed Passage – A bill that has been voted on in either a committee or assembly or senate floor and did not receive a majority vote. An urgency measure or tax increase must receive 2/3 vote on the floor.

Gut and Amend – An amended bill where the previous legislative language is removed and replaced with entirely new subject matter.

Held in Committee – Status of a bill that is heard in committee but no action is taken.

Inactive File – A bill ready for floor consideration but placed on a dormant list upon the author’s request.

Interim Study – The assignment of a bill’s subject matter to the appropriate committee for study during the period the Legislature is not in session.

Reconsideration Granted – A motion giving the opportunity to take another vote on a bill that has failed passage in a committee hearing or floor session.

Rules Committee – All bills are initially referred to this committee in each house for policy committee assignments.

Spot Bill (or intent bill) – A bill that proposes nonsubstantive changes to a code section in a particular subject area. Often used as a legislative vehicle later in the legislative session for ideas not fully fleshed out when the bill is introduced.

Suspense File – Bills meeting a certain appropriation threshold in fiscal committees are placed on the suspense file. Fiscal committees in each house hold a special hearing close to the fiscal committee deadlines (late May and August) to determine which bills will come off the suspense file and move forward. The decision on each bill is pre-determined by leadership and the committee vote is mostly a formality.

CHEAC Legislative Position Chart

S - 1 Strong Support	S - 2 Soft Support	S - 3 Discretionary Support	SIA Support if Amended
O - 1 Strong Oppose	O - 2 Soft Oppose	O - 3 Discretionary Oppose	OUA Oppose Unless Amended
WC Watch with Concerns	W - SIB Watch - Special Interest Bill	W Watch	R/BB Refer/Bring Back

Call call her



Laura Sanborn
<ljsanborn@comcast.net>
08/14/2009 02:26 PM

To gayle@bos.cccounty.us
cc
bcc
Subject working dogs

Dear Supervisor Uulkema

You and I corresponded by letters about one year ago. I am a volunteer search-and-rescue dog handler. As members of the California Rescue Dog Association (CARDA) my dog and I respond to missing person misalons throughout California.

I live in your district in Orinda.

In addition to my involvement in search-and-rescue I also lead a statewide grassm ofts coalition called Save Our Dogs that aims to protect working dogs from the unintended consequences of pet legislation. California's working dogs serve in roles in search-and-rescue, law enforcement, border patrol, guiding the blind, assisting the disabled, protecting and herding livestock, detecting insect pests, and other jobs.

Currently pending in the state legislature is Senate Bill 250 (mandatory spay/neuter for dogs and cats) which has already passed the Senate and its first assembly committee vote, and now resides in the Assembly Appropriations Committee. It will likely be voted on in that committee during the last week in August, and if it passes there its last stop before it goes to the governor's desk is a full Assembly vote in the first week or so of September

On behalf of working dogs, SB 250 is opposed by CARDA, Save Our Dogs, the Western States Police Canine Association, the California Farm Bureau Federation, Canine Companions for Independence, and many other working dog interests. It is also opposed by hundreds of breed and kennel clubs, the American Veterinary Medical Association, the California Department of Finance, and tens of thousands of Californians. Unfortunately we have a difficult time up against the misguided Hollywood animal rights activists who fund these efforts. This is the third spring and summer in a row I have been pre-occupied with this issue... we barely defeated the predecessor to SB 250 (AB 1634) last year.

If possible I would like to meet with you to discuss this issue. SB 250 is not just a state government concern. The costs and collateral damage if this bill becomes law will fall largely on California's local governments, indeed the bill's author amended SB 250 to make sure that local governments and not the state government will assume its fiscal costs -- costs that we project to be well in excess of \$100 million a year. As local governments are becoming aware of this, they are starting to weigh in their opposition. For example, the Mendocino County Board of Supervisors unanimously voted to oppose SB 250.

More info about other harmful impacts of SB 250
<http://saveourdogs.net/wp/wp-content/uploads/2009/08/talking-point-docs.pdf>

Thank you very much for your consideration.

Respectfully yours,

Laura Sanborn
192 Hail Drive, Orinda 94563
925-212-4629
laura@saveourdogs.net

RECEIVED
AUG 14 2009
GAYLE B. UULKEMA

AMENDED IN SENATE MAY 28, 2009
AMENDED IN SENATE MAY 5, 2009
AMENDED IN SENATE APRIL 21, 2009
AMENDED IN SENATE APRIL 2, 2009

SENATE BILL

No. 250

Introduced by Senator Florez

February 24, 2009

An act to add Sections 30804.6 and 31751.4 to the Food and Agricultural Code, relating to animals.

LEGISLATIVE COUNSEL'S DIGEST

SB 250, as amended, Florez. Dogs and cats: spaying and neutering. Existing law generally prohibits public pounds and private shelters from selling or giving away any dog or cat that has not been spayed or neutered; provides, under certain circumstances, for the sale or giving away of a dog or cat that has not been spayed or neutered upon the payment of a refundable deposit, as specified; provides for the imposition of fines or civil penalties against the owner of a nonspayed or unneutered dog or cat that is impounded by a public pound or private shelter; and immunizes cities and counties, societies for the prevention of cruelty to animals, and humane societies from an action by the owner of a dog or cat for spaying or neutering the dog or cat in accordance with the law. A violation of any of these provisions is an infraction, punishable as specified.

This bill would provide, in addition, that every dog owner shall secure a license for the dog, as required by state or local law, and that no person shall own, keep, or harbor, except as specified, an unsterilized dog, as defined. It would make it unlawful for any person who owns, keeps, or

harbors any unsterilized cat, as defined, 6 months of age or older to allow or permit that cat to roam at large. It would require any owner or custodian, as defined, of an unsterilized dog to have the animal sterilized at 6 months of age, ~~provide obtain~~ a certificate of sterility, or, *if provided by local ordinance*, obtain an unaltered dog license. It would require an owner or custodian of an unsterilized cat *who permits that cat to roam at large* to have the cat sterilized or ~~provide obtain~~ a certificate of sterility. It would allow an unaltered dog license to be denied, revoked, and reapplied for, as specified, and the licensing agency to utilize its existing procedures or to establish new procedures for any appeal of a denial or revocation of an unaltered dog license. *The bill would authorize the licensing agency to assess a fee for the procedures related to the issuance, denial, or revocation of an unaltered dog license.*

This bill would require an owner or custodian who offers any unsterilized dog or cat for sale, trade, or adoption to meet specified requirements. It would permit any authorized penalty for a violation of certain provisions relating to dogs to be imposed only if the owner or custodian is concurrently cited for violation of one or more of other specified provisions. It would require, if an unaltered dog or cat is impounded pursuant to state or local law, the owner or custodian to meet specified requirements, including paying the costs of impoundment. It would require all costs, fines, and fees collected under the bill to be paid to the licensing agency for the purpose of defraying the cost of the implementation and enforcement of the bill. By creating new crimes and ~~imposing new duties on local animal control agencies~~, this bill would impose a state-mandated local program upon local governments.

