

Funding for Natural Resources And Environmental Protection Programs

LEGISLATIVE ANALYST'S OFFICE

Presented To:

Assembly Budget Subcommittee No. 3 on Resources
Assembly Environmental Safety and Toxic Materials
Committee

Assembly Natural Resources Committee

Assembly Water, Parks and Wildlife Committee

Hons. Pavley, Laird, Jackson, and Canciamilla,
Chairs





Resources Agency and Cal-EPA Budgets

- Total 2003-04 proposed expenditures for Resources Agency departments are \$4.3 billion,^a with funding as follows:**

• Federal funds	\$182 million	(4 percent)
• General Fund	\$959 million	(22 percent)
• Other funds (special funds)	\$1.3 billion	(30 percent)
• Selected bond funds	<u>\$1.9 billion</u>	(44 percent)
	\$4.3 billion	

^a Does not include expenditures for (1) DWR's energy purchases on behalf of the investor owned utilities or (2) the off-budget State Water Project.

- These proposed expenditures are about \$1.1 billion (20 percent) below 2002-03 estimated expenditures, mainly reflecting a *net* reduction in bond fund expenditures. Proposed General Fund expenditures are \$157 million (14 percent) below the 2002-03 level.

- Total 2003-04 proposed expenditures for Cal-EPA departments are about \$1.2 billion, with funding as follows:**

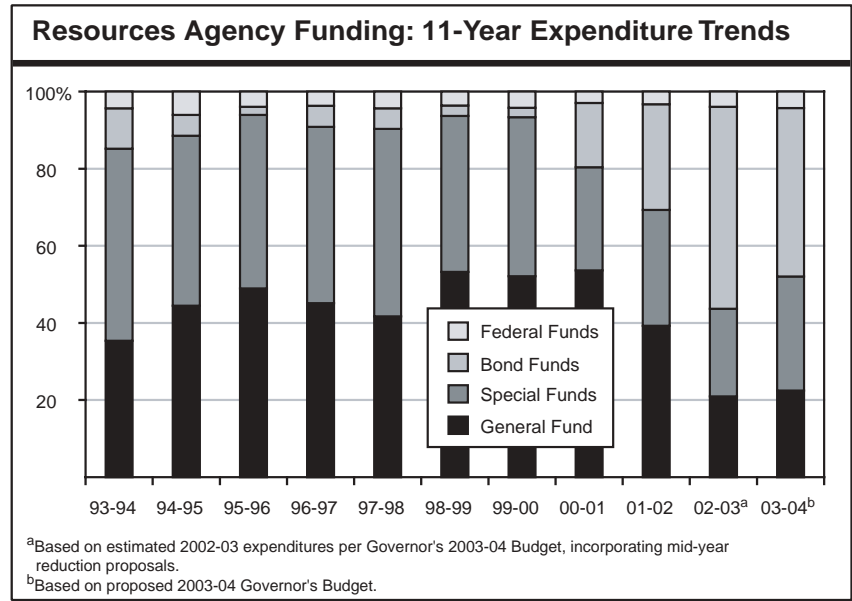
General Fund	\$100 million	8 percent
Federal funds	\$167 million	14 percent
Bonds	\$272 million	22 percent
Other funds (mainly regulatory fees)	<u>\$686 million</u>	56 percent
	\$1.2 billion	

- These proposed expenditures are about \$350 million (22 percent) below 2002-03 estimated expenditures, also largely reflecting a *net* reduction in bond fund expenditures. Proposed General Fund expenditures are \$76 million (43 percent) below the 2002-03 level.

