

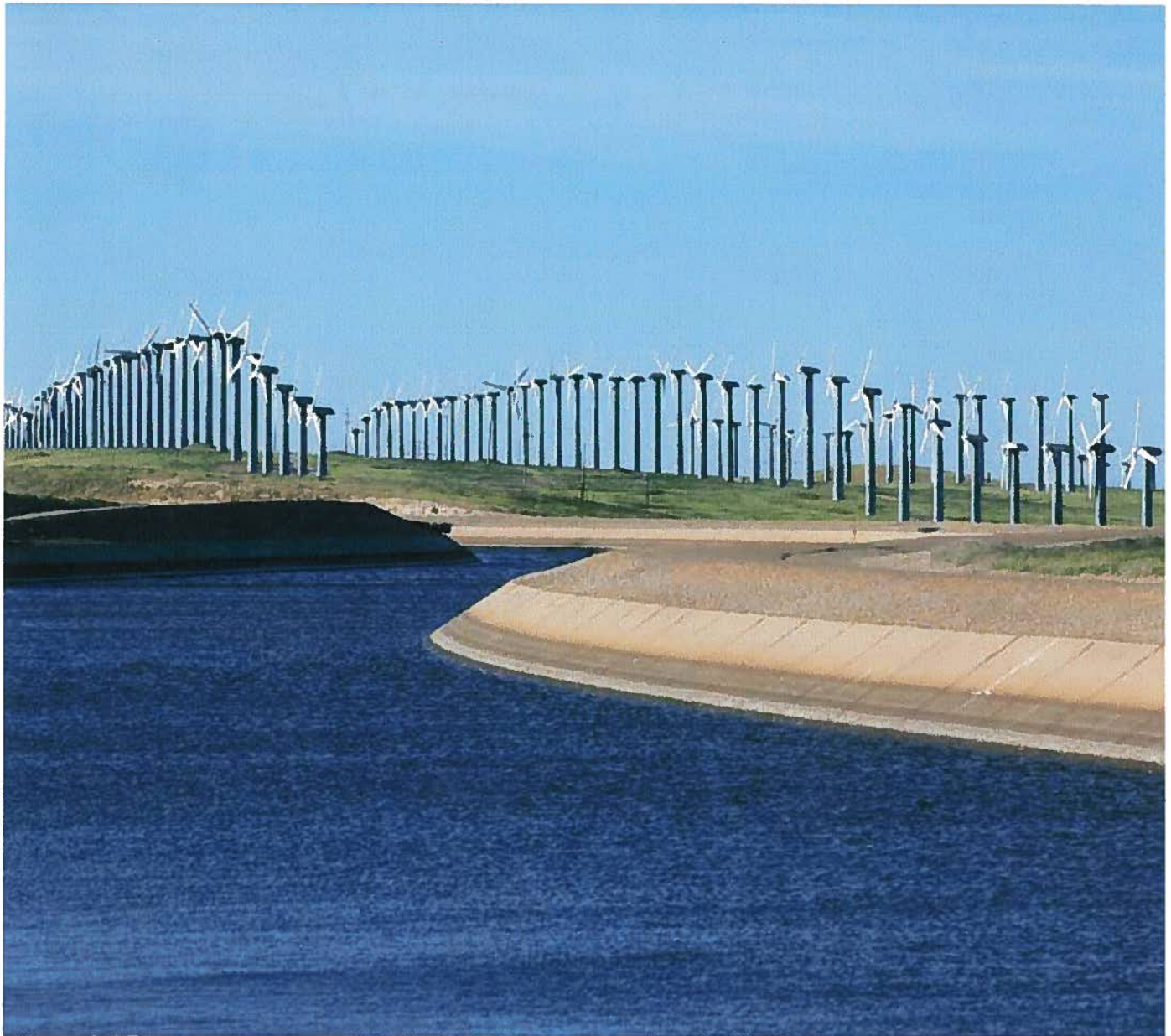


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The 2010-11 Budget:

Resources and Environmental Protection



technology. Under this proposal, the entire network would be upgraded and extended to cover most CalFire locations.

