



California Department of Fish and Wildlife

It Is Not Fulfilling Its Responsibilities Under
the California Environmental Quality Act

June 2019

REPORT 2018-119





CALIFORNIA STATE AUDITOR

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June 27, 2019
2018-119

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As directed by the Joint Legislative Audit Committee, the California State Auditor performed an audit of the California Department of Fish and Wildlife's (department) duties and activities related to the California Environmental Quality Act (CEQA). The following report concludes that the department has failed to meet its responsibilities under CEQA.

As the highest state authority overseeing California's fish and wildlife resources, the department's input on CEQA documents, such as environmental impact reports, is critical. However, in recent years, the department has reviewed less than half of the CEQA documents it received. The department frequently does not respond to consultation requests and rarely provides comments on draft CEQA documents. In 2018 the department provided formal comments on just 8 percent of draft CEQA documents it received. Because it lacks policies for prioritizing and reviewing CEQA documents, the department cannot ensure that its staff are consistently reviewing projects with potentially significant impacts on the environment.

Further, the department has not ensured that it spends the filing fee paid by project applicants and public agencies subject to CEQA exclusively on its CEQA activities. Although state law restricts the use of the filing fee revenue to fund only activities related to its CEQA responsibilities, the department keeps this revenue in a shared account with revenues for other functions, and it does not track the CEQA revenue and expenditures separately from the other functions. In fact, we determined that from fiscal years 2012–13 through 2016–17, the department spent \$5.7 million in CEQA filing fee revenue to subsidize non-CEQA programs.

Similarly, the department's current timekeeping practices do not differentiate between staff time spent on CEQA activities and staff time spent on other departmental work. Even though the department has frequently cited insufficient staff resources as the cause for its inability to meet its CEQA responsibilities, without accurately capturing the amount of time staff spend working on CEQA activities, it cannot correctly determine either its necessary staff resources or the amount it should charge for filing fees.

Respectfully submitted,

A handwritten signature in black ink that reads "Elaine M. Howle". The signature is written in a cursive, flowing style.

ELAINE M. HOWLE, CPA
California State Auditor

Selected Terms and Abbreviations Used in This Report

CEQA	California Environmental Quality Act.
CEQA document	A document—either an environmental impact report, negative declaration, or mitigated negative declaration—that a public agency prepares to comply with CEQA.
CESA	California Endangered Species Act.
Draft review period	The time period within which state agencies may review and comment on draft CEQA documents.
Environmental impact report	A document describing and analyzing a proposed project's likely significant environmental effects. It lists ways in which the project applicant might mitigate significant effects and indicates alternatives to the project.
Environmental scientist	Department staff who review CEQA documents and permit applications. These scientists are located at the department's regional offices and state headquarters.
Exemption	Statutory or categorical criteria that define projects that are not subject to CEQA.
Final phase	The CEQA review phase during which the lead agency certifies or adopts its CEQA document.
LSA	Lake and Streambed Alteration.
LSA agreement	A permit the department issues that details mitigation measures to protect lake and streambed habitats. LSA agreements are necessary for projects that substantially impact a body of water.
Lead agency	The agency that is primarily responsible for carrying out or approving a project. A lead agency prepares or contracts for the preparation of CEQA documents, which it must also certify. Typically, a local government agency, such as a city or county, acts as a lead agency.
Negative declaration	A document stating why a project will not significantly affect the environment. When the project will not significantly affect the environment as a result of mitigation measures the project applicant incorporated into the project, the document is called a <i>mitigated negative declaration</i> .
Notice of determination	A notice that a lead agency sends to inform the public and responsible agencies that it has approved or decided to carry out a project and has certified or adopted a CEQA document.
Notice of preparation	A notice that a lead agency sends during the preliminary phase of CEQA review to inform responsible and trustee agencies that it will be preparing an environmental impact report for a project.
Operation of law	A term that the department uses to describe projects that proceed without LSA agreements because of the department's failure to draft an agreement within the 60-day time period outlined in state law.
Preliminary phase	The CEQA review phase prior to the lead agency preparing a draft CEQA document. During this phase, the lead agency consults with responsible agencies on the type of CEQA document to prepare for a project.
Project applicant	The party that proposes a project for lead and responsible agency approval.
Responsible agency	An agency that helps the lead agency prepare adequate CEQA documents through consulting with the lead agency and commenting on draft CEQA documents. An agency is a responsible agency if it has authority to approve an aspect of a project by, for example, issuing a permit. A state or local agency may act as a responsible agency. A single project may have more than one responsible agency.
Trustee agency	A state agency that helps the lead agency prepare adequate CEQA documents for projects that affect resources within that state agency's jurisdiction. The department is one of four public agencies specified in state regulations as a trustee agency.

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SUMMARY

The Legislature enacted the California Environmental Quality Act (CEQA) in 1970 in an effort to disclose and mitigate the potential environmental damage that certain development projects—such as housing developments and shopping centers—might cause. CEQA requires the California Department of Fish and Wildlife (department) to act as what the law refers to as a *responsible agency* for many of these development projects. In this role, the department must work with other public agencies, known as *lead agencies*, to inform decision makers and the public about the potential environmental impacts of the proposed projects and to reduce those environmental impacts to the extent feasible. The department is the highest state authority on California’s fish and wildlife resources and is responsible for issuing permits for projects affecting lake and stream habitat or endangered species; therefore, there is no adequate substitute for the department’s input on a project’s impacts on sensitive habitat and species. Our audit examined whether the department has met its statutory requirements under CEQA and whether it has appropriately managed its available funding to meet its CEQA responsibilities. This report concludes the following:

The Department Has Failed to Meet Its Obligations as a Responsible Agency Under CEQA

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One of the department’s key roles under CEQA is to provide consultation and commentary to lead agencies when those lead agencies are developing CEQA-related documents. Nonetheless, the department’s project tracking database shows that in 2018 the department responded to only 20 percent of the requests for consultation that it documented receiving from lead agencies. Without early consultation from the department, these lead agencies may be less likely to prepare appropriate and complete CEQA documents. Further, according to regulations, the department should—as a responsible agency—comment on CEQA documents for projects that are within its jurisdiction. However, it seldom provides such comments, even though doing so could make its subsequent permitting process more efficient. Finally, the department has provided its staff with neither policies and procedures for selecting CEQA documents to review nor guidance for conducting those reviews. Without such policies and guidance, the department cannot ensure that its environmental scientists consistently conduct their CEQA reviews and that its staff select for comments the CEQA documents for projects that pose the greatest risk to the State’s fish and wildlife resources.

The Department Has Not Used All Available Funding to Fulfill Its CEQA Requirements

State law requires the department to impose and collect a filing fee to defray the cost of protecting fish and wildlife resources through CEQA, and it also requires the department to use this fee for CEQA-related activities only. However, from fiscal years 2012–13 through 2016–17, the department spent a total of \$5.7 million in CEQA filing fee revenue on non-CEQA activities. Moreover, the department cannot adequately determine the full cost of its CEQA activities because it has not tracked the number of hours staff spend reviewing CEQA documents and performing other CEQA-related tasks. Although state law requires the department to evaluate the cost of its CEQA activities and recommend changes to the CEQA filing fee every five years to ensure that the fees cover its costs, the chief of the Habitat Conservation Planning Branch stated that the department delayed the assessment due in 2017 because of changes to its accounting system and staff turnover. Without an accurate assessment of the resources it uses for the CEQA program, the department cannot accurately determine whether a change in fees is necessary.

Other Areas We Reviewed

Our audit found that the department has created unnecessary delays in its CEQA review process by mailing CEQA documents to its environmental scientists rather than distributing those documents electronically. Staff at the regional offices indicated that it has historically taken one to two weeks for them to receive CEQA documents for review. In addition, the department has paid nearly \$30,000 in postage to ship these documents over the last five years. We also determined that although the majority of the department's revenues are restricted to specific uses, the department might be able to request additional funding from the California Environmental License Plate Fund to support its CEQA activities.

Summary of Recommendations

To ensure that it consistently prioritizes, reviews, and comments on CEQA documents for development projects with potentially significant impacts on the environment, the department should establish a policy by March 2020 for determining the CEQA documents it will review and provide comments on, and by this same date, it should develop policies and procedures outlining its expectations for conducting CEQA review.

To ensure that it complies with state law requiring it to use CEQA fee revenue only for CEQA activities, the department should immediately begin tracking and monitoring its CEQA-related revenues and expenditures separately from its revenues and expenditures for other programs and activities.

To accurately estimate the resources it needs to review all CEQA documents that it receives, the department should implement a timekeeping mechanism by December 2019 that requires staff to track the hours they spend on CEQA-related activities.

Agency Comments

The department generally agreed with our recommendations and in some cases provided information on how it would implement them.

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INTRODUCTION

Background

Enacted in 1970, the California Environmental Quality Act (CEQA) requires state agencies to give major consideration to preventing environmental damage when regulating activities under their jurisdiction. The California Department of Fish and Wildlife (department) refers to CEQA as California's broadest and most important environmental law. Both public and private development projects in California—such as community centers and apartment buildings—are generally subject to CEQA.¹ CEQA generally requires state and local government agencies to inform decision makers and the public about the potential environmental impacts of proposed projects and to reduce those environmental impacts to the extent feasible.

CEQA has been the subject of some controversy. Project applicants have been critical of CEQA for increasing the costs of development. Critics of CEQA have also claimed that opponents of development projects use the law to slow down the projects for nonenvironmental reasons, such as to prevent transit stations in certain neighborhoods or to gain leverage in labor negotiations. However, since its implementation, public agencies and the public have used CEQA to protect the environment, as well as public health and safety. For example, in 2003 local groups and labor unions realized that a proposal to expand an oil refinery to produce lower sulfur diesel fuel would increase pollution and harm public health in the area. Through CEQA, the groups worked with the refinery owner to mitigate the increased pollution yet still allow the expansion to go forward. A 2016 report commissioned by a charitable foundation supporting environmental work found that since the Legislature enacted CEQA, California has outperformed other states in conserving and protecting its natural resources while also enjoying economic prosperity. Thus, CEQA can be an effective tool for protecting the public and the environment while allowing development and growth.

The Department's Mission

The mission of the department is to manage California's diverse fish, wildlife, and plant resources—and the habitats upon which they depend—for their ecological value and for their use and enjoyment by the public. Its many functions include law enforcement and issuing hunting and fishing licenses. In addition, the department has authority to approve projects with impacts on fish, wildlife, and their habitats in part through its permitting process. Although its CEQA duties are separate from its permitting duties, the department's CEQA work may serve as a precursor to its permitting process. Under CEQA, the department is generally responsible for reviewing the impact that development projects may have on fish and wildlife resources and for recommending options for mitigating potentially significant effects on those resources. We discuss the department's specific responsibilities related to CEQA in more detail below.

¹ Certain development projects are statutorily or categorically exempt from CEQA.

The Department's Structure and Budget

The Habitat Conservation Planning Branch (conservation branch) conducts the department's work related to CEQA and accounts for 14 percent of the department's total staff. Dispersed among the department's regional and satellite offices, environmental scientists from the conservation branch handle work related to CEQA reviews and to permitting based on the locations of projects. Figure 1 shows the area assigned to each region and the location of each region's headquarters. When a project spans multiple regions or may have statewide impact, conservation branch staff at the department's state headquarters oversee the project's CEQA reviews.

The department's budget was \$600 million in fiscal year 2018–19, and it used half of this budget for conservation programs. Appendix B provides a breakdown of the department's enacted fiscal year 2018–19 budget by function and revenue source. The State's General Fund contributed \$121 million to the department in fiscal year 2018–19. The remainder of its funding came from different sources, including fees related to CEQA reviews, permits, and hunting and fishing licenses. The department receives about \$6 million annually—roughly 1 percent of its overall budget—from fees that project applicants and public agencies that are subject to CEQA pay during the review process.