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.~~

~~With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 30804.6 is added to the Food and
2 Agricultural Code, to read:

3 30804.6. (a) (1) Every dog owner shall secure a license for
4 the dog pursuant to Section 121690 of the Health and Safety Code
5 or as required by the local licensing agency.

6 (2) No person shall own, keep, or harbor *an* unsterilized dog in
7 violation of this section.

8 (3) An owner or custodian of an unsterilized dog shall have the
9 dog sterilized by the age of six months, ~~provide~~ *obtain* a certificate
10 of sterility, or, *if provided for by ordinance of the responsible city,*
11 *county, or city and county,* obtain an unaltered dog license in
12 accordance with this section.

13 (4) This subdivision shall not apply to a dog with a high
14 likelihood, due to age or infirmity, of suffering serious bodily harm
15 or death if surgically sterilized. The owner or custodian shall obtain
16 written confirmation of this fact from a veterinarian licensed in
17 this state. If the dog is able to be sterilized at a later date, that date
18 shall be stated in the written confirmation. If the date for
19 sterilization in the written confirmation is more than 30 days after
20 the date that the owner or custodian receives that confirmation,
21 the owner or custodian shall apply for an unaltered dog license
22 *pursuant to any applicable city, city and county, or county*
23 *ordinance.*

24 ~~(b) An unaltered dog license may be denied or revoked for one~~
25 ~~or more of the following reasons:~~

26 *(b) The licensing agency shall utilize its existing procedures or*
27 *may establish procedures for the denial or revocation of an*
28 *unaltered dog license and may deny or revoke a license for one*
29 *or more of the following reasons:*

30 (1) The owner, custodian, applicant or licensee is not in
31 compliance with all of the requirements of this section.

1 (2) The owner, custodian, applicant, or licensee has violated a
2 state law, or a city, county, or other local governmental provision
3 relating to the care and control of animals.

4 (3) Any unaltered dog license held by the applicant has been
5 revoked for violating a state law, or a city, county, or other local
6 government provision relating to the care or control of animals.

7 (4) The license application is discovered to contain a material
8 misrepresentation or omission of fact.

9 (c) The licensing agency shall utilize its existing procedures or
10 may establish procedures for any appeal of a denial or revocation
11 of an unaltered dog license, which appeal procedure may include
12 written notice of the denial or revocation and a reasonable
13 opportunity for the owner or custodian to respond.

14 (d) *The licensing agency may assess a fee for the procedures*
15 *related to the issuance, denial, or revocation of an unaltered dog*
16 *license consistent with this chapter.*

17 (d)

18 (e) An owner or custodian who offers any unsterilized dog for
19 sale, trade, or adoption at four months of age or older or the age
20 required by the licensing agency shall be required to include a
21 valid unaltered dog license number with the offer of sale, trade,
22 or adoption, or shall otherwise state and establish compliance with
23 this section. The unaltered dog's license number, and any existing
24 microchip number for the dog, shall appear on the document
25 transferring ownership of the dog to the new owner.

26 (e)

27 (f) (1) Any authorized penalty may be imposed upon an owner
28 or custodian of an unlicensed, unaltered dog for a violation of this
29 section only if the owner or custodian is concurrently cited for one
30 or more of the following:

31 (A) Permitting the subject dog to roam at large.

32 (B) Failure to provide adequate care for the subject dog in
33 violation of animal cruelty provisions.

34 (C) Rabies quarantine violations for the subject dog.

35 (D) Fighting dog activity in violation of Section 597.5 of the
36 Penal Code.

37 (E) Failure to comply with the local jurisdiction's requirements
38 for the keeping of a dog that has been adjudicated by a court or an
39 agency of appropriate jurisdiction to be potentially dangerous,
40 dangerous, or vicious.

- 1 (F) Failure to possess an unaltered dog license.
- 2 (2) Any owner or custodian of an unaltered dog who is found
3 to be subject to a penalty under paragraph (1) shall be required to
4 surgically sterilize the unaltered animal in accordance with this
5 section. The licensing agency ~~shall utilize its existing procedures~~
6 *may utilize procedures as they exist on the effective date of this*
7 *Section* for any appeal of this requirement.
- 8 (3) Any owner or custodian of an unaltered dog who is lawfully
9 using that dog for the pursuit or ~~take~~ *taking* of mammals pursuant
10 to Section 265 of Title 14 of the California Code of Regulations
11 *or for the lawful pursuit or taking of migratory game birds, game*
12 *birds, ducks, and other permitted water fowl* and has lawfully
13 purchased a hunting license as provided in Section 3031 of the
14 Fish and Game Code ~~is not~~ *shall not be* in violation of
15 subparagraph (A) of paragraph (1).
- 16 (4) At the time a citation is issued pursuant to paragraph (1) or
17 (2), the licensing agency may provide the owner or custodian
18 information as to the availability of sterilization services for free
19 or at a reduced cost.
- 20 (f) If an unlicensed unaltered dog is impounded pursuant to state
21 or local law, in addition to satisfying applicable requirements for
22 the release of the animal, including, but not limited to, payment
23 of impound fees pursuant to this section, the owner or custodian
24 shall also do one of the following:
- 25 (1) Provide written proof of the dog's prior sterilization, if
26 conditions cannot or do not make this assessment obvious to the
27 licensing agency personnel.
- 28 (2) Have the dog surgically sterilized by a veterinarian
29 associated with the licensing agency at the expense of the owner
30 or custodian. That expense may include additional fees due to any
31 extraordinary care required.
- 32 (3) Arrange to have the dog surgically sterilized by another
33 veterinarian licensed in this state.
- 34 (4) At the discretion of the licensing agency, the dog may be
35 released to the owner or custodian if he or she pays a refundable
36 deposit consistent with existing practices and procedures, or signs
37 a statement under penalty of perjury representing that the dog will
38 be surgically sterilized and that he or she will submit a statement
39 by the deadline set by the licensing agency, but in no case less
40 than 10 days after the release, signed by the veterinarian,

1 confirming that the dog has been surgically sterilized or is
2 incapable of breeding, or confirming that the veterinarian has
3 scheduled the operation within a reasonable time.

4 (g) The owner or custodian of the unaltered dog shall be
5 responsible for the established costs of impoundment, which shall
6 include daily board costs, vaccination, medication, and any other
7 diagnostic or therapeutic applications as required by this section.
8 The owner or custodian shall comply with any additional
9 impoundment procedures.

10 (h) All costs and fines collected under this section and the fees
11 collected under subdivision (g) shall be paid to the licensing agency
12 for the purpose of defraying the cost of the implementation and
13 enforcement of this section.

