

### **LEGISLATION COMMITTEE**

December 7, 2009 10:30 A.M. 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: November 2, 2009
- 4. Delta Water Legislation Update-Presenters: Lara DeLaney, Cathy Christian
- 5. Draft 2010 State Legislative Platform-Presenters: Lara DeLaney, Cathy Christian
- 6. Draft 2010 Federal Legislative Platform—Presenters: Lara DeLaney, Paul Schlesinger
- 7. Status of 2009 State and Federal Legislation—Presenters: Lara DeLaney, Cathy Christian
- 8. Adjourn

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- 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	HUD	United States Department of Housing and Urban
	Employees		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	MBE	Minority Business Enterprise
	to Kids	M.D.	Medical Doctor
CAER	Community Awareness Emergency Response	M.F.T.	Marriage and Family Therapist
CAO	County Administrative Officer or Office	MIS	Management Information System
CCHP	Contra Costa Health Plan	MOE	Maintenance of Effort
CCTA	Contra Costa Transportation Authority	MOU	Memorandum of Understanding
CDBG	Community Development Block Grant	MTC	Metropolitan Transportation Commission
CEQA	California Environmental Quality Act	NACo	National Association of Counties
CIO	Chief Information Officer	OB-GYN	Obstetrics and Gynecology
COLA	Cost of living adjustment	O.D.	Doctor of Optometry
ConFire	Contra Costa Consolidated Fire District	OES-EOC	Office of Emergency Services-Emergency
CPA	Certified Public Accountant		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	TRANSPAC	Transportation Partnership & Cooperation (Central)
	treatment Program (Mental Health)	TRANSPLAN	Transportation Planning Committee (East County)
et al.	et ali (and others)	TRE or TTE	Trustee
FAA	Federal Aviation Administration	TWIC	Transportation, Water and Infrastructure Committee
FEMA	Federal Emergency Management Agency	UCC	Urban Counties Caucus
F&HS	Family and Human Services Committee	VA	Department of Veterans Affairs
First 5	First Five Children and Families Commission	VS.	versus (against)
	(Proposition 10)	WAN	Wide Area Network
FTE	Full Time Equivalent	WBE	Women Business Enterprise
FY	Fiscal Year	WCCTAC	West Contra Costa Transportation Advisory
GHAD	Geologic Hazard Abatement District		Committee
GIS	Geographic Information System		
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(State Dept of) Housing & Community Development Department of Health and Human Services

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### **Legislation Committee**

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

### **Record of Actions**

### November 2, 2009, 10:30 a.m. Room 108, 651 Pine Street, Martinez

- 1. Introductions
- **2. Public Comment:** No comments were received.
- 3. Record of Action of August 3, 2009 Meeting

The record was accepted.

#### 4. <u>Delta Water Legislation Update</u>

The Committee accepted the report. Cathy Christian and Supervisor Piepho provided additional information about the status of the water legislation.

#### 5. <u>Draft 2010 State Legislative Platform</u>

The Committee accepted the report. Chair Bonilla suggested that staff whittle down the number of sponsored bills to the priority items.

#### 6. Draft 2010 Federal Legislative Platform

The Committee accepted the report. Chair Bonilla suggested that Flood Control staff and the federal lobbyist determine the best projects to submit for the 2010 WRDA bill and fine-tune the priority order.

#### 7. Status of 2009 State and Federal Legislation

The Committee accepted the report. Chair Bonilla suggested that the dates for the lobbying trip be determined as soon as possible. No further action was directed.

#### 8. Adjourned to Next Meeting Scheduled for December 7, 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: December 2, 2009

SUBJECT: Agenda Item #4: Delta Water Legislation Update

#### RECOMMENDATION

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

#### **REPORT**

At a press conference in Los Angeles on November 6, 2009, Governor Schwarzenegger signed SBX7 6 and SBX7 8 by Senate President Pro Tem Darrell Steinberg and expressed his support for the entire Delta/ water reform legislative package approved by the Legislature, in the early morning hours of November 4. (The Governor subsequently signed the three remaining bills in the package.) The agreement came less than one month into the special session on water, called by the Governor in mid-October.

The package totals five bills and included an \$11.14 billion bond bill that will head to the November 2010 ballot to be approved by voters. The bills address a variety of water issues, including the management of the Delta, groundwater monitoring, water conservation, water diversion/use reporting, and governance of the Delta.

Intense closed-door negotiations surrounded the package up until the final hour. The last two sticking points of the all-night session related to the water rights enforcement measure and the further parsing out of the water bond dollars. In the end, the controversial water rights language was dropped, and other provisions regarding water diversions in the Delta were amended into another bill. And, the water bond gained the necessary support with the addition \$1 billion sought by Los Angeles for conservation and monitoring.

The package makes substantial changes to the management of the Delta, and while it does not specifically authorize a peripheral canal, supporters have stated that the package sets the stage for major decisions on Delta conveyance. The legislation does create a new Sacramento-San Joaquin Delta Conservancy, a new Delta Stewardship Council, and establishes a statewide water conservation program, among other things.

Specifically to counties, the package includes a new statewide groundwater monitoring program. The program would require groundwater monitoring by local agencies, the county, water replenishment districts, or a groundwater management agency or association. If these entities choose not to perform the monitoring, they would exclude themselves from receiving any water grants or loans administered by the state, and the Department of Water Resources would assume the responsibility of monitoring. There is an exemption included in the language from this penalty for a service area that qualifies as a disadvantaged community.

Due to the closed-door nature of these legislative negotiations, Contra Costa County's efforts through the Delta Counties Coalition to seek important changes to these bills were largely unsuccessful. Our state legislative delegation showed their support for delta interests by voting against SB 1 (Governance) and SB 2 (Water Bond). For additional information on the impacts of the legislative package on counties and Delta counties specifically, see Attachment A "Impacts of Water Legislation on California Counties," prepared by Solano County Supervisors Reagan and Vasquez.

#### Federal Activity

In light of the passage of this package of legislation and in consideration of the additional federal assistance needed for the Delta and its communities, the Delta Counties Coalition arranged a trip to Washington, D.C. for December 2-4 to meet with key congressional representatives and agency staff. Supervisor Piepho represented Contra Costa County and will provide a report on the outcome of the meetings.

Prior to the trip, the Delta Counties Coalition (DCC) had agreed to promote the following near-term recommendations to our federal delegation and agency staff:

- 1) Establish a process through which the DCC can engage with the administration, and the delegation, on an on-going basis. The DCC must be central to the development of proposals to address Sacramento-San Joaquin Delta issues in a comprehensive, sustainable manner. We also request that representatives from the appropriate federal agencies actively participate on the entities established in California's recently enacted Delta/Water legislative package, including but not limited to, the Delta Stewardship Council, the Delta Protection Commission, the Delta Conservancy, and the Science Advisory Board.
- 2) Secure funding support in the 2010-2011 federal budget and appropriations processes to:
  - a) Assist the DCC in analyzing aspects of the Bay Delta Conservation Plan (BDCP) that will not be covered in the NEPA and CEQA analyses, notably the socio-economic, environmental and hydrologic impacts of BDCP on the region;

- b) Provide resources to permit the DCC to participate with the BDCP as it is developed in order to avoid conflicts and provide implementable outcomes.
- 3) Secure federal support for the local and regional habitat management plans in the five Delta counties, particularly those adjacent to the BDCP and assist federal regulatory agencies and counties in integration of local terrestrial habitat management plans in the five Delta counties with the aquatic habitat being created by Delta Smelt and Salmon Biological Opinions.
- 4) Accelerate federal studies associated with developing storage options and implementing water conservation, recycling, re-use, and regional self sufficiency as part of an improved statewide storage, flood management, and water supply systems.
  - a) Immediate funding to study minimum in-stream flow requirements, as well as salinity in-flows/intrusion and how they affect federal project operation.
  - b) Evaluate the impacts of BDCP and an alternative water conveyance facility (i.e., the Peripheral Canal) on existing project levees and other federal water projects and facilities.
  - c) Develop and fund a new regional landscape level management program or model specifically for the Delta – such as those developed for the Great Lakes, Puget Sound, Everglades, or Chesapeake Bay programs.
- 5) Provide additional resources for infrastructure projects and emergency response projects such as the completion of through Delta transportation corridor studies and levee improvements; and an increase in funding to the Public Safety Interoperability grant program to assist Delta Counties with emergency response and recovery.

In addition to these efforts, the Delta Counties Coalition also recently submitted to our federal delegation a request for support of a project in the 2010 Water Resources Development Act (WRDA) related to the Delta: the Sacramento-San Joaquin Delta Water Infrastructure Authority. This project is intended to serve as the beginning of discussions on how best to align the authorities of the Army Corps of Engineers with efforts to develop and implement a comprehensive solution to the water resource problems facing the Delta. Among other things, our proposal seeks to provide the Corps with the authority to participate in levee improvement, water supply and water quality projects as well as critical ecosystem and habitat restoration initiatives.

**Project Description:** In partnership with Sacramento-San Joaquin Delta counties and communities, authorize the U.S. Army Corps of Engineers to provide financial and other assistance to Delta counties and communities in protecting and enhancing water quality

and quantity, enhancing habitat and the environment for all species in the Delta, improving flood control and protection, and protect Delta counties and communities, their economies, and their quality of life in restoring the Delta for endangered species and water supplies.

#### Summary of State Water Legislative Package

The following is a summary from CSAC staff of the five bills approved by the Legislature in Special Session 7X on water. Comments from County staff in this summary are shown in italics.