- **Automatic Vehicle Locators (\$5 Million, Ongoing).** The CalFire's current dispatch and communications system relies on fire or aircraft crews to report their location to the dispatch center manually. Under this proposal, vehicles would be fitted with a system that would automatically update the dispatch system with the vehicle's location.
- **Aviation Asset Coordinator (\$0.3 Million, Ongoing).** The CalFire works with the Military Department and federal military agencies to respond with firefighting aircraft. Under this proposal, CalFire would add 1.5 positions to better coordinate these activities between CalFire and other agencies.

 **CalEMA Augmentations.** The Governor proposes these augmentations for CalEMA:


- **Wildland Fire Engines (\$15 Million in 2011-12; Total of \$67 Million Over Six Years).** The administration intends to purchase 131 fire engines to supplement the current CalEMA fleet of about 140 engines.
- **Additional Staff (\$2.6 Million, Ongoing).** The administration intends to add staff for various emergency preparedness and response activities.

Military Department Augmentations. The Governor proposes these augmentations for the Military Department:

- **Aerial Fire Suppression Assets (\$2.2 Million in 2011-12; Total of \$13.5 Million Over Six Years).** The administration intends to purchase aerial fire suppression assets, including modifications to existing helicopters and airplanes.
- **Additional Staff (\$1.3 Million Beginning in 2012-13, Ongoing).** The administration intends to add staff for various emergency response activities.

LAO Comments. The administration's may have merit, but none of the proposed augmentations requires the Legislature to act *now* to approve or reject the augmentations. This is because the program augmentations are not scheduled to begin until 2011-12. In any event, the Governor did not submit detailed budget change proposals for many of these out-year augmentations, so the Legislature lacks the required information to evaluate them. Therefore, we recommend that the Legislature make any decision on these proposed augmentations as part of its 2011-12 budget deliberations and in the context of the Legislature's funding priorities for the three affected departments in that year. We also recommend that the Legislature consider each augmentation proposal on its merits separately from discussions on the funding source.

**LAO Alternative:
Wildland Fire Protection Fee**

 **Implementing the Beneficiary Pays Funding Principle.** In the past, our office has offered a number of recommendations for achieving General Fund savings by shifting funding for particular state governmental activities from the General Fund to new or increased fees. While the resulting General Fund savings are clearly a

benefit from adopting these recommendations, we have offered these kinds of recommendations in both good and bad fiscal times. Our analysis finds that these fees are the appropriate funding source, as a matter of policy, for the activities in question. For example, in cases where the state is providing a service directly to beneficiaries, such as wildland fire protection, the application of the beneficiary pays funding principle would have these beneficiaries pay for the costs of the services that directly benefit them.

However, it is important to note that the application of the beneficiary pays funding principle does not imply that fees will necessarily cover the full cost of the state's wildland fire protection. This is because this activity provides benefits to the public at-large (such as by providing habitat protection) as well as directly to a discrete group of identifiable individuals (namely property owners in or near wildland areas). In such circumstances, we recommend that fees be assessed to cover only the portion of costs that can reasonably be allocated to the direct beneficiaries of the state's wildland protection services, with state General Fund resources being used to pay for the broad public benefits. We think that it is very important that any fee be set at levels that are reasonable and proportional in light of the benefit received, and the additional costs imposed on the state, by the individual feepayer. This is the nexus between fee and feepayer that is necessary for an assessment to pass both legal and policy muster as a fee, rather than as a tax.

Below, we discuss our policy rationale for the enactment of a new wildland fire protection fee.

State Is Responsible for Wildland Fire Protection. Under existing statute, the state is responsible for providing *wildland fire protection* in State

Responsibility Areas (SRAs). These SRAs encompass about 31 million acres of the state, primarily *privately owned* timberlands, rangelands, and watershed areas. There are an estimated 860,000 homes in SRAs. Initially, CalFire's mission was the prevention and suppression of wildland fires in undeveloped areas. Over time, however, there has been considerable "mission creep" and the department now spends considerable time and resources protecting homes in SRAs from wildfire, as well as responding to medical emergencies and other non-wildfire calls.

