

## DRAFT

### MEMORANDUM

TO: RLC WILLIAMSON ACT SUBVENTION PROJECT PARTICIPANTS

FROM: BILL GEYER

DATE: FEBRUARY 9, 2010 (Revised 4-2-10)

SUBJECT: WILLIAMSON ACT SUBVENTION ALTERNATIVE FUNDING

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This memo constitutes the first step in developing a white paper listing and analyzing feasible alternative sources for funding Williamson Act (WA) subvention payments to offset local governments' revenue losses. The purpose of this white paper is to facilitate discussion and ultimate consensus among landowners (and especially agricultural organizations), counties, and environmental groups on a package that would be politically achievable and adequate to restore county confidence in the subvention program.

At this point, I have conceptually explored or developed a wide variety of options, funded from diverse sources. My evaluation criteria included such issues as who pays, ease of calculation and collection, equity and other nexus issues, stability of the source, and impact on the WA's local and statewide support and credibility. Some options are much simpler to price and cost than others, but I have not yet done any detailed fiscal analysis of any of them. My initial review has led me to focus greater attention for now on a multiple source package as opposed to a single "silver bullet," and on sources based within the WA constituency rather than strangers. I am attracted to the multiple funding option notion because diversity has the potential for greater stability, because it avoids the present risk of having all the eggs in one basket, and because it spreads the hit more broadly, reducing the individual bite.

My reasons for focusing on the WA constituency for funding are those of nexus and control. To the extent that the WA community comes up with the subvention money internally, it can justify much greater political control over the solution and its implementation over time. In addition, the WA can provide a mechanism for doing this with the consent of its contractual participants, which may not only simplify both the politics and the mechanics of collecting the money, but also help insulate it from outside raids. While one might ask, if the money to offset county tax losses is to come from the benefitting landowners, isn't this a zero sum game? The answer is, as will be explained, that first, some of the money proposed to come from the landowner base will actually come from external beneficiaries, and second, since the counties apparently now only get roughly 20% of the property tax dollar, their losses can be theoretically made whole without tapping into 80% of the existing tax relief. What follows is my attempt to demonstrate that viable options probably exist to create a coherent alternative to the state General Fund to finance WA

subventions. None of this means that the full range of options will not be on the table in a draft or final white paper.

At full funding, the present WA subvention program formula requires almost \$40M for roughly 17M acres of contracted land (see Section 16140 ff, Government Code). For discussion purposes, it may help to break potential alternative funding sources down into four components projected to raise 10M± each. In the end, actual reliable estimates for these components and many of their subcomponents may vary substantially from these target numbers based upon the price tag set for each charge and the incidence of occurrence of each event. I was recently able to secure funding from the California Association of Realtors (CAR) to get technical assistance, and have retained a consultant (Vince Minto, former Glenn County Assessor) who is familiar with the WA and local government, to assist in making these calculations and estimates. Since in real life the money will at least conceptually all go into the same pot, individual pluses or minuses can offset each other, and the sources discussed can be either added to or subtracted from as new information is developed.

1) **EARLY CONTRACT TERMINATION**

The WA provides at least four different mechanisms for early contract termination that do not require the substitution of another restrictive instrument on the land. According to the Department of Conservation (DoC), over the past decade (1996-2007), notices of nonrenewal have accounted for an average of 52,000 acres of contract phase outs annually (57%), compared to early termination figures of 1,100 acres for cancellations (1%), 29,000 acres of public acquisitions (32%) and 3,400 acres of annexation protests (4%).

**CANCELLATION**

Fiscally, the most prominent early termination option is cancellation (see Section 51280 ff, Government Code), which requires the payment of a fee equal to 12½% of the new unrestricted value of the land (through the county) to the state General Fund. Because cancellation fees are not specifically dedicated to the subvention program, the state currently gets to have its cake and eat it, too. Even though subventions have been almost totally defunded, the general fund will retain (and use) any annual cancellation fee income over the initial \$2½M, which is earmarked for its own costs in operating the Department of Conservation's (DoC) farmland programs (including the WA).