## SBX7 1 (Simitian) — Delta Management — Public Resources As Amended on November 4, 2009

SBX7 1, the Delta management reform bill by Senator Joe Simitian, would make changes to the management of the Delta and establish guidelines for the creation of a new Delta plan. Specifically, the bill would do the following:

- Place into statute the concept of co-equal goals; providing a more reliable water supply for California and protecting and restoring the Delta ecosystem.
- Make changes to the Delta Protection Commission (DPC), including changes to its membership and scope. The DPC would be required to develop an economic sustainability plan for the Delta and will study and recommend whether to change the boundaries of the Primary Zone. The DPC will retain its existing authority to consider appeals of Primary Zone land-use decisions.
- Create a new Sacramento-San Joaquin Delta Conservancy. The conservancy would be charged primarily with Delta eco-system restoration. Funding for the conservancy would be appropriated from Proposition 84 and 1E funds, with no ongoing source of funding identified.
- Repeal the Bay-Delta Authority Act.
- Create a new Delta Stewardship Council (Council), and establish the legal framework for the management of the Delta. The Council would be *a regulatory agency* charged with developing a Delta plan, to further the co-equal goals, promote a reliable water supply, promote conservation, and attempt to reduce risks to people, property, and state interests in the Delta.
- The DPC would also be charged with ensuring consistency of the Delta Plan. The Council can review and advise local and regional agencies on the consistency of their plans with the Delta Plan. State and local agencies that propose to implement actions that occur within the legal Delta would be required to submit consistency certifications to the Council. The Council would review the certification to determine whether the project is consistent with the Delta Plan. There are exemptions to this consistency determination, including

routine operation and maintenance, regulatory actions, regional transportation plans, and State Water Project and / Central Valley Project operations.

Additionally, the bill contains an exemption for any plan, program, project, or activity within the secondary zone of the Delta that the applicable metropolitan planning organization (MPO), pursuant to SB 375, has determined is consistent with either a sustainable communities strategy or an alternative planning strategy, and ARB determines meets the greenhouse gas reduction targets. The bill specifically defines "consistent with" to mean, "the use designation, density, building intensity, transportation plan, and applicable policies specified for the area in the sustainable communities strategy or the alternative planning strategy, and any infrastructure necessary to support the plan, program, project, or activity."

The bill requires the State Water Board, in consultation with the DPC, to appoint a Delta Watermaster to provide timely monitoring and enforcement of Board actions. This authority is limited to diversions in the Delta or actions that apply to conditions in the Delta.

- Create a Delta Independent Science Board and Delta Science Program.
- Require the Council to consider the Bay-Delta Conservation Plan (BDCP) for incorporation into the larger Delta Plan.

## SBX7 2 (Cogdill) — Bond Bill — Safe, Clean and Reliable Drinking Water Supply Act of 2010

#### As Amended on November 4, 2009

SBX7 2, by Senator Dave Cogdill, would place before the voters an \$11.14 billion bond for the purposes of financing a variety of water programs, including water supply, Delta sustainability, water system operational improvement, conservation and watershed protection, groundwater protection, water storage, drought relief, and water recycling. The bond does not include any funding for the proposed peripheral canal. The bond would also be issued in at least two stages, by authorizing the sale of no more than half of the bond by 2015.

CSAC will take a position on the bond measure next year following review and approval by the CSAC Agriculture and Natural Resources Policy Committee, Executive Committee, and CSAC Board of Directors.

The following is a summary of the bond's funding categories:

WATER BOND SBX7 2 (Cogdill)	
CHAPTER 5 - Drought Relief	\$455,000,000
- Drought Relief Projects	\$90,000,000
- Economic Impact from Drought	\$90,000,000
- Small Community Wastewater	\$75,000,000

- Safe Drinking Water Revolving Loan	\$80,000,000
- New River	\$20,000,000
- Local and Regional Projects in San	
Diego	\$100,000,000
CHAPTER 6 - Regional Supply	\$1,400,000,000
- IRWMP - allocated	\$1,000,000,000
- (Unallocated/Interregional)	\$50,000,000
- Local Conveyance	\$350,000,000
CHAPTER 7 - Delta	\$2,250,000,000
- Projects	\$750,000,000
- Ag Economy (out of project pot)	[\$250,000,000]
- Eco/ BDCP	\$1,500,000,000
CHAPTER 8 - Statewide	
Flexibility/Storage	\$3,000,000,000
CHAPTER 9 - Watershed and Water	
Quality	\$1,785,000,000
CHAPTER 10 - Groundwater	\$1,000,000,000
	<b>*</b> / • <b></b> • •••
CHAPTER 11 - Recycling	\$1,250,000,000
Recycling	\$1,000,000,000
Conservation	\$250,000,000
TOTALS	\$11,140,000,000

# SBX7 6 (Steinberg) –Groundwater Monitoring As Amended on November 4, 2009

SBX7 6, by Senator Darrell Steinberg creates a statewide groundwater monitoring program. The bill states legislative intent to have systematic monitoring and public reporting of groundwater information in all groundwater basins and sub-basins. However, the bill does authorize the Department of Water Resources (DWR) to prioritize groundwater basins for the purposes of monitoring.

Specifically, this bill allows local groundwater management entities, including counties, water replenishment districts, local agencies, groundwater management agencies, or associations to volunteer to assume the responsibility of monitoring all or part of a basin. SBX7 6 does not specifically require counties to assume this responsibility. However, if local entities, including counties, choose not to assume this responsibility they would exclude themselves from receiving water grants and loans administered by the state, and DWR would assume the responsibility of groundwater monitoring. There is an exemption included in the bill for disadvantaged communities. Additionally, the bill requires DWR, if no local agency volunteers, to directly perform groundwater monitoring functions and charge

well owners for the costs of such activity. County staff understands that Section 10933.5(c) expressly prohibits DWR from assessing a fee or charge to recover costs for groundwater monitoring. Section 10936 authorizes DWR to recover all its costs under this statute to unallocated 2006 water bond revenue.

CSAC communicated to the Legislature and the Administration its concerns with the bill's approach to groundwater monitoring. Although SBX7 6 now names DWR as the default groundwater monitor, the bill still penalizes counties and other local entities over situations in which they have no control.

## SBX7 7 (Steinberg) – Water Conservation As Amended on November 4, 2009

SBX7 7, by Senate Pro Tem Darrell Steinberg, would set water conservation targets. Specifically, this bill would:

- Require the state to achieve a 10% reduction in urban per capita water use in California by December 31, 2015, and a 20% statewide reduction by December 31, 2020.
- Require each urban retail water supplier to develop urban water use targets and an interim urban water use target by July 1, 2011, and specifies methodologies for achieving the targets. Public hearing requirements are also included to allow community input on the supplier's water use target implementation plan.
- Prohibit urban suppliers from requiring changes that reduce process water and allows urban water supplier to exclude process water from the development of the urban water target if substantial amount of its water deliveries are for industrial use, but allows for reductions in emergencies. "Process water" is defined as water used for producing a product or product content.
- Require, on or before July 31, 2012, agricultural water suppliers to implement efficient water management practices. *Mandated practices are limited to installing water meters and charging for water according to the amount used.* Suppliers are exempt from additional specified practices if the supplier documents that such practices are not locally cost effective or technically feasible.
- Require the Department of Water Resources (DWR) to prepare reports to the Legislature regarding the progress of urban water management plans and agricultural efficient water management practices.
- Require DWR to promote implementation of regional water resources management practices.
- Condition state water grants/loans for urban and agricultural water suppliers on compliance with provisions of the bill, but allow funding for water conservation under certain conditions and funding by the federal American Recovery and Reinvestment Act of 2009.

- Provide that all costs incurred by a water utility, as a result of the bill's requirements, may be recoverable in rates subject to review and approval by the Public Utilities Commission.
- Reauthorize the Agricultural Water Management Planning Program.
- Exempt from the bill's water conservation and water management planning requirements any agricultural supplier serving less than 25,000 of irrigated land if the state does not provide funding for those purposes.
- Provide an exemption from the bill's provisions for agricultural water suppliers that are parties to the Colorado River Quantification Settlement Agreement. *(enables irrigators to sell water to municipalities).*

## SBX7 8 (Steinberg) – Water Diversion Reporting/Reallocation of Bond Funding As Amended on November 4, 2009

SBX7 8, by Senate Pro Tem Darrell Steinberg, authorizes the State Water Resources Control Board and DWR to adopt emergency regulations for the filing of reports of water diversion or use. Specifically, the bill would:

- Repeal water diversion reporting exemptions for diverters in the Sacramento-San Joaquin Delta.
- Increase fines and penalties relating to reporting of diversions.
- Redirect funds from Proposition 84 (2006) and 1E (2006) to pay for various Deltarelated projects and purposes. This includes \$250 million in grants to local public agencies to implement Integrated Regional Water Management Plans and \$222 million to DWR for levee and flood control projects.
- Authorize the addition of 25 water rights enforcement staff at the State Water Resources Control Board, to be paid for from the Water Rights Fee Fund.

#### WATER COMMITTEE

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### IMPACTS OF WATER LEGISLATION ON CALIFORNIA COUNTIES

#### **CSAC Policy Direction on State Water Proposals**

Approved by the CSAC Board of Directors on September 11, 2008, the CSAC Policy Direction on State Water Proposals recognizes that California faces many complicated and compelling water resource issues. CSAC has supported statutory protection of counties of origin and watershed areas, support for existing water rights, the need for new and expanded water resources, and the need for local water conservation efforts. CSAC also acknowledged the reliance of counties on the Delta as a water delivery system, and the urgency with which all of the Delta partners, including the State must act to resolve and fund infrastructure, environmental and supply issues.

#### **Delta/Water Strategy**:

Solano County along with Contra Costa, Sacramento, San Joaquin and Yolo Counties came together to form the Delta Counties Coalition (DCC). These counties did so because they realized there were several statewide Delta/Water efforts in play that would potentially result in significant impacts to the Delta Counties. This is in keeping with CSAC's existing policy that recognizes the Delta as a critical region of statewide importance encompassing vital water, transportation, energy, land use, agriculture and economic interests.

#### Legislative Results:

Governance: CSAC believes that any proposed Delta solutions be implemented in a manner that ensures Delta counties' status as voting members of any proposed Delta governance structure. The DCC sought representation on the Delta Stewardship Council, the Delta Protection Commission (DPC) and the Delta Conservancy. As a result of efforts to date, all five Delta Counties have Supervisors who serve on two of three governance bodies (the Sacramento-San Joaquin Delta Conservancy and the DPC). The Delta counties collectively have one seat on the Delta Stewardship Council, which was not part of the originally proposed council membership and are looking to the Governor and Legislative appointments to include greater Delta representation on the Stewardship Council. Additionally, the membership of the DPC was modified to balance and strengthen local government perspective on the Commission.