CEQA Agency Roles

Lead Agency—Typically, a local government agency, such as a city or county, acts as a lead agency. The lead agency is responsible for either carrying out or approving a project. A lead agency prepares—or contracts for the preparation of—CEQA documents, which the lead agency must also certify or adopt.

Responsible Agency—A state or local agency is a responsible agency if it has authority to approve an aspect of a project by, for example, issuing a permit. A responsible agency helps the lead agency prepare adequate CEQA documents by consulting with the lead agency and by commenting on draft CEQA documents. A single project may have more than one responsible agency.

Trustee Agency—A trustee agency is a state agency that helps the lead agency prepare adequate CEQA documents for projects that affect resources within that state agency's jurisdiction. The department is one of four public agencies specified in state regulations as a trustee agency.

Source: Analysis of CEQA laws and regulations and a report from the Association of Environmental Professionals.

The Department's Duties Under CEQA

As we indicate above, the CEQA process occurs after a public or private entity—which we refer to as a *project applicant*—decides to construct a development project, but before it applies for a permit from the department. The project applicant must submit an application for approval to a lead agency, usually a city or county. As Figure 2 shows, the lead agency must then consult with the department regarding the project's potential environmental impacts. This step begins the CEQA process, which has three separate phases—preliminary, draft, and final—that we discuss later in this section. At the end of the CEQA process, the lead agency decides whether to approve the project, after which the project will proceed to the permitting process, if necessary. Although portions of the CEQA process have deadlines, it can take years for a project to complete the CEQA process and obtain permits if necessary.

Figure 1
The Department's Regional Offices

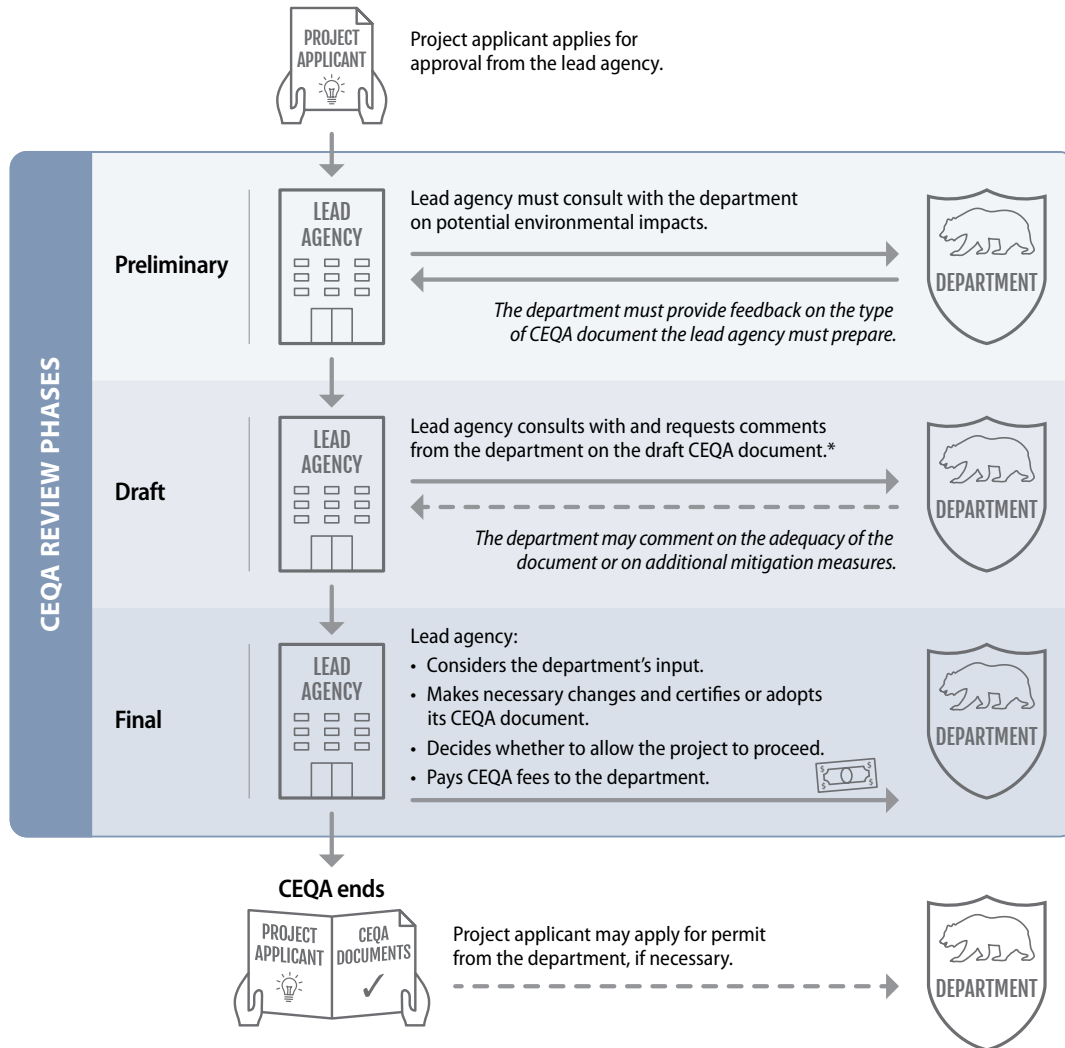


Source: Analysis of the department's website.

* Sacramento, San Joaquin, and Yolo counties are split between regions 2 and 3. The majority of the counties are within Region 2.

† Region 7 covers the entire coast within three nautical miles off of the shore.

Figure 2
The Three Phases of CEQA Review



Source: Analysis of CEQA-related laws and regulations and the department's permit application instructions.

Note: We define these phases for the purpose of our report. This process does not apply to projects that are statutorily or categorically exempt from CEQA.

* The lead agency must consult with and request comments from the department when preparing an environmental impact report. It must give notice to and allow comments from the department when preparing most negative declarations and mitigated negative declarations. If the lead agency receives comments from the department on these documents, it must consider them.

Depending on the projects' particular circumstances, the department has different roles and responsibilities in the CEQA process. As the text box explains, CEQA mandates specific requirements to the three roles in which agencies may serve: lead agency, responsible agency, and trustee agency. The department functions as a lead agency when it carries out its own projects in, for example, state wildlife areas. In contrast, the department

functions as a trustee agency for all projects that may affect, among other things, California’s fish, wildlife, and their habitats. Finally, the department functions as a responsible agency only when it will eventually have responsibility for approving projects by, for example, issuing a permit. A project may have more than one trustee agency or responsible agency.

This report focuses primarily on the department’s duties as a responsible agency. Determining early in the CEQA process whether the department will be a responsible agency can be difficult. According to the department, the initial documents describing a project may not include the level of detail necessary to determine if a permit will be required. However, because state law and regulations establish activities that a responsible agency must or should undertake—such as consulting or reviewing draft CEQA documents—before the permitting process begins, the department must sometimes perform the duties of a responsible agency before it is certain that it will serve in that role. The department also has responsibilities as a trustee agency that extend to all projects—not just those for which it will eventually issue permits. The duties of a responsible and a trustee agency are similar; in this report, we identify those instances when the department’s duties as a trustee agency differ from its duties as a responsible agency.

The State Clearinghouse, located within the Governor’s Office of Planning and Research, also has a role in the CEQA process. When a lead agency determines that a project potentially will have statewide significance or an environmental impact on natural resources over which one or more state agencies has jurisdiction, the State Clearinghouse acts as the liaison between the lead agency and the state trustee and responsible agencies. State law and regulations require that, upon the lead agency’s request, the State Clearinghouse must help identify which state agencies will be responsible agencies. Further, regulations require it to distribute CEQA documents to the state trustee and responsible agencies for review and comment.

The Preliminary Phase of CEQA Review

The preliminary phase of the department’s CEQA review helps to shape the type and content of the CEQA documents, which the text box describes. During this phase, regulations require the department—as a responsible agency—to respond to a lead agency’s consultation request and help the lead agency determine whether a project will have a significant effect on the environment. This consultation informs the lead agency’s

Types of CEQA Documents

Environmental Impact Report—A document describing and analyzing a proposed project’s likely significant environmental effects. It lists ways in which the project applicant might mitigate significant effects and indicates alternatives to the project.

Negative Declaration—A document stating why a project will not significantly affect the environment. When the project will not significantly affect the environment as a result of mitigation measures the project applicant has incorporated into the project, the document is called a *mitigated negative declaration*.

Source: State laws and regulations pertaining to CEQA.

determination of whether it must prepare a negative declaration or an environmental impact report for the project. If the lead agency determines it will prepare an environmental impact report, it sends a notice of preparation to the department. Regulations require the department to respond in writing to that notice as soon as possible, but not longer than 30 days after receiving it, and to include in its response the environmental issues the lead agency should address in its draft environmental impact report.

The Draft Phase of CEQA Review

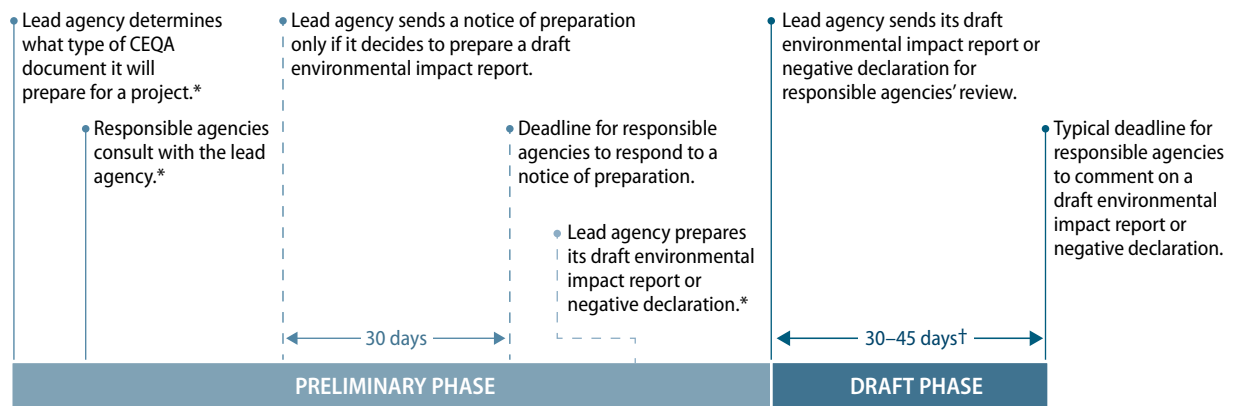
In the draft phase, the department—as a responsible agency—should receive a draft environmental impact report, negative declaration, or mitigated negative declaration that the lead agency has completed. The department and the lead agency must again consult on—and the department may comment on—an environmental impact report in the draft CEQA phase. Regulations generally give the department 45 days to review a draft environmental impact report. Although state law does not require the department to consult on a draft negative declaration, regulations generally allow 30 days for it to review and comment on a draft negative declaration if it chooses to do so. The department's consultation and comments can help ensure that the lead agency's draft environmental impact report or negative declaration is adequate. Regulations state that the department should limit its comments to project activities within its area of expertise. For example, as a responsible agency, the department's comments could inform the lead agency of ways to mitigate a project's impact on endangered species. Figure 3 illustrates the timeline within which a responsible agency must fulfill the preliminary and draft phase requirements.