14 (i) Nothing in this section shall prohibit a local jurisdiction from
15 enforcing or enacting local measures that require the spaying or
16 neutering of all dogs, and this section shall not prohibit a local
17 jurisdiction from enacting or enforcing other local measures
18 pertaining to the obligations of a person owning or possessing a
19 dog.

20 (j) For the purposes of this section, the following terms have
21 the following meanings:

22 (1) "Licensing agency" means the municipal city or county
23 animal control agency or other entity responsible for enforcing
24 laws relating to animals.

25 (2) "Custodian" means any person who undertakes the personal
26 care and control of a dog, or any person who intentionally provides
27 care, security, or sustenance for a dog on the person's property for
28 any period exceeding 30 days. "Custodian" does not include a
29 licensing agency.

30 (3) "Sterilize" means to permanently eliminate the ability of a
31 dog to reproduce by removing the sex organs or ~~prohibiting their~~
32 *functions preventing them from functioning.*

33 SEC. 2. Section 31751.4 is added to the Food and Agricultural
34 Code, to read:

35 31751.4. (a) (1) It is unlawful for any person who owns, keeps,
36 or harbors any unsterilized cat six months of age or older to allow
37 or permit that unsterilized cat to roam at large.

38 (2) An owner or custodian of an unsterilized cat *who permits*
39 *that cat to roam at large* shall have the animal sterilized, or ~~provide~~
40 *obtain* a certificate of sterility.

1 (3) This subdivision shall not apply to a cat with a high
2 likelihood, due to age or infirmity, of suffering serious bodily harm
3 or death if sterilized. The owner or custodian shall obtain written
4 confirmation of this fact from a veterinarian licensed in this state.
5 If the cat is able to be sterilized at a later date, that date shall be
6 stated in the written confirmation.

7 (b) An owner or custodian who offers any unsterilized cat for
8 sale, trade, or adoption shall notify the licensing agency, if the
9 jurisdiction requires the licensing of cats, of the name and address
10 of the transferee within 10 days after the transfer. Any existing
11 microchip number for the cat shall appear on a document
12 transferring ownership of the cat to the new owner.

13 (c) If an unaltered cat is impounded pursuant to state or local
14 law, in addition to satisfying applicable requirements for the release
15 of the animal, including, but not limited to, payment of impound
16 fees pursuant to this section, the owner or custodian shall also do
17 one of the following:

18 (1) Provide written proof of the cat's prior sterilization, if
19 conditions cannot or do not make this assessment obvious to the
20 licensing agency personnel.

21 (2) Have the cat surgically sterilized by a veterinarian associated
22 with the licensing agency at the expense of the owner or custodian.
23 That expense may include additional fees due to any extraordinary
24 care required.

25 (3) Arrange to have the cat surgically sterilized by another
26 veterinarian licensed in this state.

27 (4) At the discretion of the licensing agency, the cat may be
28 released to the owner or custodian if he or she pays a refundable
29 deposit consistent with existing practices and procedures, or signs
30 a statement under penalty of perjury representing that the cat will
31 be surgically sterilized and that he or she will submit a statement
32 by the deadline set by the licensing agency, but in no case less
33 than 10 days after the release, signed by the veterinarian,
34 confirming that the cat has been surgically sterilized or is incapable
35 of breeding, or confirming that the veterinarian has scheduled the
36 operation within a reasonable time.

37 (d) The owner or custodian of the unaltered cat shall be
38 responsible for the established costs of impoundment, which shall
39 include daily board costs, vaccination, medication, and any other
40 diagnostic or therapeutic applications as required by this section.

1 The owner or custodian shall comply with any additional
2 impoundment procedures.

3 (e) All costs and fines collected under this section and the fees
4 collected under subdivision (e) shall be paid to the licensing agency
5 for the purpose of defraying the cost of the implementation and
6 enforcement of this section.

7 (f) Nothing in this section shall prohibit a local jurisdiction from
8 enforcing or enacting local measures that require the spaying or
9 neutering of all cats, and this section shall not prohibit a local
10 jurisdiction from enacting or enforcing other local measures
11 pertaining to the obligations of a person owning or possessing a
12 cat.

13 (g) For the purposes of this section, the following terms have
14 the following meanings:

15 (1) "Custodian" means any person who undertakes the personal
16 care and control of a cat, or any person who intentionally provides
17 care, security, or sustenance for a cat on the person's property for
18 any period exceeding 30 days. "Custodian" does not include a
19 licensing agency.

20 (2) "Licensing agency" means the municipal city or county
21 animal control agency or other entity responsible for enforcing
22 laws relating to animals.

23 (3) "Sterilize" means to permanently eliminate the ability of a
24 cat to reproduce by removing the sex organs or ~~prohibiting their~~
25 ~~functions preventing them from functioning.~~

26 ~~SEC. 3. No reimbursement is required by this act pursuant to~~
27 ~~Section 6 of Article XIII B of the California Constitution for certain~~
28 ~~costs that may be incurred by a local agency or school district~~
29 ~~because, in that regard, this act creates a new crime or infraction,~~
30 ~~eliminates a crime or infraction, or changes the penalty for a crime~~
31 ~~or infraction, within the meaning of Section 17556 of the~~
32 ~~Government Code, or changes the definition of a crime within the~~
33 ~~meaning of Section 6 of Article XIII B of the California~~
34 ~~Constitution.~~

35 ~~However, if the Commission on State Mandates determines that~~
36 ~~this act contains other costs mandated by the state, reimbursement~~
37 ~~to local agencies and school districts for those costs shall be made~~
38 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
39 ~~4 of Title 2 of the Government Code.~~

1 *SECTION 3. No reimbursement is required by this act pursuant*
2 *to Section 6 of Article XIII B of the California Constitution because*
3 *the only costs that may be incurred by a local agency or school*
4 *district will be incurred because this act creates a new crime or*
5 *infraction, eliminates a crime or infraction, or changes the penalty*
6 *for a crime or infraction, within the meaning of Section 17556 of*
7 *the Government Code, or changes the definition of a crime within*
8 *the meaning of Section 6 of Article XIII B of the California*
9 *Constitution.*

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**OFFICE OF THE COUNTY ADMINISTRATOR
CONTRA COSTA COUNTY**

TO: Legislation Committee
Supervisor Susan A. Bonilla, Chair
Supervisor Mary N. Piepho, Vice Chair

FROM: Lara DeLaney, Legislative Coordinator

DATE: August 26, 2009

SUBJECT: **Agenda Item #7: Federal Health Care Reform Update**

RECOMMENDATION

ACCEPT the report and discuss response from Contra Costa County.

MEDICAID/HEALTH REFORM

Health system reform continues to dominate the federal domestic health and human services agenda. Two Senate and three House committees have conducted numerous hearings, but only one – the Senate Health, Education, Labor and Pensions (HELP) Committee – has begun marking up legislation. Of note to county systems, the HELP draft contains a substantial new investment of \$10 billion over ten years for public health and prevention efforts.