**Definition of the Delta**: CSAC policy calls for the demonstration of clearly evidenced public benefit to any proposed changes to the boundaries of the Delta. The policy also accords special recognition and advances the economic vitality of "heritage" or "legacy" communities in the Delta. During negotiations, there was a proposal to change the definition of the Delta; to

include the primary zone, legacy communities and at times parts if not all of the secondary zone. The DCC fought to confine State usurpation of land use authority by defining what constituted "the Delta" to include only the primary zone. This definition of primary zone held in the legislation, as passed. A study will be commissioned to review the secondary zone. This is consistent with CSAC policy regarding changes to the boundaries.

#### **Local County Authority:**

CSAC believes that any proposed Delta solutions be implemented in a manner that ensures consistency with affected counties adopted policies and plans and that respects the affected counties' land use authority, revenues, public health and safety, economic development, water rights, and agricultural viability. The Legislative package sends troubling messages on this. It provides for the development of State Plans by State Boards for the Delta and then requires that local government land use plans be made consistent with these State Plans. The DCC argued for enhanced representation on these governing bodies in order to ensure the Delta counties, cities and special districts are treated fairly.

The Delta Counties believe that the Delta Protection Commission is the appropriate body to establish land use policies for the Delta. The new legislation reforms the Commission so that a majority of the eleven member body is composted of city and county elected officials. However, the new legislation also allows the Delta Stewardship Council to nullify the land use decisions of cities or counties in the Delta, without consultation with the Delta Protection Commission. The Delta Protection Commission or its policies need to be considered in the land use actions that are brought to the Delta Stewardship Council for a determination of consistency with the Delta Plan.

**Bond Monies**: CSAC believes that any proposed Delta solutions be implemented in a manner that secures financial support for flood management, improved emergency response, preservation of agriculture, protection of water resources, and enhancement and restoration of habitat. The bond package, if approved by the voters, does have some monies for some of these programs.

The DCC sought to have parity in the proposed bond financing between in-Delta ecosystem restoration and local sustainability projects. While the bond designations for these projects went from as high as \$2 billion for ecosystem and nothing for Delta communities; ultimately, \$1.5 billion was approved for ecosystem restoration and \$750 million for local sustainability, including upstream wastewater treatment and economic mitigation for lost agricultural production. This was more than was originally proposed in the bond measures, but is inadequate to mitigate local impacts.

Further, the DCC argued that previously approved bond monies needed to be expended for Delta projects immediately. This need was recognized and it is hoped that projects for a variety of programs, including levees, will move more quickly – with a positive benefit to the Delta.

**Conservancy**: CSAC believes that any proposed Delta solutions be implemented in a manner that improves and protects the Delta ecosystem, water quality, flows and supply; and that promotes recreation and environmental protection. The DCC was able to write bill language for the Conservancy. This language held throughout the legislative process and ultimately was

the language approved by the Governor. It will require the Conservancy to support efforts that advance both environmental protection and the economic well-being of Delta residents in a complementary manner, including protecting and preserving Delta agriculture, assisting the Delta regional economy through the operation of the Conservancy's programs and, protecting, conserving, and restoring the region's physical, agricultural, cultural, historical, and living resources.

**Water Rights/Diversion**: CSAC believes that any proposed Delta solutions be implemented in a manner that respects the affected counties' water rights. The DCC also expressed strong concern about the need to protect local water rights. Stronger area-of-origin protections in the Delta were successfully incorporated into the legislative package.

Conservation and Groundwater Monitoring: CSAC believes that any proposed Delta solutions be implemented in a manner that support development of adequate water supply for the south, utilizing the concept of "Regional Self Sufficiency" whereby each region maximizes conservation and recycled water use, implements storage (surface and groundwater) and considers desalination, as necessary. The DCC expressed concerns about water conservation measures that disproportionately impacted Delta Counties. Conservation language for residential uses did get included in the package signed by the Governor; however, the Legislature is expected to revisit this topic to provide cleanup language.

The new legislation makes counties ultimately responsible for any needed groundwater monitoring. Unfortunately, the legislation provides no mechanism for counties to fund this new mandate. Counties that fail to perform needed groundwater monitoring will be ineligible to receive certain grant funds. The Delta Counties believe legislation should provide counties with a mechanism to fund this groundwater monitoring or eliminate the penalty if a county is unable to provide the data.

<u>Delta County Issues with the Legislation:</u> The DCC actively participated in the legislative process this year and offered many solutions that were consistent with the Delta Vision's coequal goals of ecosystem restoration and water supply reliability and with the DCC's adopted 11 Principles. While some of DCC's concerns were addressed in legislation, as summarized above, the DCC remained opposed to the final package because the Delta counties never received adequate assurance that Delta communities would not be adversely harmed. The DCC continues to have major concerns with the financing of the package, the powers and governance of the new Council, and the new water conservation requirements, as described below:

1. There is no assurance in the five-bill package that there will be adequate, reliable ongoing funding for restoring and protecting the Delta; operating either the new governance bodies or the ongoing Delta Protection Commission; or providing a sufficient supply of clean water. Funds for Delta Sustainability to help mitigate the impacts to Delta counties are not guaranteed or sufficient.

Delta Counties are being asked to provide matching funds for projects to repair the damage done to the Delta as a result of its role in the State's water supply system. This is distressing because the counties are not responsible for the failing condition of the Delta and do not have the funds needed to complete the match. Delta funding is

contingent on passage of \$11.1 billion in general obligation bonds – another battle yet to fight.

If the bonds do pass, Senate Bill X7-2 authorizes, but does not require, \$250 million to provide assistance to local governments due to loss of productive agricultural lands for habitat and ecosystem restoration within the Delta. Moreover, the \$750 million that is set aside for Delta Sustainability does not allocate a specific amount to counties, cities or impacted special districts. The bond further limits the amount of funding that we can receive from the state for sustaining the Delta to 50% of total project costs. We question where the balance of the needed funding will be found.

- 2. The new Stewardship Council in Senate Bill X7-1 does not have sufficient oversight or authority over the development, approval, and implementation of the Bay Delta Conservation Plan (BDCP). Further, the package does not provide adequate protection to Delta communities from adverse direct and indirect impacts the BDCP can cause due to the construction of new water conveyance facilities or habitat restoration. Funding for either upfront or ongoing mitigation related to the BDCP is missing from this package.
- 3. While the Delta Counties agree that water conservation is an important part of the solution to the water crisis, we have concerns that the targets set in Senate Bill X7-7 prejudice our Delta Counties for the water that we are responsibly using and conserving now. Because we are not short of water, due to prudent planning and substantial investment in our local water infrastructure, this legislation may cause us to have to conserve disproportionately more water than other parts of the state at an unreasonable cost to our local ratepayers. Moreover, this bill requires us to undertake conservation measures even if they are not locally cost-effective.

#### Next Steps:

It is in the best interest of CSAC to maintain a proactive approach on Water and the Delta, which will ensure the best possible result for all counties in California. There continue to be many statewide initiatives – such as the Bay Delta Conservation Plan, the Central Valley Flood Protection Program and the State Water Plan – that will impact counties. And, the Federal Government is becoming more involved in Delta water issues which will require additional diligence on CSAC's behalf.

Going forward, CSAC should remain committed to the existing CSAC Policy Direction on State Water Proposals and continue to focus on ensuring the best possible future for California Counties. This platform will benefit all California counties. Without a sustainable Delta, water will not be able to be distributed through the Delta to the rest of California.

Delta Counties would like CSAC to make every effort to ensure counties maintain:

- The maximum amount of meaningful authority over governance and local land use,
- The greatest number of reliable assurances to protect County interests including water rights, and
- Adequate funding to support mitigating impacts to counties especially Delta counties, and other local governments, and residents from State and Federal initiatives.

# OFFICE OF THE COUNTY ADMINISTRATOR CONTRA COSTA COUNTY

TO: Legislation Committee

Supervisor Susan A. Bonilla, Chair Supervisor Mary N. Piepho, Member

FROM: Lara DeLaney, Legislative Coordinator

DATE: December 2, 2009

SUBJECT: Agenda Item #5: 2009 State Legislative Platform: Sponsored

**Bills and Advocacy Priorities** 

#### RECOMMENDATIONS

1. REVIEW Sponsored Bill proposals and RECOMMEND action for the Board of Supervisors.

- 2. REVIEW Advocacy Priorities and RECOMMEND action for the Board of Supervisors.
- 3. REVIEW additional policy proposals/changes, as recommended by staff and RECOMMEND action for the Board of Supervisors.

#### CONTRA COSTA SPONSORED BILL PROPOSALS

CAO staff had received four new proposals for sponsored bills from our Elections Department related to the Elections Code. If pursued, these proposals would be in addition to the three County-sponsored bills that were carried by Senator DeSaulnier in 2009 and would likely be requested for support again, and they would constitute an usually large legislative package. The Transportation, Water and Infrastructure Committee has acted to support requesting Senator DeSaulnier's support of the Subdivision Map Act Amendment for 2010.

At the November 2, 2009 meeting of the Legislation Committee, County Clerk-Recorder Steve Weir recommended that only one of the new proposals be included in the Platform ("'All Mail Ballots for Special Elections") and that the remaining bills be provided to our legislative delegation for their possible interest in sponsorship.

With this change, the list of County-sponsored bill proposals is the following:

1. Subdivision Map Act Amendment for Pedestrian, Bicycle, Transit and Traffic Calming Facilities — For some time the County has wanted to update its transportation fees for new development to fund off-site pedestrian, bicycle, transit and traffic calming facilities. However, the state statute authorizing local agencies to adopt ordinances to require the payment of fees for transportation facilities, section 66484 of the Subdivision Map Act, is limited to bridges and major thoroughfares.

Rationale: The public's concern over greenhouse gas emissions and the impact of auto-oriented development on public health has spurred the County's efforts to secure additional funding for transportation facilities that can encourage more walking, bicycling and transit use. In addition, the County's successful efforts to reduce sprawl through infill development has increased the need for traffic calming devices to help minimize the traffic impacts from new development on existing roads. Revising the Subdivision Map Act to allow fees for these transportation facilities would support the County's public policy goals, consistent with its General Plan circulation element. Senator DeSaulnier introduced a bill to accomplish this in 2008 but dropped it due to opposition from the building industry. The County will request the bill be reintroduced in the 2010 session, as it would provide more flexibility for an existing transportation funding source.

