

**LAKE AND STREAMBED ALTERATION PROGRAM  
FISCAL ANALYSIS FOR FYs 2010-2014  
December 2015**

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**PURPOSE**

This fiscal analysis was prepared to determine if current fees for a lake and streambed alteration agreement (agreement) pay for the total costs incurred by the Department of Fish and Wildlife (Department) in administering and enforcing Fish and Game Code (FGC) Sections 1600-1616, as required by FGC Section 1609. This code section also allows the Department to adjust the fee schedule pursuant to FGC Section 713(g). This analysis is intended to inform decisions and may be used to support a proposal to adjust the fees the Department charges for agreements.

**Fish and Game Code and Fee Regulations**

FGC Sections 1600-1616 were enacted to protect and conserve the state's fish and wildlife resources, which the legislature declared to be of utmost public interest.

FGC Section 1609(a) authorizes the Department to charge fees to pay the total costs incurred to administer and enforce FGC Sections 1600 -1616 including, but not limited to, processing notifications, preparing agreements, and conducting site inspections. In order to charge such fees, the Department established a graduated schedule of fees in accordance with FGC Section 1609. Under FGC Section 1609, the Department may not impose a fee greater than \$5,000 for an agreement with a term of five years or less.

FGC Section 702 authorizes the Department to administer and enforce the provisions of the FGC through regulations adopted by the Department.

FGC Section 713(b) provides the Department *shall* adjust for inflation any fees it charges. In contrast, FGC Section 1609 states that the Department *may* adjust fees pursuant to FGC Section 713.

FGC Section 713(g) provides the Department *shall*, at least every five years, analyze all fees for licenses, stamps, permits, tags, and other entitlements issued by the Department to ensure the Department is charging the appropriate fee amount.

The Department's current fee schedule is in California Code of Regulations, Title 14, Section 699.5.

**Notification and Agreement Process**

FGC Section 1602 requires an entity to notify the Department before conducting an activity that will substantially divert or obstruct the natural flow of any river, stream or lake; substantially change or use material from the bed, channel, or bank of any river, stream, or lake; or deposit or dispose of debris, waste or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream or lake.

An entity notifies the Department by submitting a written notification using a form approved by the Department (notification) and the applicable fee. Based on the information in the notification and any onsite inspection the Department conducts, the Department will determine whether a lake or streambed alteration agreement (agreement) is required for the proposed project.

An agreement will be required if the Department concludes that the proposed project may substantially adversely affect a fish or wildlife resource. In that case, within 60 days of receiving a complete notification, the Department must submit a draft agreement to the entity that includes measures necessary to protect the fish and wildlife resources the project may adversely affect. If the Department fails to submit a draft agreement within the 60-day period, the entity may proceed with the project without an agreement by “operation of law.” If the Department submits a draft agreement within the 60-day time period, and the entity agrees with the measures in the agreement, the entity will sign and return the draft agreement to the Department. The Department will then sign it, thereby making it final, but only after the Department complies with the California Environmental Quality Act (CEQA) as a lead or responsible agency.

### **Staffing**

Environmental scientist classifications are primarily responsible for reviewing notifications, preparing agreements, and complying with CEQA. Assistance from other Department staff in other classification is often required, depending on the type of activity proposed. Other classifications have included hydraulic engineers, engineering geologists, wardens, attorneys, analysts, clerical, administrative, and management staff. The amount of time needed to issue a final agreement varies with the type of activity as well as project and site specific conditions.

The Lake and Streambed Alteration (LSA) Program currently funds 37.3 Personnel Years (PYs) at an estimated maximum cost of \$4.7 million when fully staffed at top step salary. PYs and classifications are listed below.

- Environmental Program Manager (Supervisory) – 0.8
- Senior Environmental Scientist (Supervisory) – 0.7
- Senior Environmental Scientist (Specialist) – 3.8
- Environmental Scientist – 22.0
- Senior Engineering Geologist – 1.0
- Associate Government Program Analyst – 1.0
- Office Technician – 5.0
- Staff Services Analyst (General) – 1.0
- Management Services Technician – 1.0
- Senior Staff Counsel – 1.0

### **FEE SCHEDULE**

The current fee schedule is in California Code of Regulations, Title 14, Section 699.5. A history of the adoption of and changes to the fee schedule is outlined below.

- FY 1982-83: The Legislature authorized the Department to charge applicants fees to meet *half* of its LSA Program costs.
- In 1991, former FGC Section 1607 was amended to require the Department to charge fees to meet its *total* LSA Program costs. In response, the Department amended the fee schedule in July 1991 on an interim basis, and again in May 1992, but not in the amount necessary to cover total LSA Program costs.
- March 2000: The Department amended the fee schedule by increasing all fees 16.75%.
- November 2005: The Department repealed its existing fee schedule and developed a new graduated fee schedule intended to generate \$3.4 million and support existing staffing levels with capacity to review 50% of Notifications.
- January 2010: Fees were adjusted 12% for inflation based on the Implicit Price Deflator Index (IPDs) for 2007, 2008, and 2009.
- January 2014: Fees were adjusted 9.5% for inflation based on the IPDs for 2010, 2011, and 2012.