My proposal would be to simply dedicate annual cancellation fee revenue in excess of DoC's earmark to the subvention program. Historically, cancellations and resulting revenue have increased over time but also varied substantially with economic and development cycles. Most recently, they peaked at over \$25M in 2005-6 (nearly 2/3 of the annual subvention cost), but apparently fell below the \$2½M DoC support cost in FY 2008-9. My projection is that they will recover along with the economy over the next 2-5 years, and may then reliably produce \$10±M annually. They are unlikely to reach earlier highs because those appear to have been driven primarily by increases in land values (rather than acreage), which will not likely be matched in the near future. However, a possible upside influence is that both DoC and local governments

may be steering some of the current interest in alternative energy facilities into cancellations.

### PUBLIC ACQUISITIONS

A far more common source than cancellation of acreage lost to early contract termination is public acquisition through use or threat of eminent domain, which acts to terminate a contract immediately without penalty (see Section 51295). Although we had sufficient reasons for not charging a fee originally (including protection of the landowner from having his land devalued in the acquisition appraisal by the WA restriction), I would seriously consider imposing a lesser charge (perhaps 1-5%) on these transactions. The WA clearly does benefit public agencies by keeping a large inventory of California land undeveloped and hence more readily available for necessary infrastructure, so such a charge has a clear nexus and is not inequitable. In addition, acquiring agencies would continue to have their present option to acquire the land without eminent domain, inherit the WA contract, and subsequently deal with any conflict with their intended use by nonrenewal or cancellation.

The funding potential of this source for our purposes is robust and virtually unlimited, but very hard to project until more research and specific charges and rules are developed. Clearly governments at all levels are likely to continue to acquire WA land for public purposes (as well as public utilities who also have eminent domain power), in spite of existing WA avoidance preferences. There are also significant challenges, political, legal, technical and operational, to developing and implementing a charge on acquisition. These include its application to federal acquisitions, methods of valuation, possible exemptions, less than fee interests, and the general concern about raising cost of public projects (although environmental mitigation is now a widely accepted cost category). A concern has also been expressed that a fee might legitimize uses that otherwise might not be allowed. To summarize, at the cancellation fee level, this charge might more than pay for the whole subvention program. At a much lower level, it could still be a substantial contributor, but I'm not counting on it until it can be further vetted and proven feasible.

### PROTESTED ANNEXATION

A third and less common early termination option is where a city annexes contracted land for which it had originally protested the contract and which was within one mile of its then-city boundaries (see Section 51243.5). Although a city's right to protest a new contract was prospectively repealed in 1990, old protests were grandfathered, and allow the city to choose to not succeed to the contract, which then terminates it without penalty. In dealing with DoC legislation in 2004 proposing to abolish the grandfathered protests, we learned that no one had collected a body of statewide information that could tell us what and where was the inventory of existing potentially valid city protests. Although the landowner is not directly involved except through his consent to annexation, he apparently does not have a contractual right to free termination, so it does not seem unreasonable to impose a charge, payable by the landowner or the city, at some level lower than a cancellation fee for the contract termination, as this inventory of grandfathered protests gradually phases itself out. At

this point the revenue potential is unquantifiable but potentially significant, and I would expect we could get a better handle on it with the cooperation of cities and LAFCos by doing some sampling.

### MATERIAL BREACH

The final method of early contract termination is through the application of the recently enacted material breach provisions of the WA (see Section 51250) which would apply in most instances a 25% penalty fee to resolve “egregious” contract violations as the price of resolution and contract termination. This money goes to the state, after deduction of local costs, for the Soil Conservation Fund, which supports DoC. My proposal here, as with cancellation, is simply to dedicate the money to subvention funding. So far, material breach revenue has been negligible because DoC has been sparing, for a variety of reasons, in invoking formal material breach proceedings. Because of the size of the penalty, it could be significant on a case by case basis or if used more widely. Such an arrangement might also have the incidental benefit of reducing any incentive for either DoC or a single local entity to pursue material breach prosecutions as a revenue raising measure. In the present context, I would not rely on this as a significant source of revenue.

In summary, early contract termination charges at existing or realistic rates may have the long run potential to fund perhaps up to half the total cost of subventions (twice the amount projected here for the package component). In the near term, because of the projected recovery delays for cancellation revenue, one or two other significant sources may be necessary to meet the component target. Finally, although fee payment under the early termination alternatives may be, or be made to be, a legal obligation of the existing contract landowner, the good news is that the actual burden is likely to fall upon, or be shared by an outside beneficiary.

