

**SIX STATE ENTITIES ACTING WITHIN THE DELTA:
ROLES, RESPONSIBILITIES & REVIEWS OF**

CALIFORNIA PUBLIC UTILITIES COMMISSION

DEPARTMENT OF FISH AND GAME

DEPARTMENT OF WATER RESOURCES

RECLAMATION BOARD

STATE LAND COMMISSION

AND THE

STATE WATER RESOURCES CONTROL BOARD

Prepared for Delta Vision

**April Manatt
December 2007**

INTRODUCTION

Executive Order S-17-06 created a seven-member Blue Ribbon Task Force to help craft a new and ongoing vision for management and sustainability within the Delta and Suisun Marsh regions. The Task force must submit its Delta Vision report to the Governor by January, 2008, and issue a Strategic Plan to implement its Delta Vision by October, 2008.

Since its creation in 2006, the Task Force has commissioned many research projects and studies and held a number of public workshops to seek and disseminate information on the Delta debate. As part of this ongoing effort, the Task Force sought additional information about the roles, responsibilities, programs, and oversight reports associated with state agencies acting within the Delta and Suisun Marsh region.

The following report summarizes the roles and responsibilities of the California Public Utilities Commission, the Department of Fish and Game, the Department of Water Resources/Reclamation Board, the State Lands Commission, and the State Water Resources Control Board. The report also discusses oversight reports, critiques, and recommendations associated with the activities of these entities from 2000 to the present. The report assumes that readers have a basic level of familiarity with the policies, features, and problems of the Delta estuary. For background information about the Delta and Suisun Marsh regions, their history, challenges, and governance, readers may wish to review the Delta Vision Task Force's series of Context Memorandums (http://www.deltavision.ca.gov/Context_Memos/Context_Memos.shtml).

The information presented about state agencies and their powers and programs comes from documents and articles published by the agencies themselves and other public agencies, and from discussions with knowledgeable state policymakers. Information concerning comments, critiques, and recommendations of these entities come from the following sources: the California Performance Review, the California Research Bureau, the Department of Finance, the Legislative Analyst, the Little Hoover Commission, the Public Policy Institute of California, the Senate Office of Research, and the State Auditor. The report includes responses to these reports and reviews by the affected state entities and subsequent changes to departmental activities, when available.

The report contains several documents:

- A matrix highlighting each entity's mission and responsibilities, some programs and activities which illustrate their roles within the Delta, and a list of topics included in recent oversight reviews;
- A more detailed report describing and summarizing each entity's roles and responsibilities within the Delta-Suisun Marsh region, including a synopsis of significant oversight reviews, audit reports, and recommendation and reform proposals, with responses from the entities, where available;
- A description of the oversight agencies that issued comments, critiques, and recommendations identified in this report (Appendix A);

- An index of the abbreviations used throughout the report (Appendix B);
- A bibliography of information sources used to prepare these documents (Appendix C).

CALIFORNIA PUBLIC UTILITIES COMMISSION (CPUC)

Legal authority: California Constitution Article XII, §11; California Public Utilities Code §301 et seq.

Governance structure: The CPUC is a state administrative agency consisting of five members appointed by the Governor and approved by the Senate, for staggered six-year terms.

Mission: The CPUC's function is to ensure safe, reliable, and adequate utility services at reasonable rates.

Powers and duties: The CPUC regulates private utility companies that own, operate, control or manage telecommunications, electricity, natural gas, and water utilities. For these entities, the CPUC provides three different types oversight: quasi-legislative (rule-making), quasi-judicial (dispute adjudication), and rate-making (setting fair and reasonable rates). Specifically, the CPUC fixes rates, establishes rules, issues permits, examines records, and prescribes uniform accounting rules for private utility companies. The CPUC also performs regular financial inspections and audits of regulated entities, and conducts investigations of accidents that occurring on utility property. The CPUC is responsible for approving and locating new and extended utility pipelines and transmission infrastructure. The CPUC is also charged with expediting the plans and processes for long-term recovery in areas of the state that have been declared natural disasters and where utilities have sustained severe damage or destruction.

The CPUC also oversees railroad, rail transit, and passenger transportation companies and facilities. The CPUC enforces state and federal laws regulating railroads, public mass transit, and common carrier systems. The CPUC must approve the construction of intersections between highways, streets, and rail lines, and identify construction projects that adversely impact rail safety, and investigate rail-related fatalities and significant crossing accidents.

[For a detailed description of the gas, oil, water, electric, and transportation infrastructure within the Delta Region, please see the Delta Blue Ribbon Task Force Context Memorandum, "Utilities." For a comprehensive overview of ferries, railroads, and shipping channels within the Delta Region, please see the Delta Blue Ribbon Context Memorandum, "Transportation."]

Regulated entities within the Delta: Within the Delta region, the CPUC regulates numerous natural gas transmission and distribution pipelines and storage facilities, petroleum pipelines, power plants, infrastructure, and facilities, several private water companies, and railroad tracks (many built on levees) for the transport of passengers and freight.

Recent oversight and reform efforts: Beginning in the mid 1990s, investigations and critiques of the CPUC have focused on defining and streamlining its core regulatory functions, expediting its permitting and infrastructure site selection processes, improving its accounting, and scrutinizing its infrastructure security regulation and programs.

In 1996, the Little Hoover Commission examined the state's energy and transportation structure and policies in light of a new emphasis on competitive energy markets. The Commission's report covered many areas, including the CPUC's role in regulating private water companies and transportation safety functions. As a regulator of private water utilities, the report found that the CPUC's institutional focus was limited to rate-setting for consumer protection purposes. The Commission found that while rate regulation was still a valid governmental function, the evolution of water policy dictated new priorities including compliance with strict federal water quality standards and water conservation activities to ensure adequate supplies. Due to these factors, along with the CPUC's primary focus on power and telecommunications issues, the Commission recommended shifting the CPUC's authority over private water companies to the State Water Resources Control Board. Responding to the Little Hoover Commission's report, the CPUC maintains that it is the most adept agency at setting reasonable rates for consumers and utility providers.

The Commission's 1996 report also noted that the CPUC's transportation safety functions (including licensing, planning, and safety requirements for railroads and passenger and other common carriers) had been almost entirely pre-empted by the federal government. In light of the federal preemption of most of these activities, the Commission recommended moving the CPUC's remaining transportation licensing and safety functions to the Department of Business, Transportation, and Housing Agency (BTH) where they could be handled by the California Highway Patrol and Department of Motor Vehicles. In response to the 1996 report, the CPUC improved communications with the California Department of Transportation to improve grade crossings, but maintains that its independent safety oversight function serves as a critical check and balance to the Department of Transportation expenditures for grade crossing improvements.

In 2000, state policymakers became concerned with the CPUC's lengthy process for siting electrical transmission lines and the resulting impact on the state power grid. In response to concerns about electricity shortages and consumer costs, the Legislature and Governor approved a measure to require the CPUC to remove barriers to new energy production by setting time limits for siting transmission lines and allocating additional resources for permitting staff (AB 970, Ducheny, Chapter 329 of 2000). Despite the new law, a 2001 report by the California State Auditor found that the CPUC still had not created a mechanism for quickly siting urgent transmission lines. The Auditor cited several reasons for CPUC permitting delays, including a need to better coordinate with federal agencies, slow consultant contracting procedures, and difficulty in working with other agencies' permitting processes. The Auditor recommended several legislative changes, including allowing the CPUC to enforce deadlines on other state and local agencies, and the ability to resolve environmental disputes outside the CEQA process.

In 2001, the Senate Office of Research (SOR) continued to express concerns about the slow pace of the CPUC permitting process for power transmission infrastructure. SOR's report criticized the CPUC's long process for permitting intrastate natural gas pipelines. The report noted that while the Federal Energy Commission's regulatory process was generally resolved within 18 months, the time for CPUC processing of applications generally took two to three years. SOR recommended expediting the CPUC's procedures in

order to reduce energy process and increase availability. SOR also suggested that the CPUC should determine if improvements in its process for permitting underground storage capacity were also necessary.

In response to concerns about its ability to quickly site transmission infrastructure, the CPUC has identified barriers and implemented mechanisms to speed this process, including issuance of the July 26 Transmission Project Review Streamlining Directive. The CPUC is currently evaluating several proposed transmission projects under these new reforms.