The Final Phase of CEQA Review

If the department agrees that the environmental impact report or negative declaration is adequate, it does not play a role as a responsible agency in the final phase of CEQA review. The lead agency carries out this phase when it certifies the environmental impact report or adopts the negative declaration or mitigated negative declaration before it approves the project. Before certifying or adopting the respective document, the lead agency must consider any comments it received from responsible agencies during the draft review period; it must respond to those comments when the comments concern an environmental impact report. The State's policy is that public agencies should not approve projects as proposed if feasible alternatives or mitigation measures are available that would substantially lessen the significant environmental effects of the projects. However, if specific economic, social, or other

conditions make alternatives or mitigation measures infeasible, lead agencies may approve individual projects even if they have significant environmental effects.

Figure 3
Timeline for Responsible Agencies to Consult and Comment on CEQA Documents



Source: Analysis of CEQA laws and regulations.

* Regulations do not provide a specific time limit for consultation or for the lead agency to prepare a draft CEQA document; however, state law generally allows the lead agency 180 days to finalize a negative declaration and one year to finalize an environmental impact report, starting from the date the lead agency received the application for the project.

† Regulations generally establish a draft review period of 30 days for negative and mitigated negative declarations and 45 days for environmental impact reports.

If a lead agency approves a project to proceed, it presents evidence of its decision by filing a notice of determination with a county clerk or the State Clearinghouse. At this time, project applicants pay a filing fee, which we describe later in this report. Although the lead agency has approved it, a project may still require one or more permits before the project applicant may proceed with construction. We discuss the department's permits and how they relate to CEQA in the next section.

The Relationship Between CEQA and the Department's Permitting Process

As we indicated previously, the department's permitting process is separate from the CEQA review process. However, the department's authority to approve project permits is one reason it acts as a responsible agency under CEQA. As a responsible agency, the department helps the lead agency prepare an appropriate and complete CEQA document that identifies the significant environmental impacts of a project; similarly, the department may determine through its permitting process that a project needs

additional mitigation measures. Before approving a permit, the department must issue findings explaining that the measures included in its permit and in the lead agency's CEQA document will substantially lessen any significant environmental impacts within its jurisdiction that the project may cause.

The department's two permits—California Endangered Species Act (CESA) permits and Lake and Streambed Alteration (LSA) agreements—may build upon the lead agency's CEQA document. A project applicant obtains a permit from the department through a collaborative process. First, the project applicant submits to the department its CEQA document and an application. If the application does not contain sufficient information, the department will follow up with the applicant. Next, the department may require additional mitigation measures to minimize harm to fish and wildlife resources. To obtain a CESA permit, an applicant must fully plan to mitigate the project's impacts on endangered and threatened species. To obtain an LSA agreement, an applicant must ensure that the project does not substantially divert or obstruct the flow of lakes, rivers, or streams, or alter their beds. A project applicant seeking a CESA permit must wait until it receives that permit before proceeding with the project. However, if the department does not issue a draft LSA agreement within 60 days, a project applicant may generally proceed without an agreement. The project applicant must still conduct the activity as described in its application to the department, including implementing measures intended to protect fish and wildlife resources.

The Department Has Failed to Meet Its Obligations as a Responsible Agency Under CEQA

Key Points

- The department has not consistently responded to consultation requests or commented on draft CEQA documents, allowing lead agencies to approve projects without its input on whether those projects may affect sensitive fish and wildlife resources.
- When the department does not comment on draft CEQA documents, it does not provide important guidance to project applicants and fails to inform them of mitigation measures they may be required to adopt during the subsequent permitting process. As a result, the permitting process may take more time.
- The department's lack of policies, procedures, and training related to CEQA review increases the risk that its environmental scientists will review CEQA documents in an inconsistent manner. Moreover, without standards to guide its staff's decision making, the department cannot be sure that its supervisors and scientists select CEQA documents for review and comment that are the highest priority in terms of protecting the State's fish and wildlife resources.

The Department Has Not Consistently Consulted and Commented on Development Projects, Allowing Lead Agencies to Approve Projects Without Its Input

Although lead agencies do not always request early consultation, the department often does not respond when they do. State law requires the lead agency to consult with the responsible agencies in the preliminary phase of a development project. When the department is a responsible agency for a project, regulations require that it respond to a consultation request to help ensure that the lead agency prepares the appropriate CEQA document.² However, the department enters only some consultation requests it receives in its project tracking database. For example, an administrative staff member from one of the department's regions explained that she enters all consultation requests the office receives through email or mail; however, she is not always aware of requests by phone and thus does not enter them. Once staff enter requests into the project tracking database, they then may enter the department's responses to the requests, if any.

According to the information in the database, the department responded to only 100 of around 500 (20 percent) documented requests for consultation it received from lead agencies in 2018. In some cases, the department cited in the database

² As we discuss in the Introduction, we use the term *responsible agency* throughout this report to refer to all of the department's duties related to the CEQA process from early consultation through reviewing the draft documents. We specifically note those instances when the department's duties as a trustee agency differ from its duties as a responsible agency.

insufficient time as its reason for not responding to the requests. Frequently, however, the department did not record any reason for not responding to a consultation request. The Chief of the Habitat Conservation Planning Branch (conservation branch chief) stated that the department's low rate of response might be due to a number of different issues, including insufficient staff time and incomplete data in the database. According to one of the department's environmental scientist supervisors, staff at his regional office prioritize early consultation because making changes to projects is easier during the preliminary phase. Nevertheless, he acknowledged that the department may not have the staff resources to respond to every early consultation request it receives.

Without early consultation from the department, a lead agency cannot ensure that it will prepare an appropriate and complete CEQA document, which could lead to challenges in the final phase of CEQA review. Regulations require the department to help the lead agency determine whether a project may significantly affect the environment, in which case the lead agency must prepare or contract for the preparation of an environmental impact report; otherwise, the lead agency must prepare a negative declaration. Without the department's input, the lead agency may inappropriately determine that a project will not significantly affect the environment and prepare the wrong document. Regulations require responsible agencies to take action if they deem a CEQA document to be inadequate. Specifically, a responsible agency may initiate legal challenges to CEQA documents it believes are inadequate; if it does not do so, it is deemed to have waived any objections. It also has the option of either preparing a subsequent environmental impact report, if statutorily permissible, or assuming the role of the lead agency, if specific legal conditions are met.

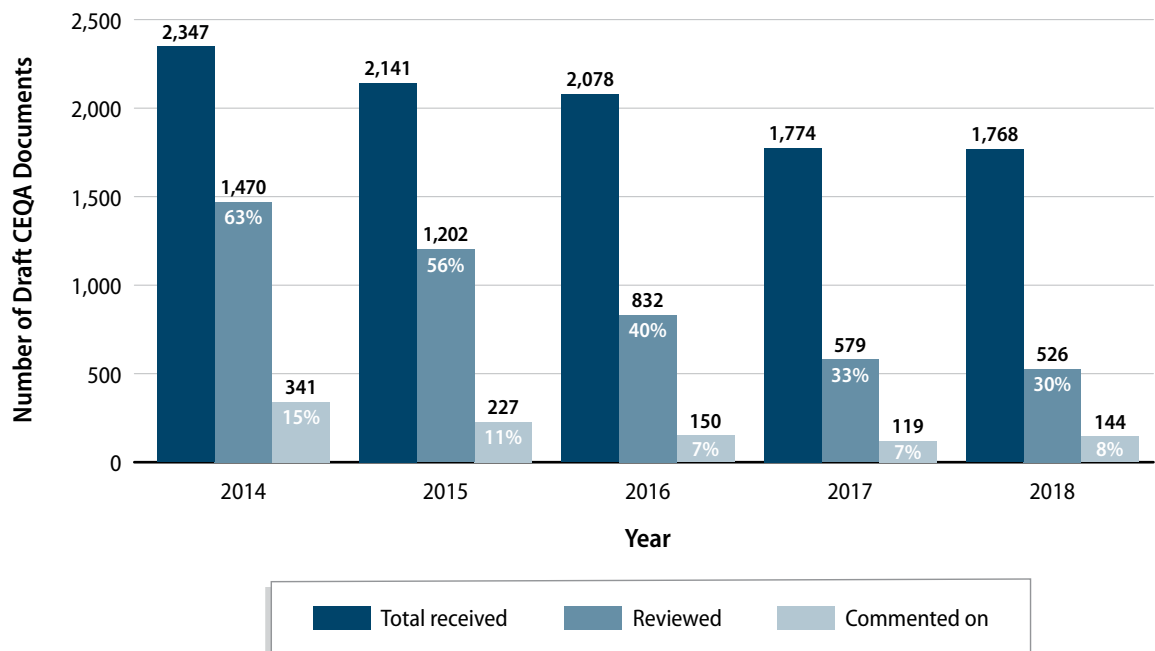
Furthermore, the department frequently does not reply to official early notices—called *notices of preparation*—for projects that may significantly affect the environment. When a lead agency determines that a project may have a significant impact on the environment and that the department will be a responsible agency, it notifies the department that it intends to prepare an environmental impact report. State regulations require the department to provide a written reply to each notice of preparation within 30 days and to specify within its reply the scope and content of the information that the draft environmental impact report should include. However, according to the department's project tracking database, it replied to only 14 percent of these notices in 2018.

The database includes a field for the department to record its reason for not responding to a notice of preparation; however, in many cases, we found that the department left this field blank. For the two projects we reviewed where the department did not reply to the notices of preparation, the assigned scientists stated that they did not have sufficient time to reply within the required 30 days. If the

department does not either respond or request additional time within those 30 days, the lead agency has the legal right to assume that the department does not have a response to make. However, because the department has jurisdiction over the conservation, protection, and management of California’s fish and wildlife resources, its input on a project’s impacts on sensitive habitats and species is critical.

The preliminary phase of review is not the department’s last chance to provide input on projects; however, the department frequently fails to provide input during the draft phase, as well. In fact, the percentage of draft CEQA documents that the department reviewed has dropped significantly over the past five years. Although state law does not require the department to provide comments on every draft CEQA document in its role as a responsible agency, regulations state that it should comment on the adequacy of the lead agency’s draft environmental impact report or negative declaration for projects that it will later be asked to approve. However, the department seldom comments on draft CEQA documents. As Figure 4 shows, the department did not take any action at all for most of the documents it received from 2014 through 2018.

Figure 4
The Number of Draft Environmental Impact Reports and Negative Declarations the Department Reviewed Has Decreased Over the Past Five Years



Source: Analysis of the department’s project tracking database as of January 2019.

Even when the department did review draft CEQA documents, it did not always provide comments to the lead agencies. For example, according to its database, the department reviewed 30 percent of the documents it received in 2018. However, of those 526 reviewed documents, it commented on only 144. Regulations generally allow the department 30 days to review and comment on negative declarations and 45 days to review and comment on draft environmental impact reports. After that period expires, the department may still provide comments on draft CEQA documents, but state law does not require the lead agencies to respond to those comments. Nevertheless, lead agencies must consider all comments received until a CEQA document is certified or adopted.

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Even when the department reviewed draft CEQA documents, it did not always provide comments to the lead agencies.