## 2) NEW CHARGES

The second proposed funding component consists of four new possible programmatic charges based upon other events or circumstances unrelated to the privilege of early termination plus a fifth proposal to dedicate the fruits of future WA litigation to subvention purposes.

### COMPATIBLE USES DISPLACING AGRICULTURE

The first possible funding component involves allowable compatible uses that displace agricultural uses (as distinguished from conjunctive compatible uses, which can share the same ground). In general, counties should not approve compatible uses if they “significantly” displace or are mutually exclusive of agricultural uses (see Section 51238.1). However, there are a number of exceptions to this principle, including statutory compatible uses (infrastructure, open space, and farm worker housing), existing contract uses grandfathered in 1994, and uses on non-prime land. Many (but not all) displacement uses have income streams that result in additional tax revenue to local government, and direct or indirect income to the contracting landowner. Most have been historically a part of rural landscapes, or must be located in conjunction with resources they depend upon, and exist for extended periods of

time. Prominent examples are aggregate mining and solar farms; while uses often determined to result in “insignificant” displacement include wind machines, cell towers and gas wells (because of their limited footprints). Most hunting and fishing activities provide an example of conjunctive use, although wildlife and open space uses have been controversial de facto displacement uses in some circumstances.

My proposal would be to look into establishing a charge, probably on an annual basis and probably related to income or site rental value, for the duration of the agricultural displacement. Minor displacement uses could either be exempt, or if acreage was used in the calculation of the charge, simply have a lower obligation. Although the basic principle of charging for exclusive non-agricultural occupancy (often accompanied by visual compromise of open space vistas) of protected land seems equitable, devising a workable system involving a variety of such uses, and developing sufficient information to evaluate likely revenues and cost of compliance would not be easy. Beyond that, its implementation might depend too much on making bright line judgments in gray areas. I would also be reluctant to have a revenue system play a disruptive role, positively or negatively in the choices that users, landowners, and public officials currently have to make. In short, while the revenue potential is intuitively substantial, the difficulties of developing and managing such a system could prevent us from tapping into it.

#### NONFAMILY CHANGE OF OWNERSHIP

When WA contract property changes hands, Prop 13 requires that the prior base year valuation is replaced by a current year valuation. In the recent past, if a seller has owned it for many years, the difference was likely to be substantial. Where the farmland is productive and not urban-impacted, the seller’s WA valuation and tax may not be too much lower than the Prop 13 value and hypothetical tax, and his tax relief and the consequent county tax loss would have been low. By contrast, the new owner’s tax benefit may be substantially higher (and the county’s paper tax loss correspondingly greater) because his actual taxes under the WA contract will remain the same as the seller’s, and will continue as long as the contract is not nonrenewed or otherwise terminated. The first question that requires more empirical investigation is whether recent land value declines will have wiped out most of the seller’s old annual 2% value adjustment under Prop 13, so that a significant increased gap is the exception rather than the rule.

Where this gap does exist, it seems equitable to make some one-time charge for this increased long term comparative benefit that would help offset the county’s increased loss. A charge based upon a percentage of the difference between the old and new base year value might be relatively easy to calculate and collect if we can solve the problem of the delay between the closing transaction and the timing of the assessor’s determination of the new base year value. If there is no gap, there would be no charge. I would generally follow existing Prop 13 rules for change of ownership, although I might consider broadening the definition of family for this purpose. To minimize the disruptive consequences of placing a significant additional cost on the real estate transaction, I might consider allowing payment over time, and/or a window

for the new owner to avoid payment by nonrenewing the contract. Depending on the level of the charge and the tax benefit, I would guess most such buyers would think twice before surrendering their WA contract status benefits. Finally, projecting the incidence and magnitude of transactions of WA contract land for rate setting and revenue purposes will be a challenge. Assessors probably have all the basic information but it is unlikely to have been collected in this way. Sampling and modeling may be required. Until this is done, it will be hard to determine whether the revenue would be substantial enough in the long run to justify imposing the charge.