In 2004, the Governor's CPR revisited the 1996 Little Hoover Commission critique of the multiplicity of planning and regulatory agencies involved in state energy policy (see above). The CPR identified the CPUC as one agency in a "fractured and inefficient" statewide energy policy, and criticized its role in the siting of energy transmission facilities. Specifically, the report argued that the CPUC's transmission siting process focused only on the localized impacts of facilities and did not adequately consider the overall statewide energy benefits of a facility. The report recommended consolidating all energy-related siting authority within the BTH. The CPR also echoed the 1996 Little Hoover Commission recommendation that the CPUC's railroad safety functions be transferred to BTH. The Governor began working internally on a plan to implement a consolidated energy agency.

In August 2005, Governor Schwarzenegger proposed his plan to consolidate overlapping and duplicative energy policy functions that were spread among various state agencies and commissions. In his letter to the Little Hoover Commission proposing the GRP, the Governor expressed his desire to unify the state's energy policy and create a single point of accountability. He proposed a new cabinet level Energy Agency to reduce fragmentation, eliminate duplication, and provide a more transparent policy-making process. The proposed Agency would assume the CPUC's authority to site transmission lines and related infrastructure.

The Legislative Analyst reviewed the proposed GRB and agreed that consolidating energy-related policy functions into a new entity with direct gubernatorial accountability would improve state energy policy-making and regulation. The LAO argued that having a single energy department or agency (which would include CPUC's functions) would allow for better direction from the Governor and the Legislature and provide more accountability. The LAO acknowledged the CPUC's transmission permitting process as complex, convoluted, and a barrier to new investments. To combat these problems, she recommended that the Legislature explicitly define each agency's role in the permitting process (federal, state, and local), in order to provide better comprehensive planning, allocate responsibilities, assess potential projects' reliability and economic effects, and apportion costs.

In May 2005, the Governor submitted his GRB to the Little Hoover Commission. The Commission reviewed his plan and advised against it, citing legal opinions from the Attorney General and Legislative Counsel that the GRB process could not be used to enact constitutional changes needed to eliminate the duties assigned to the CPUC under the state constitution. Though the Commission called the GRB "legally flawed," it urged the

Governor to revise his proposal and to continue his efforts to create a new Department of Energy with consolidated energy regulation programs. The legal controversy regarding the changes proposed by the Governor's reorganization proposal led the Legislature to reject the plan in August 2005.

In his 2007-08 Budget, Governor Schwarzenegger requested the allocation of \$500 million of federal funds to create a new CPUC utility infrastructure security branch. In its review of the Governor's budget, the LAO argued that the Governor's request was premature and that the Legislature needed to debate the policy merits of this program and outline its priorities and parameters in statute before authorizing any expenditure. The LAO also expressed concern that the funding source was too uncertain to commit for this long-term purpose. Notably, the LAO also cautioned that the proposal would have significantly expanded the CPUC's role beyond regulating private utilities to include municipal utilities. The Legislative Budget committees determined that infrastructure security activities would be better handled by the Office of Homeland Security and directed the federal funds to local emergency providers. In the meantime, the CPUC has established a working relationship with Office of Homeland Security but has not yet developed an overall infrastructure security plan.

DEPARTMENT OF FISH AND GAME (DFG)

Legal authority: California Fish and Game Code §700 et seq.

Governance structure: A department within the Resources Agency, DFG is responsible for implementing the policies of the Fish and Game Commission, a five-member board appointed by the Governor, with Senate approval, which sets policies relating to regulations, permits, licenses, and management of California's fish and wildlife resources. DFG's Director, along with the President of the Fish and Game Commission, and the Director of the Department of Finance, together govern the Wildlife Conservation Board which prioritizes selects, and purchases land and water for recreation purposes and wildlife protection and restoration. DFG has divided the state into seven separate management regions, including a Bay Delta Region (Region 3).

Mission: DFG manages the state's fish and wildlife resources, which are held in trust for the public.

Powers and duties: Historically, DFG's primary duties revolved around administration and management of recreation and commercial fishing and hunting activities for which it recouped its costs through fees. Over time, DFG has assumed a larger role in protecting public trust resources through ecosystem management and broader wildlife monitoring and programs for which it must compete with other agencies and programs for General Fund appropriations. Today, DFG has the following responsibilities:

Data Gathering, Analysis, and Dissemination. DFG conducts biological studies and field investigations to collect, analyze, and disseminate information regarding the protection, conservation, and propagation of birds, reptiles, mammals and fish. For example, together with the Department of Water Resources (DWR) and the State Water Resources Control Board (SWRCB), DFG participates in the Interagency Ecological Program, a coordinated effort to identify negative impacts from humans and water projects on Delta fish and wildlife and to identify and recommend effective mitigation measures. DFG is also a participant in the Delta Risk Management Study, an effort conducted by the DWR to evaluate potential environmental threats to the Delta over the next 200 years and guide future policy decisions regarding levee protections, management policies, and infrastructure investments.

Environmental Review, Regulation, Planning, and Management. DFG reviews and comments on projects with potential impacts on the environment, species, or natural resources as specified by the California Environmental Quality Act (CEQA) and other environmental review processes. DFG also implements the California Endangered Species Act (ESA) which identifies the State's threatened or endangered species and requires conservation and enhancement of those species and their habitats. In this role, DFG recommends species and develops and implements recovery strategies for individual species, for the Commission's approval. DFG can also waive the protections imposed through the ESA by granting "incidental take" permits to persons or entities for legal activities that have been certified through CEQA. DFG also engages in wildlife planning

and protections outside the ESA process. For example, DFG is currently participating with other agencies on the development of comprehensive habitat and species protections under the Natural Community Conservation Planning (NCCP) and Habitat Conservation Plan (HCP) process such as the ongoing Bay Delta Conservation Plan. The HCP and NCCP processes will allow DFG and participating agencies to prepare a regional, multi-species habitat protection plan rather than individual plans for each species.

Licensing and Permitting. DFG grants personal and commercial fishing and hunting licenses. DFG must review and negotiate agreements with persons or entities that want to divert, alter, obstruct, or harm a waterway, or deposit material into a stream, river, or lake. DFG also regulates transport of wild animals, birds, mammals, and aquatic plants and animals.

Land Acquisition and Management. DFG acquires swaps, manages, and improves lands to preserve, protect, and restore fish and wildlife, including fish hatcheries, nature preserves, and other lands. For example, within the Central Valley region, DFG manages more than 70 wetland areas. Each year, DFG provides the Legislature with a list of the lands it acquired during the prior two years and the status of its resource management plans and activities.

Enforcement Activities. DFG can issue violations to persons who interfere with lawful fishing, hunting, and other wildlife regulations. Deputies appointed to enforce wildlife regulations may issue citations and are considered peace officers. DFG can investigate boats, buildings, clothing and other items of persons. DFG can also issue fines to persons discharging wastes into the waters, unless those wastes are discharged under a SWRCB permit. DFG may inspect property, including dams, pipes, canals, and flumes, and ensure that fish are not prevented from free movements in and around waterways.

CALFED Bay-Delta Program: DFG serves as an implementing agency for the following CALFED program elements: levees, ecosystem restoration, watershed, and the environmental water account.

State law specifies that in the event of conflict between DFG goals and activities and those of other state agencies, DFG actions shall prevail, except for the following actions:

- waste discharge requirements established by the SWRCB and its regional boards;
- activities necessary for commerce and navigation;
- necessary activities for the construction, operation, or maintenance of bridge crossings, water conservation and utilization, or flood control projects.

Recent oversight and reform proposals: In recent years, critiques of DFG have focused on land acquisition and management practices, environmental review procedures, money management, and isolation from other similar state government functions.

In June 2000, the State Auditor reviewed state agencies that acquire land for wildlife and habitat mitigation and restoration. The Auditor's report found that state agencies, including DFG, act independently and with regard to specific individual projects, leaving the

state without interagency coordination and comprehensive land acquisition policies, priorities, strategies, and procedures. The report also found inadequacies in the management of acquired lands, and specifically discussed DFG's failure to develop a management and monitoring plan for approximately one-half of its parks and properties. Lack of adequate management of acquired land, the report found, leads to uncertainty as to whether acquired lands continued to serve their desired purpose. DFG responded to this report by noting that in the past, funding for land acquisition did not include sufficient amounts for subsequent monitoring activities. In recent years, DFG has increased its efforts to include monitoring funds in land acquisition proposals and to establish benchmarks and performance goals in its grant applications and requests for funding.