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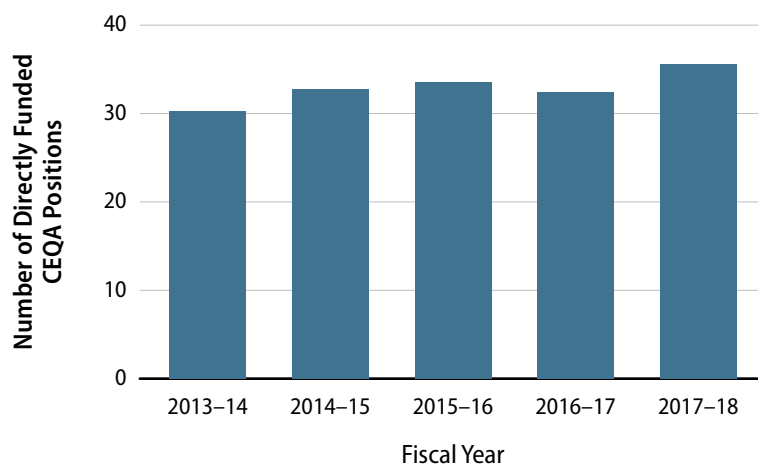
As a result of the department's failure to fulfill its responsibilities in the preliminary and draft phases, lead agencies have approved some projects' CEQA documents without any input from the department. After the draft phase, a lead agency must finalize a project's CEQA document and decide whether to approve the project. Before it does so, state law requires the lead agency to consider draft comments from responsible agencies. Therefore, the draft phase is generally the department's last opportunity during the CEQA process to inform the lead agency of the project's effects on sensitive species and habitats within its jurisdiction and possible mitigation measures for these effects.

When we reviewed a selection of 20 projects for which lead agencies completed CEQA documents and for which the department was a responsible agency, we found that the department conducted varying levels of review during the preliminary and draft phases. For six of these 20 projects, early consultation did not occur and the department did not comment on draft CEQA documents. For example, in 2016 a water district approved a project that involved constructing a pump station and installing a new pipeline. The department did not have a record of early consultation and did not comment on the water district's draft mitigated negative declaration. For another seven projects, the department provided input during only one of the phases. Finally, for the remaining seven cases, the department provided input during both the preliminary and draft phases. However, the department acted after

the review period had expired in four of these seven cases. When the department does not fulfill its responsibilities, lead agencies may not be aware of potential significant impacts to fish and wildlife resources that they should consider.

The department indicates that it does not have enough resources to fulfill all of its CEQA responsibilities. In 2012 it told the Legislature that it could review only 50 percent of the documents it received with the funding and staffing levels it had at that time. According to the conservation branch chief, this is still the case. However, as Figure 4 shows, the percentage of CEQA documents the department reviewed has fallen below 50 percent over the last five years— in 2018 it reviewed only about 30 percent of the documents it received. This decrease occurred, as Figure 5 shows, even though the number of CEQA-funded positions has remained relatively stable.

Figure 5
The Department's Number of CEQA Positions Has Remained Relatively Stable



Source: Analysis of the department's staffing data.

The department offered several possible explanations for the decrease in the documents it reviewed. According to the conservation branch chief, the department's number of LSA staff—some of whom also spent time reviewing CEQA documents—has decreased by 50 percent in recent years. In addition, the number of split positions, which are positions receiving funding from multiple sources, such as CEQA fees, LSA agreement fees, and CESA permit fees, has increased. He said that although these changes might have increased the number of permits the department issued, they also might have decreased the number of CEQA documents it reviewed. Further, he said that the department has received CEQA documents that

involve more complicated environmental issues and that the reviews therefore take longer. Finally, some lead agencies, such as the California Department of Transportation (Caltrans), contract with the department for staff dedicated to those lead agencies' CEQA and permitting activities. However, according to the department and Caltrans, the main purpose of these reimbursed positions is to assist with the permitting process, rather than to review CEQA documents.

The department may, in fact, need additional resources to meet its responsibilities. However, as we discuss later in this report, the department has not tracked the time its staff spent on CEQA activities in a manner that would enable it to estimate the resources it would need to fully meet its CEQA responsibilities. Moreover, the department has not spent all of the CEQA fees it received on CEQA activities. The department will need to address these problems before it can adequately justify the need for additional resources.

The Department's Failure to Comment on Draft CEQA Documents May Slow Its Permitting Process and Lead to Avoidable Harm to the Environment

When the department does not comment on draft CEQA documents, the process for applicants to obtain permits for projects may take more time. According to the department scientists we interviewed, the department's comments can strengthen the permitting process. They further stated that when the department ensures that a lead agency knows of and can consider all known or reasonably anticipated significant environmental impacts before approving a project, it enables that lead agency to require the project applicant to implement additional measures to protect fish and wildlife. In addition, when a project applicant knows early in a project that it will need to implement costly mitigation measures, it has more time to consider ways to modify the project to reduce or avoid these costs. Furthermore, when the department comments on draft CEQA documents, it could reduce the need to request additional information from project applicants during the permitting process.

Our review suggests that when the department does not comment on draft CEQA documents, it may slow its permit processes. We reviewed a selection of 25 projects for which the department approved LSA agreements. The department did not comment on the draft CEQA documents for 18 of these projects. On average, the department took 354 days to finalize LSA agreements for these 18 projects. This is more than double the amount of time the department took—175 days—to finalize LSA agreements on the seven projects on which it did comment. According to the senior scientist overseeing the LSA program for the central regional office, the department's comments on draft CEQA documents

could ideally make the permit process easier, but in practice the lead agencies' draft documents do not always contain enough detail for the department to comment on permit-specific issues. However, we question this assertion, given the results of our review. Although our selection was not a statistical sample, it represents a variety of projects across four regional offices.

The department's commenting on draft documents may speed the permitting process in part because it may reduce the need for the department to request additional information during that process, saving both the department's and the project applicants' time. According to the lead scientist in the LSA program for the north central region, delays during the permitting process often occur because of the time applicants take to respond to the department's requests for additional information. Although the department cannot control how long applicants take to submit additional information, it can—by commenting on the draft CEQA document—specify needed information years before the permitting process begins. For example, the department's reply to the notice of preparation for a solar park project asked the lead agency to include a detailed analysis of the project's stream impacts in its CEQA document. That reply noted that the analysis would make the environmental compliance process more efficient by saving the department effort during the LSA permit process. The LSA agreement process for the solar park took just over 200 days to complete, much less than the average of about 350 days for the projects we reviewed that did not receive the department's comments on their draft CEQA documents.

By commenting on draft CEQA documents, the department can specify needed information years before the permitting process begins.

In a converse example, in 2011 the department did not comment on the draft environmental impact report for a city's planned civic center because, according to the assigned environmental scientist, he did not have time. In 2014 the project applicant applied for an LSA agreement for the project. However, the department deemed the application incomplete and asked for additional information about the project's stream impacts. After reviewing the additional information, the department requested yet more information about the project, and it did not issue the LSA agreement until almost two years after it received the application. Had the department

commented on the project's draft CEQA document, it could have asked the lead agency to include additional information on stream impacts, which could have reduced the amount of time the department spent requesting and reviewing additional information during the permitting process. According to the department, CEQA documents that do not address all lake and streambed impacts are a common cause for delayed LSA agreements.

A lengthy permitting application process may also contribute to the department's inability to issue some LSA agreements. As we mention in the Introduction, state law allows a project to proceed without additional mitigations to protect fish and wildlife when the department fails to draft an LSA agreement within 60 days of receiving a complete application, through a process that the department calls *operation of law*. An application is complete when it sufficiently describes the project's impacts on lake and stream habitat. If the department deems an application incomplete, the project applicant has unlimited time to submit additional information until the department deems the application complete. As Table 1 shows, the department has allowed numerous projects to proceed without LSA agreements through operation of law.

Table 1
A Significant Number of Projects Have Proceeded Without LSA Agreements

	2014	2015	2016	2017	2018
Operation of law projects	269	256	297	338	396
Total applications	1,959	2,232	2,264	2,872	2,646

Source: The department's reports generated from its project tracking database.

The amount of staff time dedicated to reviewing and returning incomplete applications may contribute to the department's not being able to draft some LSA agreements within 60 days. According to the senior environmental scientist overseeing the LSA program in the conservation branch, staff do not always have time to issue draft agreements for projects that apply for LSA agreements. He also acknowledged that reviewing incomplete applications takes more staff time than reviewing complete applications because staff must follow up with the project applicants to obtain the missing information and must continue working with the project applicants until the applications are complete. Therefore, it is reasonable to conclude that the time staff spend reviewing incomplete applications may divert their attention from reviewing complete applications.

When the department does not issue a draft LSA agreement, it may miss an opportunity to ensure that a project applicant has adopted adequate mitigation measures to protect fish and wildlife. For example, in 2017 the department's central regional office allowed a solar park to proceed through operation of law. In a letter to the project applicant, the department acknowledged that the project could proceed through operation of law but stated that it still had concerns over the project's risk of water pollution and underestimated stream impacts. Determining a project's long-term detrimental impact on the environment can require significant analysis, but ultimately the department's agreements can reduce the projects' adverse impacts to fish and wildlife.

The Department Has Not Provided Guidance for Its Regional Offices, Which Could Result in Inconsistent CEQA Review

The department has established neither centralized policies and procedures nor mandatory training regarding CEQA review, increasing the risk that regions will review CEQA documents inconsistently. When the department's regional offices receive a CEQA document, staff enter the basic details of the project into the department's project tracking database. Next, all but one of the regions triage the documents to determine which to prioritize for review and comment. The northern region's Redding office does not triage documents because it is able to review all of the relatively small number of documents that it receives. In some regions, scientists triage the documents, while in other regions the supervising scientists do. According to the conservation branch chief, a scientist is assigned to review the chosen CEQA documents and may make informal or formal comments to the lead agency about affected natural resources and mitigation measures necessary to protect these resources.

Neither the department nor its regional offices have policies describing how the regions should determine which documents to prioritize for review and comment. According to the conservation branch chief, the department must prioritize CEQA documents because it receives more than it has resources to handle. Because the department must select which documents to review, we expected either the state headquarters, the regions, or both would have formal guidance for staff conducting the triage to ensure the department is consistent in the kind of projects it prioritizes. However, according to the conservation branch chief, the department does not have a standardized process by which staff triage CEQA documents. Scientists in two regions stated that the department's lack of such a process makes it difficult for newer scientists and supervisors to determine which documents they should review and on which documents they should comment.

Without such standards, supervisors and scientists cannot be sure that they select for review documents that are the most important in terms of protecting the State's fish and wildlife resources.

The department and the regional offices also lack policies for regional staff that describe how they should review CEQA documents. Regulations require that public agencies, including the department, adopt specific procedures for administering their responsibilities under CEQA, including the orderly evaluation of projects. Although the department has regulations for reviewing CEQA documents, they are general and largely mirror other state regulations. The conservation branch chief stated that the department had not developed written policies for CEQA review because there is such variation between the regions that regional managers should be able to use their knowledge and expertise to set priorities and policies specific to their regions. He also stated that creating such policies might require regulations. However, according to managers at the regional offices, the regions also do not have written policies regarding CEQA review. Without written policies at both the departmental and regional levels, the department cannot ensure that its environmental scientists are conducting CEQA reviews consistently either within or across regions.

Without written policies, the department cannot ensure that its environmental scientists are conducting CEQA reviews consistently.

The department has known for years that its lack of policies for prioritizing which documents to review and its lack of policies for conducting CEQA review are problematic. In fact, a 2002 Legislative Analyst's Office's report stated that the department lacked both a formal triage process for CEQA documents and standard protocols for guiding the extent of the department's comments. Nonetheless, the department has not rectified this issue. However, when we presented our concerns to the conservation branch chief, he recognized that the lack of formal standards increased the risk that staff could be inconsistent in reviewing documents. He stated that he would support the department developing written procedures for CEQA triage and review, as well as requiring regional offices to create written policies on CEQA triage and review.