2. CEQA Exemption for Affordable Housing Lending — CEQA exempts specified projects from its requirements, including an action taken by the State agencies to provide financial assistance or insurance for the development and construction of affordable housing if the project for financial assistance or insurance will be reviewed pursuant to CEQA by another public agency (Section 21080.10(b) of the California Public Resources Code). The County Redevelopment Agency requests legislation to additionally exempt from CEQA that action taken by a city or county housing and community development or housing finance agency to provide financial assistance or insurance for the development and construction of affordable housing.

Rationale: AB 2518 (Houston) in 2006 was a Contra Costa County-sponsored bill to accomplish this, but it was not successful in the Legislature. The exemption for State agencies engaged in affordable housing lending was adopted in 1980, before localities had a significant role in affordable housing lending. Today, localities are a major provider of affordable housing assistance, whereas the State role has diminished. Local agencies should not be treated differently from State agencies with respect to CEQA requirements and exemptions. Moreover, without this exemption, affordable housing projects not otherwise exempt by virtue of "by right" provisions in State law could be subject to "double jeopardy," whereby they would be subject to CEQA during entitlements and subject to CEQA during financing.

3. CEQA Exemption for Infill Development in Unincorporated Areas – Section 15332 of the CEQA Guidelines is a Categorical Exemption for infill development projects but only within cities. The exemption should also include *urbanized unincorporated areas*. The proposal would affect the County's affordable housing, revitalization, and redevelopment programs in all unincorporated urbanized areas of the County.

Rationale: Without the exemption, housing projects in the unincorporated areas are subject to a more time-consuming and costly process in order to comply with the CEQA guidelines than that which is required of cities, despite having similar housing obligations.

**4.** <u>All Mail Ballots for Special Elections</u> —Add provisions to the state Elections Code that would allow special elections to fill a vacancy in a congressional or legislative district to be conducted by all mailed ballots at the county's discretion.

Rationale: Historically, special elections to fill congressional and legislative vacancies have failed to attract interest, resulting in low voter turnout. For example, in Los Angeles County, four special vacancy elections were held in 2007. The average turnout for these elections was 11 percent with costs incurred ranging from \$700,000 to \$1,400,000. A significant portion of the costs expended was related to the recruitment of polling places and poll workers and supplying those polling places with election materials. This proposal would have a favorable administrative and fiscal impact by eliminating the need to recruit polling places and poll workers for these elections. In addition, the popularity of voting by mail has tremendously increased; therefore, the all mail ballot procedure for this type of election could result in higher voter turnout.

#### LEGISLATIVE/REGULATORY ADVOCACY PRIORITIES

Staff recommends the following advocacy priorities for 2010. The Legislation Committee may wish to provide further direction on these priority areas.

State Budget – The state is facing a deficit of approximately \$7.4 billion for the 2010-2011 fiscal year and a projected deficit of at least \$30.6 billion through 2012-13. The long-standing practice of state government has been to look to counties as a means of balancing its budget. While opportunities to do so are more limited with the passage of Proposition 1A, the magnitude of the deficit makes it certain the state will be creative in their effort to include counties as part of its budget balancing solution. Of particular concern to counties is the inadequate reimbursement for our increasing cost of operating several human services programs, the Human Services Funding Deficit, formerly referred to as the "Cost of Doing Business." The annual shortfall between actual county

expenses and state reimbursement has grown to over \$1 billion since 2001, creating a de facto cost shift to counties. The funding gap forces counties to reduce services to vulnerable populations and/or divert scarce county resources from other critical local services. It also increases the risk of state and federal penalties.

**Health Care** — Counties have a high stake in California's health reform efforts. Counties serve as employers, payers, and providers of care to vulnerable populations. Consequently, counties stand ready to actively participate in discussions of how to best reform the health care system in California. As proposals for Health Care reform by either the Administration or the Legislature are presented, they will be reviewed based on the Board-adopted "Principles for Action," and the Health Care Principles adopted by CSAC and the Board of Supervisors.

Water and Levees /The Sacramento-San Joaquin Delta — Due to the Governor's Delta Vision and other processes, significant legislative activity related to re-engineering of the Delta is underway that could have significant impacts upon the County in the areas of water quality and supply (such as a peripheral canal), levees, ecosystem, governance and flood control. A water bond may be included in a future election,. Consideration should be given to the potential for the County to sponsor Delta-related legislation through our legislative delegation. The Delta Water Platform, as well as the Strategic and Action Plan documents, is incorporated in this Platform by reference.

**Transportation Funding** – In recent years, the State has taken a significant amount of dedicated transportation funding to cover the General Fund budget For FY 2009/10 the state is withholding six months worth of transportation funding for cities and counties, to be repaid in the spring of 2010. The County will advocate for the protection of all current transportation funding sources and work to prevent the State from dipping into these funds again to cover budget shortfalls. Recent legislation placed limits on the State's ability to divert transportation funds to the General Fund, but diversion is frequently discussed by legislators. State transportation funds historically have been an important piece of the funding picture for annual road maintenance work, public transit, paratransit services, and major improvement projects to freeways and local roads. Funds also are needed to meet a growing number of unfunded state and federal mandates such as the Americans with Disabilities Act and stormwater and habitat preservation requirements, all of which have impacts on transportation improvement projects. The creation of a new transportation funding source could be supported, provided that the new source does not shift revenue away from the State's General Fund.

Redevelopment Agency Revenue Shift to ERAF (Educational Revenue Augmentation Fund) — The adopted FY 2009-10 State budget requires a one-time shift of \$1.7 billion in property tax revenues from redevelopment agencies to

Educational Revenue Augmentation Funds (ERAF). The \$1.7 billion take from redevelopment agencies is intended to support schools and programs that service residents of the redevelopment areas or that live in redevelopment-financed housing Under this take, RDAs may suspend their contributions to their Low and Moderate Income Housing Funds in 2009-10 in order to help finance payments, or may borrow from their parent city or county. Any RDA that fails to restore their L&M Funds by June 30, 2015 will be subject to a 5 percent increase in their required annual housing set-aside. RDAs may extend their time limits for plan effectiveness and for receipt of tax increment revenues by one year after they meet their payment obligation for 2009-10. The County should monitor discussions of any additional redevelopment revenue shifts and work with the California State Association of Counties (CSAC), the League of California Cities, and the California Redevelopment Association to educate the Governor and Legislature on the value of redevelopment as an economic development and smart growth tool as they conceive and adopt budgets in the future.

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Since the November meeting of the Legislation Committee, CAO staff has received a request from First 5 Contra Costa to include the following policy positions in the draft State Platform:

OPPOSE any legislation that increases tobacco taxes but does not contain language to replace any funds lost to The California Children and Families Act/Trust Fund for local services as currently funded by tobacco taxes, Prop 10 in 1998 and Prop 99.

OPPOSE legislation, rules, regulations or policies that restrict or affect the amount of funds available to, or the local autonomy of, First 5 Commissions to allocate their funds in accordance with local needs.

Staff of both the Employment and Human Services Department and Health Services Department supported the inclusion of the policies.

Also since the November meeting, the Board of Supervisors took action on November 10 to approve an Intergovernmental Agreement with the Guidiville Band of Pomo Indians related to the Point Molate casino and resort project proposal. Given this action by the Board, staff recommends that the policies related to Indian Gaming in the draft State Platform be amended to reflect the following:

#### **Indian Gaming Issues**

Contra Costa County is currently home to the Lytton Band of the Pomo Indians' Casino in San Pablo, a Class II gaming facility. There are also proposals for two additional casinos in West County: one in North Richmond and the other in Point

Molate. Local governments have limited authority in determining whether or not such facilities should be sited in their jurisdiction; the terms and conditions under which the facilities will operate; and what, if any, mitigation will be paid to offset the cost of increased services and lost revenues. Contra Costa County has been active in working with CSAC and others to address these issues, as well as the need for funding for participation in the federal and state review processes and for mitigation for the existing Class II casino.

- 1. SUPPORT efforts to ensure that counties who have existing or proposed Class II Indian gaming facilities receive the Special Distribution Funds.
- 2. SUPPORT State authority to tighten up the definition of a Class II machine.
- SUPPORT State legislative and administration actions consistent with the CSAC policy documents on development on Indian Lands and Compact negotiations for Indian gaming.

The following policies in the 2009 State Platform are recommended to be deleted:

- 85. OPPOSE the approval or establishment of Indian gaming facilities in Contra Costa County.
- 86. OPPOSE the expansion or approval of Class III gaming machines at the existing gaming facility in Contra Costa County.

# 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: December 2, 2009

SUBJECT: Agenda Item #6: 2010 Federal Legislative Platform: FFY 2011

Appropriation Requests, Bill Reauthorizations, and Policy

**Positions** 

#### RECOMMENDATIONS

1. REVIEW Appropriation Requests and RECOMMEND action for the Board of Supervisors.

- REVIEW SAFETEA-LU and WRDA Reauthorization lists.
- 3. REVIEW Policy Positions and provide direction.

#### FEDERAL APPROPRIATION REQUESTS

#### 2010 Federal Appropriations Requests for FFY 2011

The following 13 appropriations requests have been submitted by department staff. The Legislation Committee may wish to consider the priority ranking of these requests, as well as the number of requests submitted. The Committee may also wish to recommend that staff consider alternative projects.

The only change in the list from that presented in November is a change in the amount requested for the Safe and Bright Futures project (#2), which has been decreased to \$450,000.

1. Delta LTMS-Pinole Shoal Management, CA – \$2,000,000 appropriation for the Army Corps of Engineers to continue a Long Term Management Strategy (LTMS) for levee rehabilitation, dredging and sediment reuse in the Delta, similar to the effort completed in the Bay area. Levee work, reuse of dredged sediments, dredging and other activities have been difficult to accomplish due to permitting problems and a divergence of priorities related to water quality. Significant levee rehabilitation is critical to the long term stability of these levees and to water quality and supply for the 23 million Californians who depend upon this water. Stakeholders from the Department of Water Resources, Ports, Army Corps,

levee reclamation districts, local governments and other interested parties are participating in the LTMS. A Sediment or Dredged Material Management Office will be established, and in the longer term, preparation of a Sediment Management Plan will consider beneficial reuse of dredged materials as one potential source of sediment for levees. (Note: \$500,000 appropriated for FFY 2005; \$225,000 for FFY 2006; \$500,000 for FFY 2007; \$462,000 for FFY 2008; \$235,000 for FFY 2009; \$100,000 for FFY 2010.)