The 2000, the State Auditor's report recommended that the Governor's Office of Planning and Research (OPR) conduct an inventory of lands acquired by state agencies (a recommendation made by the Little Hoover Commission for DFG in 1995), and develop a comprehensive statewide policy for their maintenance and management. The Auditor recommended that the state adopt procedures for more formal coordination of the state agency land acquisitions and overall statewide land objectives. The report urged the DFG to adopt and maintain management and conservation plans for each parcel that identify specific resources present on acquired lands and detailing the specific plans to preserve, protect, or restore those resources and to ensure that acquired lands continue to serve the purposes for which they were acquired. The Auditor also recommended that the Legislature should create a process for earmarking a percentage of future bond proceeds for land maintenance projects, and requiring future land acquisition proposals to include provisions for maintaining acquired properties. OPR agreed with the Auditor's recommendations, but the Resources Agency did not respond to all the Auditor's findings.

In 2001, the Legislative Analyst's Office (LAO) reviewed DFG's administration of its Fisheries Restoration and Grant Program (FRGP), a program initiated in 1981 to provide resources to landowners and public and private entities to restore salmon and steelhead populations with habitat improvements. The LAO noted that DFG had been processing these grants on an individual basis and had failed to set overall restoration priorities. The LAO made several recommendations for streamlining the application process, developing a strategic restoration plan with specific priorities, and requiring regular reports to the Legislature. The LAO also suggested that DFG make changes to its CEQA monitoring and fee collection efforts. The LAO also recommended that the Legislature provide specific criteria about how DFG should spend \$25 million in state bond funds for salmon restoration (Proposition 13, 2000) and activities proposed to improve habitat under the NCCP process.

In 2002, the LAO conducted a study of DFG's role in the CEQA processes for projects with the potential to impact natural resources. The LAO noted that DFG's role is usually not that of a lead agency, but rather limited to commenting on other agencies' CEQA documents. The LAO found that DFG's CEQA role needed improvement in the areas of prioritization, document tracking, mitigation evaluation and fee collections, and recommended that DFG:

- establish a priority system for reviewing and tracking CEQA documents;
- standardize the type and details of the comments it provides to CEQA documents;

- assess the effectiveness of the mitigation measures imposed on projects; and
- reexamine its CEQA fee structure to ensure consistency in application and consider adopting a tiered fee structure so that projects with larger impacts would pay a higher fee.

In response to concerns about the finances and efficacy of DFG's CEQA monitoring program, the Legislature and the Governor increased the filing fees collected by DFG under CEQA and indexed them for inflation (SB 1535, Kuehl, Chapter 667, 2006). The new statute also expressed legislative intent to allocate additional funds to defray the costs of managing and protecting fish and wildlife trust resources.

In a related report that same year, the California Research Bureau (CRB) studied statutes that allow state agencies to perform "certified regulatory programs" in lieu of environmental impact studies required by CEQA. The report noted that the substitution of a certified regulatory program is permitted in certain instances already required to meet detailed environmental criteria (making the CEQA process redundant) or where the CEQA environmental impact studies were not feasible (for example, in cases where hundreds or thousands of individual permits or licenses will be involved annually). The CRB study, using DFG rulemaking as an example, analyzed whether certified regulatory programs were equivalent to CEQA and how the processes and requirements differed. The CRB report found DFG certified regulatory programs functionally equivalent to CEQA in many requirements, but noted significant discrepancies with CEQA in the following instances:

- lack of mandatory consideration of baseline conditions and consideration of inconsistencies with general and regional planning documents;
- no requirement to consider potential cumulative impacts of projects or need to explain why cumulative impacts were deemed not significant;
- no need to study a "no project alternative;"
- lack of a requirement for monitor mitigation measures;
- no need to discuss or disclose why one mitigation alternative was selected over another; and
- less stringent requirements to obtain opinions and comments from other agencies.

Overall, the CRB study concluded that certified regulatory programs "diverge in substantial ways from the requirements of CEQA."

In 2004, the State Auditor examined DFG's funding under the Fish and Game Preservation Fund (Fund). The Fund, representing approximately one-third of DFG's total budget and dedicated to the protection of animals, is primarily comprised of the proceeds from fishing and hunting licenses. Of the money in the Fund, 15% is dedicated to specific statutory activities. Between 2001 and 2004, DFG's relative proportion of revenues has changed with Fund sources constituting a larger share (due to increases in license and permit fees) and General Fund resources decreasing due to reduced appropriations. The Auditor found that revenue restrictions within the Fund caused a relative shift in funding, resulting in disproportionate reductions in non-hatchery programs, such as wildlife habitat protection and restoration. The Auditor recommended that DFG adopt a long-term spending plan to guide future departmental priorities, especially in times of fluctuating fund allocations.

The Auditor also recommended a more thorough assessment of the financial costs associated with each DFG program and urged the DFG to take steps necessary to ensure that adequate funding streams exist. DFG agreed with the Auditor and began implementing these changes, and in 2005, the Legislature passed a bill to require that 33% of revenues from sport fishing licenses to support fish hatcheries and trout programs (AB 7 (Cogdill), Chapter 689, 2005). The new statute also requires DFG to issue biennial reports to the Legislature regarding its implementation of the bill's provisions. DFG also updated its strategic plans, goals, and strategies which include management restructuring proposals to improve internal fiscal and programmatic operations.

In 2004, Governor Schwarzenegger issued an executive order creating the California Performance Review to examine and assess California state government organization and formulate policies to agencies, programs, and operations with the intent of increasing productivity and accountability and reducing costs. The CPR's final report contained numerous recommendations for consolidating and realigning the functions of many state agencies and departments. The report recommended transferring DFG's peace officer and enforcement functions to a new Department of Public Safety and Homeland Security. Such a shift of duties, the report argued, would promote better coordination and efficiency. The CPR report also advised the creation of a new Department of Natural Resources. The report recommended that the new Natural Resources Department assume DFG wildlife management functions (including monitoring, regulating, and advising on activities that impact wildlife) to better align program priorities and eliminate duplication and overlapping responsibilities. The Governor's proposals were never implemented.

In 2005, the Department of Finance (DOF) conducted a comprehensive program and fiscal review of the first five years of CALFED implementation activities. The report included critiques of DFG activities in several categories: the environmental water account (EWA), levee integrity, and ecosystem restoration.

The DOF review found that the EWA has succeeded in ensuring water supplies for the State Water Project (SWP) and the Central Valley Project (CVP), but concluded that fish protections and funding were less successful than anticipated. The report also identified a similar lack of funds for levee integrity programs where DFG is involved in improving emergency response, coordination of permit programs, and development of adequate funding mechanisms.

For ecosystem restoration, where DFG is working to improve aquatic and terrestrial habitats and to recover endangered species, DOF found that activities were proceeding generally according to plan, but at an uneven pace. DOF also found inadequacies associated with setting and managing ecosystem priorities. In recent years, DFG officials note that they have spent more time and effort to narrow and prioritize their project list and to engage in projects with the most likelihood of achieving their stated goals. DFG is currently attempting to create new and broader ecosystem benefits by participating in the multi-agency Bay Delta Conservation Plan process, a multi-species, regional habitat plan pursuant to the HCP/NCCP processes.

In 2005 and 2006, the LAO reported on structural deficits within DFG's internal accounts and programs. Specifically, the LAO focused on shortfalls within the Fish and Game Preservation Fund (FGPF), the account which receives the revenues from hunting and fishing licenses, taxes, and permits and environmental fees and accounts for about 1/3 of the Department's overall budget. Some funds within the FGPA are "nondedicated" and therefore available to support a wide variety of activities; other sources of FGPF funds are statutorily dedicated to 27 specific activities and programs. The LAO found that in previous years, DFG had been overspending in some of its account and using funds from other dedicated accounts to cover these shortfalls, defying statutory mandates. The LAO recommended that DFG discontinue this practice, repay inappropriately diverted moneys, and provide a more transparent accounting of its budget in the future. In 2006-07, the Legislature appropriated \$20 million in one-time revenues to cover past FGPF deficits, and \$6 million in ongoing support to allow some FGPF activities to be funded with General Fund dollars. The Legislature also approved budget trailer language to improve DFG accounting procedures (AB 1803, Chapter 77, Committee on Budget, 2006). Subsequent to these reforms, the LAO found that DFG had achieved compliance, but provided additional suggestions for more budget transparency and accountability.

