

STATE OF CALIFORNIA
Budget Change Proposal - Cover Sheet
 DF-46 (REV 08/15)

Fiscal Year 2016-17	Business Unit 3900	Department Air Resources Board	Priority No. 1
Budget Request Name 3900-301-BCP-BR-2016-A1		Program 3500 – MOBILE SOURCE	Subprogram N/A

Budget Request Description The Air Resources Board requests \$3.2 million from the Air Pollution Control Fund, and 8 positions for program and litigation costs associated with litigating civil penalties concerning Volkswagen, and others for using "defeat devices" on diesel engines. Additionally, \$1 million is requested for a one-time equipment purchase and \$1 million is requested to contract with the State Attorney General.

Budget Request Summary

This proposal is for resources to thoroughly investigate and prepare a civil litigation case concerning Volkswagen, Audi and Porsche vehicles using defeat devices to circumvent emission test procedures. Current resources are inadequate to support work on this investigation and litigation because this case requires a major effort due to the number and types of vehicles and the volume of documentation needed. This case is significant with potential penalties in the hundreds of millions of dollars. Proceeds from regulation violations are deposited in the Air Pollution Control Fund.

On January 4, 2016, the U.S. Department of Justice, on behalf of the U.S. Environmental Protection Agency, filed suit in federal court in Detroit, Michigan. Since the suit is largely the result of work done by the Air Resources Board, and because the Air Resources Board is the nation's leader on air quality, it is key in preparing the federal case as well as for the possible state case against Volkswagen. Since resources are being focused on the Volkswagen case, other important investigations and legal activities have been put on hold or slowed and may not be brought to fruition in a timely manner.

Requires Legislation <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Code Section(s) to be Added/Amended/Repealed	
Does this BCP contain information technology (IT) components? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <i>If yes, departmental Chief Information Officer must sign.</i>	Department CIO	Date

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

FSR SPR Project No. Date:

If proposal affects another department, does other department concur with proposal? Yes No
Attach comments of affected department, signed and dated by the department director or designee.

Prepared By Pam Biggins <i>P318</i>	Date 3-29-16	Reviewed By Alice Stebbins <i>Alice Stebbins</i>	Date 3-28-16
Department Director Richard W. Corey <i>[Signature]</i>	Date 3-29/2016	Agency Secretary Matthew Rodriguez <i>[Signature]</i>	Date 3-29-16

Department 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	Original Signed By: Ellen Moratti	Date submitted to the Legislature APR 01
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A. Budget Request Summary

The Air Resources Board (ARB) core mission is to have primary responsibility for protecting air quality in California. ARB develops, implements, and enforces regulations limiting criteria pollutants, toxic air contaminants, and greenhouse gases to protect public health and the climate. Enforcing these regulations requires enforcement investigations and sometimes civil court actions to impose penalties on manufacturers for non-compliance. While ARB base budget includes funding for in-house counsel and for the California Office of the Attorney General (AGO), occasionally a significant litigation matter occurs that exhausts human and budgetary resources for litigation and enforcement.

This proposal is for resources to thoroughly investigate and prepare a civil litigation case concerning Volkswagen (VW), Audi, and Porsche vehicles using defeat devices to circumvent emission test procedures. Current resources are inadequate to support work on this investigation and litigation because this case requires a major effort due to the number and types of vehicles and the volume of documentation needed. This case is significant with potential penalties in the hundreds of millions of dollars. Proceeds from regulation violations are deposited in the Air Pollution Control Fund (APCF).

On January 4, 2016, the U.S. Department of Justice (US DOJ), on behalf of the U.S. Environmental Protection Agency (US EPA), filed suit in federal court in Detroit, Michigan. Since the suit is largely the result of work done by ARB, and because ARB is the nation's leader on air quality, it is central to preparing the federal case as well as for the possible state case against VW. Since resources are being focused on the VW case, other important investigations and legal activities have been put on hold or slowed and may not be brought to fruition in a timely manner. We note US EPA does not pay for the work done by ARB to prepare the case, but California would benefit from any federal penalties assessed. Additionally, ARB is preparing its own state level litigation and there are as many as 450 separate class action suits brought by non-government entities.