Costs of State Fire Protection Have Increased Dramatically. Today, the state's largest General Fund program expenditure in the natural resources area is fire protection. Over the last two decades, the cost to provide fire protection in SRAs has increased substantially. For example, between 1998-09 and 2008-09, the General Fund cost for fire protection (including both the base budget and E-Fund expenditures) more than tripled. In the current year, estimated General Fund fire protection expenditures are \$750 million.

Increasing Development in and Around SRAs Has Increased CalFire's Fire Protection Costs. Increasing residential development in and around SRAs has translated to increased CalFire fire protection costs for several reasons. First, with the presence of life and structures in or nearby to the areas for which CalFire is responsible to provide wildland fire protection, more resources are often deployed to suppress wildland fires than would be used in nondeveloped areas. Second, the presence of development can limit the fire prevention and suppression options available to wildland fire managers, thereby potentially increasing the fire risk of an area and increasing fire suppression costs. For example, development substantially restricts the ability

of fire prevention agencies to use certain techniques such as prescribed burning to reduce the high volume of flammable vegetation intermixed with development. Lastly, the presence of people in wildlands can increase fire protection costs because fire from structures, vehicles, and human activities can quickly spread to the wildland vegetation.

Wildland Fire Protection Directly Benefits Property Owners in SRAs. As a matter of practice, local governments are primarily responsible for providing *structural* fire protection in the state, both inside and outside SRAs. This has led some to question what benefit, if any, property owners with structures in SRAs receive from CalFire's *wildland* fire protection services. In our view, these property owners directly benefit from, and impose costs on, CalFire's fire protection activity for a number of reasons. First, if CalFire were not located nearby to help prevent wildfires from reaching the structures and to be as readily available to assist as an emergency responder, then the local fire agencies would need to augment their resources substantially. These increased local costs would be passed on to the property owners under the local jurisdiction by way of increased local assessments. Similarly, without CalFire's presence, property owners with structures in SRAs could face higher property insurance premiums because there would be a higher fire risk to insure against (unless the local firefighting agency stepped up its resources to fill the gap). Finally, the presence of structures in SRAs impacts the way CalFire fights wildfires, and has greatly increased the state's costs in providing its fire protection.

Recommend a New Wildland Fire Protection Fee in SRAs. Property owners in SRAs directly benefit from the protection of their property pro-

vided by CalFire. Therefore, we believe it is appropriate that property owners in SRAs pay a *portion* of the state's cost for fire protection. Because the department provides fire protection for natural resources of statewide significance—such as watersheds that provide drinking water for much of the state—it is also appropriate that the state as a whole pay for a portion of the cost of fire protection. Therefore, we consider it reasonable that the state's cost of providing fire protection in an SRA be shared between the direct beneficiaries and the state's taxpayers as a whole.

We recommend that the Legislature enact a fee on the owners of structures in SRAs that would be proportional to the additional costs imposed on the state as a result of the presence of those structures. When determining the level of such a fee for structures in a given area, the Legislature would need to consider actual expenditures made by the department in that area, the local fire risk, and the adequacy of fire protection provided by local governments. We continue to consult with staff at Legislative Counsel about the technical requirements to structure the assessment so that it passes legal muster as a fee rather than a tax. We will share the written opinion that we have requested from Legislative Counsel with the Legislature once it is received. Finally, we recommend that the Board of Equalization (BOE) be authorized to collect such a fee.

Because our recommendation would create a new fee, there would be a significant amount of one-time administrative work by CalFire and BOE to set up the fee-collection mechanism and make the initial determinations of who must pay the fee. It is likely this work would take several months. It may be possible to generate revenues beginning as early as the budget year if the Legislature were to enact our fee recommenda-

tion soon. Otherwise, revenues from the new fee would most likely begin accruing in 2011-12.

Structured as a Fee, LAO Alternative Does Not Create Proposition 98 Funding Obligations.

As discussed above, we believe that the Governor's proposed insurance premium surcharge is a tax that would increase the state's funding obligations under Proposition 98. In contrast, our proposed funding mechanism would be structured as a fee and thus would not add to the state's funding obligations under Proposition 98.

For a more detailed discussion of our SRA fee proposal, please see our *Analysis of the 2008-09 Budget Bill*, page B-47.