In 2006, the LAO expressed broader concerns with the Legislature's oversight of DFG. Specifically, the LAO noted that over time, DFG had been subjected to numerous statutory directives and mandates which, taken in total, did not provide clear priorities for DFG activities. The LAO referenced a 2005 State Auditor report which also identified the overall lack of formal, written guiding priorities. The LAO also identified a lack of responsiveness by DFG to legislative inquiries relating to its activities and a number of legally-mandated reports the DFG had failed to provide. DFG responded that it was currently in the process of restructuring its department to make it more efficient. In 2006, DFG created a new water branch to consolidate and coordinate its water policy expertise and programs in a single unit and also reorganized its nine regional offices so that one regional office (Region 3, the Bay-Delta Region) would encompass the entire legal Delta and Suisun Marsh territory, instead of splitting jurisdiction of these areas among several regional offices, as in prior years. DFG also completed an update of its strategic plan to identify core departmental functions and priorities. DFG also indicated its intent to develop a priority-based budget process.

The LAO also examined DFG's Lake and Streambed Alteration Program which requires DFG to issue permits for projects such as bridge construction and levee repairs that could impact streams, lakes, or rivers. While the program was statutorily required to be self-funded through permit fees, the LAO found that DFG transferred over \$1.5 million to this fund from the FGPF to cover excess expenditures. The LAO criticized DFG's slow pace in adopting a full cost recovery fee schedule and encouraged the Legislature to enact one if DFG was not immediately forthcoming.

In March 2007, the LAO urged the Legislature to consider a more aggressive approach to using the "beneficiary pays" principal for Bay-Delta Conservation planning.

In 2007, the LAO discussed the San Joaquin River Restoration Project, a multi-agency settlement agreement which ended a 1988 lawsuit regarding water project impact

mitigations to protect salmon populations in the Delta, including specific water flow requirements and physical and levee improvements in and along the San Joaquin River. The LAO recommended that the Legislature defer appropriations to DFG for this settlement until funding commitments from other parties to the lawsuit were secured. Recently, the federal government approved a proposal authorizing federal participation in this settlement, and perhaps, allowing the expenditure of funds for this purpose.

In 2007, the Public Policy Institute of California issued a detailed report of the Delta's history and myriad policy challenges, and also presented a variety of options for the future management and governance of the region. The PPIC report found that DFG and state agencies acting within the Delta operate independently, and on a project-by-project basis. The report found "no institutional inclination for regional management of resources of broad public interest." The report argues for stronger regional policymaking and statewide interest representation in Delta land use choices.

DEPARTMENT OF WATER RESOURCES (DWR)/ RECLAMATION BOARD (BOARD)

Legal authority: California Water Code Sec. 174 et seq. (Department of Water Resources); California Water Code §8520 et seq. (Reclamation Board).

Governance structure: DWR, a department within the Resources Agency, is responsible for managing California's water resources. DWR also administers, staffs, and carries out the policies and decisions of the Reclamation Board, a seven-member board appointed by the Governor and serving at his pleasure. [In 2008, the Reclamation Board will be renamed the Central Valley Flood Protection Board and will be governed by a nine-member board, with seven members appointed by Governor and two Legislators (the Chairs of the Senate and Assembly policy committees with jurisdiction over water issues) as ex-officio non-voting members].

Mission: DWR manages state water resources for the protection, restoration, and enhancement of natural and human environments and to prevent and minimize flood damage. DWR also provide information about water and its uses and promotes dam safety. The Reclamation Board is responsible for managing and controlling flooding along the Sacramento and San Joaquin Rivers and their tributaries.

Powers and duties: In California, DWR is responsible for the following programs, policies, activities, and infrastructure:

State Water Planning. DWR develops and assesses strategies for managing the state's water resources. Its primary planning document is the California Water Plan. The Water Plan, which DWR updates every five years, quantifies present and future water supplies and demands, includes principles and guidelines for long-range planning (including water storage and recycling programs), and sets water quality objectives.

State and Central Valley Water Projects. DWR operates and maintains the State Water Project, including its storage facilities, canals and pipelines, pumping plants, power plants, and other infrastructure and facilities. DWR also manages flood water storage and bypass systems manages associated with the federal Central Valley Project.

Environmental Studies, Plans, and Programs. DWR is responsible for protecting water resources and the health of related ecosystems. DWR performs water studies in conjunction with other state analyze data on fish and wildlife resources, and to recommend and/or mitigate impacts of human activities and water project operations on fish and wildlife resources. DWR collaborates and coordinates with agencies to control salinity levels and provide long-term water quality solutions for the Delta estuary, and also adopts standards for gray water (untreated wastewater that is not contaminated with toilet discharge) systems for subsurface irrigation. DWR also reviews and comments on environmental documents, including CEQA documents.

Dams. DWR oversees construction, operation, and maintenance of over 1,200 dams. DWR issues permits for projects relating to dams and reservoirs.

CALFED Bay-Delta Program. DWR houses and coordinates the California Bay-Delta Authority, which coordinates 14 public agencies to develop long-term solutions for Delta water quality, supply, flood control, and fish and wildlife protections in the Delta region. DWR is also a designated implementing agency for the following CALFED Bay-Delta Program elements: levees, water supply reliability, water use efficiency, water transfer, watershed, storage, conveyance, and the environmental water account.

Flood Protection, Levees & the Reclamation Board. DWR is responsible for water management, planning, and structural and nonstructural flood management and works throughout the state. DWR encourages preventative floodplain management practices and cooperates with other entities on flood control planning and facility development. Within the Central Valley, DWR is responsible for carrying out additional powers and responsibilities within the Central Valley which are under the jurisdiction of the Reclamation Board.

Reclamation Board. Within the Central Valley, the Reclamation Board is responsible for flood control management along the Sacramento and San Joaquin Rivers and their tributaries. The Reclamation Board provides structural flood control works, including building, maintaining, and repairing federally authorized flood control works within the Delta region, including levees. Of the 1,600 miles of federally authorized levees within the Central Valley, the state has ceded responsibility for operations and maintenance for 80% (1,300 miles) to numerous local reclamation districts; the Reclamation Board, through DWR, continues to actively maintain 300 miles of levees ("project levees"). Though local agencies exercise primary responsibility for most Central Valley levees, the state, through the Reclamation Board within the DWR, continues to provide oversight and coordination and also exercises ultimate responsibility for the federally authorized levee system as a whole and responds to levee breaks in times of emergency. In addition to federally authorized levees, local agencies have authorized, constructed, and maintain approximately 700 additional miles of levees within the Delta region. The Board can direct landowners and other entities to construct, repair, or complete a flood control project according to construction and other standards adopted by the Reclamation Board.

The Reclamation Board provides nonstructural flood control by planning and designating floodways within the Central Valley and preventing or limiting encroachments and development within those floodways when necessary to preserve water flow and to protect lives, land values, and improvements. The Reclamation Board's floodway decisions must include consideration of:

- existing and projected flood control improvements and regulations;
- the degree of flood danger to life, property, and public health and welfare; and
- the types and rates of development occurring within the flood plain.

After the Reclamation Board studies, adopts, and records designated floodways, regulations list approved land uses within those floodways, including: open space,

equipment storage yards, railroads and streets, and uninhabited anchored structures. The Reclamation Board is responsible for issuing permits and variances for activities that are consistent with its authorized land uses within or outside of an adopted flood control plan for projects and development that could affect floodplains, even those that will be maintained by other agencies. Permits granted can require inspections, monitoring, mitigation, notice, or other conditions or oversight. The Reclamation Board can reject permits that threaten or impair levee integrity, obstruct water flows, interfere with public safety, etc. Other public agencies may ask DWR to review their flood plain management regulations.

Encroachments in existence before floodway plans are adopted are automatically permitted by the Reclamation Board, if the encroachments conform to the facility and use requirements. Nonconforming encroachments that do not have a major detrimental impact on the floodway can remain, but those with a major detrimental impact must be removed or modified.

The Reclamation Board can enforce its regulations through enforcement actions against landowners that own, undertake, or maintain works and dwellings in violation of Reclamation Board standards, requirements, and limitations. Enforcement actions can include orders to modify or remove works, construct or operate additional improvements, including additional mitigation works, or the filing or revocation of permits.