Because the department lacks written guidance on triaging and reviewing CEQA documents, regions may implement practices that conflict with the department's responsibilities under law. For example, according to the environmental program manager for the southern coastal region, that region developed a practice of not reviewing any CEQA documents from a significant portion of the Los Angeles metropolitan area from 2010 through 2013. In fact, she estimated that during that time, the department provided no review on more than 450 projects. The program manager stated that the region made this decision because it lacked adequate resources for reviewing CEQA documents at the time; because the area was highly developed, the regional office assumed any additional development would have minimal impact on wildlife. However, none of the other regions have had recent policies that excluded entire areas for review, even though several also have highly urbanized areas within their jurisdictions. Additionally, the conservation branch chief stated that even in a largely urbanized area, CEQA projects might present significant environmental concerns. Without sufficient guidance from the department, its regional offices could adopt policies that effectively exempt projects from CEQA review when, according to regulations, the department should be evaluating the environmental impact of such projects.

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Because the department lacks written guidance on CEQA documents, regions may implement practices that conflict with the department's responsibilities under law.

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In addition to lacking standardized policies for how its scientists should conduct their CEQA reviews, the department also offers only limited training on the subject. According to the conservation branch chief, the department's basic CEQA training course largely focuses on the laws and concepts of CEQA and the stages of review; it does not describe how to complete a review. He further stated that no policy or legal obligation exists for staff training in CEQA and that the trainings the department offers are not mandatory. When viewed together, the department's lack of guidance on CEQA activities and the absence of consistent, robust training for its scientists means that no common standard exists by which the department's staff review and comment on CEQA documents, both departmentwide and within each region. The lack of a common standard for review increases the risk that staff will apply different standards when determining what environmental

issues or mitigating strategies the documents ought to include. The conservation branch chief stated that he supports developing more robust training for scientists.

The department offers only limited, nonmandatory training in CEQA for its scientists.

Finally, neither the department nor its regional offices have policies to describe how staff should enter data into the department's project tracking database. In our review, we found inconsistencies in the quality of the data across regions. The department admits that its data are incomplete and that the regional offices are inconsistent in how they use the database. The conservation branch chief stated that the department has not created policies or procedures regarding data entry into the project tracking database because the conservation branch does not have the authority to set such policy. He stated that the department's chief deputy director would need to establish such a policy because the regional directors report directly to that position. According to the conservation branch chief, past chief deputy directors have not established a policy for database entry. Nevertheless, this database is the only source of data the department has on its CEQA review activities, and the department uses it to report its activities to the Legislature. Therefore, it is important for the department to ensure the information it enters into the database or into any future database it adopts is accurate and consistent across regions. The current chief deputy director expressed interest in creating a statewide data entry policy.

Recommendations

To ensure that it consistently prioritizes and reviews projects with potentially significant impacts on the environment, the department should do the following:

- Establish a departmentwide policy for prioritizing CEQA documents for review and comment by December 2019 and require regional offices to adopt region-specific procedures by March 2020.

- Develop policies and procedures outlining departmentwide expectations for CEQA review and comment by December 2019 and require regional offices to develop region-specific policies and procedures for CEQA review by March 2020.
- Develop ongoing training for environmental scientists that covers subjects including the complexities and technical aspects of CEQA review by June 2020.
- Should it determine that the new policies and procedures create rules of general application, incorporate the policies and procedures into regulations in full compliance with the Administrative Procedure Act.

To ensure regional staff enter data into the project tracking database accurately and consistently, the department should, by December 2019, develop, implement, and provide training on departmentwide written policies and procedures that outline the requirements and process for entering data related to CEQA review into the department's project tracking database.

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The Department Has Not Used All Available Funding to Fulfill Its CEQA Obligations

Key Points

- From fiscal years 2012–13 through 2016–17, the department did not spend about \$5.7 million in CEQA fee revenue on CEQA-related activities. Instead, that revenue helped the department cover shortfalls in other programs because, although state law requires the department to use CEQA filing fee revenue for CEQA activities, the department does not track CEQA revenues separately from certain other program revenues.
- Although the department asserts it does not have enough staff to meet all of its CEQA responsibilities, it has not tracked the time that staff spend on CEQA activities in a way that would allow it to accurately estimate the number of staff it needs to meet these responsibilities.
- The department's audits have identified thousands of dollars in CEQA revenue that counties did not collect or remit. However, the department has not yet recovered that revenue because it determined that it was giving conflicting guidance to the counties on requirements for collecting and remitting fees and it has not been able to provide training to county clerks in recent years to the same extent that it did in the past.

The Department Has Not Spent All of the CEQA Fee Revenue It Received Each Year on CEQA Activities

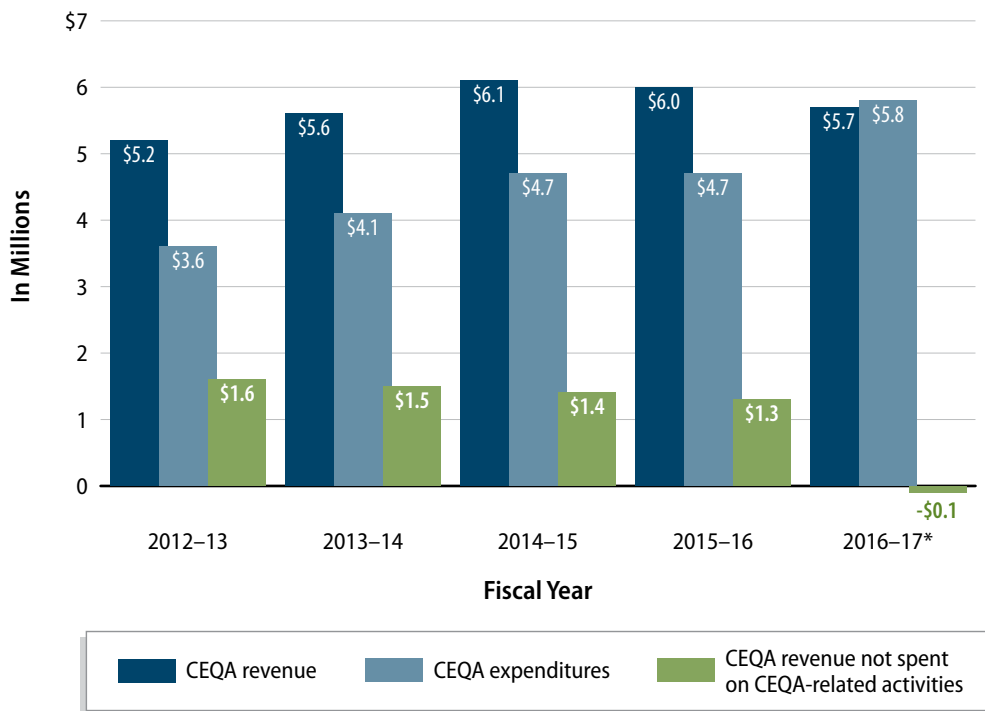
The department has not spent all of the revenue it received from CEQA filing fees on CEQA review. State law requires the department to impose and collect a filing fee to defray the costs of protecting fish and wildlife resources through CEQA. A project applicant pays the fee after the department's review period for the draft CEQA document, upon the lead agency's submission of the notice of determination. The department's filing fees in 2019 are \$2,350 for a negative or mitigated negative declaration and \$3,270 for an environmental impact report. State law requires the department to adjust the fees each year to account for inflation and restricts the use of CEQA filing fee revenue to funding only CEQA-related activities.

However, we found that from fiscal years 2012–13 through 2016–17, the department did not use \$5.7 million in filing fee revenue for its CEQA activities.³ As Figure 6 shows, we calculated that the department spent less on CEQA activities than it collected in fees in four of the five fiscal years from 2012–13 through 2016–17. The department tracks this revenue, along with revenue from other program activities,

³ The department stated that because it converted to a new fiscal system, it does not yet have a full accounting of revenues and expenditures related to CEQA for fiscal year 2017–18.

in a shared account—which the department calls the nondedicated account—within the Fish and Game Preservation Fund; however, it does not manage the CEQA revenues within the account separately from other revenue. We worked with the assistant deputy director of fiscal operations to confirm our calculations. He explained that the department does not monitor each individual revenue source and related activities within the account. Thus, the department cannot ensure that it uses restricted CEQA fee revenue only for CEQA purposes.

Figure 6
The Department Has Not Spent All of Its CEQA Revenue on CEQA-Related Activities



Source: Analysis of the department's yearly revenue and expenditure data.

* According to the department, its conversion to a new fiscal system means that its fiscal year 2016-17 revenues and expenditures in this figure will change after it finalizes revenue and expenditures that it posted after July 1, 2017.

In fact, other programs in the shared account have used CEQA fee revenue to supplement their own deficits. The chief of the department's accounting branch (accounting chief) explained that when programs within the shared account spend more than they bring in, those programs use funds from others with a surplus—such as CEQA—before using the shared account's reserve. For example, in fiscal year 2014-15, the department's CEQA fee revenue exceeded its CEQA-related expenditures by \$1.4 million, whereas

the other programs using the shared account had a deficit of about \$25 million. Therefore, according to the department's accounting records, it used \$1.4 million in CEQA fees to cover a portion of the deficits of other programs in the account in that year. If the department had managed CEQA's revenue separately and not used it to cover other programs' deficits, the department could have used these funds to better meet its CEQA responsibilities. The department noted that staff from other programs sometimes worked on CEQA activities, but the accounting records do not reflect the costs of those staff. As we describe in the next section, the department does not track staff activity in a way that would allow it demonstrate who was working on CEQA activities.

The Department Has Not Adequately Tracked the Time Its Staff Spend on CEQA Review

Because the department has not accurately tracked how much time its staff spend on CEQA activities, it cannot estimate the full cost of the program or determine how many additional resources it may need. According to the accounting chief, the scientists who review CEQA documents record their time under a single line item on their timesheets, rather than recording it per project or task. Some of these scientists may also spend part of their time working on the issuance of permits, meaning that the department cannot use their timesheets to accurately track the time they spent on CEQA review versus other activities, like permitting. Although the department's project tracking database contains a field for the amount of time scientists spend reviewing specific CEQA documents, we observed many instances where the field was blank. Further, all four of the regions we visited stated that these data are incomplete and often do not accurately capture the actual hours staff spend on review. Because the department cannot use either timesheets or the data in its project tracking database to assess the time its scientists spend on CEQA review, it cannot accurately measure the cost of administering its CEQA responsibilities.

State law requires the department to adjust the CEQA fees annually for inflation and to estimate the cost of the program and report to the Legislature the need for any other fee adjustments every five years. The department has adjusted the fees each year for inflation; however, according to the environmental program manager for the Sacramento headquarters, the department has not recommended any additional adjustments to the Legislature in more than 10 years. The department last reported to the Legislature on the cost of conducting CEQA reviews in 2012. In that year, the department told the Legislature that the CEQA filing fees would be adequate to cover the cost of reviewing half the CEQA documents

it received. However, as we discussed earlier, the department has reviewed significantly less than 50 percent of the documents that it received in recent years.

The department last reported to the Legislature on the cost of conducting CEQA reviews in 2012.

The program manager stated that the department did not report on the cost of conducting CEQA reviews to the Legislature in 2017 because of staff turnover and changes to the department's accounting system. Nevertheless, unless the department periodically estimates the full cost of the CEQA program, it cannot recommend fees adequate to cover that cost, as state law requires. As a result, it will not be able to review all CEQA documents, as it should. Although the department is currently undergoing a budgeting analysis that will enable it to calculate the average amount of resources it uses to review a CEQA document, the analysis is not due to the Legislature until 2021.

The Department Did Not Recover Unpaid Fees It Identified in Its Audits

Although the department has identified instances when counties did not collect all CEQA fees due, it has not taken steps to recover that revenue. Once a lead agency approves a project, the project applicant pays the filing fee to the lead agency. If the lead agency is a local agency, it remits the fee to the county clerk. If the lead agency is a state agency, it remits the fees to the State Clearinghouse. State law requires that county clerks and the State Clearinghouse maintain records of all CEQA documents received and the fees for the projects and that they provide those records and the fees to the department each month. However, some of the department's audits have found instances when counties did not collect fees for some projects when such fees were due.