IMPROVING LEGISLATIVE OVERSIGHT OF CALFIRE'S FIRE PROTECTION BUDGET

Background

Role in Fire Protection. The CalFire is responsible for wildland fire protection in SRAs. These SRAs encompass about 31 million acres (about one-third) of the state, primarily privately owned timberlands, rangelands, and watershed areas. In order to provide this fire protection, CalFire employs around 5,000 permanent firefighters, operates an aviation program (aircraft, helicopters, and air tankers), and runs some 230 fire stations.

Two Main Components to CalFire's Fire Protection Budget. The Governor's budget proposes about \$1 billion (from all fund sources) for CalFire's fire protection state operations in 2010-11. As discussed in further detail below, this budgeted amount has two components—the "base budget" and an amount budgeted for emergency fire suppression known as the E-Fund. The base budget is proposed to be supported from the General Fund (\$300 million) and revenues from

a proposed surcharge on property insurance policies statewide (\$200 million). The E-Fund is budgeted with a \$223 million General Fund appropriation. The additional \$277 million consists of reimbursements from local agencies as well as the federal government for fire protection services provided by CalFire.

Base Budget Intended to Pay for Day-to-Day Fire Protection Costs. The CalFire's base budget pays for everyday firefighting operations of the department, including salaries, facility maintenance, and other regularly scheduled costs. Included in the base budget are the costs associated with the "initial attack" on a wild-fire—that is, the firefighting operations generally undertaken in the first 24 hours of an incident. Typical costs would include retardants, overtime, and equipment. The base budget is the source of support for personnel costs to staff engines with three firefighters year-round. (The base budget is also used for the support of fire stations that are in operation on a seasonal basis.)

The base budget is subject to annual appropriation by the Legislature and follows normal budget review processes (such as the submission of budget change proposals for consideration by the Legislature).

E-Fund Budget Intended to Pay for Large-Incident Firefighting Costs. Once an incident has gone beyond the initial 24 hours and therefore will likely exceed the capability of containment by that CalFire unit, costs associated with firefighting are charged to the E-Fund. Such costs as equipment rental, unplanned overtime, inmate crews, and additional air support are charged to the E-Fund for large incidents. If there were no large-fire incidents in a given fiscal year, expenditures from the E-Fund in that fiscal year would in theory be zero.

For many of these large incidents, the state is eligible to be reimbursed by the federal government for some or all of the costs. However, the federal reimbursement process can take a number of years. Once federal funds have been obtained, they are deposited into the General Fund, where in effect they offset state firefighting costs. As a result, the E-Fund expenditures that occur in any given year do not necessarily reflect the ultimate cost to the state for these activities during that time period.

The General Fund support for the E-Fund is provided by the Legislature as a separate budget appropriation based on an estimate of the large-incident firefighting costs for the fiscal year. For 2010-11, the estimated expenditure is \$223 million. According to the administration, this amount reflects the average of the most recent five years of these costs. The budget act's appropriation item for the E-Fund provides that the Director of Finance can augment the item to pay for emergency fire suppression costs at any time without the approval of the Legislature. The department is required to report actual expenditures from the E-Fund to the Legislature quarterly. However, CalFire does not submit requests for any specific expenditure item from the E-Fund to the Legislature.

**E-Fund Budgeting Practice
Raises Several Issues**

Our review of the department's E-Fund budget proposal finds that the amount requested in the budget is likely to provide a more accurate estimate of the resources needed in the budget year than has been the case with past estimates. However, we are concerned about the expanded use over time of the E-Fund by the department—in particular, its practice of charging day-to-day operating costs not related directly to a large incident to the fund. The practical consequence is that expenditures that would normally be required to be justified in the legislative budget process would escape the Legislature's oversight and budgetary review. We elaborate on these concerns below.

Budgeting of E-Fund Has Historically Underestimated Expenditures. Figure 11 shows by how much the budgeted E-Fund amounts and actual expenditures for emergency fire suppression have underestimated actual expenditures for the last five years. Beginning with the 2009-10 budget year, the administration has changed its methodology to estimate E-Fund costs by using the average of costs from the most recent five years. Given this, the estimate for the E-Fund should more

closely reflect the likely costs to be incurred.