Recent oversight and reform efforts: Recent reviews of DWR and Reclamation Board activities focus a variety of topics including the need for adopting clearer program policies and project priorities, increasing state fees and local financial participation, expediting the pace of approving and completing projects, and other issues.

In 1999, the LAO did a comprehensive review of the state's water transfer laws which allow temporary or permanent shifting of water resources from one party to another in the state. Though the LAO found that water transfers could significantly improve management of the state's water resources, the LAO found that the state's laws governing these transactions were fragmented and vague. The LAO recommended developing clearly stated goals for these programs and consolidating the related laws into a single act to reduce existing uncertainties and transaction costs. In April 2002, DWR signed a memorandum of understanding with the United States Bureau of Reclamation and the State Water Resources Control Board to create a Water Transfer Clearinghouse, as was required by the by the 2000 CALFED Implementing Agency Memorandum of Understanding. The 2002 memorandum requires collecting data on water transfers, promoting disclosure of water transfer information, and other activities as needed.

In 2000, the Governor's Proposed Budget suggested giving DWR state funds to match local water agency contributions for "implementing water management programs and water transfer programs to mitigate water shortages and water quality impacts." The LAO criticized the lack of detail regarding the water programs and priorities to be funded. She recommended providing additional details and parameters of these programs before committing state funds for these purposes.

In 2003, the LAO advised the Legislature to restructure DWR's dam safety recovery fees for reviewing and supervising plans to build and alter 1,250 nonfederal dams and for annual inspection costs. The LAO recommended that DWR increase its dam safety fees to eliminate General Fund support of the program. DWR adopted new fees for dams effective July 1, 2007.

In 2004, the LAO outlined DWR's ability to take over levee maintenance from local reclamation districts where local maintenance activities were inadequate. She noted that some new costs associated with the state's new maintenance activities were not fully offset by DWR's existing authorization to collect assessments from the districts previously providing these services. The LAO recommended legislation that would allow the state to recapture the full costs of its levee maintenance activities. In 2007, the Legislature and Governor approved AB 156 (Laird, Chapter 368), which increased DWR's ability to recoup its costs for levy maintenance activities.

In 2004, Governor's CPR report recommended transferring DWR's emergency management functions to a new Public Safety and Homeland Security Department and its infrastructure components to new Infrastructure Department. With regard to DWR's State Water Project, the CPR noted challenges of increased water delivery demands, water quality issues, endangered species protections, and budget staff shortages leading to less maintenance on the old system. The report noted the recent formation of a joint powers authority (JPA) by state water contractors and recommended that the state contract with the JPA to perform various SWP projects and activities, including operating and maintaining facilities and for acquiring water and water rights. The CPR recommended the creation of that the Governor a separate authority within the Resources Agency to focus on infrastructure and other SWP issues.

The Governor's CPR report recommended that DWR develop additional floodplain disaster avoidance plans and increase the dissemination of information useful for local planning. The report also recommended transferring DWR's infrastructure activities, including those related to the SWP and CALFED programs, to a new statewide Infrastructure Authority. In a separate recommendation, the CPR suggested eliminating the Reclamation Board and transferring its duties to either a new Department of Natural Resources or _____. The CPR recommendations were never enacted.

In 2004, the LAO recommended that state lawmakers enact a bill to reduce the State's share of costs for federally authorized flood control projects. Currently, the State pays between 50% and 70% of these matching costs. But because local communities benefit directly from these programs, and in keeping with the "beneficiary pays" principles of CALFED, the LAO urged the Legislature to cap the state's share of costs at 50%.

In 2005, the LAO did a comprehensive review of water policy issues facing the state. She suggested that the state consider expanding its roles and responsibilities for levee maintenance activities in light of minimal local inspection programs and the state's interest and liability in levee performance.

In 2005, the Department of Finance (DOF) conducted a comprehensive program and fiscal review of the first five year's CALFED implementation activities. The report included critiques of DWR activities in several categories including water storage, water use efficiency, and levee integrity.

For water storage, DWR is an implementing agency with a goal of increasing both surface and groundwater storage, and improving the management, reliability, and quality of stored water. The DOF review found that surface water storage projects were behind schedule, but also that CALFED's schedule was not realistic. The review noted that groundwater storage programs, which are faster, cheaper, and controlled locally, are on track. The report did find inadequacies relating to the clarity and accuracy of communications to stakeholders on these programs and confusion as to anticipated benchmarks. The report noted that program priorities should be set according to need and not funding availability.

For water use efficiency, the review found unclear and conflicting goals of this program, discrepancies in milestone targets, lack of interagency coordination, and mixed results. The report noted that water recycling has played a larger role — and received more funding than anticipated — though it is unclear why this change of focus occurred.

For levee integrity, the review highlighted that lack of federal and state funding has delayed progress and not necessarily led to efficient expenditures and prioritization. Also, the report found that because some Delta levees program preceded CALFED plan, conflicts arise between these programs.

In 2005, the LAO recommended establishing a Central Valley Flood Control system-wide assessment to ensure that the beneficiaries of the state's flood management efforts funded the state's expenditures.

In 2005, the LAO criticized the slow pace of DWR allocation of bond funds appropriated to DWR in 2002-03 under Proposition 40 for watershed management and pollution control programs. Specifically, the LAO noted that DWR was still working on grant guidelines and that approximately half of the funds had still not been allocated.

In 2005 the LAO recommended that the Legislature direct DWR to conduct an assessment of the overall integrity of the Central Valley Flood Control System, establish regional benefit assessments, and expand the state's oversight role in non-federally authorized levees. The LAO also suggested leveraging local land use decisions for better flood planning. In 2007, legislative changes were designed to improve coordination between state and local flood planning efforts, increase local accountability for development decisions, and reduce the state's liability for flood damage, including:

- AB 70 (Jones, Chapter 367) requiring cities and counties to contribute a fair share of funds to cover property damage caused by a flood if a court finds that city or county actions increased the state's liability by approving certain kinds of development;
- AB 156 (Laird, Chapter 368) requiring local agencies to adopt flood safety plans as a condition of receiving state funds for levy upgrades; and

- **AB 162 (Wolk, Chapter 162) requiring cities and counties to consult with the Central Valley Flood Protection Board when adopting or revising their General Plan.**

In 2005, the Little Hoover Commission studied governance of CALFED and its role in the Bay-Delta Authority. The report notes the Reclamation Board's determination that levee stability analyses are inherently flawed. The Commission concluded that policy and management decisions within the Delta were not based on robust science or comprehensive data. It recommended independent validation and conformation.

In 2006, the Senate Committee on Natural Resources and Water held five hearings on a proposal by the Governor to ask California voters to approve a state bond measure for flood control and water resource improvements. Afterward, the Committee issued a report with its financial and programmatic priorities and recommendations for the bond funds. As part of its report, the Committee recommended restructuring the Reclamation Board. Citing disappointment with both flood control planning and quality control activities, the Committee urged strengthening the powers, duties, and independence of the Reclamation Board and clarifying its relationship with the Department of Water Resources, various federal agencies, and local flood management entities. California voters approved \$290 million for flood control under the Disaster Preparedness and Flood Prevention Bond Act (Proposition 1E) in 2006.

In November 2006, California voters approved two bond measures to provide an additional \$5 billion in funds for flood control and other water-related improvements: Proposition 1E, the Disaster Preparedness and Flood Prevention Bond Act, and Proposition 84, the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act.

In 2007, the LAO made recommendations to the Legislature regarding strategies for timely and effective expenditure of bond funds under Proposition 1E and Proposition 84, including:

- defining flood projects eligible for funding;
- imposing a financial matching fund requirement for local projects;
- conditioning bond funds for local agencies on improved flood control planning at the local level;
- streamlining environmental review processes and permitting processes for levee repair projects;
- enacting legislation to limit "administrative costs" that could qualify for bond funding;
- giving priority to projects that strengthen the Central Valley flood control system in order to reduce the state's exposure under the *Paterno* decision; and
- requiring oversight, including semi-annual reporting of capital outlays and independent review, of projects.

