STATE OF CALIFORNIA
Spring Finance Letter - Cover Sheet
DF-46 (REV 08/15)

Fiscal Year 2016-17
Business Unit 3960
Department Toxic Substances Control
Priority No. 3
Budget Request Name 3960-002-SFL-BR-2016-GB
Program 3620 Site Mitigation And Brownfields Reuse
Subprogram 3625 Hazardous Waste Management

Budget Request Description
Office of Environmental Justice and Tribal Affairs

Budget Request Summary:
The Department of Toxic Substances Control (DTSC) requests an augmentation of $881,000 ($441,000 from Toxics Substances Control Account and $440,000 from Hazardous Waste Control Account) and 6.0 permanent positions to create an Office of Environmental Justice (EJ) and Tribal Affairs. This proposal will help strengthen coordination of EJ and Tribal Affairs activities and enhance engagement with impacted communities. It will also allow the Department to identify and address gaps within its programs that may contribute to unequal environmental protections or outcomes in these communities, and broaden the transparency of and access to DTSC’s programs.

Requires Legislation
☐ Yes ☒ No

Code Section(s) to be Added/Amended/Repealed

Does this BCP contain information technology (IT) components?
☐ Yes ☒ No

If yes, DTSC Chief Information Officer must sign.

For IT requests, specify the date a Special Project Report (SPR) or Feasibility Study Report (FSR) was approved by the DTSC of Technology, or previously by the DTSC of Finance.

☐ FSR ☐ SPR

Date: Project No.

If proposal affects another DTSC, does other DTSC concur with proposal?
☐ Yes ☐ No

Attach comments of affected DTSC, signed and dated by the DTSC director or designee.

Prepared By

DTSC Director

Reviewed By

Agency Secretary

Date 4/8/16

Date 4/8/16

Date 4/8/16

Date 4/8/16

DTSC of Finance Use Only

Additional Review: ☐ Capital Outlay ☐ ITCU ☐ FSCU ☐ OSAE ☐ CALSTARS ☐ Dept. of Technology

BCP Type: ☐ Policy ☐ Workload Budget per Government Code 13308.05

PPBA Date submitted to the Legislature
A. Budget Request Summary

DTSC requests an augmentation of $881,000 ($441,000 from Toxics Substances Control Account; $440,000 from Hazardous Waste Control Account) and 6.0 permanent positions to create an Office of Environmental Justice (EJ) and Tribal Affairs (Office). This proposal would help to strengthen coordination of EJ and Tribal Affairs activities and enhance engagement with impacted communities. It would also allow the Department to identify and address gaps within its programs that may contribute to unequal environmental protections or outcomes in these communities, and broaden the transparency of and access to DTSC’s programs.

B. Background/History

DTSC has experienced increasing public scrutiny and legislative oversight since 2008. Programmatic improvements are currently being implemented; however, concern continues to be raised about DTSC’s ability to protect the State’s people and environment from the harmful effects of toxic substances. A key focus is on those communities most impacted by multiple sources of pollution and most vulnerable to their effects. High profile cases – such as the Exide Technologies facility in the City of Vernon, where DTSC is overseeing facility closure and large-scale cleanup efforts in surrounding neighborhoods – keep DTSC’s policies, decision-making processes, and community engagement practices in the spotlight at a state and national level.

In early 2015, DTSC took a critical step towards restoring public confidence by developing a new executive leadership position focused on advancing environmental justice. According to California statute, environmental justice is defined as “the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies” (Government Code Section 65040.12). DTSC worked with the Legislature to create an Assistant Director position in statute in June 2015. This new position has been filled by a highly qualified individual.

In 2007, an environmental justice initiative was created within the enforcement program to fulfill certain state mandates and address concerns of environmental justice communities. Since that time, environmental justice coordination has been the primary responsibility of one staff member within the enforcement program, and has lacked reach into DTSC’s other key programs such as permitting, site cleanup, and safer consumer products and workplaces.

The Department is currently overseeing the cleanup of approximately 1,300 contaminated sites in California and is the only state agency responsible for hazardous waste oversight at more than 120,000 businesses that generate, handle, treat and dispose of hazardous waste in California. Within its jurisdiction and statutory authority, DTSC is committed to equitable protection for all communities, including Tribal communities, and seeing that all communities have the opportunity for meaningful participation in regulatory decisions and planning processes.