Medicaid would be expanded to individuals in drafts of both the House and Senate initiatives. However, income eligibility levels and the number of years the federal government would fully assume the costs are key unresolved issues. Additionally, the continued role of Medicaid disproportionate share hospital (DSH) payments to facilities serving large numbers of uninsured patients remains unsettled. While there is a general understanding that DSH payments would no longer need to continue at current levels in a system where millions of additional individuals are insured, paring back payments before reform is achieved would place safety net financing at risk.

Committees in the House and Senate were expected to mark up their reform bills in July. Congressional leaders are hoping to send a reconciled bill to President Obama this fall. The timetable continues to be ambitious, with a number of major issues unresolved, including how to pay for the trillion dollar effort over the next ten years and whether there should be a new public health insurance option launched by government and sustained by the premiums paid into it.

Bipartisan overhaul negotiators on the Senate Finance Committee agreed via teleconference on August 21 to put an increased emphasis on affordability of care and reducing health costs in any bill they produce.

But there was no indication of a final deal or agreement coming out of the 90-minute discussion — or details on how much more they might try to lower the price tag of the legislation, which an initial estimate pegged at \$900 billion over 10 years.

The group of six senators did agree to meet again before they return to Washington after Labor Day.

The meeting came after a week in which the future of the only bipartisan overhaul negotiations on Capitol Hill seemed in doubt. Republican Sen. Charles E. Grassley of Iowa, the lead GOP negotiator, said he wants to continue working with Finance Committee Chairman Max Baucus, D-Mont., and other Democrats, but also said he would “absolutely not” vote for a health care bill that had only three or four Republicans backing it, giving a more emphatic tone to comments he made earlier about seeking wide GOP support.

Baucus issued a statement on Thursday’s “gang of six” meeting, the first since Aug. 6. The group is made up of Baucus, Grassley and Democrats Kent Conrad of North Dakota and Jeff Bingaman of New Mexico, and Republicans Olympia J. Snowe of Maine and Michael B. Enzi of Wyoming.

The task for the negotiators and their staffs will be how much more can be saved in the legislation without affecting the overall goal of extending affordable coverage to the 47 million uninsured Americans while bending the cost curve of health care spending.

In a related development, and marking a major victory for counties and states, the Obama administration rescinded or otherwise tabled the implementation of seven Medicaid regulations issued by the Bush administration that would have restricted or eliminated federal reimbursement for certain services provided to Medicaid beneficiaries. Eliminating federal reimbursement for services such as case management for child welfare or behavioral health populations would have shifted significant costs to counties.



CONTRA COSTA COUNTY
Department of Conservation & Development
Community Development Division
651 Pine Street, North Wing – 4th Floor
Martinez, CA 94553-1229
Telephone: 335-1290 Fax: 335-1299

TO: Board of Supervisors - Legislative Committee
Supervisor Susan Bonilla, District IV, Chair
Supervisor Mary Piepho, District III, Vice Chair

FROM: Patrick Roche, Principal Planner *P. Roche*

DATE: August 20, 2009

SUBJECT: Update on State Subvention Funding for Williamson Act Program

In Governor Arnold Schwarzenegger's blue penciling action of the recently adopted state budget, the Governor has effectively eliminated the state subvention funding for the Williamson Act Program by taking the State Legislature's appropriation of \$28.7 million for FY 09-10 to \$1,000. It is noted that the Board of Supervisors has gone on record in opposition to the elimination of the state subvention funding (see attached 12/9/2009 letter from Chair, Board, to Contra Costa County's State Legislative Delegation).

Enacted in 1965, the Williamson Act is a voluntary program that provides lower property taxes to agricultural landowners in exchange for their contractual commitment with participating local governments (cities and counties) to keep their land in agricultural or open space uses for at least 10 years. In 1971, state funding was provided which created a formula for allocating payments to local governments based on acreage enrolled in the program. This state subvention funding for the Williamson Act was established to provide an incentive for many local governments to stay in the program and to enroll more agricultural lands into the program. Statewide nearly one-third of all privately owned land is enrolled in a Williamson Act contract, and this constitutes 16 million acres or more than one-half of the state's 29 million acres of farm and ranchland. Here in Contra Costa County, about 47,000 acres of unincorporated land is enrolled under Williamson Act contracts (see attached map for Williamson Act contracted lands in Contra Costa County), and for 2008 the state's subvention funding payment to the County was \$61,000.00.

There is a real concern among agricultural interests and local governments (particularly counties where agriculture is key to the local economy) that this "temporary" loss of state subvention funding will become permanent and even a one-year loss of funding could threaten the continued existence of the only statewide agricultural conservation program.

Due to these concerns about the future of the Williamson Act Program, the Agricultural & Natural Resources Policy Committee of the California State Association of Counties (CSAC) convened a conference call on August 14th to provide a briefing on efforts to restore funding for the Williamson Act Program and invited the 54 counties with Williamson Act programs to participate in the discussion. The following are staff's summary notes from the conference call:

1. Karen Keene, CSAC staff, and Supervisor Mike Nelson, Merced County, Chair, A&NR Policy Committee opened the discussion.
2. Karen Keene, CSAC summarized the status of state subvention funding for the Williamson Act Program and CSAC's official position.

Most Recent State Subvention Funding

- FY 07-08 – Williamson Act Program (subvention funds to local governments) was fully funded at \$39 million in state budget approved by State Legislature and signed by the Governor.
- FY 08-09 – Williamson Act Program was reduced by 10% at \$34.7 million in state budget approved by State Legislature and signed by the Governor.
- FY 09-10 – State Legislature approved a 20% reduction to Williamson Act Program at \$28 million; however, Governor's "blue penciled" the funding to just \$1,000.

CSAC Position

- CSAC position on the Williamson Act Program is that funding should be fully restored to historic level in FY '07-08 at \$39 million. Note that Contra Costa County has endorsed early CSAC position in 2004 that called for full funding of the Williamson Act Program.
- CSAC's Rural Counties Caucus has formed a coalition with the California Farm Bureau, California Cattlemen's Association, Sierra Club, and other statewide organizations, to initiate a broad based and grass roots effort to restore funding for the Williamson Act Program, and at minimum they are seeking to reinstate the \$28 million the State Legislature appropriate for FY '09-10. CSAC and coalition members are working through Assemblyman Jim Nielsen (R-Gerber) to restore the \$28 million for the Williamson Act Program.