- 2. Safe and Bright Futures for Children Exposed to Domestic Violence \$450,000 appropriation to implement the federally funded plan to diminish the damaging effects of domestic violence on children and adolescents and to stop the cycle of intentional injury and abuse. A three year assessment and planning process resulted in a program plan that will align and create a system responsive to the needs of children exposed to domestic violence through identification, intervention, and treatment; raising awareness; training professionals; utilizing and disseminating data; establishing consultation teams to support providers in intervening and using best practices; and developing targeted services. The local domestic violence hotline received over 3,100 calls involving children last year (60% of all calls). Exposure to trauma like domestic violence reshapes the human brain, influences personality, shapes personal skills and behaviors, impacts academic performance, and substantially contributes to the high cost of law enforcement, civil/criminal justice and social services. (Note: \$428,000 appropriated for FFY 2009; appropriation for FFY 2010 unknown at this time.)
- 3. Mt. Diablo Mercury Mine Clean-up \$483,000 appropriation for the Army Corps of Engineers to complete phase 2 and 3 of the Technical Planning Process for the Mt. Diablo Mercury Mine Demonstration Project. The project will clean up the mine in a cost effective, environmentally-sound manner with minimal liability exposure for the County and involving all stakeholders through an open community-based process. The Corps initiated a Technical Planning Process in June 2008 to develop a preliminary remediation plan, identify applicable permit and environmental data requirements and complete a data collection and documentation program for the clean-up of the Mt. Diablo Mercury Mine. Phase 1 of the planning process has been completed, and this appropriation will allow the Corps to continue the planning process and complete phase 2 and 3. The planning process will include looking at watershed issues downstream of the mercury mine. The Corps will be focusing on the mine site, and the local Contra Costa County Flood Control District will be focusing on the broader watershed issues. The mine site is located on private property on the northeast slope of Mt. Diablo at the upper end of the Marsh Creek watershed. Existing funding will be depleted before the end of this year and an appropriation is needed. (Note: \$517,000 appropriated for FFY 2008.)
- <u>4. Lower Walnut Creek, California</u> \$600,000 appropriation for the Army Corps of Engineers continue their general reevaluation of the lower five miles of the Walnut Creek Channel to restore flood capacity, provide environmental

enhancement and ecosystem restoration. The project is designed to help improve flood protection in a densely populated area, while leaving the creek in a natural state, thus providing habitat for migratory birds, fish and other wildlife; increasing neighborhood livability; and allowing for linkages with recreational and park land. (*Note:* \$188,000 appropriated for FFY 2006; no FFY 2007 appropriation; \$562,000 for FFY 2008; \$287,000 for FFY 2009; \$0 for FFY 2010.)

- 5. Grayson and Murderer's Creeks (Walnut Creek Basin), California \$600,000 appropriation for the Army Corps of Engineers to analyze Grayson and Murderer's Creeks to determine the feasibility of providing improved flood protection for a community that regularly experiences flood damages. The project is designed to help improve flood protection in a densely populated area, while leaving the creeks in a natural state, thus providing habitat for migratory birds, fish and other wildlife; increasing neighborhood livability; and allowing for linkages with recreational and park land. (Note: \$100,000 appropriated for FFY 2006; no FFY 2007 appropriation; \$98,000 for FFY 2008.; \$478,000 for FFY 2009; \$90,000 for FFY 2010.)
- 6. CALFED Bay Delta Reauthorization Act Levee Stability Improvement Program (LSIP) TBD appropriation for the Army Corps of Engineers for levee rehabilitation activities. The CALFED Reauthorization Act, passed in January 2004, authorized \$90 million, which may be appropriated for levee rehabilitation work. The Corps has prepared a "180-Day Report" which identifies projects and determines how these funds would be spent. Since that time, the breakdown of CALFED, coupled with the Army Corps' attempts to define an appropriate and streamlined process, has delayed funding and resultant levee work. (Note: \$500,000 appropriated for FFY 2006; \$400,000 for FFY 2007; \$4.92 million for FFY 2008; \$4.844 million for FFY 2010.)
- 7. Suisun Bay Channel/New York Slough Maintenance Dredging \$6,114,000 appropriation for the Army Corps of Engineers for maintenance dredging of this channel to the authorized depth of minus 35 feet. Continued maintenance is essential for safe transport of crude oil and other bulk materials through the San Francisco Bay, along the Carquinez Straits and into the Sacramento/San Joaquin Delta. Dredging for this channel section is particularly costly, due to requirements on placement of dredged materials in upland environments. An oil tanker ran aground in early 2001 due to severe shoaling in a section of this channel, which creates a greater potential for oil spills (Note: \$4.559 million appropriated for FFY 2005; \$4.619 million for FFY 2006; \$2.82 million for FFY 2007; \$2.856 million for FFY 2008; \$2.768 million for FFY 2009; \$3.819 million for FFY 2010.)
- 8. San Pablo/Mare Island Strait/Pinole Shoal Channel Maintenance <u>Dredging</u> – \$5,300,000 appropriation for the Army Corps of Engineers (\$2.65 million for Mare Island) for maintenance dredging of the channel to the authorized depth of minus 35 feet. The Pinole Shoal channel is a major arterial

for vessel transport through the San Francisco Bay region, serving oil refineries and bulk cargo which is transported as far east as Sacramento and Stockton. (Note: \$1 million appropriated for FFY 2005; \$2.988 million for FFY 2006; \$896,000 for FFY 2007; \$1.696 million for FFY 2008; \$1.058 million for FFY 2009; \$2.518 million for FFY 2010.)

- 9. San Francisco to Stockton (J. F. Baldwin and Stockton Channels) Ship Channel Deepening \$2,500,000 appropriation for the Army Corps of Engineers to continue the Deepening Project. Deepening of this channel will allow for operational efficiencies for many different industries, an increase in waterborne goods movement, reduced congestion on roadways, and air quality benefits. Phase one work focused on establishing economic benefit to the nation and initial salinity modeling in the channel sections. The second and final phase includes detailed channel design, environmental documentation, cost analysis, additional modeling, and dredged material disposal options. (Note: \$500,000 appropriated for FFY 2005; \$200,000 for FFY 2006; \$200,000 for FFY 2007; \$403,000 for FFY 2008; \$1.34 million for FFY 2009; \$0 for FFY 2010.)
- <u>10. Methamphetamine Eradication and Suppression Program</u> \$700,000 appropriation to maintain the Sheriff's Office's Specialized Investigative Unit's enforcement efforts targeting mid to high-level methamphetamine manufacturers and distributors. This elite unit is responsible for having seized over 100 pounds of methamphetamine, over 10 pounds of cocaine, and assets valued at over \$650,000 in the last two years. This unit is working in a primary capacity with both State and Federal agencies on high-level wire-tap investigations.

The Office of the Sheriff is seeking funds to continue its Specialized Investigations Unit's efforts and honor its commitments to the multi-jurisdictional effort through the Cal-MMET program. Funds from this program would be utilized to maintain staffing of four full-time Detectives in this critical investigative component of the Investigation Division. Without this funding, significant accomplishments and inroads made in the methamphetamine drug-trafficking trade and organized crime industry will be lost. The impact of this will compromise interagency coordination and multi-jurisdictional investigations, heavily impacting public safety throughout Contra Costa County. (Note: appropriation for FFY 2010 unknown at this time.)

11. Wildcat Creek, Section 1135 Project – \$300,000 appropriation for the Army Corps of Engineers to complete a feasibility study for environmental enhancement, ecosystem restoration and modification of fish passage in Wildcat Creek. The primary purposes of the project are to enhance the fish and wildlife values for the original Wildcat Creek Flood Control Project while also maintaining the flood carrying capacity of the channel. The project includes construction of a meandering low flow channel, enlarging the associated riparian corridor, stabilizing the adjacent flood plain bench, expanding the existing sediment basin, and modifying or replacing the existing fish ladder to provide for effective fish

passage through the sediment basin and concrete channel. The project also includes construction of floodwalls or levee embankments to ensure the level of flood risk reduction provided by the original Corps project.

- 12. Carquinez Scenic Drive Bay Trail \$2.0 million (increased from \$0.5 million in current platform) to repair slide damage and reconstruct the multi-use trail as part of the San Francisco Bay Trail. The Trail is a continuous 400-mile recreation corridor that will encircle the entire Bay Area, connecting communities to each other and the Bay. To date, 210 miles of the Bay Trail have been developed. This segment would access East Bay Regional Parks land and connect the communities of Martinez, Port Costa and Crockett for bicycle, pedestrian and equestrian users as well as provide alternate emergency vehicle and evacuation routes for these communities. The planning study, which evaluated roadway stability and identified stabilization and path alignment alternatives, was completed in 2007. (Note: \$1 million appropriated for FFY 2006; no appropriations since then.)
- 13. State Route 4 / Old River Bridge Study \$1,000,000 appropriation to work with San Joaquin County and the State of California on a study of improving or replacing the Old River Bridge along State Route 4 on the Contra Costa / San Joaquin County line. The study would determine a preferred alternative for expanding or replacing the existing bridge, which is part of State Route 4. The existing bridge is narrow, barely allowing two vehicles to pass each other, and is aligned on a difficult angle relative to the highway on either side, requiring motorists to make sharp turns onto and off of the bridge. The project would improve safety and traffic flow over the bridge. (Note: no appropriations for this project as yet.)

#### TRANSPORTATION BILL REAUTHORIZATION

The current federal transportation policy and spending act, a five-year act known as the Safe, Accountable, Flexible and Efficient Transportation Equity Act – A Legacy for Users, or SAFETEA-LU, expired in September 2009. Discussions about the reauthorization of the bill have commenced. What follows is a draft of the current list of projects and programs the County may be requesting Reauthorization funding for. These projects have been recommended by the Transportation, Water and Infrastructure Committee. No changes have been made to the list.