#### RESIDENTIAL CONSTRUCTION

Residential uses are, with some limitations, allowable compatible uses on WA contract land. Both the residential structure and its immediate site are assessed under Prop 13, and receive no WA tax break (see Section 428, Revenue and Taxation Code). Nevertheless, there has been a longstanding WA concern relative to WA land divisions into “ranchettes,” or parcels too small to sustain their agricultural use (the statutory presumption is 10 acres for prime and 40 acres for non-prime land) where the residential tail wags the dog. Since residential uses, although generally necessary to an agricultural use, are in effect displacement compatible uses, and their increase in rural area is the subject of WA statutory caution (see Section 51220.5), a reasonable charge on new construction on WA land may be justifiable. Appropriate exemptions would include farm worker housing, and perhaps the first “X” dollars of construction (which would avoid getting involved in small remodeling or repair jobs and would benefit affordable housing). It should be relatively simple for the county to collect a WA surcharge on its building permit fees. Ascertaining the appropriate amount would involve developing information on the incidence of residential construction on WA land and typical construction costs. Although it is hard to guess whether construction on rural and WA lands has been impacted as much as urban residential construction by the recent downturn, this would seem to be a fairly reliable revenue source in the long run, and would not appear to have a significant impact on the construction industry generally, since the fee would usually be paid by the landowner.

#### CEQA MITIGATION OF CUMULATIVE IMPACTS

A fourth possible source of new subvention revenue might be mitigation fees for the cumulative impacts of conversions of agricultural lands identified under CEQA. Farmland as defined in CEQA is basically irrigated cropland defined somewhat more narrowly than WA prime farmland. The statute offers an optional LESA model to help determine whether conversion impacts may be significant. Conversion of farmland or of land under a WA contract usually requires review by either a “neg dec” or an EIR as a possible significant CEQA impact. Reviewable impacts are generally either direct or cumulative. The former are somewhat easier to quantify and mitigate than the latter, whose identification depends upon contextual information about farmland in the area in relation to other past, present, or future conversions. Both types of impacts are often found significant in EIRs, with mitigation then overridden as infeasible. However, a neg dec by definition must provide mitigation to insignificance for all significant impacts, so no override is available.

My proposal would be to allow or require farmland or WA conversions having significant cumulative impacts to be mitigated by contributions to a WA Subvention fund. WA support is perhaps one of the most appropriate forms of mitigation available for cumulative impacts, because it supports the continuation of local WA programs that counteract the immediate pressures of farmland loss. My initial preference would be to find some kind of a formula that would work on a statewide basis for cumulative impacts, and leave it up to local (or other) lead agencies to address direct impacts (perhaps with a WA subvention contribution as an option), since many counties have developed programs in this area. This concept needs further investigation (including discussions with CEQA professionals) and refinement before it can be quantified for revenue purposes or considered feasible. In the last decade, there have been policy and legal controversies over whether mitigation for farmland loss is inherently impossible, and whether the use of agricultural conservation easements can be required for this purpose. This proposal could provide an alternative option, or merely complicate the debate. WA subvention funding from this source appears worth further pursuit since it is potentially substantial, and because farmland conversion is not likely to go away (as documented in DoC's biennial farmland reports). However, no charge or mitigation could occur unless a farmland conversion impact was actually determined to be significant in an adopted CEQA review document.

#### NON-TERMINATION VIOLATION SETTLEMENTS

The state, participating counties, and landowners all have standing to go to court to enforce WA contracts. Such litigation occasionally winds up with awards or settlements benefitting the state. Distribution of these proceeds may vary. I would propose earmarking them for subvention funding in the General Fund. This would be an irregular source of funding, but is certainly an appropriate use for WA-related revenue and would have the added advantage of defusing any future notions of using aggressive litigation as a revenue generation measure for other purposes.

In conclusion, each of the first four proposals discussed may have the potential to fund a substantial portion of this components target. Each would require a lot more work to develop to the point where a specific change could be calculated upon which revenue projections could be made. Each could also turn out to be infeasible on political, administrative, or policy grounds, although each has a strong nexus to the WA and appears consistent with its policies and its necessary funding. In short, I think there is a reasonable chance that one or more of these proposals can be made to work to collectively reach funding targets.