Native American Tribes are sovereign nations requiring government-to-government interaction. Executive Order B-10-11 requires state agencies to encourage and permit representatives of Tribal governments to provide meaningful input into the development of legislation, regulations, rules, and policies on matters that may affect Tribal communities. Assembly Bill (AB) 52 (Public Resources Code Section 21080.3.1 – 21080.3.) requires lead agencies to consult with California Native American Tribes before conducting an environmental review of agency activities so that Tribal communities who may be impacted are informed and actively involved in mitigating any potential impacts. Tribal consultation activities, which rely on building and maintaining trusted relationships, have previously been limited and lacked effective coordination within DTSC.
Analysis of Problem

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<th>WORKLOAD MEASURE</th>
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*Attended by staff as available & time permitted from other DTSC programs

C. State Level Considerations

DTSC is required to develop a strategy to identify and address any gaps in existing programs, policies and activities that may impede the achievement of environmental justice (Government Code sections 65040.12(e) and 12812.2; Public Resources Code sections 71110-71113; California Health and Safety (CA H&S) Code section 25180.2, and CalEPA Intra-Agency Environmental Justice Strategy). AB 1329 (CA H&S Code Section 25180.2) requires DTSC to prioritize enforcement actions within the most impacted environmental justice communities, as identified by CalEPA. Additionally, SB 673 (CA H&S Code Section 25200.21) directs the Department to update criteria used for issuance of a new or modified hazardous waste facility permit to consider vulnerability, cumulative impacts, and existing health risks as well as other criteria that are important to environmental justice communities.

California H&S Code section 57015 requires the Assistant Director to:

(a) Serve as ombudsperson and outreach coordinator for disadvantaged communities, as described in Section 39711, where hazardous materials and hazardous waste disposal facilities are located.

(b) Provide information and assistance to communities on permitting, enforcement, and other DTSC activities in the major language(s) spoken in those communities to ensure the maximum feasible community participation in regulatory decisions made by DTSC.

(c) Make community health or epidemiological information collected by DTSC or other parties available to communities, consistent with other requirements of law, as soon as possible with plain explanations as to their impacts.

This work will align with objectives identified in DTSC’s 2014-2018 Strategic Plan, including:

- Objective 2.5: Develop processes and apply criteria to prioritize work within the hazardous waste Enforcement and Permitting programs using tools such as new environmental screening methods and GIS technology.

- Objective 5.1. Provide the public with clear, accessible, and timely information to build trust in DTSC’s decision-making and foster an understanding of how DTSC’s work benefits the public and the environment.

- Objective 5.2. Ensure DTSC’s website and social media efforts are useful and accessible, and address the needs of communities, the public, and other DTSC stakeholders.

- Objective 5.3. Develop and implement a process to hold regular public meetings for input on DTSC’s projects and proposals, and to inform stakeholders about DTSC programs and activities.

- Objective 5.4. Develop and implement a strategy for impacted communities that engages members and aligns with program initiatives and community needs.

- Objective 5.5. Develop/update DTSC’s communication guidance documents (i.e., public participation guidance, community advisory group guidance, environmental justice action plan,
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Tribal affairs guidance, media guide, and writing guide) using a publicly transparent process; and ensure guidance documents align with CalEPA and US EPA guidelines, as appropriate.

- Objective 5.6. Integrate DTSC's public participation strategies and activities into site cleanup and hazardous waste management programs, including the use of cross-program workgroups.

CalEPA’s Tribal Policy on Consultation with California Native American Tribes (August 20, 2015) requires that Tribal communities who may be impacted by environmental legislation, regulations, rules and policies are addressed through their informed and active involvement. Governor’s Executive Order (EO) B-10-11 requires strengthening of communications and consultation with California Tribal governments. AB 52 (Public Resources Code Section 21080.3.1 – 21080.3.2) requires lead agencies to consult with California Native American Tribes.