3. CSAC and coalition members have begun already begun lobbying of officials in Governor's administration. They have been emphasizing that the Williamson Act is the only statewide agricultural / open space conservation program. The \$28 million cost of the program is "budget dust" when compared to other state programs. The \$28 million is a small investment by the state yielding higher returns statewide in terms of conserving agricultural/open space lands. Also, the Williamson Act supports and complements statewide effort on climate change and reducing greenhouse gas emissions.
4. Karen Keene, CSAC, noted that State Senator Steinberg's lawsuit seeking to stop Gov.'s blue pencil of items in previously approved state budget includes restoration of the \$28 million appropriated by State Legislature for FY 09-10. However, County Council Association is not very optimistic that Sen. Steinberg's lawsuit will succeed.

Additionally, there is real doubt among Capitol insiders that State Legislature will have the ability to re-open or re-visit the FY 09-10 budget before the start of the next legislative session beginning January 2010.

5. Key issue under discussion is whether the Governor's blue pencil of Williamson Act Program funding to essentially nothing (\$1,000.00) will be permanent. Apparently, the Governor has since 2004 signaled his intention to de-fund the program, but CSAC and others (e.g. CA Farm Bureau) have succeeded in keeping the program funded. There is real uncertainty about whether the program will survive a state level.

- ▶ ***If the state no longer provides subvention funding at FY 07-08 level of \$39 million or even restore the \$28 million appropriated for FY 09-10, what reason would some Counties have to backfill the loss of state subvention funding in order continue their Williamson Act Program when they have other pressing budget priorities?***

Many Counties, especially in Central Valley, those receiving hundred of thousands or millions of dollars in state subvention funding, have indicated that they will need to either end their local program because they cannot backfill the funding loss from state, or, they will need to find an alternative funding source. Several Counties have stopped accepting applications to establish new Williamson Act contracts and others are actively considering initiation of the non-renewal process for Williamson Act contracts as an initial start to ending the local program.¹

¹ Note: CA Farm Bureau has already issued an alert to its membership about objecting to County-initiated non-renewal process, signaling that they may fight for program survival at the County-level, putting Board of Supervisors under renewed pressure.

6. Karen Keene, CSAC, introduced potential legislative proposal that would provide some relief to Counties thinking about non-renewing WA contracts. Under existing law, when a WA contract is non-renewed, the property taxes gradually re-inflate from the WA value to their unrestricted rate (i.e. ordinary Prop. 13 value). Non-renewal may be initiated by either landowner or the County. However, if County initiates non-renewal and landowner objects, the re-inflation of property tax does not begin for 4 years. That effectively penalizes the County-initiate non-renewal process. CSAC has preliminarily drafted potential legislation that would allow for accelerate re-inflation of property tax upon non-renewal by County.
7. Supervisor Mike Nelson, Merced County, opened general discussion about what Counties are considering in terms of continuation of local WA Program and on the potential CSAC leg. proposal to allow Counties accelerated re-inflation of property tax under County-initiated non-renewal:
 - Central Valley counties – Fresno, King, Merced, Tulare, etc., indicated that they cannot sustain their local Williamson Act programs without the state subvention funds. Each indicated that they may have to leave the program or find an alternative fund source to sustain the program. Some of the Central Valley counties noted some urgency in decision to stay in the program before Nov. 1, 2009, since under the statute they would need to issue the non-renewal to landowners by that date or wait until next year. It was noted by Fresno County representatives that the non-renewal process for them would a significant undertaking because it involves notice on thousands of parcels and hundreds of landowners.
 - Marin, Napa, and Sacramento counties indicated that they will likely retain program for at least one more year, and may consider leaving program if Governor and State Legislature do not restore funding for the Williamson Act Program to historic levels.
 - There was no consensus among conference call participants on the potential CSAC legislative proposal for accelerated re-inflation of property tax under County-initiated non-renewal. Several problems were identified with this proposal:
 - CA Farm Bureau would likely put up strong resistance to this idea – it might fracture the coalition and there is a need to maintain solidarity; and,
 - Mixed message to Governor or State Legislature – need to emphasize strong commitment to keeping the program, this signals a message that counties are willing to let program go away, if the state eases the County-initiated non-renewal process.

8. Next Steps for CSAC A&NR Policy Committee.

- a. Report to CSAC Executive Committee.
 - b. Strengthen message of the coalition to stress that restoring program funding is essential to local Counties economy, particularly those that have local economies based on agricultural.
 - c. Poll all the Counties participating in Williamson Act Program to find out what they intend to do about local retention of the program given that Governor has essentially de-funded the program.
 - d. Continue to explore legislative remedies as a contingency, if, as some fear, the Governor's action means it is likely that state program will no longer be funded
9. Concluding remarks of some conference call participants: ***CSAC and the coalition must put the pressure on the Governor and State Legislature. CSAC and the coalition must maintain solidarity! Counties that are considering temporarily absorbing the loss in state subvention funds, need to think about the mixed message this might send to Governor and certain Legislators – Who will ask why should the State should continue funding the program if the counties have found a funding alternative? Don't give them an excuse to cut state funding to the only statewide program that has successfully conserved agricultural/open space lands and relegate funding responsibility for a statewide program to the County level!***

Attachments (3)

1. Letter from Chair, Board of Supervisors to CCC State Legislative Delegation Opposing Elimination of State Subvention Funding, December 9, 2008
2. Map of Agricultural Preserves in Contra Costa County, 2007 (Williamson Act contracted lands)
3. Williamson Act Program Statewide: Acreage Enrolled by County and State Subvention Funding by County

CC: CAO
County Assessor (attn: Jim Lynch)
County Agricultural Commissioner
County Counsel
BGO File

The Board of Supervisors

County Administration Building
651 Pine Street, Room 106
Martinez, California 94553

John Gioia, 1st District
Gayle B. Uilkema, 2nd District
Mary N. Piepho, 3rd District
Susan A. Bonilla, 4th District
Federal D. Glover, 5th District

**Contra
Costa
County**



John Cullen
Clerk of the Board
and
County Administrator
(925) 335-1900

December 9, 2008

The Honorable Mark DeSaulnier
California State Senate
Sacramento, CA 95814

The Honorable Loni Hancock
California State Senate
Sacramento, CA 95814

The Honorable Tom Torlakson
California State Assembly
Sacramento, CA 95814

The Honorable Nancy Skinner
California State Assembly
Sacramento, CA 95814

The Honorable Joan Buchanan
California State Assembly
Sacramento, CA 95814

RE: Opposition to Elimination of Funding for Williamson Act Program

Dear Senators DeSaulnier and Hancock and Assemblymembers Torlakson, Skinner, and Buchanan,

On behalf of the Contra Costa County Board of Supervisors, I am writing to express our strong opposition to the Governor's November Special Session State Budget proposal that would eliminate \$34.7 million in Williamson Act subventions. While we understand the severity of the current economic crisis, this permanent elimination of the subvention payments will have irreversible adverse consequences at the local, state and national level.