### 3) LOCAL ADMINISTRATIVE COST RECOVERY

Probably the simplest of all the components discussed herein is a proposal to authorize a county (or city) to make a charge on WA landowners dedicated to recovering its projected administrative costs for operating a WA program. For example, charges could be collected annually on an acreage basis from active contract owners by the county and credited against their total state subvention entitlement. Pegged at \$1.00/acre for prime

land and .50 cents/acre for non-prime land, this charge would raise more than \$10M statewide. However, ranchers (CCA) object to acreage fees generally, believing with some justice that their seductive simplicity can result in disproportionately burdening rangeland in relation to cropland and/or actual program benefits. Other possible formulas for cost recovery, including a percentage of actual tax savings or land value, should be explored. Costs offset would include existing costs and new costs undertaken by the county in administering the new subvention funding program. Perhaps the formula could be expressed as a state cap with counties authorized to assess anything up to that amount based upon local justification in the adoption process. The WA authorizes collection of fees to cover some specific processing costs (such as those involved in cancellation). I would think those authorizations should continue, but perhaps there should be some more general rule about cost recovery outside the cap. Charges recovered on the basis of this proposed formula would cost landowners about 5% of their total tax relief savings statewide and 25% of the county tax lost and historically subvented.

#### 4) **SUBVENTION PROGRAM SAVINGS**

The fourth package component consists of potential savings in the existing WA subvention program. In 2007, the last year of full subventions, the state payout was \$37.7M, or a reduction of \$2.3M from our target total of \$40M. Under existing law, subventions are not paid on land upon which notice of nonrenewal has been served, or for which there has been no tax loss (e.g. where the agricultural use value is at or above the Prop 13 value). In addition, according to DoC, enrolled active WA acreage has been on a mild downturn since 2004 (largely due to nonrenewals). While this trend may flatten due to the recession, some additional nonrenewals could occur as a result of the implementation of the current proposal for lands with marginal tax benefits or in anticipation of likely fee generating occurrences.

##### “NO SUBVENTION” CATEGORIES

Additional possible measures that might result in reduction of subvention obligation would be to discontinue subventions for substandard contracts, or for displacement compatible uses with nonagricultural taxable values or income streams. In many counties, there are WA parcels in separate ownerships that are below the statutory minimum parcel size presumptions (10 acres for prime and 40 acres for non-prime land), and/or have no active agricultural use. Without reaching the issue of whether these contracts were in local or state violation of the act or their contract terms, the state could simply decline to pay subventions on them. Similarly, where a displacement compatible use generates a taxable income stream or economic value, subventions may be inappropriate because the county may not have suffered an unmitigated tax loss. Also, WA homesites are already ineligible for subventions but I don't know how thoroughly counties report this exclusion. I would not expect any of these exclusions to result in huge savings, but collectively they could be substantial.

##### MULTI-TIER PAYMENT STRUCTURE

Some reallocation of the existing dollars per acre contained in the WA subvention formula might allow us to maintain an adequate level of support for all WA counties

while providing additional help for counties who are most heavily dependent upon the property tax and have limited other sources of revenues, and still spend somewhat less money overall. The ways in which this could be done are almost infinite. John Gamper (CFBF) developed a hypothetical multi-tier model last summer. The initial reaction by counties to multi-tiering has been mostly negative, apparently partly attributable to an understandable preference for full funding, and partly to the complexity of developing and agreeing upon need-based criteria.

A simpler approach might be to give all counties 70% of the money they would be entitled to under the current formula, spend another 20% on a need-based supplemental system based on the percentage of the county's total revenues that is derived from the property tax along with one or more other variables, and retain 10% plus any collection overages to build a reserve fund. These figures are based largely on worst case assumptions of what the suite of feasible alternative funding sources might yield in a slowly recovering economy. If feasible sources prove more robust upon further analysis, the pot can be sweetened to the extent it bears a verifiable relationship to actual county losses. My choice of the 70% funding first tier target is simply that it is similar to the funding included in the 2009-10 budget that was vetoed by the Governor, which was generally regarded by counties as minimally acceptable in the short run. For the purposes of this white paper, subvention cost savings need to stay on the table, but (except for interim solutions) a fuller evaluation can perhaps be deferred until the new revenue options have been better developed and quantified.

## 5) **IMPLEMENTATION**

Implementation challenges include making program changes in a contract based system, the role of the county in collecting the new funds, developing a collaborative money management system involving the state and local stakeholders, protecting the new funds from state raids, and adaptive adjustment of charges based upon future experience.