The department conducts periodic audits of county clerks to determine compliance with CEQA fee collections; it has conducted 11 such audits since July 2015. At times, those audits have uncovered concerns. In a 2018 audit of San Joaquin County, for example, the department's auditors found that the county did not collect or remit filing fees for 81 projects from July 2016 through March 2017. Fees from these projects would have totaled about \$180,000. Further, another audit from the same year of Santa Barbara County

found eight project applicants filed notices of determination with the county, but the county did not have proof of the applicants' filing fee payments. If, in fact, the eight applicants did not pay, the department lost another \$21,000 in fee revenue. According to the chief of the audits branch (audits chief), the former audits chief chose not to recommend that San Joaquin County recover the revenue because the department determined its conservation branch had given conflicting guidance to the counties about which projects were exempt from filing fees. He also noted that the department did not require Santa Barbara County to recover the fees because there were only a few instances of noncompliance.

The department's conservation branch gave conflicting guidance to the counties about which projects were exempt from filing fees.

Although the department conducts periodic audits, it could do more to communicate the results of those audits beyond the counties audited and to provide information on requirements for collecting and remitting CEQA fees. According to the audits chief, the department does not share its audit findings with all counties unless it observes similar issues across multiple counties. However, doing so would allow counties to learn from each others' mistakes. The department could also use its attendance at an annual meeting of county clerks to communicate its findings. Specifically, the environmental program manager stated that until recently, the department attended an annual conference of county clerks. However, because of a staffing reduction, the department has not been able to attend the conference since 2014. Unless the department informs counties of the mistakes they might make in collecting, documenting, and remitting CEQA fees, it risks that the counties will not collect all fees due.

Recommendations

To ensure that it complies with state law requiring it to use CEQA fees only for CEQA activities, the department should immediately begin tracking and monitoring CEQA revenues and expenditures separately from other program activities within the nondedicated account in the Fish and Game Preservation Fund.

To determine more accurately the resources that it needs to review all CEQA documents it receives, the department should implement a timekeeping mechanism by December 2019 that requires staff to track the hours they spend on CEQA-related activities.

To determine the costs for its CEQA review and set appropriate fees, the department should complete its five-year review of program costs and revenues and report the results to the Legislature by March 2020. To provide the Legislature with a more accurate estimate of the costs of CEQA activities, the department should prepare an update to this review no more than two years after it has modified its time-tracking procedures.

To ensure it receives all CEQA revenues to which it is entitled, the department should immediately begin collecting any unpaid fees it identifies in audits of counties.

To reduce the risk of counties not collecting and remitting CEQA filing fees, the department should begin sharing any findings from internal audits with counties and reminding county officials of their responsibilities related to CEQA fees.

OTHER AREAS WE REVIEWED

To address the audit objectives approved by the Joint Legislative Audit Committee (Audit Committee), we also reviewed the department's practice of mailing paper CEQA documents to its regions, identified other funding sources that may be available to fund CEQA activities, and reviewed the department's process for refunding filing fees. Table 2 describes the results of our review and presents any related recommendations that we have not already discussed in this report.

Table 2
Other Areas Reviewed as Part of This Audit

The Department's Process for Distributing CEQA Documents

As we discuss in the Introduction, the State Clearinghouse acts as the liaison between lead agencies and the responsible agencies, such as the department. After receiving CEQA documents from lead agencies, the State Clearinghouse physically mails them to the department's regional offices. Staff at the regional offices indicated that it has historically taken one to two weeks to receive a CEQA document from the State Clearinghouse and distribute it to the department's environmental scientists. Because of these delays, the scientists—particularly those not working at the main regional offices—may have two weeks or less to review what can be long and complex documents. In addition to losing time waiting for mail in transit, the department has paid nearly \$30,000 in postage to ship these documents over the last five years.

According to the conservation branch chief, the department has not prioritized developing a process for electronically distributing CEQA documents because scanning documents would be time-consuming and electronic copies have not been available on the State Clearinghouse's database. However, a new public electronic database at the State Clearinghouse should enable the electronic collection, storage, retrieval, and dissemination of most CEQA documents. State law required the State Clearinghouse to report to the Legislature on its plans for implementing the system in 2017 and to report on the status of that implementation by July 2019. According to its director, the State Clearinghouse has spent the last 18 months working with the California Department of Technology to create the new online system, which the State Clearinghouse plans to switch to in the fall of 2019. Further, the State Clearinghouse is already using some elements of the database, including online access to some CEQA documents. The conservation branch chief asserted that when the State Clearinghouse's new database is fully operational, it will have a positive impact on the CEQA review process.

Recommendation

To maximize the amount of time that environmental scientists have to review CEQA documents, the department should establish procedures for the electronic distribution of CEQA documents for review by December 2019. These procedures should include the utilization of the State Clearinghouse's electronic system when it becomes available.

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Additional Funding for CEQA Reviews

The department cannot use the majority of its non-CEQA funding for its CEQA reviews because state law restricts a significant portion of the department's funding to specific purposes unrelated to CEQA. The department has little discretion over how it spends this revenue. For example, state law requires the department to use the oil fee proceeds from its Oil Spill Prevention and Administration Fund for, among other things, implementing oil spill prevention programs and studying prevention and response efforts. Additionally, the department receives restricted funding from sources such as federal grants and contract reimbursements. Similarly, when we analyzed the department's Fish and Game Preservation Fund—which accounted for 18 percent of the department's fiscal year 2018–19 budget—we found that almost all of its funding sources are restricted for other purposes. Finally, the deputy director of administration stated that the department uses the General Fund revenue it receives to fund programs that are not completely funded by fee revenues—such as law enforcement and marine life protection—and that are necessary to fulfill the department's mission.

However, we did identify a potential source of revenue that the department could use. Specifically, state law allows the department to use proceeds from the sale of environment-themed license plates to protect threatened and endangered species and to review projects' environmental impacts on fish and wildlife habitat. The Department of Motor Vehicles collects the revenue and deposits it in the California Environmental License Plate Fund (environmental plate fund). Multiple state agencies draw from the environmental plate fund, including the department, the Department of Parks and Recreation, and the California Department of Forestry and Fire Protection. Although the environmental plate fund's balance has fallen in recent years, the fiscal year 2019–20 budget projects a \$9 million reserve balance; thus, the department may request additional revenue from the fund should CEQA fee revenues be insufficient. According to the deputy director of administration, the department stopped using the environmental plate fund for CEQA review in 2008, after the Legislature approved a fee increase to fund CEQA review.

The Department's Fee Refunds

The department has refunded project applicants' filing fees in compliance with state law. State law and regulations exempt a project applicant from paying the CEQA filing fee if the department determines that the project has no effect on fish and wildlife. The department notifies the applicant or lead agency through a document called a *no effect determination*. According to the department's data, it issued 950 no effect determinations from 2014 through 2018. In all other cases when the project is not exempt, state law requires a filing fee when a lead agency other than the department submits a notice of determination—with either an environmental impact report or a negative declaration—to a county clerk or the State Clearinghouse, as appropriate.

According to the conservation branch chief, the department generally issues no effect determinations before applicants need to pay the fee, but it is the lead agencies' responsibility to inform project applicants that they should apply for a no effect determination. He also stated that the department works closely with project applicants, lead agencies, and other parties, such as project consultants, if they believe projects qualify for such determinations. The department also makes information on applying for a determination readily available, and it informs recipients of such determinations that they do not need to pay a filing fee. However, if a project applicant has already paid the fee, and the department subsequently issues a no effect determination, the department allows the applicant to request a refund. From 2013 through 2017, the department received 13 refund requests and appropriately issued a refund in each case.

We conducted this audit under the authority vested in the California State Auditor by Government Code 8543 et seq. and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives specified in the Scope and Methodology section of the report. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Respectfully submitted,

A handwritten signature in black ink that reads "Elaine M. Howle". The signature is written in a cursive style with a long, sweeping underline.

ELAINE M. HOWLE, CPA
California State Auditor

Date: June 27, 2019

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APPENDIX A

Scope and Methodology

The Audit Committee directed the California State Auditor to determine how the department allocates resources for its role as a responsible agency under CEQA. Specifically, it directed us to determine whether the department is meeting its statutory requirements for CEQA, to assess the adequacy of its CEQA staffing, and to determine how it manages its funds to meet its CEQA responsibilities. Table A outlines the Audit Committee’s approved objectives and our methods for addressing them.

Table A
Audit Objectives and the Methods Used to Address Them

AUDIT OBJECTIVE	METHOD
<p>1 Review and evaluate the laws, rules, and regulations significant to the audit objectives.</p>	<p>Reviewed relevant laws, rules, and regulations related to the department’s CEQA roles.</p>
<p>2 Determine how frequently over the past five years the department received requests to be a responsible agency for a CEQA review and its actions in response to the requests.</p>	<p>For the last five years, identified the number of CEQA documents the department has been asked to comment on according to its project tracking database and identified how many requests it reviewed and responded to.</p>
<p>3 Review a selection of CEQA requests where the department was a responsible agency and determine whether it met statutory requirements. If it did not meet statutory requirements, identify the major reasons why not.</p>	<ul style="list-style-type: none"> • Judgmentally selected 20 projects for which the lead agency completed CEQA documents and for which the department was a responsible agency. We evaluated whether the department fulfilled its CEQA role as a responsible agency for these projects by examining its comments and the timeliness of its response to the CEQA documents. We selected and reviewed projects from regions 2 through 5, since they received the most CEQA documents in the past five years. • Reviewed the department’s process for consulting with lead agencies before their submission of CEQA documents. • Evaluated the department’s process for deciding whether to review documents during the CEQA process. • Identified and analyzed the factors that contributed to instances when the department did not meet its CEQA responsibilities.

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AUDIT OBJECTIVE	METHOD
<p>4 Review and assess the sufficiency of the department's allocation of resources. In particular, perform the following:</p>	
<p>a. Assess whether it employs a sufficient number of staff to meet its CEQA-related legal obligations as a responsible agency.</p>	<ul style="list-style-type: none"> • Calculated the department's number of CEQA-funded positions for the past five fiscal years. • Interviewed department staff and reviewed the department's most recent report on its fiscal analysis of CEQA activities to obtain the department's perspective on its CEQA staffing levels. • Reviewed the department's CEQA workload tracking practices.
<p>b. Identify the expenditure and staffing levels for other functions within the department unrelated to CEQA and, for those functions, assess the department's justification for its staffing and expenditure levels. To the extent possible, identify opportunities to reduce these levels to fund CEQA-related activities.</p>	<ul style="list-style-type: none"> • Analyzed the department's revenue sources and determined whether it could reallocate funds for CEQA review. • Identified the department's revenues and budgeted expenditures for its major program areas in fiscal year 2018–19 in Appendix B. • Interviewed department staff to determine the department's justification for its General Fund expenditures. • Reviewed staffing levels to identify if the department could reallocate any chronically unfilled General Fund positions to CEQA review. We determined that the department has had no General Fund positions unfilled for more than 6 months that it could have reallocated to CEQA.
<p>c. Identify how each major function is funded, including its CEQA process and habitat management. Further, determine the percentage of staff dedicated to habitat management.</p>	<ul style="list-style-type: none"> • Identified the department's major program areas and their funding sources. • Calculated the number of staff in the department's conservation branch, which includes staff who work in habitat management, as of fiscal year 2018–19. • Analyzed the conservation branch's staffing level relative to the department as a whole.
<p>5 Determine whether the department's CEQA process affects its other programs and whether there are opportunities—such as early participation in the process—that could benefit those other programs.</p>	<ul style="list-style-type: none"> • Judgmentally selected and analyzed 12 LSA agreements where the department had not commented during the CEQA process. • Determined the effects of the department's not commenting on CEQA documents on the LSA agreements by adding these 12 judgmentally selected projects to 13 of the 20 projects selected for Objective 3 for which the department issued LSA agreements. For these 25 projects, we compared how long the department took to issue LSA agreements for projects on which it commented during CEQA versus for projects on which it did not comment. • Reviewed the department's reports from its project tracking database to determine the number of LSA agreements that proceeded through operation of law and interviewed department staff to determine the department's perspective on why projects proceed through operation of law. • Reviewed litigation related to permitting and CEQA.
<p>6 Determine how the department manages the funds received from CEQA fees and whether it expends or refunds the funds in compliance with state law and in a manner consistent with meeting its CEQA responsibilities. In particular, determine how the department manages these funds in cases where it does not respond to requests from local governments.</p>	<ul style="list-style-type: none"> • Reviewed the department's process for collecting fees to determine if it ensures that lead agencies pay appropriate fees. • Reviewed the revenue and expenditures for CEQA and programs unrelated to CEQA for the past five fiscal years to determine if any unrelated programs may be using CEQA filing fees for funding. • Obtained documentation for cases within the past five years when project applicants submitted refund requests and determined whether the department issued the refunds.
<p>7 Review and assess any other issues that are significant to the audit.</p>	<p>Identified what steps the department took to resolve the data issues that it identified in its 2012 fiscal analysis of CEQA activities report to the Legislature. We also reviewed the department's practice of mailing paper CEQA documents to its regions.</p>

Source: Analysis of the Audit Committee's audit request number 2018-119, as well as information and documentation identified in the column titled Method.