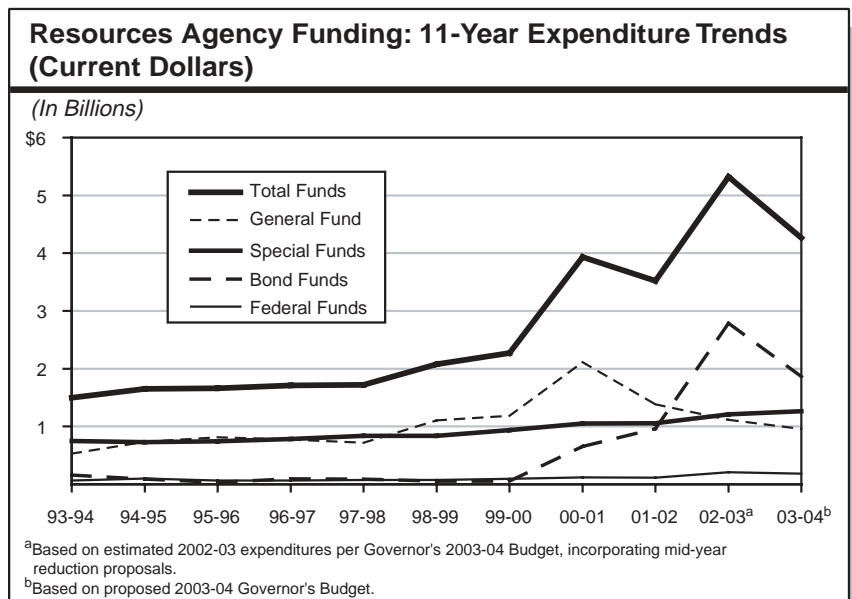


Resources Agency: 11-Year Funding Mix And Expenditure Trends

The figure below shows the mix of funding sources supporting Resources Agency programs from 1993-94 through 2003-04:



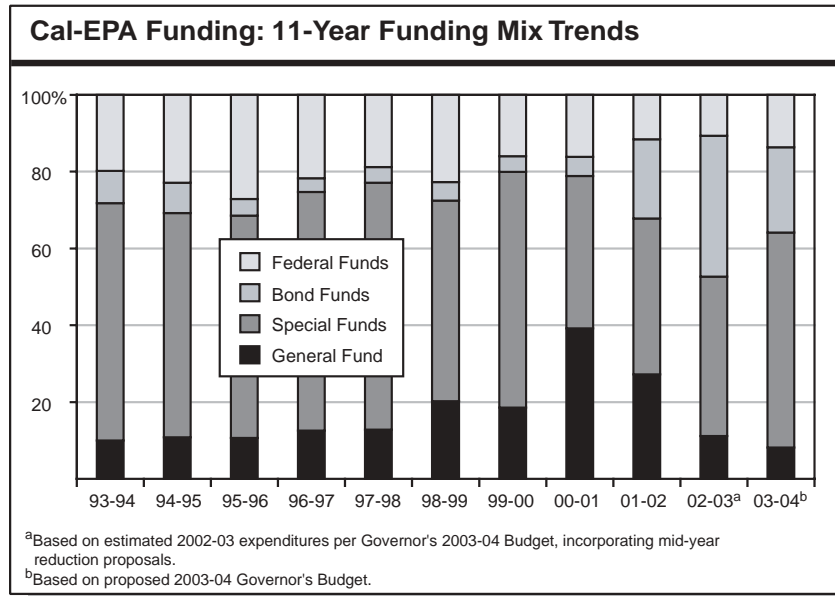
The figure below shows the expenditure trends for Resources Agency programs from 1993-94 through 2003-04:



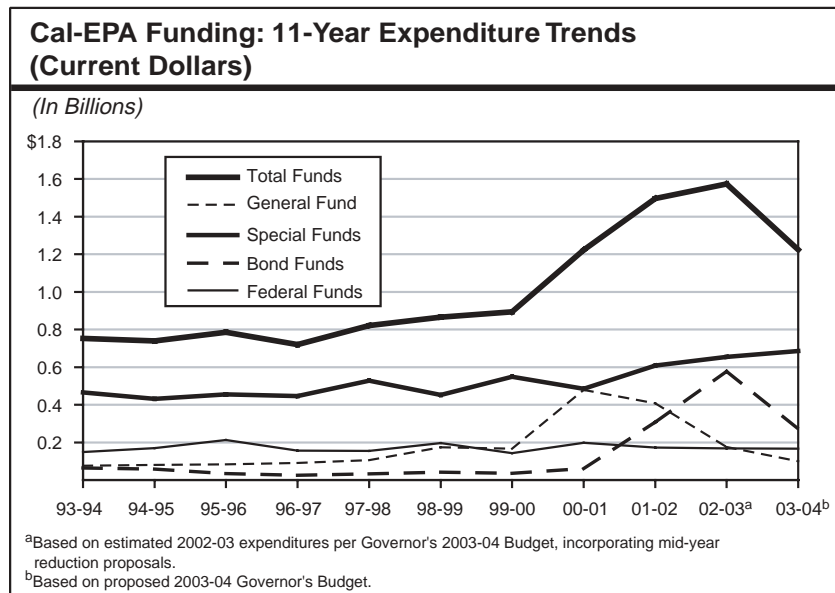


Cal-EPA:11-Year Funding Mix And Expenditure Trends

✓ The figure below shows the mix of funding sources supporting Cal-EPA programs from 1993-94 through 2003-04:



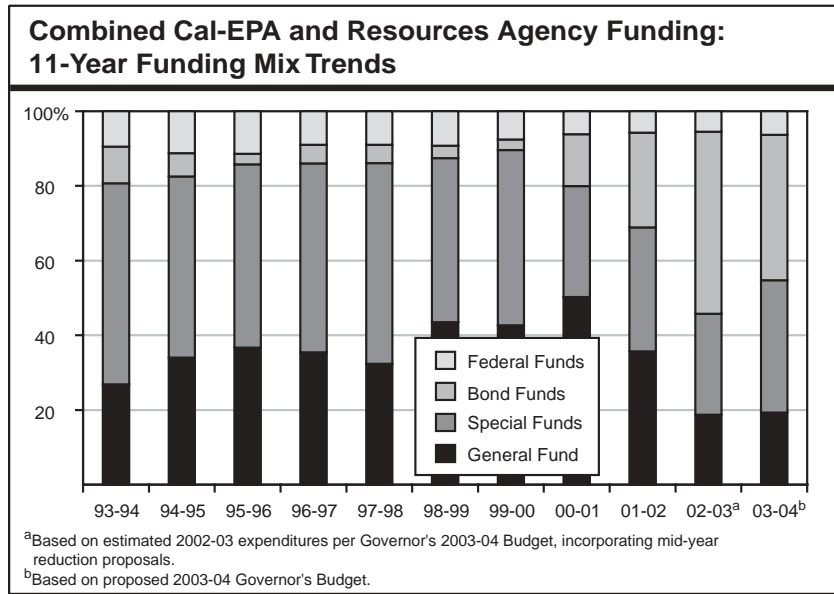
✓ The figure below shows the expenditure trends for Cal-EPA programs from 1993-94 through 2003-04:



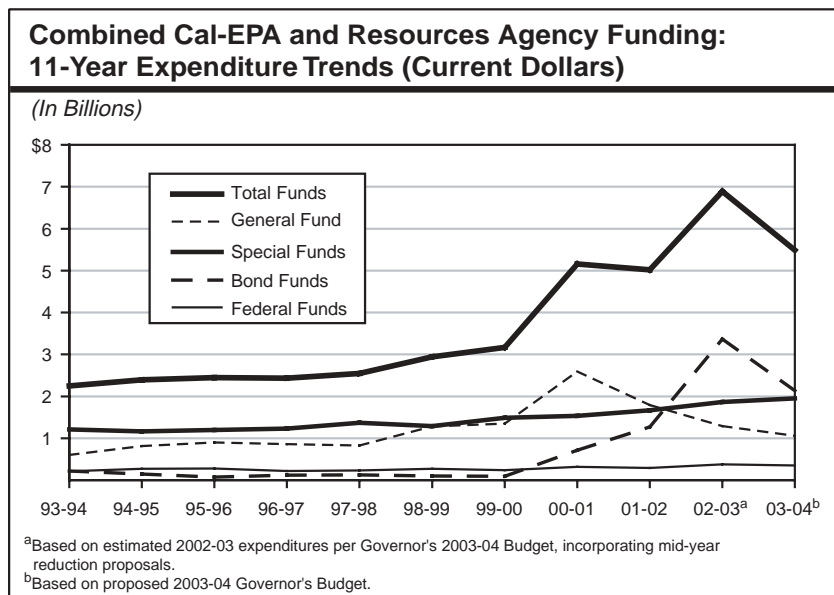


Combined Resources Agency and Cal-EPA: 11-Year Funding Mix and Expenditure Trends