1. Vasco Road Safety Improvement Project -- \$30 million (reduced from \$40 million in previous platform, due to receipt of \$10 million in ARRA funds) for improvements to a 2.5-mile accident-prone section of Vasco Road. Project components include widening the roadway to accommodate a concrete median barrier and shoulders on either side of the barrier, construction of the barrier, and extension of an existing passing lane. The project will eliminate cross-median accidents which have caused numerous fatalities in recent years, and will provide

increased opportunities for vehicles to safely pass (unsafe passing is a major cause of accidents and fatalities on this segment of the increasingly busy two-lane undivided road). The project will include provisions for wildlife undercrossings to preserve migration patterns. The funds will complement \$10 million programmed for the project in the American Recovery and Reinvestment Act (federal stimulus program). (10<sup>th</sup>/11<sup>th</sup> Districts, ??? / McNerney)

- 2. North Richmond Truck Route -- \$25 million (increased from \$15.5 million in the 2009 platform due to engineering issues pertaining to levees and railroad right of way) to construct a new road that will provide truck access between businesses and the Richmond Parkway, moving the truck traffic away from a residential neighborhood and elementary school. This project will increase safety, improve public health around the school and residential area by reducing diesel particulate emissions from those areas, increase livability of the neighborhood, improve local access to the Wildcat Creek Regional Trail, stimulate economic development in the industrial area of the community and provide a better route for trucks traveling to and from the Richmond Parkway. The alignment was developed through a community planning process funded through an Environmental Justice planning grant from Caltrans). (7<sup>th</sup> District, Miller)
- 3. Eastern Contra Costa Trail Network -- \$5 million for a joint planning, environmental review, right-of-way acquisition and constructions of a coordinated network of trails for walking, bicycling and equestrian uses in eastern Contra Costa County. Eligible trails include, but are not limited to, (1) the Mokelumne Trail overcrossing of the State Route 4 Bypass; (2) Contra Costa segments of the Great California Delta Trail; (3) a supportive network of East Contra Costa trails in unincorporated County areas and the cities of Antioch, Brentwood, Oakley and Pittsburg (all districts) (No changes proposed from 2009 platform)

Following are priority programs for inclusion in the next multi-year transportation bill:

- Rural Road Funding Program The County supports the creation of a new funding program that will provide funds for converting or upgrading rural roads into more modern roads that can handle increasing commuter traffic in growing areas, such as East County. These roads do not often compete well in current grant programs because they do not carry as many vehicles as roads in more congested urban or suburban areas. As a result, improvements such as widening, realignment, drainage improvements and intersection modifications often go unfunded, leaving such roads with operational and safety problems as well as insufficient capacity. (All districts)
- Transportation Funding for Disabled, Low-income, and Elderly Persons The County supports continuation and increased funding levels for the three federal funding programs dedicated to transit services for these population

groups -- the New Freedom Program for senior transit services, the Job Access and Reverse Commute Program which funds transit services to job locations for low-income persons, and the Section 5310 transit funding program for the elderly and individuals with disabilities. SAFETEA-LU provided a total of \$1.7 billion nationwide for these programs. By comparison, \$200 billion was provided for highway projects; even transportation research got more funding (\$2.3 billion) than transit for elderly, disabled and low-income persons. All of the demographic trends point to a growing need for such services in the future. For example, the 65-and-older population in the Bay Area is projected to more than double by the year 2030.

Transit services for elderly, disabled, and low-income persons are provided by the County, by some cities, by all of the bus transit operators, and by many community organizations and non-profits that provide social services. Increased funding is needed to provide and maintain more service vehicles, operate them longer throughout the day, upgrade the vehicle fleet and dispatching systems, improve coordination between public providers and community groups that also provide such services to their clients, and expand outreach programs to inform potential riders of the available services, among other needs. (*All districts*)

#### WATER RESOURCES DEVELOPMENT ACT (WRDA) BILL REAUTHORIZATION

The Water Resources Development Act of 2007 became law in November, more than seven years after the last authorization bill. Congress may take action on a WRDA bill in 2009. The following are projects submitted for inclusion:

- 1. Mt. Diablo Mercury Mine Clean-up Authorize the Army Corps of Engineers, through their Remediation of Abandoned Mine Site program (RAMS), to perform and complete the Technical Planning Process and site characterization of the Mt. Diablo Mercury Mine in Contra Costa County as a demonstration project with no local match, and authorize the Army Corps of Engineers to construct the clean-up project at the Mt. Diablo Mercury Mine. This mine remediation project is the first to combine the Corps' RAMS program and partnering agreements with local government to resolve liability issues associated with a clean-up project on private property and address mercury pollution on a watershed basis. Since this is a demonstration project, the Corps would fund the full Technical Planning Process and project construction.
- **2.** Sacramento-San Joaquin Delta Infrastructure Authority—In partnership with Sacramento-San Joaquin Delta counties and communities, authorize the U.S. Army Corps of Engineers to provide financial and other assistance to Delta counties and communities in protecting and enhancing water quality and quantity, enhancing habitat and the environment for all species in the Delta, improving flood control and protection, and protect Delta counties and communities, their economies, and their quality of life in restoring the Delta for endangered species and water supplies.

- 3. Rodeo Creek, Section 1135 Project The Contra Costa Flood Control and Water Conservation District is seeking an 1135 project authorization for the Army Corps of Engineers to prepare a study of the feasibility of restoring and enhancing wildlife resources in Rodeo Creek between San Pablo Bay and Highway 80. The channel was designed and constructed to provide adequate flood protection for the community of Rodeo and to control erosion of the creek. The channel currently does this, but requires extensive, environmentally insensitive maintenance to keep the channel functioning properly. In addition, the current channel design includes barriers to migration of anadromous fish. The Contra Costa Flood Control and Water Conservation District would like to partner again with the Corps of Engineers under the Corps' 1135 program to transform this outdated design into a sustainable, environmentally sensitive facility that better serves the community and the environment.
- 4. Rheem Creek, Section 1135 Project The Contra Costa Flood Control and Water Conservation District is seeking an 1135 project authorization for Rheem Creek between the mouth at San Pablo Bay and Giant Road. The Army Corps of Engineers' existing flood protection project on Rheem Creek protects a number of commercial, industrial, residential and open space areas in the Richmond / San Pablo area of Contra Costa County. Surrounding the mouth of the creek is a large undeveloped parcel (Brunner Marsh) which has been acquired by the East Bay Regional Park District for a future public park. Development of the adjacent lands as a regional park provides a unique opportunity for an enhanced creek environment in an area that will be very visible to the public.

#### FEDERAL POLICY POSITIONS

Since the November 2, 2009 meeting of the Legislation Committee, the Board of Supervisors took action on November 10, 2009 to approval an Intergovernmental Agreement with the Guidiville Band of Pomo Indians for the Point Molate casino and resort project. In light of this action, the Legislation Committee may wish to consider amendments to the policy positions in the Federal Platform regarding Indian Gaming which currently reads:

Designation of Indian Tribal Lands and Indian Gaming — The Board of Supervisors has endorsed the California State Association of Counties' (CSAC) policy documents regarding development on tribal land and prerequisites to Indian gaming. These policy statements address local government concerns for such issues as the federal government's ability to take lands into trust and thus remove them from local land use jurisdiction, absent the consent of the state and the affected county; the need for tribes to be responsible for all off-reservation impacts of their actions; and assurance that local government will be able to continue to meet its governmental responsibilities for the health, safety, environment, infrastructure and general welfare of all members of its

communities. The County will continue to advocate for federal legislation and regulation that supports the CSAC policy documents.

The County will also advocate for limitations on reservation shopping; tightening the definition of Class II gaming machines; assuring protection of the environment and public health and safety; and full mitigation of the off-reservation impacts of the trust land and its operations, including the increased cost of services and lost revenues to the County.

The County will also advocate for greater transparency, accountability and appeal opportunities for local government in the decision-making processes that permit the establishment of Indian gaming facilities. This includes sequencing the processes so that the Indian Lands Determination comes first, prior to initiation of a trust land request and associated environmental review.

The County will also continue its opposition to new Indian gaming facilities in Contra Costa County as well as its support for federal legislation that allows Class III gaming at the existing gaming facility only if approved as newly acquired land and maintains the size of the existing Class II gaming operation.

# 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: December 2, 2009

SUBJECT: Agenda Item #7: Status of 2009 State and Federal Legislation

#### **RECOMMENDATION**

ACCEPT the report on state and federal legislative matters.

#### STATE LEGISLATIVE ACTIVITY

#### State Budget Outlook Grim Through 2012

(Capitol Weekly, 11/12/09 by John Howard)

California's budget, rarely pretty, is getting uglier. Personal income-tax collections are weak, courts are intervening, one-time fixes are exhausted, the economy is grim and grimmer, borrowing money is dicey, forced furloughs continue. The Capitol's partisan politics is more entrenched than ever, and in the background looms the 2010 gubernatorial election – in which the state's unraveling finances are likely to take center stage.

"Given what we projected back in the summer and given the other pressures, the gap we're going to have to close in the coming budget is likely to be in double digits," said Finance Department spokesman H.D. Palmer.

Even for a state accustomed to budget meltdowns, the new numbers are daunting.

"I don't see any bright spots. I keep looking for them. We used every trick we could find to balanced this year's budget," said Assemblywoman Noreen Evans, D-Santa Rosa, the chair of the Assembly Budget Committee. "This year we tried to fund every program at a minimum. I just don't know what options we are going to have next year."

Gov. Schwarzenegger says the state faces a \$5 billion to \$7 billion shortage before the end of the current fiscal year next June. That's a dramatic shift from the roughly \$500 million cushion that had been predicted in an \$85 billion General Fund that already had been cut by \$6 billion from the year before.

That means a new round of cuts is coming. "I think that there will be across-the-board cuts again. I mean, we are not going to go and pick and choose. I think that we always have to go and cut across the board," Schwarzenegger told reporters in San Jose. "So we just have to hang in there, tighten our belts and live within our means. That's the most important thing."

In August, the administration projected some \$22.4 billion in shortages through the middle of 2012, a figure that reflects a \$7.4 billion shortfall through the end of 2010-11 fiscal that ends 19 months from now and grows to \$15.5 billion the following year. That number did not include the governor's latest estimate.

The Legislature's nonpartisan fiscal adviser, the Legislative Analyst's Office, plans to release its own budget outlook report next week. It will reflect the most current numbers -- which may be even more severe than the administration's given that the economy has weakened since August.

Tax receipts are running below projections by more than \$850 million, although the latest numbers show they may be flattening out.