The VW case has affected:

- Making progress on multiple programmatic data needs, including other certification, compliance or enforcement efforts
- Completing laboratory testing priorities such as for the Mid-Term Review of ARB's Advanced Clean Cars program and the improvement of ARB's mobile source emissions inventory to better represent the emissions of California's vehicular population in State Implementation Plans submitted to the US EPA
- Legal workload for discovery for this and other cases
- Legal contracts for document management
- Use of ARB fixed and mobile testing devices

B. Background/History

On September 3, 2015, in meetings with the ARB and the US EPA, VW admitted they installed defeat devices on VW and Audi 2009-2016 model year 2.0 liter diesel vehicles to circumvent emission test procedures and an enforcement investigation was initiated. VW repeated this admission during a U.S. Congressional Hearing on October 8, 2015.

On November 2, 2015, VW (as well as Audi and Porsche) was put on notice, via letter, of an investigation into the 3.0-liter diesel engines related to defeat devices intended circumvent emission test procedures. This letter also put these companies on notice to find corrective actions and bring the vehicles into compliance with California emission standards. On November 19, 2015, VW advised the US EPA it included the defeat devices on all of its U.S. 3.0-liter diesel engines since 2009. On January 4, 2016, the US DOJ filed a complaint on behalf of US EPA against VW, Porsche, and Audi for violations of the Clean Air Act.

ARB is pursuing its own investigation and on January 12, 2016, issued a notice of violation for 70,747 VW and Audi vehicles equipped with 2.0-liter diesel engines from 2009-2015. California also continues its investigation into the 15,864 VW, Audi, and Porsche vehicles equipped with 3.0-liter diesel engines from 2009-2016 that VW reports selling in California.

Resource History
(Dollars in thousands)

Program Budget	PY - 4	PY - 3	PY - 2	PY - 1	PY
Authorized Expenditures				67,942,232	68,113,031
Actual Expenditures				67,942,232	87,386,416
Revenues				-	-
Authorized Positions				392.00	411.80
Filled Positions				383.40	395.80
Vacancies				8.60	16.00

C. State Level Considerations

Having the ability to quickly respond, and begin investigations, when auto manufacturers fail to contain harmful emissions from the vehicles sold in California is vital to preserving air quality in the state. Purposely employing “defeat devices” to circumvent emission test procedures when in fact these vehicles are polluting at rates far higher than allowed is the most egregious of the many types of violations discoverable through certification testing and investigation. Having the ability to access resources allows California to bring in additional staff and equipment to conduct necessary testing to support investigations and to conduct legal activities to put corrective actions in place and levy civil penalties. The APCF is a depository for penalties and fees collected on vehicular and non-vehicular air pollution control sources. The fee money in the fund is available to ARB to carry out its duties and functions upon appropriation.

D. Justification

This request includes 8 positions, contract funds and equipment:

- 4 positions, (Air Resources Engineers) for the Emissions, Compliance, Automotive Regulations, and Science Division (ECARSD)
- 2 positions, (Air Pollution Specialists) for the Enforcement Division (ED)
- 2 positions, (1 Attorney and 1 paralegal) for Legal Services
- \$1 million for the AGO for document management
- \$1 million for two Portable, Emissions, Monitoring Systems (PEMS)

These resources are necessary, as the currently budgeted levels for program and legal are inadequate to complete its investigation and prepare the civil case due to the magnitude of the case. While the case could potentially result in civil penalties in the hundreds of millions, the number of vehicles and the level of documentation far exceed a typical case.

The amounts collected through ARB Enforcement have increased from \$7.6 million in 2011-12 to \$27 million in 2014-15. To date the highest amount collected is about four percent of the potential penalties the VW case. The fines and penalties per vehicle could be \$5,000 or more. Applied to 70,747 vehicles the fines and penalties could result in more than \$353 million in penalties. Additional staff is necessary to complete the investigation, including acquiring necessary documentation on the vehicles, preparing the legal cases, conducting additional testing based on ARB lessons learned regarding how the VW defeat device was discovered and applying that knowledge to testing on other engine families.