Enacted in 1965, the Williamson Act is a voluntary program that provides lower property taxes to agricultural landowners in exchange for their contractual commitments with participating cities or counties to keep their land in agricultural or open space uses for at least 10 years. In 1971, state funding was provided which created a formula for allocating payments to local governments based on acreage enrolled in the program. Today, nearly one-third of all the privately owned land in the state is enrolled in a Williamson Act contract. Those 16 million acres constitute more than one-half of the state's 29 million acres of farm and ranchland.

For cities and counties, this financial support has provided a tangible incentive for local governments to stay in the program and initiate more contracts by partially replacing property tax revenues lost on enrolled land. Property tax revenue growth has dropped

considerably in many parts of the state and will continue to decline as the housing market continues to slow. If the subventions are not funded, there is no doubt that cities and counties will be forced to discontinue their participation in the Act given local budgetary conditions. Although Contra Costa County's subvention from the State for our Williamson Act Program is not very substantial (this year's claim is approximately \$68,000), these funds support important activities associated with administering this statewide program.

For California, eliminating the subvention payments is the first step towards a total unraveling of the broadest based agricultural conservation program in the State. California is losing its working landscapes at an alarming rate while simultaneously faced with tremendous population pressure that further jeopardizes the economic viability of thousands of farming and ranching enterprises. Even with the Williamson Act, the Department of Conservation estimates over 397,000 acres of farmland were converted to other uses from 2000 to 2002.

We feel very strongly that the Williamson Act has proven to be an effective tool for encouraging the preservation of existing farmland. With the State's emphasis on the reduction of greenhouse gases, the Williamson Act is excellent tool that local governments can use to encourage the protection of agricultural lands and open space. Therefore, we strongly urge you to oppose the elimination of the funding that supports this important farmland and open space protection program.

Sincerely,

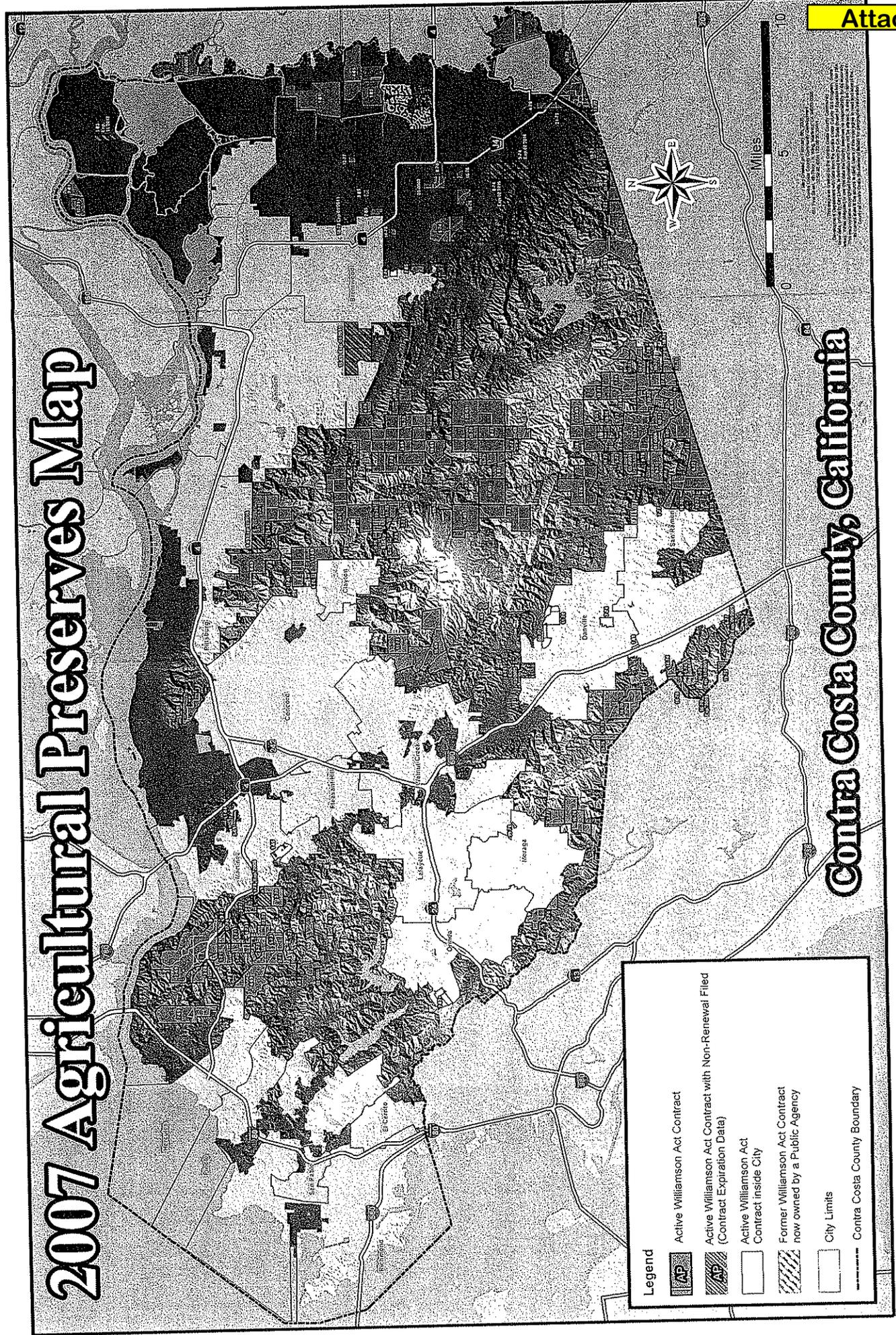


FEDERAL D. GLOVER
Chair, Board of Supervisors

cc: Board of Supervisors
David Twa, CAO
Gus Kramer, Contra Costa County Assessor
Catherine Kutsuris, Contra Costa DCD Director
Cathy Christian, Nielsen Merksamer
Contra Costa County Agricultural Task Force
Contra Costa Mayors' Conference
City of Brentwood
City of Oakley
Bay Area Land Trust
Discovery Bay CSD
Bethel Island MAC
Byron MAC
Knightsen MAC

2007 Agricultural Preserves Map

Contra Costa County, California



Legend

-  Active Williamson Act Contract
-  Active Williamson Act Contract with Non-Renewal Filed (Contract Expiration Data)
-  Active Williamson Act Contract inside City
-  Former Williamson Act Contract now owned by a Public Agency
-  City Limits
-  Contra Costa County Boundary

Map prepared by the Contra Costa County Agricultural Preserves Office, 1000 Contra Costa Blvd., Suite 200, Walnut Creek, CA 94597. Phone: (925) 938-7000. Fax: (925) 938-7001. Website: www.contracostacounty.com/agriculturalpreserves. Map data derived from the California Statewide Geographic Information System (CALGIS) and other sources. The County is not responsible for errors or for any consequences arising from the use of the information contained in this map. The County is not liable for any damages, including consequential damages, arising from the use of this map. The County is not responsible for any changes in the information contained in this map. The County is not responsible for any omissions or inaccuracies in the information contained in this map. The County is not responsible for any errors or for any consequences arising from the use of the information contained in this map. The County is not liable for any damages, including consequential damages, arising from the use of this map. The County is not responsible for any changes in the information contained in this map. The County is not responsible for any omissions or inaccuracies in the information contained in this map.