Absent action and assuming a flat or worsening economy, the state is looking at shortages of perhaps \$25 billion or more during the next 2 ½ years, but the number is a moving target because an array of taxes are phased out, and a number of tax breaks phase in.

The General Fund has already dropped nearly \$19 billion in two fiscal years – from \$103 billion in 2007-08, to \$85 billion in the current year.

One member of the Assembly budget and a veteran of city and county government, said long-term budgeting is a necessary first step.

"We've got to do a systematic approach and address the cost drivers of the budget. We ought to be budgeting for five years," said Assemblyman Jim Beall Jr., D-San Jose, a member of the Assembly Budget Committee.

"When the economy is bad, caseloads go up. I'm not sure lowering caseloads is feasible, because more and more people are applying for aid. Proposition 36 money (for drug rehabilitation) has been cut to the bone, from \$120 million to \$18 million, but alcohol and drug abuse are big drivers for prison costs. Rehabilitation has been ignored by the governor – he's vetoed it," Beall added.

Other factors are intensifying the crisis.

Temporary taxes will expire over time, leaving the state without money that it counted on last time to balance its books. Tax breaks for businesses, approved as part of the last budget to woo Republican votes, will kick in, further draining the treasury. Last time, lawmakers and the governor delayed a \$6.3 billion payment to schools, accelerated tax collections to get money quickly, tapped federal stimulus money and delayed payments to employees, among other items.

"The basic problem is that tax revenue goes away and the corporate loopholes take affect – all at the same time. This is self-inflicted. This has nothing to do with the economy," said Lenny Goldberg of the California Tax Reform Association, which opposes corporate tax breaks.

But to replace or revise those taxes, however dire the state's fiscal condition, is all but certain to spark political warfare, as minority Republicans block new taxes in a repeat of the round of crises and confrontations with the Democratic majority that dominated 2009.

Borrowing money also will be difficult. This week, the state borrowed \$1.9 billion, but was forced to pay a 4 percent tax-free yield to attract bond buyers, the Los Angeles Times reported. The borrowing is intended to repay local governments for a \$2 billion shift in property tax funds to the state, which need the money to balance its books.

Some items that brought in revenue will disappear. A boost in the personal income tax, which was expected to bring in \$5.8 billion, will expire by July 2011, and a .25 percent income tax increase, worth about \$3.7 billion, will go out of existence in December 2010. A ½ percent increase in the vehicle license fee to 1.15 percent of the depreciated value of the vehicle ends in the middle of 2011, reverting to it's earlier level of .65 percent.

Federal stimulus money, some of which was used to replenish the state's General Fund, will dwindle in the upcoming budget.

A one-cent increase in the statewide sales tax, worth about \$4.4 billion to the state, ends on June 30, 2011. A two-year borrowing from local governments – the locals called it a "raid," not a borrowing – brought in about \$2 billion, including \$1.7 billion one year and a projected \$350 million the next. But budget writers can't do the same thing again until that money is paid back, the under provisions of voter-approved Proposition 1A of 2004, which was intended to protect locals' funding.

Sacramento's penchant for tapping other funds, such as transportation money under Proposition 42 that was intended to relieve traffic congestion, also will be harder. That's because those borrowings are limited to twice a decade, and the state has used up its quota.

The state also has tapped money from local redevelopment funds, a move that thus far has drawn two lawsuits. Also in the courts: the administration's efforts to save \$80 million by cutting back In-Home Supportive Services. The state also delayed payments to schools and workers, including a \$6.3 billion payment to education, that will have to be resolved in the new budget. The decision to delay payments by one day and shift them to the new fiscal year changed the year that certain funds were given to them.

"It is very difficult to say where we have the ability to cut without very significant, very substantial program cuts," said Marianne O'Malley, a budget expert with the Legislative Analyst's Office.

There is a potential bright spot.

With the Dow climbing, there is a possibility of significant revenue from capital gains transactions. During the dot.com bubble of the late 1990s, tax revenue from capital gains – which are taxed like income -- fueled state unprecedented state spending.

One issue that may be at risk in the upcoming budget wrangle is the governor's legacy, which insiders believe is hooked to water projects to be financed by an \$11 billion bond measure scheduled to go before voters next year. But with the market uncertain, the chances of the bond's passage are problematic.

"His legacy? It's not about his legacy anymore, it's about helping the state survive. It's not about helping our political careers or legacy or egos," Beall said.

#### Two hearings and one bill later, IHSS implementation deadline still causing chaos

Efforts to clarify new rules regarding In-Home Supportive Services (IHSS) providers are still underway after SB 69, a bill to postpone some of the provisions, failed in the Senate on November 3.

The IHSS program integrity and anti-fraud provisions in question were contained in ABX4 19 (Evans, Chapter 17, Statutes of 2009), which was part of the mid-year budget packaged passed by the Legislature in July. They required new IHSS providers to submit fingerprints and undergo a criminal background check, attend a new provider orientation, and complete several new forms.

Under the legislation, all of these changes were required to be implemented by November 1. However, counties did not receive most of the clarifying implementation information from the Department of Social Services (DSS) until October, with information coming as late as 10 p.m. on Saturday, October 31. Furthermore, counties have not received any additional funding for implementation or workload, and none of the materials provided by the state have been translated into required threshold languages.

This has caused mass confusion among prospective providers and current IHSS consumers who are in urgent need of services.

A hearing held by the Assembly Budget and Fiscal Review Committee on October 28, highlighted the issues and inconsistencies with the implementation of the change. As a result of that hearing, SB 69, by the Assembly Committee on Budget and Fiscal Review, was presented on the Assembly floor on November 2. The bill, as amended in the Assembly, included a stakeholder processes to speed efficiency and implementation and imposed a 60-day implementation window after the stakeholder process was completed.

SB 69, which CSAC supported, was approved by the Assembly 69-0, but was held up in the Senate on the evening of November 3 by Senate Republicans and the Administration.

In response, Assembly Budget Chair Noreen Evans convened another hearing to discuss possible solutions to this issue. State human services leadership and IHSS technical staff did not attend the hearing; instead, the Department of Social Services sent their legislative affairs staff.

Frank Mecca, executive director of the County Welfare Directors Association, spoke at the hearing, calling the situation a "trap door," since the old requirements for prospective providers were scrapped by the state before the new requirements could be effectively implemented.

The state appears to be continuing with changes to the program without addressing the fundamental questions that counties continue to raise. State staff indicated that they will respond to questions and concerns raised at the hearing in writing.

#### FEDERAL LEGISLATIVE ACTIVITY

On Saturday, Nov. 21, the Senate voted to bring proposed health reform legislation to the floor for debate. Senate Majority Leader Harry Reid (D-Nev.) rolled out his merged bill on November 18. Entitled the Patient Protection and Affordable Care Act, it combines the Finance Committee's America's Healthy Future Act (S. 1796) with the Health Education Labor and Pensions Committee's Affordable Health Choices Act (S. 1679).

According to the Congressional Budget Office (CBO) it will cover 94 percent of all Americans below 65 years of age at a cost of \$848 billion over ten years. Debate began in earnest on November 30 and will continue until the holiday recess. The House and Senate would aim to consider a conference report in early January, with the State of the Union Address as a deadline for final passage.

With pressure mounting to pass health care reform legislation before the end of the year, Senate Democrats have threatened to pull out the procedural stops to force votes on amendments to the healthcare reform bill on the floor as the GOP continues to object to advancing the legislation.

Moreover, Senate Democrats said after huddling on floor strategy on December 2 that the majority party is prepared to keep the Senate in session until Christmas or beyond in order to complete work on the bill before New Year's.

The Senate began its formal debate on the healthcare reform bill on November 30 but has yet to hold a vote on the first two amendments to the legislation because of Republican objections to moving forward. Without an agreement from the minority, Democrats would either have to file cloture on each amendment, a process that takes days and requires 60 votes, or move to table the amendments, a procedural move that requires only 51 votes but that traditionally has been viewed by senators as harsh.

With Congress's scheduled winter holiday recess fast approaching, the slow start to the floor debate — not to mention unresolved policy issues dividing Democrats — threatens

the Democratic leadership's plan to get the bill passed before 2010. Democratic senators said they were ready to stay in session as long as it takes.

Senate Health, Education, Labor and Pensions Committee Chairman Tom Harkin (D-lowa) predicted Democrats would meet their target despite the sluggish floor debate. Majority Leader Harry Reid (D-Nev.) has already warned senators that he plans to keep the Senate in session at night and on weekends.

The Senate has been stuck debating an amendment authored by Sens. Barbara Mikulski (D-Md.) and Olympia Snowe (R-Maine) to increase access to breast cancer screenings and an amendment offered by Sen. John McCain (R-Ariz.) to strip more than \$400 billion in Medicare spending cuts from the legislation. Reid planned to hold votes on these amendments and two substitute amendments Wednesday afternoon, but Minority Leader Mitch McConnell (R-Ky.) objected Tuesday evening.

Republicans deny their intention is to stymie debate on the legislation, though a GOP leadership aide said their aim is to ensure that the healthcare reform bill is on the floor for at least as long as the several weeks Reid spent behind closed doors merging the healthcare bills approved by the Finance and HELP committees. The aide also noted that the Democratic Conference has 60 members and should be capable of overcoming any minority objections and that Democrats would move to table the amendments.

Democrats are strongly leaning toward moving to table the amendments if Republicans continue to object to holding votes, according to Harkin.

Lawmakers also are grappling with another high priority, hot-button piece of legislation – climate change. The Senate Environment and Public Works (EPW) Committee approved a package (S. 1733) November 5 that would impose a mandatory reduction on greenhouse gas emissions. Democrats are eager to show some movement on an emissions bill before an international gathering on climate change next month in Copenhagen, Denmark.

Congress continued the week of November 2 to wrestle with the various fiscal year 2010 appropriations bills. Although most spending bills for fiscal 2010 have not been finalized, the Senate did clear November 5 the Commerce-Justice-Science spending measure (H.R. 2847), which includes \$228 million for the State Criminal Alien Assistance Program (SCAAP), a \$172 million reduction. Earlier this session, the House approved \$400 million for SCAAP, or the same amount of funding appropriated by Congress in fiscal 2009. A House-Senate conference committee will meet to iron out differences between the two competing bills.