✓ The figure below shows the mix of funding sources supporting collectively Resources Agency and Cal-EPA programs from 1993-94 through 2003-04:



✓ The figure below shows the expenditure trends collectively for Resources Agency and Cal-EPA programs from 1993-94 through 2003-04:





Program Activities Funded by Fees

- Fees assessed by Resources Agency and Cal-EPA departments tend to be one of three types:
 - Regulatory fee.
 - User fee.
 - Cleanup/mitigation fee.
- Regulatory fees support programs that prevent or reduce the degradation of a public resource (such as air, water, and wildlife) by regulating private activities.
- Some major regulatory programs that are entirely or significantly supported by regulatory fees include:
 - ***The State Water Resources Control Board's (SWRCB's) Core Regulatory Program.*** This program regulates dischargers of waste into the state's surface waters and groundwater and involves permitting, inspections, and enforcement activities. Fees are assessed on parties seeking permits with the board to discharge waste. These fees currently cover approximately 50 percent of the program expenditures, but recently enacted legislation increases fees so that they cover over 80 percent of the program expenditures.
 - ***The Department of Pesticide Regulation's Pesticide Registration Program and Pest Management, Environmental Monitoring, Enforcement and Licensing Program.*** These programs are largely supported by a fee on pesticide registration and a fee on sales at the wholesale level of pesticides for use in California.



Program Activities Funded by Fees *(Continued)*

- ***The Air Resources Board's (ARB's) Stationary Source Program.*** This program performs planning, research, monitoring, and standard-setting activities. Many of these activities form the basis of air quality permits issued and enforced mainly at the local level. The program also oversees local air district activities. A fee assessed on stationary source polluters currently funds less than 10 percent of program costs. The Governor's budget proposes to increase fee revenues so that about 40 percent of program costs will come from fees.
- ***The ARB's Mobile Source Program.*** This is a regulatory program (regulating vehicle emissions) largely funded from the Motor Vehicle Account (driver license fees and a portion of the vehicle registration fee). (Recently, bond funds have been used for a diesel emission reduction incentives program.)
- ***The Department of Toxic Substances Control's Hazardous Waste Management Regulatory Program.*** Persons that generate, treat, transport, store, or dispose of hazardous waste pay fees that support most of this program that involves permitting, enforcement, and oversight of corrective actions.
- ***Solid Waste Management Programs.*** The California Integrated Waste Management Board is almost entirely fee supported. A \$1 per-tire fee on tire sales supports a tire recycling program. A 4 cent fee per quart of lubricating oil is collected from oil manufacturers and supports a used oil recycling program. A \$1.40 fee per ton of waste disposed at landfills is collected from disposal facility operators; this fee supports landfill sitings and enforcement activities, the cleanup of waste sites, and programs to divert waste from landfills.



Program Activities Funded by Fees *(Continued)*

- ***Dam Safety Regulation.*** The Department of Water Resources' dam safety program regulates the safety of the state's non-federal dams. Fees assessed on dam owners regulated by the department support approximately 30 percent of program expenditures. (The General Fund and Proposition 50 bond funds are proposed to support the remaining program expenditures.)



Some major programs that are significantly supported by user fees include:

- ***Operations and Maintenance of State Parks.*** The Department of Parks and Recreation charges fees to park users for a variety of activities, including camping, parking, boat use, and museum admission. Fee revenues are deposited in the State Park Recreation Fund and are used by the department for the operation and maintenance of the state park system.
- ***The Department of Fish and Game's Hunting, Fishing, and Public Use Program.*** Fisherman and hunters are required to obtain a license to fish or hunt in the state and to pay a license fee. Revenues from the fees are deposited in the Fish and Game Preservation Fund and are used to manage fish and wildlife resources to ensure that there are huntable and fishable populations.



A major program that is significantly supported by cleanup/mitigation fees is:

- ***The SWRCB's Underground Storage Tank Cleanup Fund Program.*** Fees assessed on owners of underground storage tanks are deposited in an "insurance" fund to provide financial assistance for the cleanup of leaking tank sites.