Assessment of Data Reliability

In performing this audit, we relied on electronic data and physical files that we obtained from the department and the State Clearinghouse. The U.S. Government Accountability Office, whose standards we are statutorily obligated to follow, requires us to assess the sufficiency and appropriateness of computer-processed information that we use to support our findings, conclusions, or recommendations. We obtained financial information for CEQA revenue and expenditures, verified the datasets, and conducted testing of key data elements. We determined the data were sufficiently reliable for our purposes. We also obtained data from the department's project tracking database that recorded the department's CEQA activities. Based on conversations with the department and with staff at each of the regional offices, as well as our own observations of the data, we determined that the project tracking data are incomplete and that the department's data entry is inconsistent. However, this database is the only comprehensive source of data the department has on its CEQA review activities and is the source the department uses to generate reports on its activities to the Legislature. We performed supplemental tests, based on available information, to gain some assurance that the data would support our conclusions and recommendations. We recognize that the limitations in the department's data may affect the precision of the numbers we present. Nevertheless, there is sufficient evidence in total to support our audit findings, conclusions, and recommendations.

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APPENDIX B

The Department’s Positions and Expenditures by Funding Source

As part of an audit objective, the Legislature asked us to identify the staffing levels and funding for each of the department’s major program areas. Table B lists the department’s budgeted positions and expenditures for each of the department’s seven program areas, as well as its administration, for the 2018–19 fiscal year. The table also identifies key revenue sources for each program area. Much of the department’s funding comes from revenue dedicated to specific purposes, often from fees. For example, the environmental plate fund contains revenue from a fee paid by individuals who choose to obtain special license plates. The Fish and Game Preservation Fund includes a number of different fees, including hunting and fishing license fees and CEQA filing fees.

Table B
Budgeted Positions and Expenditures by Source for the Department’s Major Program Areas
Fiscal Year 2018–19 (Dollars in Thousands)

PROGRAM AREA	BUDGETED POSITIONS	FUND SOURCE						TOTAL FISCAL YEAR 2018–19 BUDGET
		GENERAL FUND	CALIFORNIA ENVIRONMENTAL LICENSE PLATE FUND	FEDERAL TRUST FUND	FISH AND GAME PRESERVATION FUND	REIMBURSEMENTS	OTHER FUNDS*	
Biodiversity Conservation Program	704	\$68,876	\$8,179	\$13,955	\$14,040	\$19,553	\$163,925	\$288,528
Hunting, Fishing, and Public Use Program	435	9,800	843	21,770	39,868	1,343	26,455	100,079
Management of Department Lands and Facilities	370	6,878	3,322	18,640	12,200	6,525	26,579	74,144
Enforcement	218	33,879	2,689	4,735	39,342	3,774	8,730	93,149
Communications, Education and Outreach	23	361	937	3,133	125	121	26	4,703
Spill Prevention and Response	171	288	0	151	1,627	3,049	37,082	42,197
Fish and Game Commission	10	721	148	0	760	0	0	1,629
Administration†	142	—	—	—	—	—	—	—
Totals	2,073	\$120,803	\$16,118	\$62,384	\$107,962	\$34,365	\$262,797	\$604,429

Source: Analysis of the department’s fiscal year 2018–19 enacted budget.

* Other funds includes funds budgeted for local assistance and other funds budgeted for specific purposes, such as the Salton Sea Restoration Fund and the Hatcheries and Inland Fisheries Fund.

† Administrative costs—budgeted at \$50.6 million in fiscal year 2018–19—are distributed to each of the other program areas and included in those totals. The department allocates these costs to each program based on an internal model it develops annually.

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June 2019



State of California – Natural Resources Agency
 DEPARTMENT OF FISH AND WILDLIFE
 Executive Office
 1416 9th Street, Room 1205
 Sacramento, CA 95814
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
 CHARLTON H. BONHAM, Director



June 7, 2019

Office of the California State Auditor*
 Elaine M. Howle, CPA
 621 Capitol Mall, Ste. 1200
 Sacramento, CA 95814

Re: State Audit 2018-119

Dear Ms. Howle:

The California Department of Fish and Wildlife (Department) appreciates the office of the California State Auditor staff's time and effort to conduct audit 2018-119. By all accounts, the audit staff and interaction with the Department was cordial, professional, and diligent. On the whole, the Department embraces the recommendations of the report. The recommendations by the California State Auditor are helpful, insightful, well considered and the Department plans to quickly implement those recommendations. The Department has already taken action to fix problems and will build upon progress underway. Nonetheless, we would be remiss if we failed to acknowledge that some of the language in the report is unduly provocative and without critical context. ①

The Department offers this letter to express its appreciation, acknowledge the recommendations, and offer context that could help the Auditor guard against unfounded conclusions being drawn from the report. To that end, this letter describes important policy context for consideration of the report's implied standards; offers headings that more closely correspond to the report's recommendations and the complexities of California Environmental Quality Act (CEQA) implementation; responds to each of the report's recommendations; and, provides a list of actions already underway by the Department as part of its commitment to do better.

1. Appropriate Review Standard

The report implies that the Department should target in its roles as trustee and responsible agency under CEQA a 100 percent response rate to all requests for consultation and for commenting on all environmental documents. Taken at face value, that standard would result in thousands of documents requiring reply. The Department prioritizes its effort to be appropriately protective of fish, wildlife, and plant resources consistent with its mission, while mitigating the need for a fee increase. This is simply good government practice. Not all CEQA referrals involve projects that will adversely impact fish, wildlife, and plant resources. Further, the Department would have to significantly increase the CEQA fees under Fish and Game Code section 711.4 to meet a 100 percent response rate. The report itself shows that the Department, at ②
③
④

Conserving California's Wildlife Since 1870

* California State Auditor's comments begin on page 53.

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current staffing and corresponding fee levels is unable to meet a 100 percent response rate. The information in the report confirms the prudence of the Department balancing the response rate with a reasonable and appropriate fee.

2. Recalibrating the Report's Title and Certain Headings to Better Reflect the Report's Own Investigative Findings and Recommendations

- ① The Department recommends tethering the report's title and certain headings more closely to the report's own investigative findings and recommendations. Doing so would better acknowledge the breadth of CEQA compliance completed by the Department but outside of the audit's scope. For example, even accepting the report's assumptions without question, the Report's title does not recognize the overwhelming number of instances in which the Department fulfills its responsible agency obligations. Acknowledging that the report calls into question the Department's compliance with only "some" of its obligations would be much more accurate (e.g., "The Department of Fish and Wildlife: It is Not Fulfilling Some of Its Responsibilities Under the California Environmental Quality Act" (emphasis added)). In addition, adjusting the title and certain headings would acknowledge the practical policy considerations of a fee increase to fund the Department's 100 percent engagement on all referred CEQA documents, absent any prioritization to reflect the potential for benefit to fish, wildlife, and plant resources.

Below the Department provides alternatives to some of the report's headings. In addition, the Department responds to each of the individual recommendations.

Current Draft Heading: The Department Has Failed to Meet Its Obligations as a Responsible Agency Under CEQA

① **SUGGESTION: THE DEPARTMENT NEEDS FORMAL POLICIES FOR CEQA-RELATED RESPONSIBILITIES TO ENSURE AN APPROPRIATE LEVEL OF PROJECT CONSULTATION**

- ③ When prioritizing CEQA documents for review, Department staff relies on several objective factors including the potential for adverse impacts to sensitive species (e.g., listed pursuant to the California Endangered Species Act (CESA)) or other high-value species or habitats, as well as the size and scope of the project's impacts on these resources. California's significant diversity of species and habitats require staff to recognize and consider local species and habitats when prioritizing projects for CEQA review, and for any given project, this must be done with respect to all other projects in the queue for simultaneous review. In other words, the most potentially impactful projects are prioritized for review at any given time. Therefore, a statewide formal policy that prioritizes CEQA referrals must recognize California's plant, fish, and wildlife diversity and allow for local priority considerations, as well as a consideration for the variable workload that might exist at the time priorities are identified. The Department agrees that more formalized (written) policy direction on how to conduct and prioritize CEQA

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review and comment would be helpful for staff and it would improve consistency between regional offices.

Current Draft Subheading: The Department Has Not Consistently Consulted and Commented on Development Projects, Allowing Lead Agencies to Approve Projects Without Its Input

SUGGESTION: THE DEPARTMENT DOES NOT CONSULT AND COMMENT ON 100 PERCENT OF DEVELOPMENT PROJECTS, ALLOWING LEAD AGENCIES TO APPROVE PROJECTS WITHOUT ITS INPUT ①

Projects significantly vary in their potential to adversely impact plant, fish, and wildlife resources. Some projects will cause little to no biological resource impacts, while others will have significant adverse impacts to such resources. Department staff prioritizes review of, and comments on, CEQA documents by focusing on those projects that will cause adverse impacts to important biological resources, with particular attention on those projects that will cause substantial impacts to such resources. Reviewing 100 percent of all CEQA referrals, should that become feasible with additional funding and staffing, would disrupt the current accepted standard by lead agencies and the regulated community, as well as divert limited staffing and resources to projects that may not warrant Department consultation. In addition, not all reviewed CEQA documents warrant a formal comment letter. In fact, the Department sometimes determines with initial review that biological resources are acceptably addressed in a given CEQA document and staff then turn their attention appropriately to CEQA documents where that is not the case. ③ ⑤

Lastly, as the audit report acknowledges, not all lead agencies incorporate feedback provided by the Department. Lead agencies ultimately have the authority under CEQA to decide what is appropriate content of the CEQA document and any related conditions of project approval. While there is a benefit to the Department as a trustee agency under CEQA providing review and comment of CEQA documents, it does not necessarily result in a proportional improvement to the environment even where the environmental consultants, planners, and project proponents have extensive access to the Department's educational materials. In short, the extent to which a particular project ultimately reflects the Department's input relies on numerous factors other than whether the Department responded to a Notice of Preparation. ⑥

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Current Draft Subheading: The Department's Failure to Comment on Draft CEQA Documents May Slow Its Permitting Process and Lead to Avoidable Harm to the Environment

① **SUGGESTION: COMMENTING ON CEQA DOCUMENTS MIGHT REDUCE SURPRISES TO PROJECT PROPONENTS DURING THE SUBSEQUENT PERMITTING PROCESS**

The audit report acknowledges that the requirements of Fish and Game Code Section 1600 *et seq.* (lake and streambed alteration) and CESA differ from that of CEQA. As a result, CEQA documents do not typically include the level of detail needed for the Department to deem a CESA incidental take application or a notification of a lake or streambed alteration complete, or to issue either permit. That said, Department comments during the CEQA process on what is needed for the permitting process, at least in a general sense, might reduce later surprises to the project proponent during subsequent permitting efforts by the Department. However, it is important to note that responses to CEQA referrals are not the only avenue by which the Department informs the public about its concerns. In addition to the Department's ongoing efforts described below to develop curriculum, train, and provide guidance to Department staff consulting with and providing comments to lead agencies, the Department also provides important information to the public, regulated community, CEQA consultant professionals, and state and local agencies. Much of this information is posted and publicly available on the Department's web page. For example, details regarding the Department's various permitting programs and its role as a lead, responsible, and trustee agency can be found at: <https://www.wildlife.ca.gov/Conservation/CEQA>.