In other appropriations developments, President Obama recently signed into law the fiscal 2010 Interior and Environment appropriations bill (H.R. 2996) that includes a continuing resolution (CR) to fund the federal government until December 18. The federal fiscal year began October 1. Additionally, the funding measure provides \$3.6 billion for wastewater and drinking water enhancements, a \$2 billion hike over last

year's funding level.

In political news, California Democrat John Garamendi was sworn in November 5 as the newest member of Congress from California. Congressman Garamendi, who represents the state's 10<sup>th</sup> Congressional District, succeeds Ellen Tauscher, who resigned from the House to accept a high level position in the State Department.

Last Tuesday's election also brought another new member of Congress to Washington, Democrat Bill Owens of New York, who was sworn in on November 6. The House is now at full strength again, with the Democrats controlling 258 seats and the GOP 177 seats.

#### CSAC Representative Testifies on Capitol Hill on Need for Fee-to-Trust Reform

On November 4, the House Natural Resources Committee held a hearing on legislation (HR 3742/HR 3697) that would provide the secretary of the U.S. Department of Interior with authority to take land into trust for Indian tribes regardless of when they were recognized by the federal government. The legislation, sponsored by Representatives Dale Kildee (D-MI) and Tom Cole (R-OK) – the co-chairs of the Congressional Native American Caucus – would reverse the U.S. Supreme Court's ruling in *Carcieri v. Salazar*. The Court's decision limits the secretary's trust land acquisition authority to those tribes that were under federal jurisdiction at the time of the passage of the Indian Reorganization Act of 1934.

In part because the Supreme Court did not define the term "under federal jurisdiction," a great deal of uncertainty has arisen in the wake of the *Carcieri* decision regarding the future of the fee-to-trust process. According to Natural Resources Committee Chairman Nick Rahall (D-WV), "many tribes may face unnecessary litigation and other delays that tribes cannot afford" because of the Supreme Court's decision. Other key members of Congress agree with Chairman Rahall, and are pushing Congress to move swiftly to approve the *Carcieri* "fix" legislation.

The need to adopt the Kildee/Cole bills was called for in testimony provided by several witnesses, including Donald Laverdure, the deputy assistant secretary of Indian Affairs of the U.S. Department of the Interior. Along with Mr. Laverdure, several tribal representatives urged Congress to pass the legislation in order to provide certainty to Indian country. It should be noted that calls for a quick legislative fix were questioned by the committee's ranking member, Representative Doc Hastings (R-WA), who stated that: "It would be neither responsible, nor constructive, for this Committee or the Congress to attempt to rush through legislation, like the bills before us today, without considering the views of the states, counties and cities that we represent, and, more importantly, who advanced this case all the way to the United States Supreme Court, where their legal arguments prevailed."

Testifying at the hearing on behalf of CSAC was Steven Woodside, Sonoma County

Counsel. In his remarks to the committee, Mr. Woodside stated that a so-called "simple Carcieri fix" would do nothing to repair the broken fee-to-trust process, which does not require tribes to engage in good faith discussions regarding mitigation of environmental impacts of tribal development or enter into enforceable mitigation agreements with local governments. Additionally, Woodside stated that the Department of Interior does not provide sufficient notice regarding fee-to-trust applications and does not notify counties of requests for Indian lands determination, which is a critical component of a gaming application.

Instead of advancing the narrowly constructed Kildee/Cole measures, Woodside called upon the committee to work with California counties and counties from across the nation to develop a new fee-to-trust process that is founded on mutual respect and encourages local governments and tribes to work together on a government-to-government basis. Woodside recommended reforms that extend tribal trust land authority to the secretary of Interior that include clear direction to: (1) provide adequate notice to local government; (2) hear local government concerns; (3) require tribes and local governments to work together; and, (4) provide for cooperating agreements that are enforceable.

Also testifying before the committee was Connecticut Attorney General Richard Blumenthal. For his part, Blumenthal called upon Congress "to take no further action regarding the decision -- while reforming the process for taking land into trust for pre-1934 tribes and requiring congressional approval for post-1934 tribes." In keeping with themes promoted by Woodside, Blumenthal stated his belief that critical decisions should remain with Congress in a process that is transparent, accountable, and ensures input from all affected parties, including states and local communities.

#### **Details of House Health Reform Bill (H.R. 3962)**

**Medicaid Expansions:** Expanding Medicaid to cover more uninsured individuals is a cornerstone of the House health reform legislation (H.R. 3962). Effective in 2013, the bill expands Medicaid to any individual with income at or below 150% of the federal poverty level (\$16,245 annually for and individual and \$33,100 for a family of four in 2009). Under the legislation, the federal government would assume 100% of the benefit costs for the first two years, with states contributing 9% of the costs thereafter. The normal 50% federal match for administrative costs would continue to apply. An estimated 1.04 million California residents would qualify under the proposed expansion, at an additional cost of about \$221 million annually to the state beginning in 2015.

**Medicaid DSH Program:** The Medicaid disproportionate share hospital (DSH) payment program would be scaled back beginning October 1, 2017. Over the succeeding three years, the program would be reduced by \$10 billion, using a formula that would make the largest reductions in payments to those states with the lowest percentage of uninsured and the amount of true uncompensated care provided by hospitals in a state. The cuts are based on the assumption that DSH payments would be of lesser

importance, given a higher percentage of persons with health insurance. Safety net stakeholders, including CSAC, note that the Congressional Budget Office estimates that 18 million individuals would remain uninsured after full implementation of the bill. Those individuals would likely still access care through DSH-supported facilities.

**Public Health Investments:** The House measure contains significant new investments in core public health activities of state and local health departments. Those activities include improving the workforce, information systems, and meeting other agency capacity needs. Funding under the Prevention and Wellness Section would be placed in a Trust Fund that Congress could draw from. Core public health funding totals \$800 million in the first year (2011), gradually rising to \$1.265 billion in 2015. The funds would be distributed as follows: no less than 50% to states, based on a formula, and no less than 30% on a competitive basis to state, local, and tribal health departments.

#### **Climate Change**

Employing a procedural move that angered Republicans, Senator Barbara Boxer (D-CA), chair of the EPW Committee, pushed through her panel November 5 a controversial global warming bill. Stating that the Senate should not come to a standstill, the California lawmaker noted that she reluctantly employed the procedural maneuver after her efforts to compromise with GOP senators were rebuffed.

Under Senate EPW Committee rules, at least two members of the minority party must be present for votes on amendments and to approve legislation. For their part, Republicans vowed to boycott the panel's consideration of the climate change bill, prompting Senator Boxer to report the measure out of committee with a simple majority, with no votes on any amendments.

A key sticking point for the GOP panel members was Senator Boxer's refusal to request a full analysis of the bill by the Environmental Protection Agency (EPA). Senator Boxer countered by noting that S. 1733 is very similar to the House-passed measure (H.R. 2454) that the EPA had previously analyzed. She charged that the Republican request was essentially a stalling tactic that could delay the bill for five weeks.

At this point, it is not known what impact, if any, the procedural maneuver will have on the ongoing bipartisan talks on global warming, which is being spearheaded by Senators John Kerry (D-MA), Lindsey Graham (R-SC), and Joseph Lieberman (I-CT). Nevertheless, the three lawmakers, along with the White House, are expected to continue to work on a compromise package that will attract the 60 votes needed to overcome a potential filibuster in the Senate.

The legislation approved by Senator Boxer's panel aims to curb global warming by restricting the emissions of greenhouse gases, require industries that pollute to hold emissions allowances provided by the government, and set up a market for trading the allowances or credits.

It should be noted that in addition to the EPW Committee, five other Senate panels have jurisdiction over parts of the sweeping global warming legislation. Eventually, the six committees are expected to meld their versions so the full Senate can act on one comprehensive package.

#### **Transportation**

The Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) was extended by Congress as part of the recently enacted CR. The surface transportation law expired on October 1.

Under the CR, federal transportation programs are funded at the fiscal 2009 levels. Congress has failed to approve a reauthorization of SAFETEA-LU as well as the fiscal 2010 transportation appropriations bill. Additionally, efforts to enact a multi-month measure have also fallen short as the Obama Administration and key members of the House and Senate continue to push for different time frames.

For its part, the administration is pressing for an 18-month extension, while the Senate EPW Committee is trying to extend the act through April of next year. On the House side, while the Transportation and Infrastructure Committee continues to pursue a six-year rewrite of the surface transportation law, the full House recently approved a three-month extension of the act. House transportation leaders have opted for short-term extensions in hopes of keeping pressure on Congress to enact a multi-year reauthorization of SAFETEA-LU next year.

With reauthorization efforts stuck in neutral, House Republicans are seeking a two-year, transportation-related jobs bill. Specifically, they are working on proposals to provide quick funding for transportation projects with revenue from the economic stimulus package and/or the Troubled Asset Relief Program. However, GOP efforts to tap into these two programs for transportation projects have drawn little interest from the Democratic majority in Congress.

On December 2, 2009, Chairman Oberstar, Chairman DeFazio, Rep. John Garamendi of the House Transportation and Infrastructure Committee along with ASHTO and APTA held a press conference where they made the case for increased stimulus funding for transportation infrastructure projects. They began by describing the success of the current transportation stimulus funds in creating jobs throughout the country.

Then ASHTO released a report stating that State DOT's have identified an additional 9,500 projects that can move forward in the next 120 days, and an APTA representative stated that public transportation systems have identified an additional \$15 billion in capital projects that can be started within the next 90 days.

When questioned about the scope of the rumored Jobs bill that could include the additional transportation funding, Chairman Oberstar stated he had been having "serious conversations with Chairman Obey (House Appropriations) about the confluence of bad news" – States that can't provide the 20% required local match for transportation projects, the decline in revenue into the Highway Trust Fund, and the looming end of the current transportation stimulus funds which have created 211,000 direct jobs and 130,000 indirect jobs.

Further he stated that specifics about amounts and sources of funds in this proposed legislation had not been resolved.

When asked about an extension of SAFETEA-LU he said, "We have to provide an extension of current law, but only with a meeting of the minds with the White House and Senate" on when the long term bill will be completed.

He also stated that there should be a "clean" extension of SAFETEA-LU - meaning that no projects and modifications to current law should be included on the extension.

For more information, contact Joe Krahn, Waterman and Associates, 202/898-1444, or e-mail <u>ik@wafed.com</u>.