In 2006, after California voters approved several bond measures, Governor Schwarzenegger ordered state agencies to adopt new control measures for the

expenditure and oversight of bond funds, including: the creation of a strategic plan, adoption of performance measures, and documentation requirements to ensure proper monitoring and oversight. The order also required the state agencies to report annually to the Department of Finance on bond projects status and success with intended goals and required the Department of Finance to audit bond fund expenditures. DWR is currently developing policies to comply with the Governor's order, including tracking of expenditures, seeking new technology and business structures, and additional public outreach.

In 2007, the LAO noted that the State Water Project is an "off budget" item, not currently accounted for in the regular budget process. Due to the integrated, multi-agency and cross-cutting issues associated with the State Water Project, the LAO recommended that the program would receive better legislative oversight if it was included in the state's regular budget process.

In March 2007, the LAO criticized proposed expenditures for DWR's South Delta Improvement Program as inefficient due to lack of federal matching funds needed to perform surface storage feasibility studies and also due to the proposed use of bond fund to replace funds from the beneficiaries of water conservation programs.

In 2007, DWR released its first draft of its Delta Risk Management Strategy (Phase I). This report, to be completed in 2008, will provide information about risks to water supplies from various ecological changes and natural disasters over the next 200 years. In August 2007, a group of academics, researchers, and consultants, operating an Independent Review Panel, reviewed the DRMS and critiqued its contents. The Panel found, "many technical problems in each section of the report," including lack of documentation, weak analyses and models, and failure to provide comprehensive models for predicting outcomes. The Panel expressed concerns that these technical problems would lead to erroneous policy decisions. Mike Healy, the CALFED Bay-Delta Lead Scientist, wrote to the Governor's Delta Vision Blue Ribbon Task Force to warn the Task Force "to use the conclusions of the report and analyses...with caution," until a substantive revision of the report occurred. That revision is ongoing.

In 2007, the State Auditor criticized DWR's administration of funds approved by the California voters pursuant to the following initiatives:

- \$70 million under the Safe Drinking Water, Clean Water, Watershed Protection and Flood Control Collection Bond Act (Proposition 13, 2000),
- \$40 million under the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act (proposition 84, 2006),
- \$290 million under the Disaster Preparedness and Flood Prevention Bond Act (Proposition 1E, 2006).

The Auditor reported that DWR had approved local grants of over \$57 million "based on poorly defined selection criteria and incomplete information." Specifically, the Auditor noted that DWR's project application procedures, adopted against the advice of their attorneys, did not allow for thorough and consistent comparison of the benefits and drawbacks of each proposal for land use, flood control, and habitat protections. The

Auditor noted that for the largest single grant awarded, a \$17.6 million to acquire State Island for major flood control projects, DWR has failed so far to implement any significant flood control works in the six year's since its authorization. The report also documented a lack of monitoring and oversight of approved projects, even where agreements call for monitoring by DWR.

To correct the many and serious deficiencies, the Auditor recommended that DWR institute a variety of application and monitoring reforms, including development of better project selection and ranking processes, better evaluation of proposed structural and recreational project components with regard to merit and overall consistency with flood control goals, requiring detailed and complete reports from approved projects on the status of their ongoing activities, and withholding final payments for projects until they are complete.

In response to these and other concerns, and to improve overall planning and maintenance activities for Central Valley levees, the Legislature adopted a package of flood control bills in 2007 including SB 5 (Machado, Chapter 364), SB 17 (Flores, Chapter 365), AB 156 (Laird, Chapter 368), and AB 5 (Wolk, Chapter 366). Together these bills:

- allow the Reclamation Board to participate in flood control projects that include environmental enhancements and to acquire land outside the San Joaquin Drainage District;
- authorize DWR and the Reclamation Board to bank environmental credits for their flood control efforts;
- require DWR to prepare a status report on the Central Valley's State Plan of Flood Control;
- require local agencies that maintain SWP levees to report annually on their activities to DWR and for DWR to compile these reports in its annual State Plan of Flood Control Report;
- require DWR to develop cost-sharing formulas for flood control projects with a 50% cap;
- condition state funding for local levy upgrades on a local agency's adoption of a flood safety and emergency response plan;
- require DWR to estimate the costs of a flood control facility to standard and allowing DRW to require payment of such costs before the state will create a maintenance area and assume responsibility for the facility; and
- add new state standards for flood facility maintenance and allow DWR and the Reclamation Board to assume responsibility for maintenance of flood facilities previously maintained by another entity if DWR or the Reclamation Board finds that the facility is not being maintained properly.

These bills also recast, renamed, restructured, and added duties to the Reclamation Board, including:

- changing the Reclamation Board's name to the Central Valley Flood Protection Board;
- clarifying the Reclamation Board's independence from DWR and prohibiting DWR from overturning the Reclamation Board's decisions.

- increasing the seven-member board to nine-members with seven members appointed by the Governor and two Legislative Board members (the Chairs of the Senate and Assembly water committees) to serve as ex-officio, non-voting members;
- including professional requirements for four board members:
- requiring the Reclamation Board to act independently of DWR;
- requiring the Reclamation Board to adopt a State Plan of Flood Control for the Central Valley upon its adoption by DWR by December 31, 2008; and
- requiring the Reclamation Board to develop a strategic flood control plan, to review local land use plans, and recommend local improvements for public safety.

In 2007, PPIC issued its Delta report and described the ability of the Reclamation Board to shape land uses within the Delta through its authority over flood control systems. The report found, however, that the Reclamation Board was disengaged from Delta decision-making, noting, "To date, the Reclamation Board has taken little interest in the Delta and, under current policies, focuses only on those issues that either directly affect federally authorized project levees or increase regional flood issues." The report goes on to find that the Reclamation Board, along with DFG and SWRCB, has "no institutional inclination for regional management of resources of broad public interest." The report argues for stronger regional policymaking and statewide interest representation in Delta land use choices. "At a minimum," the report argues, "significant representation of state interests from outside the Delta is needed on the Reclamation Board..."

A Bureau of State Audits Report, due November 1, 2007, will study DWR policies and processes for initiating, reviewing, approving, and funding projects under the Flood Protection Corridor Program (FPCP). The FPCP, enacted by voters in March 2000, provided funding for nonstructural flood management projects, including habitat enhancements and farmland preservation.

STATE LANDS COMMISSION (SLC)

Legal authority: Public Resources Code §6001 et seq.

Governance structure: The SLC is governed by a three-member board consisting of the Lieutenant Governor, the State Controller, and the Director of the Department of Finance. The SLC is staffed by more than 200 employees with expertise in mineral resources, land management, petroleum engineering, natural scientists, and other fields.

Mission: Created in 1938, the SLC preserves and manages more than four million acres of land, tidal and submerged territory, streams, lakes, and navigable waterways given to the State of California by the federal government upon its entry into the union, and also vacant school lands. The SLC also oversees granted lands (lands transferred from the state to local agencies). The SLC manages and administers these lands pursuant to the Public Trust Doctrine to ensure that their beneficial public uses are protected for fisheries, navigation, public access, recreation, wildlife habitat, open space and other public purposes.

Powers and duties: Unlike regulatory agencies within the Delta (including the CPUC, the SWRCB, DWR, etc.), the SLC is a land owner. As a land owner, the SLC interacts with all regulatory agencies that propose projects on or affecting SLC land. Oftentimes, regulatory agencies need advice and permits from SLC to perform their activities. Among other duties, the SLC is responsible for the following activities associated with the protection of its lands and the public's use and benefit of those lands:

- *Environmental Management.* Planning and management of state lands consistent with the Public Trust Doctrine, including acting as lead agency under CEQA, reviewing and commenting on CEQA documents, and implementation of mitigation measures.
- *Land leasing.* The SLC grants leases to individuals and entities for marinas, wharves, timber harvesting, dredging, grazing, mining, or oil, gas, and geothermal development.
- *Management of Granted Lands.* The Legislature has granted tidal and submerged lands to cities and counties for ports, harbors, and other commercial activities. The SLC oversees operations on granted land to ensure compliance with SLC policies and to ensure that land uses continue to conform to statutory conditions and the Public Trust Doctrine.
- *Hazards Management.* Removal of manmade structures on beaches and public waterways that threaten the public's health or safety, or obstruct the use or enjoyment of these public lands or waters.

- ***Land Boundaries.*** Locate and determine boundaries between public and private lands, particularly in tidal or submerged areas to protect public resources and private transactions and development.

Recent oversight and reform efforts: There are very few recent reports reviewing the SLC and recommending changes.