Use of the E-Fund Has Been Expanding. Our review finds that, over time, CalFire's E-Fund expenditures have been expanded by the administration to include costs that are not incurred as a result of a large-fire incident.

Figure 11

CalFire E-Fund: Actual Versus Budgeted Expenditures

*Fiscal Years 2005-06 to 2009-10
(In Millions)*

	2005-06	2006-07	2007-08	2008-09	2009-10 ^a
Budgeted amount	\$95	\$95	\$82	\$69	\$182 ^b
Actual expenditures ^c	93	169	372	437	256
Amount Over/Under Budget	-\$2	\$74	\$290	\$368	\$74

^a Estimated.

^b Amount contained in 2009-10 Budget Act reflects the Legislature's removal of funding for DC-10 contract.

^c Does not fully reflect reimbursement for major incidents from the federal government that can take several years to be received by the state.

These costs include:

- **One-Half of the Aviation Program's Budget.** One-half of the costs of CalFire's aviation program are generally supported from its base budget, but one-half comes from the E-Fund under a longstanding departmental budget policy. This means that even if there were no large incidents in a given fiscal year, one-half of the costs of the aviation program would be charged to the E-Fund. However, if an aircraft is used for a specific large incident, then any additional costs (such as fuel and retardants) are charged to the E-Fund. One exception is CalFire's contract for a large air tanker—a DC-10—that recently had been supported exclusively from the E-Fund. (See the box on page 40 for a full discussion of the budget issues associated with the DC-10 air tanker.)

- **Four-Person Staffing.** As discussed above, CalFire's base budget contains funding for three firefighters per engine. In recent years, CalFire—under an executive order issued by the Governor—has increased staffing on fire engines to four in targeted areas during peak fire season (generally June to October) with resources provided from the E-Fund.

- **Tahoe Fire Station.** The California-Nevada Tahoe Basin Fire Commission recommended in its response to the Angora Fire (a 2007 wildfire that burned 3,100 acres and 250 structures on the western side of Lake Tahoe) that CalFire establish a seasonal fire station to improve initial attack on wildfires. The CalFire has implemented that recommendation under an executive order and supported this fire station activation through the E-Fund.

Figure 12 shows the total costs of these different cost items paid for under the E-Fund over the last five years.

Current E-Fund Budgeting Practice at Odds With Original Legislative Intent. As stated previously, if there were no large-fire incidents in a given fiscal year, expenditures from the E-Fund in that fiscal year should in theory be zero. However, the assumption in the administration's budget plan is that certain significant ongoing firefighting costs we have identified would be paid for from the E-Fund even if the state had a year in

Figure 12

A Significant Portion of CalFire's E-Fund Expenditures Were Anticipated^a

2005-06 to 2008-09
(In Millions)

Cost Type	2005-06	2006-07	2007-08	2008-09
Unanticipated Incident Costs^b	\$77	\$155	\$324	\$381
Anticipated Costs				
Personnel ^c	\$3	\$1	\$23	\$33
Half of aviation program	13	12	16	15
DC-10 contract	—	1	9	7
Subtotals	(\$16)	(\$14)	(\$48)	(\$56)
Totals	\$93	\$169	\$372	\$437

^a Split between type of costs as estimated by CalFire.

^b Costs related directly to large-fire incidents.

^c Includes four-person staffing of engines and staffing costs of Tahoe firehouse.

which it avoided fire emergencies. For example, the staffing costs of the Tahoe fire station are costs that are not related to a fire emergency. We believe this budgeting practice is at odds with the Legislature's original policy intent that the E-Fund be devoted to paying for costs associated with large-incident emergencies.

Legislature Not Given Opportunity to Review E-Fund Expenditures. The practical consequence of this budgeting practice discussed above is that the Legislature is not being given the opportunity to review the E-Fund expenditures that should more appropriately be considered as part of the department's base budget. If subjected to legislative review, some of these expenditures might not have been approved by the Legislature based upon cost-effectiveness concerns or a lack of workload justification. The Legislature might also have chosen to support some proposed expenditures found to have merit from an alternative funding source. The current use of the E-Fund by the department undermines the ability of the Legislature to exercise appropriate oversight of these expenditures.