### **CONTRACT AMENDMENT**

Proposed new charges on the WA contract lands would be neither taxes nor fees in the usual sense, but program charges authorized pursuant to the contract with the consent of the landowner. The most obvious way to do this would be by statutory amendment authorizing each charge, along with some cap or adjustment mechanism, as applied to each existing contract not already going through nonrenewal. Landowner consent to these charges would be obtained by the implied consent process cited in the 2008 Humboldt v. McKee appellate court decision with some additional due process protections. The landowner's remedy, if he disagreed with the charges or contract changes, would be to serve notice of nonrenewal by a time certain (probably 90 days before the next contract anniversary date for most contracts). In that event, his contract would not be amended, and would run down without being subject to charges. Additional due process protections might include one or more noticed county hearings and a timely notice to the landowner well before the nonrenewal deadline clearly explaining the proposed charges and his available remedy(s). A local government may also have the same right to nullify contract

amendment by nonrenewal, since the Humboldt decision treats it as an unstated WA contractual right (potentially applicable to both parties in the case of state amendments). Because the Humboldt case language is somewhat cryptic, express statutory language laying all this out prospectively, at least for the purposes of the alternative subvention program, ought to be provided.

### COLLECTION

The most logical entity to assume the responsibility for collecting the new charges are the counties (and perhaps cities, where relevant). Not only are they the ultimate beneficiaries, but in most instances they will have the data on the local WA programs, and facts, including that upon which the charges are based. Most of the collections should still follow the cancellation model and ultimately be sent to the state to be pooled to finance the subvention payout, but some (like the administrative charge) could be simply retained locally and deducted from the state subvention payment obligation. Each charge is probably capable of being set up for efficient local collection by attachment to any privilege it reflects, but in any case the newly authorized administrative charge on all contracts should cover any local state mandate or equity concerns. Other issues related to the distinction between state authorized subvention charges and other local option charges need further exploration with the counties.

### FUND SECURITY

A basic purpose of the WA subvention program was to provide financial stability for cooperating local governments. Since Prop 13, this stability has been eroded first, by raids upon local property tax base, and more recently by the threatened and actual defunding of the WA subvention program. To achieve its purpose, any collection of alternative sources would have to be insulated to the extent possible from further state raids for non-WA purposes. There may be no perfect solution to this problem, but the contract-based nature of the WA provides some opportunities. Although this requires further research, it would appear that payments of these charges, when collected, could be in trust pursuant to the contract for the subvention counties collectively, and those counties could be entitled individually to their subvention allocation as a matter of contractual right, so that the money, as collected, would have the full statutory and constitutional protection of contract law. Other supplemental and supporting safeguards are also possible, such as leaving much of the money in local hands as long as possible consistent with a statewide pool and distribution formula.

### RESERVE FUND

Although a multiplicity of funding sources should help smooth out peaks and valleys in annual subvention income, all of them are likely to be somewhat influenced by long term economic cycles. To me, this means that it is important, as soon as possible, to begin development of a reserve fund that might ultimately provide up to a 3 year cushion for annual payments from the fund. Since it is likely that most potential funding sources will be somewhat depressed coming out of the current recession, it will require more precise analysis of these sources before reserve startup can be projected. Nevertheless, it should be a priority.

### STAKEHOLDER ADVISORY COMMITTEE

Currently, the WA subvention program is administered by the Department of Conservation (DoC) for the Natural Resources Agency. DoC audits 3-5 counties every year with an emphasis first upon getting the county program correctly reported in its annual subvention application and adjusting consequent over and under payments, and second, using subventions to leverage county correction of WA administrative practices or decisions that DoC disagrees with. If the source of the subvention funding shifts as I am recommending from the state General Fund to a WA landowner/beneficiary and county mix, it would be appropriate to involve these stakeholders to a much greater extent in the administration of the money and its collection, protection and distribution.

I would recommend consideration of a serviceable model that all agriculturists are familiar with: the California Department of Food and Agriculture's (CDFA) marketing order or commission advisory bodies that advise the CDFA director's decisions in the management of specific commodity marketing programs (but perhaps without their accompanying democratic processes for representative selection and order ratification). Adapted to the WA subvention process, I could envision a five person committee composed of two agriculturalists (one irrigated ag, one rangeland), two county supervisors from significant agricultural counties (one large-CSAC, and one small-RCRC), and one public member. If conflict of interest issues could be overcome, at least a majority of the members should be WA contract holders. In this model, the DoC director would continue to be the final decision maker, but would not act on significant matters without having received the advice of the advisory committee.