## RESULTS

### Revenues and Expenditures

**Fee revenues** ranged from \$3.3 million to \$3.6 million (averaging \$3.4 million) over the past five years and have not fully recovered from the 2007 economic downturn. For example, the 2006 revenues totaled \$4.1 million and 2014 revenues totaled \$3.5 million (Table 1).

**Table 1. LSA Program Revenues and Expenditures by Fiscal Year**

	2010/11	2011/12	2012/13	2013/14	2014/15
<b>Revenues</b>	\$3,303,383	\$3,639,752	\$3,308,836	\$3,431,325	\$3,486,593
<b>Expenditures</b>	\$4,169,000	\$3,744,000	\$4,208,210	\$4,090,000	\$4,709,000
<b>Difference</b>	-\$865,617	-\$104,248	-\$899,374	-\$658,675	-\$1,222,407
<b>Fund Balance</b>	\$2,836,000	\$2,793,000	\$2,216,204	\$1,704,000	\$157,974

**LSA Program expenditures** ranged from \$3.7 million to \$4.7 million (averaging \$4.1 million) over the past five years (Table 1). The increase is largely related to increased staff benefit rates (from 34.05% to 46.79%), salary adjustments (scientific staff 6%, supervisors 43%), and administrative costs. Staff benefit rates and salary adjustments are made during employee bargaining unit negotiations with CalHR and are outside the control of the Department. Scientific staff operating budgets were reduced from \$10K to \$6K during this same period.

**Fund balance** in the dedicated account accrued due to imposed furloughs and hiring restrictions. The fund balance augmented revenues to support the Program until depleted in FY 2015/16.

### Workload

**Notifications** have averaged 2,440 annually since FY 2010/11. During this period, LSA Program staff were able to review and process (i.e., issue a draft agreement within the 60-day time period) from 85% to 90% of all notifications received. Consequently, an annual average of 14% of projects for which notifications are received have been able to proceed without an agreement by operation of law (OpLaw), and therefore without any protective measures that would be included in an agreement. In addition, there were an average of 432 requests for amendments and extensions annually (Table 2).

**Table 2. Notifications by Fiscal Year**

	2010/11	2011/12	2012/13	2013/14	2014/2015
<b>Notifications Received<sup>1</sup></b>	2480	3143	2156	2057	2361
<b>Timber Notifications</b>	112	102	84	29	2
<b>OpLaw</b>	291	234	272	290	194
<b>Amendments/Extensions</b>	397	420	441	427	473

**Staffing** included 37.3 PYs with dedicated LSA Program funding. In addition, Timberland Conservation Program (TCP) funds approximately 8.2 PYs and Reimbursable Contracts fund approximately 6.8 PYs.

## FINDINGS

- **Revenues have declined**
  - TCP projects no longer generate LSA revenues (approximately \$275K) because pursuant to Public Resources Code section 4629.6(c), effective July 1, 2013, the Department may no longer require a fee for timber harvesting projects.
  - Revenues have declined 17% since 2006 and have not rebounded to the level preceding the State’s economic downturn.
- **Expenditures increased by 13% since FY 2010/11:**
  - Salaries increased by 6% (staff) and 43% (supervisors)
  - Staff benefits rates increased by 13% (from 34.05% to 46.79%)
  - Operating budgets were reduced from an original \$10K to \$6K for scientific staff and from \$5K to \$1K for clerical staff.
  - 2014 expenditures exceeded actual revenues by over \$1.2 million, or 35%.
  - While expenditures have increased 13%, costs to implement the LSA Program at its current level exceed revenue by 40%.
- **Fund Balance will be exhausted FY 2015/16.**
- **Staffing level does not support review of all notifications.**

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<sup>1</sup> Includes timber.

- ***Fee schedule does not generate sufficient revenues to support the total costs of the LSA Program at its current level of service.***

## **CONCEPTUAL ALTERNATIVES**

Alternatives to address the funding shortfall and to cover total costs of the LSA Program include, but are not limited to, the following:

1. ***Increase fees 278% to approach total cost of a complete LSA Program (94 PY).*** Includes reviewing all notifications, issuing draft agreements for projects that may adversely affect fish and wildlife resources, partial compliance monitoring and enforcement, and development of a web-based notification and tracking database system. This estimate is supported by the Administrative Draft Compliance Monitoring Analysis and Proposal prepared by the Habitat Conservation Planning Branch.
2. ***Increase fees 215% to cover the actual cost of the LSA Program (59 PY).***
3. ***Increase fees 129% to cover the cost of the current LSA Program (37.3 PY).***
4. ***No Action - Reduce the LSA Program to match current revenues of \$3.4M:*** Reduce PYs from 37.3 to 22.0.

## **RECOMMENDATION**

1. Implement a fee increase of 129%, or equivalent variation, to generate near term revenues to support the existing funded LSA Program.
2. Explore ways to increase efficiencies that will enable the review of all notifications under existing LSA Program.