D. Justification

Programmatic and Legal Justifications

Six broad programmatic and legal justifications underpin this request for resources and staff. They are as follows:

Building on California’s Precedent-Setting Commitment to Environmental Justice

California was one of the first states to codify environmental justice in state statute. With the first executive level position focused on environmental justice at any CalEPA Board, Department or Office, DTSC is uniquely positioned to embed equitable protections in policy decisions and practices for impacted communities across the state. Much of the work involved in advancing environmental justice for impacted communities involves procedural justice, which focuses on the process through which environmental decisions are made. This includes supporting vulnerable groups with access to legal and technical resources, equal access to decision-makers and decision-making processes, equitable data collection, and providing for materials in the languages necessary to allow for meaningful public involvement. All of these duties require an investment in community education and empowerment strategies in order to build trusted community partnerships. By placing skilled and well-qualified staff to serve as ombudspersons to impacted communities, DTSC will broaden access to and transparency of each program, as well as enhance relationships with EJ and Tribal communities.

Institutionalizing DTSC’s Commitment to EJ and Tribal Affairs

Creation of a DTSC Office of Environmental Justice and Tribal Affairs will enable the Assistant Director to carry out the statutorily required duties and coordinate DTSC’s EJ and Tribal Affairs work and provide the executive leadership, resources, and public accessibility. This in turn will significantly raise the profile of DTSC’s commitment to engage EJ and Tribal communities in the regulatory processes. Resources will provide improved coordination, analysis, and promotion of community-state government partnerships to reduce pollution in impacted communities throughout the State. DTSC will be able to identify more and earlier opportunities for communities to meaningfully engage in our work and expand consultation and collaboration efforts with community organizations, Tribes, academia, and other agencies and stakeholders.

Filling Gaps that Inhibit DTSC’s Ability to Broadly Promote Environmental Justice

State law requires DTSC to conduct its programs, policies, and activities in a manner that provides for the fair treatment of people of all races, cultures, and income levels, including minority and low-income populations (PRC section 71110). However, DTSC does not currently have an EJ or Tribal Policy, Strategy or Action Plan. Resources from this BCP will be used to identify and address gaps in existing programs, policies and activities that may impede the achievement and advancement of environmental justice under California law (e.g. compliance with California Government Code sections 65040.12(e) and 12812.2; Public Resources Code sections 71110-71113; CA H&S Code section 25180.2, and CalEPA Intra-Agency Environmental Justice Strategy requirement).
Better Compliance with Significant New State Law Protecting Tribal Cultural Resources

DTSC must comply with the California Environmental Quality Act (CEQA) when conducting or overseeing investigations and remediation of contaminated properties; making decisions on hazardous waste facility permit applications, facility closures, and corrective actions; and promulgating regulations. During these processes, the potential effects a project may have on Tribal cultural resources must be assessed. Effective January 1, 2015, Assembly Bill (AB) 52 imposed additional requirements on DTSC to notify and consult with Tribal contacts before issuing a CEQA document, attend meetings requested by the Tribal contacts, conduct site visits, review information provided by Tribal contacts about Tribal cultural resources, and negotiate changes to the project to accommodate mitigation measures needed to protect those cultural resources. Some of the proposed mitigation measures could be quite complex and sensitive and require lengthy consultation and negotiation among DTSC, the affected Tribal group(s) and the project proponent. Additional staff resources will be needed to address the related technical and legal issues and to comply with AB 52.

In some cases, considerable time will be spent by DTSC staff to reassess the project and discuss with a project proponent how the mitigation measures proposed by the Tribe(s) could change the scope, nature, cost, and schedule of the project, and whether or not the project could be carried out with the proposed mitigation measures. The consultation activities required by AB 52 must be undertaken before the lead agency decides on the type of CEQA document to be prepared for a project. The final conclusion as to what type of CEQA document and the final mitigation measures will depend on the agreement reached by the parties; otherwise, DTSC must document that the required consultation has taken place and agreement was not reached after good faith and reasonable efforts. In those instances, DTSC still needs to consider feasible mitigation measures as provided in AB 52.

Enhancing Enforcement of Environmental Justice

DTSC is mandated by AB 1329 (CA H&S Code section 25180.2) to prioritize enforcement actions within communities identified by CalEPA as the most impacted environmental justice communities. Additional resources are needed to support staff training on CalEnviroScreen, and to develop program protocols for its application in prioritizing our work within impacted communities. With limited existing resources, DTSC has undertaken a significant new workload presented by DTSC’s Permitting Enhancement Work Plan, Strategic Plan 2014-18, Fixing the Foundation Workplans, and supporting CalEPA EJ Task Forces and statewide initiatives. Opportunities exist to better integrate community concerns into CalEPA Task Force initiatives. Additional staff would help to support such work, while increasing DTSC’s support for community-lead environmental reporting networks or IVANs (Identifying Violations Affecting Neighborhoods) and environmental justice task forces that seek to identify and reduce pollution. DTSC has stated commitments and established partnerships with disadvantaged communities to address public health and environmental impacts, to participate in collaborative partnerships, and to support regular communication with statewide EJ organizations.