Current Draft Subheading: The Department Has Not Provided Guidance for its Regional Offices, Which Could Result in Inconsistent CEQA review

① **SUGGESTION: THE DEPARTMENT DOES NOT HAVE STATEWIDE WRITTEN POLICY GUIDANCE FOR ITS REGIONAL OFFICES CONCERNING CEQA REVIEW**

Regional Offices provide verbal guidance and training to staff on how to prioritize and conduct CEQA review. Having written statewide guidance could improve staff understanding of expectations and lead to a consistent approach.

Recommendations: 1) by December 2019 develop a Departmentwide policy for prioritizing CEQA document review and comment; 2) by December 2019 develop policies and procedures outlining Departmentwide expectations for CEQA review and comment; 3) by March 2020 develop region-specific policies and procedures for CEQA review; 4) by June 2020 develop ongoing training for Department staff that addresses the complexities and technical aspects of CEQA; and, 5) any general rules of application would be in compliance with the Administrative Procedure Act.

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Response: Agree. The Department agrees with these recommendations and will work to implement them in the specified timeframes, noting that any requirements of the Administrative Procedure Act, should they apply to these items, will make compliance with the recommended timelines infeasible. The Department believes that such Department wide and regional procedures, as well as the new training curriculum, should focus on effective protection of fish, wildlife, and plant resources while maximizing the efficiency and efficacy of our roles and obligations under CEQA. As to training, the Department appreciates the need for additional ongoing training for its staff and the importance of developing new teaching curricula and materials to keep pace with dynamic and ever-changing CEQA landscape. CDFW has provided more than a dozen day-long or multi-hour CEQA courses for Department staff since February 2003. In fact, over 275 staff have received CEQA training since 2017. Certain courses provide a detailed overview of CEQA, while others focus specifically on Department participation in lead agency CEQA review and how to write effective CEQA comment letters to lead agencies. These courses are in addition to CEQA courses presented or facilitated with outside contractors by the Department's Habitat Conservation Planning Branch and other less formal, but still structured teaching-oriented presentations by attorneys within the Office of General Counsel. For example, the Department's lead CEQA attorney spent a half-day on two occasions earlier this year with program staff from the Northern and North Central Regional Offices, respectively, to provide an update regarding significant legal developments related to CEQA and their practical application for frontline staff. ⑧

The Department Cannot Demonstrate It Used All Available Funding to Fulfill Its CEQA Obligations

The Department acknowledges that it could improve its tracking of CEQA funds and time spent by staff on CEQA related activities. As such, we agree with the auditor's recommendations in this section of the report. The Department uses its CEQA revenues on CEQA activities. The discrepancy between CEQA revenues and expenditures that accounting records have shown in past years is most likely a result of incomplete tracking of expenditures and staff time spent on CEQA related activities. As noted in Figure 6, this discrepancy existed from 2012-13 through 2015-16, but disappears in 2016-17, with revenues and expenditures virtually equal in that fiscal year. Implementation of the auditor's recommendations will likely reveal a much closer correspondence between CEQA revenues and expenditures in future fiscal years, similar to what was seen in 2016-17. Further, the Department disagrees with the claim that it used CEQA revenues to cover deficits in other programs. Activities outside of CEQA funded by the nondedicated Fish and Game Preservation Fund do not have dedicated revenue sources and a comparison between revenues and expenditures for these activities is inappropriate. The following are the Department's comments on the auditor's recommendations. ⑨

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Recommendation: To ensure that the Department uses CEQA fees only for CEQA activities, as state law requires, the Department should immediately begin tracking and monitoring CEQA revenues and expenditures separately from other program activities within the nondedicated account in the Fish and Game Preservation Fund.

Department Response: Agree. The Department will develop procedures to track and monitor CEQA revenues and expenditures separately from other activities in the nondedicated Fish and Game Preservation Fund. The most effective method of doing this would be for the Legislature to establish a new fund in statute. The Department will work with the Department of Finance and the Legislature in this regard. If the Legislature establishes a separate fund in statute, this information will be reported annually in conjunction with the Governor's proposed budget in a fund condition statement dedicated to CEQA revenues and expenditures.

Recommendation: To determine more accurately the resources that it needs to review all CEQA documents it receives, the Department should implement a timekeeping mechanism by December 2019 that requires staff to track the hours they spend on CEQA-related activities.

Department Response: Agree. The Department has this capability within its existing time reporting system. The Department will issue direction and provide instructions to employees on how to track hours spent on CEQA-related activities on their monthly electronic timesheets. The Department has made progress toward this goal through recent training provided to all program staff during the Department's transition to F\$Cal. This training covered the correct application of fiscal coding, as well as procedures for tracking and monitoring of expenditures and staff time. The Department also implemented an electronic timekeeping system after the audit period that improves the accuracy of staff time reporting.

Recommendation: To determine the costs for CEQA review and set appropriate fees, the Department should complete its five-year review of program costs and revenues and report to the Legislature by March 2020. To provide the Legislature with a more accurate estimate of the costs of the Department's CEQA activities, the Department should prepare an update to this review no more than two years after it has modified its time tracking procedures.

Department Response: Agree. The Department has conducted many such reviews in recent years to analyze program costs and appropriate fee levels, including the California Endangered Species Act incidental take permit fee established in law in 2016.

Recommendation: To collect all CEQA revenues due, the Department should immediately begin collecting any unpaid fees it identifies in audits of counties.

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Department Response: Agree. The Department will begin collecting any unpaid fees it identifies in future audits of counties and work with appropriate counties to address any past audit findings regarding any unpaid fees not collected.

3. List of Actions/Statewide Training Underway

The Department has already undertaken numerous efforts to advance the report's recommendations, which, in turn will help focus the Department's further actions.

- Office of General Counsel alone has developed material and taught more than a dozen day-long or multi-hour CEQA course for Department staff since February 2003. (8)
- Over 275 staff have received CEQA training since 2017.
- Two in house CEQA trainings provided earlier this year to program staff from the Northern and North Central Regional Offices.
- The Department has provided training to approximately 1,000 program staff in 80 training sessions held throughout the state during the transition to FISCAL. This training covered the correct application of fiscal coding, as well as procedures for tracking and monitoring of expenditures and staff time.
- The Department implemented an electronic timekeeping system that improves the accuracy of staff time reporting. We will use this as a foundation to track CEQA staff time.
- In the past ten years, the Department analyzed program costs and appropriate fee levels approximately ten times, including the California Endangered Species Act incidental take permit fee established in law in 2016. This will serve as a foundation to do a similar analysis for CEQA fee review.

4. Conclusion

In conclusion, we are thankful for the time taken and the work done by the California State Auditor on behalf of the Department. The effort and the audit report elucidate how best to align CEQA with the states' limited resources while balancing ongoing protection of California's fish and wildlife resources. We will work quickly to implement the recommendations made by the State Auditor and we look forward to describing how we are meeting the deadlines as prescribed.

Thank you,



Charlton H. Bonham
Director

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COMMENTS

CALIFORNIA STATE AUDITOR'S COMMENTS ON THE RESPONSE FROM THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

To provide clarity and perspective, we are commenting on the department's response to our audit. The numbers below correspond to numbers we have placed in the margin of the department's response.

We stand by the language we use to describe the department's challenges related to CEQA. Our report provides appropriate context and sufficient evidence to support our report's headings and conclusions.

①

The standard we used to assess the department's responses to requests for consultation and to CEQA documents it receives was state law and regulations. As we note on page 9, state law requires the department to respond to all requests for consultation. We further note on page 15 that regulations indicate that the department, as a responsible agency, should comment on CEQA documents for projects that it will later be asked to approve.

②

On page 21, we acknowledge that the department triages the CEQA documents it receives because it does not have the resources to review and respond to all of them. However, as we state on page 21, the department does not have policies describing how its staff should triage CEQA documents to ensure it is consistent in the kind of projects it prioritizes.

③

The department's contention that fees would significantly increase if it were to meet a 100 percent response rate is premature. As we describe beginning on page 29, the department cannot estimate the full cost of the program or determine how many additional resources it may need because it does not accurately track staff time related to CEQA. The department cannot accurately assess the fee level it will require until it can also accurately assess the resources it needs.

④

The department's citation of an "acceptable standard" misdirects the reader. We base the analysis in our report on the standards in state law and regulation that, as we describe in Comment 2, state that the department shall respond to requests for consultation and should comment on CEQA documents. Further, as we state on page 15, although state law does not require the department to provide comments on every draft CEQA document in its role as a responsible agency, regulations state that it should comment on the adequacy of the draft environmental impact report or negative declaration for projects that it will later be asked to approve.

⑤

- ⑥ The department is conflating its responsibilities under CEQA with those of the lead agency. Whether the department responds to a notice of preparation is entirely within its control. The fact that the lead agency controls other parts of the process does not absolve the department from fulfilling its responsibilities. We note on page 15 that because the department has jurisdiction over California's fish and wildlife resources, its input on a project's impacts on sensitive habitats and species is critical. As a result, on page 17, we conclude that when the department does not fulfill its responsibilities, a lead agency may not be aware of potential significant impacts to fish and wildlife resources that it should consider.
- ⑦ The department's response mentions ways in which it educates the general public; however, our review, starting on page 18, focuses on how the department's input on specific projects during the CEQA review process could benefit applicants for those projects later when seeking permits from the department.
- ⑧ The department agrees with our recommendation, but adds that it has already offered some training. However, on page 23, we note that the conservation branch chief stated that the department's basic CEQA course did not describe how to complete a review and that the department's trainings on CEQA are not mandatory. Neither he nor others in the department to whom we spoke mentioned the trainings the department lists in its response on pages 47 and 49. As we state on page 23, the current lack of common training across all CEQA staff risks those staff inconsistently reviewing CEQA documents and applying different standards to those documents.
- ⑨ The department is correct that its accounting records show that CEQA expenditures matched revenues for fiscal year 2016–17. However, as we discuss in a note on Figure 6, the department has not finalized its accounting for CEQA fees in fiscal year 2016–17; thus a definitive conclusion that expenditures match revenues is premature. Further, the department used CEQA revenues to cover deficits in other areas through the way it has structured its nondedicated account. On page 28, we quote the department's explanation that it uses surpluses from programs within the nondedicated account to cover deficits in other programs within that account before it uses the account's reserves. As the department commingles all of the funds within this account and does not track CEQA revenues and expenditures separately, the department cannot demonstrate it used all CEQA funds for CEQA purposes.