Many variations on this format are possible. If the state or DoC were to be unwilling or unable to operate the WA subvention program under the revised funding system in a manner satisfactory to the new funders, the WA counties could conceivably operate it under a joint powers agreement (JPA). Although some have questioned why the state should retain its historic WA oversight role when it no longer funds county subventions, I think its participation in funding its own WA tax reduction income losses from the 80% of the property tax dollar it controls make a continuing oversight role for it appropriate.

### STARTUP TIMING AND BRIDGE FINANCING

Subventions are usually paid to counties near the end of a fiscal year based on WA annual enrollment information determined after the nonrenewal deadlines have passed. Even if legislation authorizing an alternative WA subvention funding program such as is discussed here were passed and became law this year, it would be difficult to get the program fully operational for an entire fiscal year until FY 2011-12 (starting July 1, 2011). Assuming further that a general consensus on the program made urgency clauses possible, working out the administrative details for 54 counties, and educating landowners to be well informed for the nonrenewal or implied consent decision, would make it unlikely that much new source revenue collection could be

initiated before the last months of the 2010-11 FY. If subventions are to be paid this coming FY, they may need to come from some kind of bridge funding, either one last allocation from the General Fund, some other one-time source, or some accelerated imposition of one or more of the new sources (once necessary landowner consent has been achieved). As we work through all the funding options, we need to work on these short-term bridge options as well, perhaps leveraging their individual or legislative acceptability with the commitment to make the WA county tax losses fully self-financing for FY 2011-12 and thereafter.

#### PLAN "B"

Up to now, counties have exercised considerable restraint in not taking drastic action to cut their WA post-subvention losses. In part this is because they have no options that offer instant gratification, and in part because the WA has been a locally popular program and affects an important component of any rural economy. Some discussions were held last year in the context of SB 715 (Wolk) to provide clearer authority for counties to impose immediate tax acceleration upon nonrenewal, or annual loss of WA tax status, where a WA contract was significantly out of compliance. These discussions were never finalized. Others have talked about allowing a county to suspend or terminate its WA program if the subventions are suspended or terminated. The WA coalition's hope, of course, has been that we will either overcome the General Fund problem, or else come up with one or more alternative subvention funding sources, thereby making Plan B unnecessary. I think it is fair that we keep our eyes out for feasible Plan B options and work with those exploring them, but until I see more evidence that finding alternative sources will be unsuccessful, I would not want Plan B to be a leading priority.

#### **6) OTHER POTENTIAL SOURCES OF REVENUE TO BE REVIEWED** **(MOSTLY NON-WA BASED OR MIXED)**

The following potential sources of subvention revenue have either been proposed by others, or are concepts I have given some initial thought to but are not formulated well enough to justify more detailed review. All of them will stay on the "further review" list pending more workup and feedback. I will entertain other ideas and add to the list as appropriate.

##### a) Seismic Strong Motion Fund Model (Detwiler)

At present this fund raises \$5M+ a year from a modest fee statewide on new construction, to support seismic research (Section 2605, P.R.C.). It's relatively simple, but there's no real nexus to WA issues.

##### b) State Lands Oil Lease (Blakeslee)

At one point, the 2009-10 FY budget contained revenue from a proposal to access state lands oil leases from existing nearby platforms in federal waters off Santa Barbara. When the Assembly killed this provision the Governor vetoed the WA subventions and some other expenditures contained in the final budget. Assemblyman Blakeslee put the lease proposal in AB 1536. Although facially meritorious, this

project is very controversial, and a political football. Even if passed, it would likely experience litigation and other delays, not produce money anytime soon, and has a limited nexus to the WA.

c) Oil Severance Tax (Nava)

This is the Democrats/environmentalists counter to the Blakeslee lease proposal. Nava's press release mentioned possible WA subvention funding among other beneficiaries. Again, this is very controversial, perhaps an even bigger political football, also with little nexus to the WA

d) Local WA Assessment District (Tulare Co.)