Recommendations to Improve Legislative Oversight

Given the concerns discussed above, we recommend that the Legislature make two changes to the budgeting of CalFire's E-Fund, with the intent of improving the Legislature's oversight over CalFire's budget:

- Require day-to-day expenditures currently charged to the E-Fund to instead be justified under the department's base budget.
- Improve the budget act controls on the E-Fund appropriation item.

We discuss both of these proposed changes below.

Increase CalFire's Base Budget and Decrease E-Fund Budget. We recommend that the Legislature increase CalFire's General Fund base budget appropriation for 2010-11 by about \$60 million (our estimate of day-to-day costs inappropriately charged to the E-Fund), with a corresponding reduction of \$60 million in the E-Fund appropriation. We recommend that the Legislature direct the administration to provide the Legislature, in conjunction with the Governor's May Revision, a more precise estimate of the amount of funding that should be shifted from the E-Fund to the base budget to implement this change in budgeting policy. Also, the administration should detail the changes in position authority for seasonal firefighters that should be implemented commensurate with this funding shift.

As noted above, we recommend that whatever amount of funding that is reduced from the E-Fund in the budget year be added to the base budget appropriation. This will provide needed certainty to CalFire that all funding that is needed will be available for the current fire season, which generally runs from May to October. That is, as CalFire will be hiring seasonal firefighters and entering into a contract for the very large air tanker in the current year, our recommended budget adjustment should not impede CalFire's planning for the full fire season that extends into the budget year.

However, given that many current E-Fund expenditures have never been subjected to the normal budget review process, we recommend that this funding issue be revisited in 2011-12. Specifically, the administration should be directed to provide budget change proposals in 2011-12 to fully justify this additional base-budget spending. Consistent

with this approach, any staff positions shifted into the base budget for the budget year should be established on a limited-term basis and any new contracts funded from these monies should not commit state funding beyond the budget year.

Going Forward: Increasing E-Fund Spending Accountability. In tandem with these budgetary changes, we recommend that the Legislature take further steps to ensure that E-Funds are spent

solely for large-incident firefighting costs. To accomplish this, we recommend the Legislature adopt statutory language that (1) explicitly specifies what types of expenditures are allowed from the E-Fund and (2) requires that any other expenditures be supported from the department's base budget, where they would be subject to annual appropriation in the Legislature's regular budget review process.

DC-10 CONTRACT DEMONSTRATES HOW EMERGENCY FUND (E-FUND) HINDERS LEGISLATIVE OVERSIGHT

A series of events involving a California Department of Forestry and Fire Protection (CalFire) contract for large air tanker services demonstrates how the current approach to the E-Fund makes it more difficult for the Legislature to ensure its budgeting choices are implemented.

"Call-When-Needed" Contract. For many years, CalFire had a contract for securing large air tanker services for its firefighting activity on a call-when-needed basis. Under this arrangement, the contractor would agree to deploy a firefighting plane that was requested by CalFire within 24 hours, if it was available and not in another state (or country). This contract was tapped if needed to supplement the department's own fleet or large air tankers operated by the federal government.

"Guaranteed Availability" Contract Initiated in 2006. Since 2006, CalFire has contracted with a private firm for a DC-10 air tanker capable of dropping 12,000 gallons of retardant or water on wildfires. The contract cost of around \$7 million per year is charged entirely to the E-Fund. Prior to 2006, CalFire had relied on large air tankers operated by the federal government. However, this resource became unavailable after most of the federal fleet was grounded following a number of accidents.

Under the initial multiyear contract entered into by CalFire, the contractor guaranteed that the DC-10 would be available to respond within 20 minutes of a request from CalFire during a specified fire season period (generally June through October). The contract covered fuel and pilot expenses and specified a daily rate for the aircraft to be used exclusively by CalFire.

Contract Cancelled in 2009. As part of the budget-balancing actions taken in July 2009, the Legislature reduced CalFire's E-Fund budget by \$6.7 million and directed CalFire to cancel the contract for the DC-10, which the department did immediately. In part, the Legislature's action reflected concerns about whether the DC-10 was a cost-effective firefighting resource to the department. The CalFire then reverted to a previous call-when-needed arrangement for hiring the DC-10.