An engine family is a vehicle model or group of models equipped with the same engine, emissions control system, evaporative control On-Board Diagnostics (OBD) capabilities. A single vehicle model could be in multiple engine families if the model could be a four or six cylinder or other distinctions in the engine making it part of different families. About 475 engine families are certified each year. ARB has 90 days to complete each certification.

The Emissions, Compliance, Automotive Regulations, and Science (ECARS) Division:

The ECARS Division will need an additional:

- 4 Air Resources Engineers
- \$1 million for equipment
- \$75,000 for overtime

The additional testing related to engine certification applications will require an additional three weeks per certification but does not add any time to the 90 days. Thus, additional positions and equipment will be required for program, consisting of 4 positions, equipment (PEMS X 2), and overtime. The positions include 1 permanent Air Resources Engineer (ARE) for OBD, 1 permanent ARE for Certification processing, and 2 permanent AREs to support in-use compliance efforts aimed at determining the manufacturer's compliance with State and Federal emissions standards.

Two PEMS units are needed because all existing PEMS units are in use full time. Initial PEMS testing is necessary to determine whether further investigation is needed to verify the presence of a defeat device. Each PEMS unit costs approximately \$500,000 and may require as long as 6-9 months before delivery of the units. Thus, these machines need to be ordered at the earliest possible date in order to maximize the time the machines are available for preparation of the case.

Finally, \$75,000 in overtime is needed because laboratory staff will need to gather additional data to defend the VW enforcement case and the laboratory is already operating at full capacity. Furthermore, in-use compliance, certification, and OBD staff are unable to maintain progress on their remaining workloads resulting from involvement in this enforcement case and will need overtime to conduct other work.

Enforcement Division:

The Enforcement Division will need an additional:

- 2 Air Pollution Specialist positions for workload associated with VW

In the Enforcement Division, there are currently 60 cases under investigation. Of those, ten are approaching the three-year statutes of limitations to file a lawsuit, request an extension of time, or drop the investigation.

In order to conduct the investigation into VW while maintaining current programs, staff is taking on VW in addition to their current assignments. To make up the staffing shortfall Division management is conducting staff work on existing cases. The VW casework includes organizing investigations, documenting each vehicle in non-compliance, interviewing internal staff, developing chronologies describing how the investigation continues to unfold, developing information requests for VW so the case is better understood, documenting violations, developing mitigation approaches and plans, and coordinating with the US EPA, US DOJ and other organizations. This work is expected to continue for the next several years.

The additional workload on the VW case affects other cases. Enforcement in ARB vehicle certification and aftermarket parts programs is slowing because staff does not have the time to devote to each case, and because division management does not have time to review staff work. Each case must be fully investigated within the three-year statute of limitations. The inability to address cases now means cases, which would otherwise be prosecuted, will no longer be pursued. In the certification and

aftermarket parts programs ARB typically initiates 80 cases per year, and currently has 60 cases under investigation. About 10 of these 60 cases have statute of limitations that take effect as soon as April of this year.

Legal Services:

The work required to prepare the legal case requires additional resources including:

- 1 Attorney
- 1 Paralegal
- \$1 million for contracted document management services with the AGO

When the VW investigation was initiated, ARB began to preserve all data, including email, electronic data on computers, certification documents, voicemails, and all other information relevant to the VW investigation. This large volume of data is used for the ARB investigation and possible case (if no settlement), the US DOJ/US EPA case and the over 450 private class actions lawsuits filed by consumers in both state and federal courts. The private class actions were recently consolidated in federal court. Because ARB has a key role in identifying the VW defeat devices, it has a lead role in the US DOJ/US EPA litigation.

Additional legal staff is necessary for the document and data workload as documents need to be sorted and reviewed for relevance to each subpoena or Public Records Act (PRA) request. Thus, ARB requests 1 Attorney and 1 Paralegal. These positions will be needed for at least the next several years as litigation of this magnitude tends to take years to resolve and this matter will likely involve more than one court case.