Environmental Justice and Tribal Affairs Positions

The positions requested include: (1) the formal creation of the position of Assistant Director for Environmental Justice and Tribal Affairs; (2) an Environmental Justice Program Manager (EPM1); (3) two Environmental Scientists (ESs); and (4) two Associate Governmental Program Analysts (AGPAs). These resources supplement the 4 positions redirected from within the department.

The Assistant Director for Environmental Justice and Tribal Affairs, in consultation with executive leadership and program staff, will establish goals and objectives for developing and implementing an EJ and Tribal Affairs Strategic Plan. The Plan will build on existing frameworks developed across DTSC's programs, and will focus on identifying and addressing any gaps in existing programs, and policies and activities that may impede the achievement of environmental justice. The goals and objectives will be reviewed on a regular basis and evaluated for effective program development and implementation. This position was created in statute in the FY 2015-2016 Budget Act.

The Environmental Justice Program Manager will supervise program specialists, including three existing specialists (one Senior ES, one AGPA and one SSA) and the two requested AGPAs. The work of this unit (and the specific work of the two requested AGPAs) will include deep engagement with environmental...
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justice communities and native tribes to characterize and understand the environmental impacts they experience and how the modes of service used by DTSC’s core programs affect them. The unit will be organized regionally (northern, central and southern). These staff will partner with regional and local community-based organizations to build community networks, establish regular meetings, conduct surveys, assess cultural sensitivities and identify culturally specific communication needs (languages, preferred media, etc.). They will work with community members to prioritize issues of concern and serve as liaisons with technical program staff to identify the potential range of responsive actions. They will also report progress to the communities. In addition, these specialists will support the development and implementation of the Department’s EJ and Tribal Affairs action plans.

The requested Environmental Scientists, along with an existing Senior ES, will report to the Assistant Director. This group will develop, coordinate, and implement elements of DTSC’s EJ and Tribal Affairs action plans, and CalEPA’s EJ and Tribal policies. They will act as technical and program consultants within the Department on Environmental Justice and Tribal issues, community health and environmental impact assessments, and specific analyses associated with environmental justice reviews for permitting, enforcement and cleanup activities. They will evaluate the design or delivery of DTSC’s core programs to identify gaps that may contribute to less effective environmental protection of these communities. These staff will participate in making recommendations for policy, regulation, and other program improvements. They will also participate in the design and implementation of Supplemental Environmental Projects, support community-based enforcement efforts (such as IVAN) and environmental grants to, and projects in impacted communities.

E. Outcomes and Accountability

The requested resources will provide for the establishment of an Office of Environmental Justice and Tribal Affairs under the recently appointed Assistant Director for EJ and Tribal Affairs. The new Office will broaden the transparency of DTSC’s programs and improve access to legal and technical resources, equitable data collection, and decision-makers and decision-making processes; help build trusted partnerships with EJ and Tribal communities; and allow for meaningful public involvement. EJ and Tribal communities will be better able to inform DTSC about environmental health concerns and needs enhancing the ability of impacted communities and DTSC to make decisions better suited to protect public health and address EJ and Tribal community needs.

DTSC will formally create and fund the position of Assistant Director within the Department. While the position was established in statute and the incumbent was appointed last year, the position is currently being loaned from the California Air Resources Board. Five additional positions are being requested to support the Office and develop comprehensive Environmental Justice and Tribal Affairs programs. Action Plans, policies, protocols and other needed documents and newsletters will be developed to promote transparency and community trust for all stakeholders including EJ and Tribal communities. DTSC will have the staff needed to do much needed outreach and adequately coordinate and participate in community and other meetings with stakeholders – 100 such meetings are anticipated. DTSC will be able to involved fully in CalEPA EJ and Tribal Advisory Committee meetings as well as CalEPA EJ and Tribal Liaison meetings. There will be much needed support for 25 public hearings on high profile projects involving impacted communities and follow up meetings with core program staff. Staff will be available to provide regular support to ongoing, established community-based environmental reporting networks (IVANs), to help recently organized networks keep going and assist in the organization of new networks. This will involve both participation in regular network meetings, assisting organizers of new networks and providing problem-solving expertise. As required under AB 52, staff will be involved in outreach to tribal communities and providing Tribal consultation for cleanup and permitting projects – particularly those involving ground-disturbing activities – to support protection of Tribal cultural resources. It is anticipated that there will be at least 50 projects in the next year that will be requiring coordination and consultation with potentially impacted Tribal communities.
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Projected Outcomes