APPENDIX C

TOTAL REPORTED ENROLLMENT (2007)

Total Reported Enrollment (Acres)

Participating Local Jurisdictions	2007									
	Land Conservation Act*		Farmland Security Zone*				Agricultural Conservation Easement		Other Enforceable Restriction	TOTAL
	Prime	Nonprime	Urban		Non-Urban		Prime	Nonprime		
Alameda	2,459	133,066	-	-	-	-	-	-	-	135,525
Amador	5,230	88,554	-	-	-	-	-	-	-	93,783
Butte	109,711	106,171	-	-	-	-	-	-	-	215,882
Calaveras	566	133,891	-	-	-	-	-	-	-	134,457
Colusa	65,857	194,355	15,881	699	40,380	2,378	-	-	-	319,551
Contra Costa	9,559	37,749	-	-	-	-	-	-	-	47,308
El Dorado	2,252	32,634	-	-	5	180	-	-	-	35,071
Fresno	985,729	485,480	-	-	25,612	3,482	-	-	-	1,500,303
Glenn	61,537	265,749	13,417	500	73,114	2,226	-	-	-	416,544
Humboldt	4,661	195,495	-	-	236	31	-	-	-	200,422
Imperial	131,273	4,464	-	-	-	-	-	-	-	135,737
Kern	628,962	919,117	25,176	-	133,751	-	-	-	-	1,707,006
Kings	282,278	111,621	28,851	227	245,499	10,642	-	-	-	679,118
Lake	5,815	44,061	-	-	-	-	-	-	-	49,876
Lassen	16,036	287,280	546	34	11,189	7,734	-	-	-	322,819
Los Angeles	-	-	-	-	-	-	-	-	40,031	40,031
Madera	205,468	276,514	12,935	362	41,593	2,091	328	-	-	539,290
Marin	1,636	84,951	-	-	290	16,772	-	-	-	103,649
Mariposa	-	205,342	-	-	-	-	-	-	-	205,342
Mendocino	34,758	463,171	-	-	-	-	-	-	-	497,929
Merced	250,014	200,749	-	-	-	-	-	-	-	450,763
Modoc	16,070	100,919	-	-	-	-	-	-	-	116,989
Mono	13,310	-	-	-	-	-	-	-	-	13,310
Monterey	61,397	668,108	12,620	1,695	11,486	5,477	-	-	2,613	763,396
Napa	18,294	51,884	-	-	-	-	-	-	-	70,178
Nevada	3,349	804	-	-	-	-	-	-	2,485	6,638
Orange	285	7,849	-	-	-	-	-	-	-	8,134
Placer	15,188	27,414	-	-	-	-	-	-	-	42,601
Plumas	5,576	72,824	-	-	1,160	3,435	-	-	-	82,996
Riverside	52,825	6,601	-	-	-	-	255	214	-	59,895
Sacramento	88,771	98,331	-	-	-	-	-	-	-	187,102
San Benito	52,529	530,993	-	-	-	-	-	-	-	583,522
San Bernardino	2,247	2,402	-	-	-	-	-	-	-	4,649
San Diego	4,840	57,214	-	-	-	-	-	-	-	62,054
San Joaquin	333,697	143,522	15,026	79	34,584	10,531	-	-	-	537,439
San Luis Obispo	87,584	706,162	462	67	55	64	-	-	-	794,394
San Mateo	-	-	-	-	-	-	-	-	-	-
Santa Barbara	71,993	476,484	-	-	133	-	170	1,996	-	550,777
Santa Clara	10,316	302,322	-	-	-	-	-	-	-	312,638
Santa Cruz	2,702	14,182	82	32	-	10	-	63	-	17,071
Shasta	23,166	164,018	-	-	-	-	-	-	-	187,184
Sierra	1,919	34,620	-	773	-	2,904	-	-	-	40,216
Siskiyou	91,232	319,760	-	-	-	-	-	-	-	410,992
Solano	118,555	146,710	-	-	-	-	1,601	1,979	-	268,845
Sonoma	42,321	230,937	-	-	-	-	-	-	-	273,258
Stanislaus	290,971	400,076	-	-	-	-	-	-	-	691,048
Sutter	49,860	13,162	-	-	-	-	-	-	-	63,022
Tehama	50,829	737,818	2,655	2,467	1,190	5,044	-	-	-	800,003
Trinity	21,805	231	-	-	-	-	-	-	-	22,035
Tulare	573,105	513,565	11,132	50	-	-	-	-	686	1,098,538
Tuolumne	119,932	-	-	-	-	-	-	-	-	119,932
Ventura	46,653	79,459	1,547	661	426	248	-	-	-	128,993
Yolo	242,176	173,798	158	1	-	-	200	7	-	416,340
Cities										
Camarillo	75	1	-	-	-	-	-	-	-	76
Hayward	-	384	-	-	-	-	-	-	-	384
Menlo Park	-	-	-	-	-	-	-	-	-	-
Newark	-	-	-	-	-	-	-	-	-	-
Palo Alto	149	317	-	-	-	-	-	-	-	466
Perris	-	-	-	-	-	-	-	-	-	-
Redlands	-	-	-	-	-	-	-	-	-	-
Totals										
Counties	5,317,297	10,352,582	140,488	7,647	620,702	73,250	2,553	4,259	45,815	16,564,593
Cities	224	702	-	-	-	-	-	-	-	926
Grand Totals	5,317,521	10,353,284	140,488	7,647	620,702	73,250	2,553	4,259	45,815	16,565,519

*Totals include both continuing term and nonrenewal contracts.