In the very near future, ARB will begin receiving subpoenas to produce the documents ARB is collecting. ARB also has more than 30 PRA requests for records related to the VW matter. Because ARB does not have the technical capacity in-house (server space, database software, or technical staff) to electronically collect, preserve, sort, and mark documents for privileges for withholding in original format (preserving the metadata as required by the courts) document management is provided by the California AGO. ARB requests \$1 million for additional document management and data collection. Without these additional funds, the AGO cannot expand its contracted document and data management services. The amount of data collection is likely to be 10 terabytes or more. ARB has about \$3.7 million in the budget for AGO services but it is inadequate to fund the expanded data collection. While much of the document collection will be used in conjunction with the federal litigation, the state will not be paid for its effort. However, the state will benefit from any penalties collected in the federal case.

E. Outcomes and Accountability

The expected outcome for this request is a very well prepared enforcement case demonstrating the actions by VW were intentional and fraudulent. The additional resources will allow ARB to meet its legal obligations to produce documents as required in response to subpoenas and PRA requests. It is also expected the penalties against VW will be substantial for both the state and federal cases whether litigated or settled, although it may be several years before litigation or settlement funds are received. Further, this case has opened up new investigatory avenues possibly resulting in finding other manufacturers who have found ways to circumvent emission test procedures.

Projected Outcomes

Workload Measure	CY	BY	BY+1	BY+2	BY+3	BY+4
See Narrative						

F. Analysis of All Feasible Alternatives

- A. Approve the request for \$3.2 million for 8 positions, contract, and equipment.
- B. Do Nothing. Doing nothing will likely result in cases against manufacturers other than VW being dropped due to inadequate resources to pursue all violations. It is also possible ARB could face court sanctions if it fails to provide timely responses to subpoenas or PRA requests.

G. Implementation Plan

Work has already begun on this case and will continue. The requested resources will allow ARB to continue its existing work and develop the VW enforcement and legal cases.

H. Supplemental Information

N/A

I. Recommendation

Approve the proposal as requested.

BCP Fiscal Detail Sheet

BCP Title: Litigating Civil Penalties

DP Name: 3900-301-BCP-DP-2016-A1

Budget Request Summary

	FY16					
	CY	BY	BY+1	BY+2	BY+3	BY+4
Positions - Permanent	0.0	8.0	8.0	8.0	8.0	8.0
Total Positions	0.0	8.0	8.0	8.0	8.0	8.0
Salaries and Wages						
Earnings - Permanent	0	639	639	639	639	639
Overtime/Other	0	75	75	75	75	75
Total Salaries and Wages	\$0	\$714	\$714	\$714	\$714	\$714
Total Staff Benefits	0	296	296	296	296	296
Total Personal Services	\$0	\$1,010	\$1,010	\$1,010	\$1,010	\$1,010
Operating Expenses and Equipment						
5301 - General Expense	0	16	16	16	16	16
5302 - Printing	0	8	8	8	8	8
5304 - Communications	0	16	16	16	16	16
5320 - Travel: In-State	0	32	32	32	32	32
5322 - Training	0	8	8	8	8	8
5324 - Facilities Operation	0	80	80	80	80	80
5340 - Consulting and Professional Services -	0	1,000	1,000	1,000	1,000	1,000
5346 - Information Technology	0	32	24	24	24	24
5368 - Non-Capital Asset Purchases - Equipment	0	1,000	0	0	0	0
Total Operating Expenses and Equipment	\$0	\$2,192	\$1,184	\$1,184	\$1,184	\$1,184
Total Budget Request	\$0	\$3,202	\$2,194	\$2,194	\$2,194	\$2,194

Fund Summary

Fund Source - State Operations						
0115 - Air Pollution Control Fund	0	3,202	2,194	2,194	2,194	2,194
Total State Operations Expenditures	\$0	\$3,202	\$2,194	\$2,194	\$2,194	\$2,194
Total All Funds	\$0	\$3,202	\$2,194	\$2,194	\$2,194	\$2,194

Program Summary

Program Funding						
3500 - Mobile Source	0	3,202	2,194	2,194	2,194	2,194
Total All Programs	\$0	\$3,202	\$2,194	\$2,194	\$2,194	\$2,194