The SLC is responsible for oversight of transmission pipelines that cross state lands. In 2000 and 2002, the Legislative Analyst reviewed petroleum transportation infrastructure regulatory activities and noted the multiplicity of agencies involved, including the State Lands Commission. The LAO recommended naming the State Fire Marshal as the lead agency for coordinating pipeline infrastructure, streamlining the pipeline permitting process, and developing an inventory of high-risk pipeline sites that had leaked in the past. SLC staff responded by stating the need for SLC reviews of pipelines that cross SLC property to ensure public safety, access, and other public trust values.

In 2004, the Governor's California Performance Review recommended eliminating the SLC and transferring its functions to two new consolidated agencies: an Infrastructure Authority and a new Department of Natural Resources. The Governor's CRP proposals were never implemented.

STATE WATER RESOURCES CONTROL BOARD [SWRCB]

Legal authority: The California Constitution Article X; Water Code Section §130 et seq.

Governance structure: The SWRCB, under the administrative oversight of the California Environmental Protection Agency, is a five-member board appointed by the Governor, with Senate approval. The SWRCB membership must include board members which fulfill the categories of required expertise: a licensed attorney (water supply and rights specialty), a registered professional engineer (water supply and rights specialty), a registered engineer (sanitary engineering or water quality specialty), a water quality specialist, and a public member. The SWRCB oversees nine regional water quality control boards established in each of the state's major watershed areas, including the Central Valley Water Quality Control Board (Delta region) and the San Francisco Bay Regional Water Quality Control Board (Suisun Marsh region), which adopt individual regional Basin Plans and enforce state and federal water quality laws.

Mission: Created in 1967 to succeed the State Water Rights Board and the State Water Quality Board, the SWRCB's mission is to ensure that water resources within the state are put to the most beneficial uses possible and to conserve water for the welfare of the public. The SWRCB is charged with balancing all water uses within California, including domestic, agricultural, and environmental uses.

Powers and duties: The SWRCB's primary functions are to regulate and adjudicate water rights in the state, and to plan, enforce, and oversee water quality and water pollution in the context of:

- long-term resource planning, including ground, surface, and recycled water;
- planning and operations of water development projects; and
- wastewater discharges;

The SWRCB adopts and implements statewide water quality control plans and policies to meet current and future state water needs. The SWRCB's state plans set water quality requirements and dictates the beneficial uses to which bodies of water may be put (including recreation, drinking water, habitat, and wetlands). The water quality standards determine the amount of discharges that are allowed in that area from both point sources (specific, identifiable entities and regulated by individual permits, limits, and enforcement provisions, such a factory) and also non-point sources (natural and manmade contaminants which accumulate in water from non-specific sources, such as pesticides, mining residue, and other activities). SWRCB water standards cover effluent limitations, federal Clean Water Act pollution permits, and waste discharge requirements. The SWRCB and its regional boards also adopt regulations, issue permits, and oversee the investigation and clean up of gasoline storage tanks, hazardous and mining waste, and on-site sewage treatment systems.

In addition to its state plan, the SWRCB adopts three special standards: Ocean Standards, Thermal Standards (including water temperature standards for the Delta), and Bay-Delta

Standards. The Bay-Delta standards include provisions to protect the estuary from saltwater intrusion and agricultural drainage, as well as water project operations (flows and diversions). The Bay-Delta Standards assign specific compliance responsibilities to individual water rights holders within the system. The Bay-Delta Standards are implemented through water rights decisions, water quality control policies, and water quality control plans. The SWRCB issues permits consistent with its plans and policies, and enforces violations for projects and activities with a statewide or multi-region significance.

The nine regional boards, with the direction, oversight, and approval of the SWRCB, adopt a basin water plan every three years for their region, and also issue permits, set specific discharge limits, grant waivers, investigate activities, monitor pollutants, and enforce violations within their region.

The SWRCB also prepares and implements, with the regional boards' assistance, statewide water quality storage and retrieval programs, groundwater protection plans, and water reclamation requirements. The SWRCB also provides financial assistance for water recycling programs, wastewater treatment plants, watershed protection efforts, and nonpoint pollution control activities.

The SWRCB is also responsible for water quality research, including recommending projects to be conducted, administering statewide projects for water quality research and coordinating water quality research activities among other entities.

The nine regional boards review CEQA documents that involve projects affecting their region. The SWRCB reviews CEQA documents for projects with statewide or multi-region significance. Though regional basin plans are not subject to CEQA, the State Board's water planning is adopted under a "functionally equivalent" process, as determined by the Secretary of Resources.

CALFED Bay-Delta Programs: The SWRCB serves as an implementing agency for the following CALFED Bay-Delta program elements: water quality, water use efficiency, water transfer, and watershed.

Recent oversight and reform efforts: Recent oversight reports, critiques, and recommendations relating to SWRCB activities address the need for more environmental monitoring, better oversight of regional boards, better prioritization and coordination on expenditure priorities, the need to adjust its fee structure, the backlog of water rights applications, and the need to have SWRCB's enforcement role clarified.

In 2000, the LAO critiqued the efficacy of the SWRCB's groundwater monitoring efforts. The LAO noted that, despite recent funding increases, the SWRCB failed to issue a required legislative report documenting its groundwater monitoring activities. Consequently, the LAO recommended rejecting new resources for SWRCB groundwater monitoring activities.

In 2001, the LAO found that the SWRCB was late in implementing federally required plans to address the state's most polluted bodies of water, jeopardizing federal funding and state control of water quality regulations. Specifically, the SWRCB did not adopt total maximum

daily loads (TMDLs: amounts of point source solution) between 1972 and the 1990s, despite a federal requirement to do so. The LAO recommended that the SWRCB adopt statewide limits and set better guidelines for regional boards. The LAO also recommended streamlining reforms, including allowing regional boards to set these limits while reserving SWRCB authority to reviewing challenges to regional limits. The LAO also suggested that the SWRCB sign an interagency agreement with the Department of Pesticide Regulation and California Department of Forestry and Fire Protection to review and comment on the to decrease adoption timeline and eliminate overlapping reviews. The LAO recommended enacting legislation to formulate a 10-year work plan for the adoption of these point source limits.

In 2000 and 2002, the Legislative Analyst reviewed state regulation of petroleum transportation infrastructure and noted the duplicity of agencies involved, including the SWRCB. The LAO recommended several changes for reducing duplication and overlap to provide greater certainty for regulated entities, including: naming the State Fire Marshal as the lead agency for coordinating pipeline testing and maintenance, streamlining the pipeline permitting process, and developing an inventory of high-risk pipeline sites that had leaked in the past.

In 2002, the California Research Bureau (CRB) issued a report examining a 2001 U. S. Supreme Court ruling which determined that certain isolated wetlands were not subject to the jurisdiction of the United States Army Corps of Engineers, who had been regulating them (The SWANCC case). The Court's ruling left wetland areas mostly unregulated and the CRB report explored the ruling, its impact, and possible legislative and administrative responses. The report noted that some regional water quality control boards had already taken action. For example, the Central Valley Regional Board indicated it would designate wetlands as a beneficial use in future regional plans. To the extent that the Central Valley and other regional boards wanted to begin more aggressive wetlands regulations, the report identified several potential problems, including:

- landowners and project operators who will not realize they now need a permit from the regional water resources control board;
- the necessity for the SWRCB to adopt new permitting requirements, which would be complicated due to CEQA requirements; and
- the need for additional funds for SWRCB programs and staff associated with wetlands permitting, regulatory policies, and Basin Plan amendments.

The CRB report suggested that the Legislature direct the SWRCB to enact regulations regarding new wetland regulatory activities and provide additional funding and notification requirements in future years. Alternately, it proposed having the Legislature clarify the state's role in regulating wetlands by having the SWRCB to adopt specific water quality objectives for wetlands and to issue waste discharge permits for these waters. Finally, the report presented the option of the forming a new and separate regulatory program for wetlands and using bond funds or creating a statewide wetlands conservancy.

In 2002, the CRB studied certain statutes allowing state agencies to perform “certified regulatory programs” in lieu of the environmental impact studies required under CEQA. The substitution of a certified regulatory program is permitted under CEQA in certain instances where state actions are already required to meet detailed environmental criteria (making the CEQA process redundant) or where the CEQA EIR process would not be feasible (perhaps where hundreds or thousands of individual permits or licenses will be involved annually). The CRB study analyzed whether the CEQA and certified regulatory programs were equivalent and highlighted how they differed.