LAO's Broad Framework for Financing Resources and Environmental Programs



The LAO has developed a broad framework for financing resources and environmental programs (please see our *Analysis of the 1992-93 Budget Bill*, page IV-19), as follows:

- **General Purpose Funds** (including the General Fund and general environmental funds, such as the Environmental License Plate Fund) are appropriate funding sources when a state program benefits the general population, rather than clearly defined beneficiary groups.
- **Special Funds** (revenue from various user fees, regulatory fees, and cleanup/mitigation fees):
 - **“User” or “Beneficiary Pay” Fees.** We think these fees are appropriate to cover the costs of programs that provide a direct benefit to an identifiable population or group.
 - **“Polluter Pays” or Regulatory Fees and Cleanup/Mitigation Fees.** We think that it is appropriate to assess these fees on private businesses or landowners who use or degrade natural resources to pay for the costs imposed on the state by their use of the resources, including regulatory or restoration costs.
- **Combination of Special Funds and General Purpose Funds**
 - We think it is appropriate to fund programs that benefit a specific group or set of groups as well as the general population using a combination of special and general purpose funds.



Issues for Legislative Consideration In Establishing Fees

- Funding Level.** Fees should be considered in the context of an evaluation of the appropriate funding level for a program or activity. Questions to be asked as part of this evaluation include:

 - Has there been a funding needs assessment? For example, a legislatively mandated needs analysis of SWRCB's core regulatory program conducted by the board in 1999 identified \$181 million of unmet funding requirements.
 - Are there opportunities for efficiencies?
 - Can a program's goals be met more effectively in another way? Do the goals themselves need to be updated?
- Policy Issues.** There are many policy issues that arise in connection with establishing a particular fee structure. These include:

 - Equity issues (for example, who should and should not be included in the fee-paying base?).
 - Concerns about undue economic impact on particular fee-payers.
 - Whether the fee can/should be structured to serve as an incentive or disincentive for particular behavior.
- Setting the Policy Parameters.** An issue arises as to who should set the "policy parameters" for a fee. Should they be largely set by the Legislature in legislation, or left to be set by the administration (for instance, in regulation)?
- Implementation Issues.** Fees should be structured to promote ease of collection and reduce associated administrative costs.
- Accountability Issues.** Where should fee revenues be deposited?



Performance Based Budgeting



What Is Performance Budgeting?

- Performance Based Budgeting (PBB) is a budgeting technique intended to allocate resources to achieve specified outcomes.
- PBB attempts to determine whether a program is achieving its goals by focusing on outcomes, rather than processes or inputs.
- In order to implement performance budgeting, departments must identify performance goals, or outcomes, and the performance measures that will be used to determine whether progress is being made toward achieving the desired outcomes.



History of Performance Based Budgeting in California

- In January 1993, the Governor proposed to pilot test PBB in four state departments. The Governor's goal was to fundamentally change the budget process, produce substantial cost savings, improve program performance, enhance citizen satisfaction, and produce greater accountability.
- The Legislature enacted Chapter 641, Statutes of 1993 (SB 500, Hill), The Performance and Results Act of 1993, that directed selected departments to conduct a pilot of performance based budgeting. If the pilot were successful, the models that emerged would be applied to other state departments. The original participating departments included:
 - California Conservation Corps
 - Department of General Services



Performance Based Budgeting *(Continued)*

- Department of Parks and Recreation
- Department of Toxic Substances Control (withdrew from pilot)
- Department of Consumer Affairs
- Teale Data Center (withdrew from pilot)
- Participating departments were exempted from various administrative controls. The purpose of the exemptions was to free departments from unnecessary administrative controls so they could improve their performance.
- The rate of progress in implementing PBB varied among participating departments, with the Department of Parks and Recreation going the furthest toward implementing a PBB system.
- No department linked performance outcomes to the budget.
- PBB system was slowly phased out, and currently no departments are using performance based budgeting.