Open Space Subvention Act Payment Claims

Participating Local Jurisdictions	2007										TOTAL
	Land Conservation Act		Farmland Security Zone				Agricultural Conservation Easement		Other Enforceable Restriction		
	Prime	Nonprime	Urban		Non-Urban		Prime	Nonprime			
			Prime	Nonprime	Prime	Nonprime					
Counties											
Alameda	\$ 11,896	\$ 87,205	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 99,101
Amador	\$ 25,445	\$ 85,372	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 110,818
Butte	\$ 542,799	\$ 96,762	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 639,561
Calaveras	\$ 2,830	\$ 127,971	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 130,801
Colusa	\$ 315,902	\$ 194,324	\$ 127,049	\$ 5,594	\$ 201,898	\$ 2,378	\$ -	\$ -	\$ -	\$ -	\$ 847,145
Contra Costa	\$ 33,225	\$ 33,930	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 67,155
El Dorado	\$ 11,043	\$ 30,625	\$ -	\$ -	\$ 25	\$ 180	\$ -	\$ -	\$ -	\$ -	\$ 41,874
Fresno	\$ 4,657,724	\$ 481,140	\$ -	\$ -	\$ 128,061	\$ 3,482	\$ -	\$ -	\$ -	\$ -	\$ 5,270,408
Glenn	\$ 301,260	\$ 264,288	\$ 107,337	\$ 4,003	\$ 365,570	\$ 2,226	\$ -	\$ -	\$ -	\$ -	\$ 1,044,684
Humboldt	\$ 23,221	\$ 192,578	\$ -	\$ -	\$ 1,178	\$ 31	\$ -	\$ -	\$ -	\$ -	\$ 217,007
Imperial	\$ 557,078	\$ 2,946	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 560,024
Kern	\$ 2,972,471	\$ 890,458	\$ 201,411	\$ -	\$ 668,755	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 4,733,094
Kings	\$ 1,103,521	\$ 106,845	\$ 230,805	\$ 1,817	\$ 1,227,497	\$ 10,642	\$ -	\$ -	\$ -	\$ -	\$ 2,681,127
Lake	\$ 27,555	\$ 41,101	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 68,657
Lassen	\$ 79,179	\$ 285,663	\$ 4,364	\$ 272	\$ 55,945	\$ 7,734	\$ -	\$ -	\$ -	\$ -	\$ 433,157
Los Angeles	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 40,031	\$ -	\$ 40,031
Madera	\$ 672,824	\$ 256,441	\$ 102,546	\$ 2,893	\$ 207,963	\$ 2,091	\$ 1,639	\$ -	\$ -	\$ -	\$ 1,246,397
Marin	\$ 7,987	\$ 83,951	\$ -	\$ -	\$ 1,450	\$ 16,772	\$ -	\$ -	\$ -	\$ -	\$ 110,160
Mariposa	\$ -	\$ 183,869	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 183,869
Mendocino	\$ 173,280	\$ 451,228	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 624,508
Merced	\$ 1,228,884	\$ 200,468	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,429,352
Modoc	\$ 80,348	\$ 100,658	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 181,006
Mono	\$ 66,548	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 66,548
Monterey	\$ 126,641	\$ 655,917	\$ 100,964	\$ 13,559	\$ 57,430	\$ 5,477	\$ -	\$ -	\$ 2,338	\$ -	\$ 962,326
Napa	\$ 48,065	\$ 44,220	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 92,285
Nevada	\$ 16,344	\$ 299	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,315	\$ -	\$ 18,958
Orange	\$ 157	\$ 194	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 351
Placer	\$ 24,399	\$ 17,390	\$ -	\$ -	\$ -	\$ 1,323	\$ -	\$ -	\$ -	\$ -	\$ 43,112
Plumas	\$ 27,850	\$ 66,523	\$ -	\$ -	\$ 5,800	\$ 3,435	\$ -	\$ -	\$ -	\$ -	\$ 103,609
Riverside	\$ 200,631	\$ 5,801	\$ -	\$ -	\$ -	\$ -	\$ 1,275	\$ 214	\$ -	\$ -	\$ 207,921
Sacramento	\$ 438,220	\$ 88,853	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 527,073
San Benito	\$ 237,955	\$ 524,809	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 762,764
San Bernardino	\$ 10,258	\$ 1,493	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 11,752
San Diego	\$ 23,390	\$ 56,574	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 79,964
San Joaquin	\$ 1,479,728	\$ 124,294	\$ 120,208	\$ 632	\$ 172,920	\$ 10,531	\$ -	\$ -	\$ -	\$ -	\$ 1,908,313
San Luis Obispo	\$ 399,609	\$ 684,546	\$ 3,696	\$ 536	\$ 275	\$ 64	\$ -	\$ -	\$ -	\$ -	\$ 1,088,726
San Mateo	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Santa Barbara	\$ 213,603	\$ 420,782	\$ -	\$ -	\$ 666	\$ 849	\$ 1,996	\$ -	\$ -	\$ -	\$ 637,896
Santa Clara	\$ 45,881	\$ 295,963	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 341,843
Santa Cruz	\$ 6,556	\$ 13,558	\$ 653	\$ 258	\$ -	\$ 10	\$ -	\$ 63	\$ -	\$ -	\$ 21,097
Shasta	\$ 115,830	\$ 163,803	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 279,632
Sierra	\$ 9,595	\$ 33,237	\$ -	\$ 6,186	\$ -	\$ 2,904	\$ -	\$ -	\$ -	\$ -	\$ 51,922
Siskiyou	\$ 454,206	\$ 316,449	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 770,655
Solano	\$ 581,850	\$ 126,527	\$ -	\$ -	\$ -	\$ -	\$ 8,007	\$ 1,979	\$ -	\$ -	\$ 718,362
Sonoma	\$ 211,606	\$ 227,385	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 438,990
Stanislaus	\$ 1,101,751	\$ 365,193	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,466,943
Sutter	\$ 249,142	\$ 13,162	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 262,304
Tehama	\$ 198,625	\$ 710,495	\$ 21,242	\$ 19,735	\$ 5,950	\$ 5,044	\$ -	\$ -	\$ -	\$ -	\$ 961,091
Trinity	\$ -	\$ 21,805	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 21,805
Tulare	\$ 2,827,269	\$ 494,005	\$ 89,057	\$ 400	\$ -	\$ -	\$ -	\$ -	\$ 686	\$ -	\$ 3,411,417
Tuolumne	\$ -	\$ 107,097	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 107,097
Ventura	\$ 230,627	\$ 77,141	\$ 12,376	\$ 5,286	\$ 2,128	\$ 248	\$ -	\$ -	\$ -	\$ -	\$ 327,805
Yolo	\$ 1,115,072	\$ 165,689	\$ 1,265	\$ 8	\$ -	\$ -	\$ 998	\$ 7	\$ -	\$ -	\$ 1,283,038
Cities											
Camarillo	\$ 375	\$ 1	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 376
Hayward	\$ -	\$ 384	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 384
Menlo Park	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Newark	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Palo Alto	\$ 745	\$ 304	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,049
Perris	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Redlands	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Totals											
Counties	\$ 23,289,879	\$ 10,021,026	\$ 1,122,972	\$ 61,178	\$ 3,103,511	\$ 74,573	\$ 12,767	\$ 4,259	\$ 45,369	\$ -	\$ 37,735,535
Cities	\$ 1,120	\$ 689	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,809
Grand Totals	\$ 23,290,999	\$ 10,021,714	\$ 1,122,972	\$ 61,178	\$ 3,103,511	\$ 74,573	\$ 12,767	\$ 4,259	\$ 45,369	\$ -	\$ 37,737,344