Using the SWRCB’s procedures for adopting and revising water quality control plans, the CRB study compared SWRCB’s certified regulatory program to CEQA on 17 requirement categories (ranging from disclosure requirements, mitigation measures, analysis of alternatives, and public disclosure). The CRB study and found equivalent procedures for nine requirement categories and significant discrepancies with CEQA however in the following instances:

- lack of definitions, criteria, or guidance regarding the identification of “significant impacts.”
- a requirement that the final report includes “reasonable alternatives,” but no direction to compare alternatives, explains why one was selected over another, or examines a no project alternative.
- no requirement to notify other agencies with germane interests.
- no ability of agencies, except the SWRCB, to disapprove the plan.

Overall, the CRB study concluded that certified regulatory programs, like SWRCB’s, “diverge in substantial ways from the requirements of CEQA.”

In 2003, the LAO recommended increasing the fees on SWRCB water rights permits. These water rights, allowing for municipal, industrial, agricultural and other water diversions, for this benefit, applicants are required to pay a one-time fee. The LAO noted that California’s fees for these purposes were both lower than other states and failed to account for ongoing benefits and the costs of compliance monitoring to SWRCB and other agencies, including DFG the fees should be restructured. Specifically, the LAO recommended increasing the fees so that their revenues eliminated the need for General Fund subsidies and also instituting an annual compliance fee.

The LAO’s 2003 report also discussed the considerable backlog in the SWRCB water rights permit applications. The LAO noted that the SWRCB receives approximately 170 applications each year and is able to process about 150 of them. However, over time, a backlog of 680 applications has built up, with over 1,000 applicants waiting to be licensed and inspected. As part of increasing its new water rights permits fees, the LAO recommended including costs associated with this backlog in order to prevent development of new water supplies.

A 2003 State Auditor report noted that regional boards were sometimes slow or less than thorough in assessing and collecting fines from violators and also in following up to ensure

that enforcement activities assigned to violators were actually successfully completed. After the Auditor released these findings, the SWRCB reported implementation of tracking and compliance changes, and worked to educate its regional boards, to ensure that enforcement actions are completed.

In 2003, the LAO reviewed the SWRCB's water rights fee program assessed only a nominal one-time fee on applicants to approve, change, or pay for monitoring of water rights. The LAO recommended increasing the fee and providing an annual charge for long-term mitigation monitoring.

Governor Schwarzenegger's 2004 CPR declared that the SWRCB was part of a fragmented environmental regulatory framework and lacked accountability to the Governor or his Resources Agency Secretary. The CPR also noted that SWRCB's water rights management function— a resource management function — was not even within the Resources Agency, preventing water rights management from being integrated within a larger resource management context. The CPR proposed transferring SWRCB's water rights functions to a new Department of Natural Resources and placing the SWRCB's water quality functions into a reorganized Department of Environmental Protection. A later volume of the report proposed replacing the SWRCB and its regional boards with 10 gubernatorial appointees who would set, monitor, and enforce water quality regulations, issue discharge permits, and perform other activities. However, the CPR recommended that regional basin plans be developed by ad hoc committees that would be disbanded afterwards. The Governor's CPR reforms were never implemented.

In 2004, the LAO's analysis of the Governor's Proposed Budget recommended that users of water from the Bay-Delta region pay a user fee in accordance with CALFED's never-developed "beneficiary pays" principle. The LAO noted that though the Legislature had adopted policy statements supporting the "beneficiary pays principle" in statute, it had never outlined and adopted it as a statutory component of the CALFED's funding. She noted that implementation of this principle might require additional information from the SWRCB which tracks water diversions from the Delta only every three years and whose reports have been unreliable in the past. She suggested that more frequent and accurate reporting recruitments would be helpful.

In 2004, the LAO examined cost-sharing options and implementation of the "beneficiary pays" principle to individual water diversions from the Delta. In advising the Legislature about how it might structure a new water diversion fee, the LAO noted that while information about water diversions associated with federal and state water projects was considerable, data collected by the SWRCB for other water diversions was sporadic and unreliable. The LAO recommended amendments requiring more frequent and accurate reporting.

In 2005, the Department of Finance conducted a performance review of the first five years of the CALFED Bay-Delta program. The review made the following findings with respect to CALFED programs implemented by the SWRCB:

For the Water Use Efficiency Program, SWRCB is an implementing agency for water recycling. Water recycling has played a larger role than CALFED anticipated, and has also received more funding than anticipated, though its it unclear why this change of focus occurred.

For the Drinking Water Quality Program, the program's intent is to provide safe, reliable, and affordable drinking water through source control, treatment technologies, policy development, and water practices, and related projects. DOF noted that progress has been made on most fronts, but controlling sources within the Delta, including agricultural drainage, is delayed due to Central Valley Regional Water Quality Control Board activities. DOF also discovered that funding limitations within the program has shifted the focus from implementing improvement projects to demonstrating new technologies. In addition, DOF found that the program has helped provide better planning tools for local agencies that provide drinking water. There remain, however, unclear targets and priorities within the program. Overall, DOF discusses funding inadequacies that have resulted in a lack of comprehensive approach to water monitoring and assessment. DOF determined that funding availability drives the projects and activities undertaken, not needs.

For watershed management, SWRCB has attempted to strengthen local watershed management activities through grants. DOF found that the program works well in training staff, funding activities, and providing technical assistance, but that a lack of clarity and consistency in communications and financing still exists.

A 2006 state audit found that the SWRCB used erroneous electronic data which caused it to overcharge fees for some and undercharge others. The problems resulted from not taking into account storage authorizations included within individual water rights and limitations on the total allowed diversions. The report found that the automated system the Board had used to calculate water right charges needed to be updated to include this information. It also found that the approval time for water rights was too long, averaging over three years to issue the permit and over 38.2 years to issue related licenses for water rights. The report found that this process was getting less efficient over time and that better tracking of applications could help make the process more efficient.

In 2007, the State Auditor followed up on the SWRCB's progress in addressing the issues identified in the 2005 state audit. The auditor found that the SWRCB had reviewed over 4,000 water rights, but still needed to adopt procedures for ensuring that the data was complete and accurate in their electronic database. The Auditor also found that the SWRCB had adopted some procedures for processing water rights applications in a timelier manner, but that more time was needed to ensure that the expedited process would be effective. In October 2007, the SWRCB replaced its automated system with the Electronic Water Rights Information Management System (eWRIMS) to better track information about water rights, integrate water rights processes and information, and improve the ability to collect and manage fees. The SWRCB also indicated that its Fee Stakeholder Group reviewed the Auditor's findings regarding water rights fees but was not supportive of changing the fee structure. The SWRCB also said that tracking, database, and processing changes were underway to improve the time for approving applications.

A November 2005 Little Hoover Commission report examining the CALFED Bay-Delta program found that the SWRCB expressed uncertainty over how its regulatory powers could best be used to protect water quality, ensure reliability, and preserve the environment. Specifically, the SWRCB noted that CALFED's procedures, timeframes, and objectives, in many instances, remain unclear. CALFED officials are similarly perplexed over how to best use the SWRCB in Delta policy decisions and actions. The Little Hoover Commission recommended that CALFED should "explicitly and strategically define the role of the water board in achieving CALFED goals."

In 2007, the LAO highlighted recent litigation declaring the SWRCB's fees for issuing, modifying, and monitoring water rights to be an unconstitutional tax. The LAO urged the Legislature to withhold action on the SWRCB's budget until the department had time to consider its legal and legislative options to backfill these revenues.

IN 2007, the LAO recommended that the SWRCB update its information technology plan because it was outdated and to ease adoption of a new information technology systems in the future. The LAO focused on the SWRCB's presentation of one technology — the California Integrated Water Quality Systems — to its regional boards as a case study. In this case, the new technology was not uniformly understood or embraced, leading to some regional boards ceasing to input any data into it and causing unnecessary backlogs in permitting, enforcement, and water quality monitoring. She urged a more thoughtful policy process in the future.

The 2007 LAO review also recommended that the Legislature clarify the role of the SWRCB in taking enforcement actions against water polluters in contrast to the enforcement roles of the Department of Toxic Substances Control and the Department of Health Services.