Tulare and a couple of other counties have been exploring the idea of recovering at least some of their WA costs from WA landowners through an assessment model. Details are sketchy and are under review by legal counsel. It seems somewhat analogous to portions of my proposal package, and I'm trying to learn more about it.

e) Federal Funding (Kawamura)

CDFA Secretary Kawamura has suggested that existing or future federal funding should be explored as a possible source of WA subvention funding, especially through the Farm Bill process. This is an area where others have greater expertise, but I am not aware of any current programs that would be both suitable or available for this purpose on an ongoing basis. It may be possible that a future suitable source program, or one-time bridge financing, could be developed. Concerns I would have with dependency on federal funding would be similar to those that have emerged with respect to dependence on the state General Fund, and might be compounded by new WA program inflexibility attributable to possible federal strings. Nevertheless, the opportunity probably should be explored. I'd welcome any suggestions.

f) Agricultural Conversion Mitigation Generally

My package proposal focused on mitigation for the cumulative effects of farmland conversion as a possible funding source. Although I'm inclined to allow latitude for local preferences and programs for direct conversion mitigation under CEQA, we could create an option (including a fee structure) for a project proponent monetary contribution to the WA subvention fund (see the similar provision for oaks in Section 21083.4, P.R.C.).

g) SB 375

As regional development and transportation planning pursuant to SB 375 (Steinberg) takes place over the next decades, the open space/agricultural flip side of these plans will receive more attention. The WA is ideally suited to buy time in the interim to preserve planning options as finished landscapes (built and open) gradually evolve. This is a funding option that should continue to ripen, but requires more focused investigation.

h) Carbon Transactions and Sequestration Credits

State AB 32 measures continue to evolve, but benefits to landowners owning or managing “green” crops or landscapes haven’t become well enough developed to suggest ways in which they could reliably be tied to the WA as a fund resource. Like SB 375, the clear nexus to the WA as an interim holding action is there, but will take more work to develop as a possible WA funding source.

- i) Promotional Agricultural Marketing Orders or Voluntary Industry Programs  
My preliminary investigation of this subject indicates that use of a marketing order or commission to promote California grown products and the farmland upon which they are grown might be theoretically possible and not constitutionally barred. If so, such a program might be able to contribute to WA subventions. In practice, the difficulty in putting something like that together could easily dwarf any end result. A mechanically simpler approach would be to develop a voluntary industry program at the processor or retailer level, but the obvious problems of competitors and “free riders” might destroy the incentive to do so. A solid nexus certainly exists between the WA, the continued supply of California farmland, and the people who process and sell its products, but I don’t see any easy way to explore any possibilities here without extensive communications with industry leaders. I’d welcome any suggestions.
- j) Environmental License Plate or Income Tax Check-off Programs  
Both of these programs offer ways for the general public to individually fund causes in which they believe. California farmland and the Williamson Act could be one such cause, and both rural and urban supporters could respond to put money into the WA subvention program for these purposes. By definition, it would take both time and effort to explore these options, and the likely results would be hard to quantify except by experience. At best they would be one more contributing piece to the puzzle.
- k) On Farm Retailing  
On-farm retailing is usually a compatible use in WA contracts. It can be a substantial source of revenue when it is organized in areas such as Apple Hill or Oak Glen, or in industries such as wine. Where it occurred on WA properties, it might be possible to collect by contract a small surcharge on the sales tax for subvention support. This would probably need to have the support of the vendors involved and would likely raise concerns about competitive disadvantage. It might be most viable as a local option measure.
- l) Less Significant Displacement Compatible Uses  
These compatible uses are generally allowable under the compatibility principles of Section 51238.1. Even with a small footprint, some can bring a substantial income to the farmer. I considered exempting them in the discussion of displacement compatible uses for the package portion of the paper. Here again, this might be left as a local option.
- m) Water Transfers (Wolk)  
The possibility of limiting or prohibiting some forms of water transfers from WA contract lands was raised by Senator Wolk at the recent Senate Local Government

Committee hearing. Although that suggestion met with considerable opposition, there may be some basis for considering a charge on annual or permanent transfers from WA land when they do occur, to go towards WA subventions. The rationale would be similar to that applicable to ag displacement compatible uses. Such a proposal would likely be controversial (as noted above) and complicated to implement, but Vince Minto tells me it has some significant potential as an income stream.

n) Others

I view this list as open ended. I invite reviewers to tell me about other ideas they have heard of or thought about, as candidates for this further review list.