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F. Analysis of All Feasible Alternatives

Alternative 1: Approve a request for $881,000 and 6.0 permanent positions to create an Office of Environmental Justice and Tribal Affairs.

Pros:
- Provides DTSC resources to develop and implement EJ and Tribal Affairs strategies, plans, and policies as required by federal and state mandates and CalEPA policies.
- Required statutory duties of the Assistant Director will be met as well as actions required under the Governor’s Executive Order for Tribal Consultation, Assembly Bill 52, and CalEPA Tribal Policies.
- Enables DTSC to support the increasing number of EJ task forces and environmental reporting networks.

Con:
G. Requires an increase in budget and position authority.

Alternative 2: Redirect existing staff.

Pros:
- Requires no additional funding.

Cons:
- Limits resources to support statutorily required duties of the Assistant Director for EJ and Tribal Affairs, compliance with the Governor’s Executive Order for Tribal Consultation and AB 52, and implementation of CalEPA’s Tribal Policy.
- Restricts support for the increasing number of environmental reporting networks and meeting the significant new workload imposed by DTSC’s Permitting Enhancement Work Plan, Strategic Plan 2014-18, and CalEPA EJ Task Forces.
- Impairs the development and implementation of DTSC’s EJ and Tribal Affairs strategies, plans, and policies as required by federal and state mandates and CalEPA policies to identify and direct program resources to serve disadvantaged communities and California Native American Tribes.
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Alternative 3: Status Quo.

Pros:

- Requires no additional funding.

Cons:

- Limits resources to support statutorily required duties of the Assistant Director for EJ and Tribal Affairs and essential coordination of DTSC’s EJ and Tribal Affairs functions.
- Restricts support for the increasing number of environmental reporting networks and meeting the significant new workload imposed by DTSC’s Permitting Enhancement Work Plan, Strategic Plan 2014-18, and CalEPA EJ Task Forces.
- Impairs the development and implementation of DTSC’s EJ and Tribal Affairs strategies, plans, and policies as required by federal and state mandates and CalEPA policies to identify and direct program resources to serve disadvantaged communities and California Native American Tribes.
- Fails to provide EJ and Tribal affairs expertise and inter-departmental coordination for high profile sites potentially resulting in increased time and costs in completion of projects when required EJ and Tribal protocols are not incorporated in the beginning stages of the project.
- Impairs support for the increasing number of environmental justice organizations and reporting networks and commitments made to support impacted communities and Tribal groups.

G. Implementation Plan

July 2016 – September 2016: Complete hiring process for new positions. Begin necessary technical training classes including CalEnviroScreen and Fundamentals of EJ and Tribal Affairs, and required health and safety training including 40-hour HAZWOPER and medical monitoring for new hires. Attend regional project and community meetings to start solidifying relationships with stakeholders and enhance technical understanding of projects.

October 2016 – December 2016: Begin on-the-job training. Conduct regional public workshops on EJ and Tribal strategies and policies. Develop recommendations for revision of these guidance documents and draft plans for implementation.

January 2017: Begin Environmental Justice and Tribal Affairs work and related support activities. Coordinate with project managers and staff on projects of concern to EJ and Tribal communities. Develop action plans for addressing specific issues and provide recommendations for programmatic changes.

H. Supplemental Information

None.

I. Recommendation

Adopt Alternative 1 – Approve a request for $881,000 and 6.0 permanent positions to create an Office of Environmental Justice and Tribal Affairs. This option would accomplish the following:

- Establish an Office of Environmental Justice and Tribal Affairs.
- Support the statutorily required duties of the Assistant Director for Environmental Justice and Tribal Affairs.
- Ensure coordination of the Department’s EJ and Tribal Affairs strategies, functions, policies, and programs including required consultation and outreach with California Native American Tribes.