Key Findings on Performance Based Budgeting Pilot

- Performance based budgeting provided those departments which developed and tracked performance measures better management information.
- Pilot departments experienced challenges from outside their departments in being the only departments using performance based budgeting. For example, pilot departments were forced to maintain dual budgeting systems in order to respond to multiple data requests not compatible with performance based budgeting.



Performance Based Budgeting *(Continued)*

- Implementation costs were high and included developing performance measures and developing and maintaining new budgeting and accounting systems.
- LAO review in 1996 found PBB did not significantly change the budget process or produce cost savings.



Is the EPIC Initiative Performance Based Budgeting?

- In 2000-01, the Secretaries for Environmental Protection and Resources initiated the Environmental Protection Indicators for California (EPIC) Project. Environmental indicators are scientifically based tools to track changes in environmental conditions.
- EPIC was initiated in an attempt to focus the state's environmental protection programs on goals and results, rather than on measures of workload (such as "number of permits issued").
- Our review of similar initiatives in other states finds that they are more meaningful and effective when there is systematic feedback into the budget development process.



LAO's Fee-Based Recommendations

- The Governor's 2003-04 budget proposes various fee increases for resources programs. We offer additional fee proposals to shift funding from the General Fund to fees. We propose to shift to fees services provided directly to beneficiaries (such as fire protection), or costs to regulate the activities of individuals or businesses that degrade public resources. The additional opportunities that create General Fund savings include:
 - **Timber Harvest Plan (THP) Review**—\$22.1 million savings by having timber operators fully cover the costs incurred by state agencies in their review and enforcement of THPs. (Page B-60 of the *Analysis*.)
 - **Resource Assessments**—\$2 million savings by increasing fees on permit applicants and developers benefiting from the Department of Fish and Game's resource assessment activities. (Page B-53 of the *Analysis*.)
 - **Fire Protection**—\$170 million savings if property owners who benefit from state fire protection services pay \$6 per acre in order to offset one-half of the state's proposed General Fund costs to provide fire protection services largely to private landowners. (Page B-88 of the *Analysis*.)
 - **Dam Safety**—\$5.4 million savings by increasing existing fees on dam owners regulated by the Department of Water Resources' dam safety program, since they are direct beneficiaries of the department's activities that ensure the safe operation of dams. (Page B-106 of the *Analysis*.)



LAO's Fee-Based Recommendations

(Continued)

- **Air Quality “Stationary Source” Regulation**—Additional \$4.4 million savings beyond the Governor’s fee proposal by having fees replace a portion of the General Fund support remaining in the Air Resources Board’s stationary source program for activities related to air quality permitting. (Page B-111 of the *Analysis*.)
- **Pesticide Regulation and Risk Assessment**—At least \$2 million General Fund savings in various state departments by extending the coverage of pesticide fees to include the costs of state departments outside of the Department of Pesticide Regulation (DPR) that conduct work related to pesticide regulation. We also offer an alternative structure to the Governor’s fee proposal for DPR. (*Analysis*, page B-116.) Also, we offer the pesticide mill assessment as an alternative funding source should the Legislature wish to offset the pesticide-related General Fund reductions proposed by the Governor for the Office of Environmental Health Hazard Assessment. (Page B-130 of the *Analysis*.)
- **Water Rights**—\$7.2 million savings by increasing fees on applicants for new water rights and establishing an ongoing fee on all water rights holders, since they are direct beneficiaries of the State Water Resources Control Board’s water rights program. (Page B-123 of the *Analysis*.)
- **Power Plant Siting and Compliance Activities.** We also recommend that the Legislature establish fees on power plant developers and generators to cover a portion of the power plant siting and related compliance costs of the Energy Resources Conservation and Development Commission (California Energy Commission). If this action were taken, electricity ratepayers (who currently cover most of the siting program’s costs) would pay less for this activity. (Page B-79 of the *Analysis*.)



AB 3158 Fees: A Fee Case Study



AB 3158 Fees —What Are They?

- Chapter 1706, Statutes of 1990 (AB 3158, Costa), requires the Department of Fish and Game (DFG) to impose and collect filing fees on all projects subject to the California Environmental Quality Act (CEQA).
- The intent of the fee was to expand the funding base for wildlife protection beyond hunting and fishing to include those who consume natural resources through urbanization and development.
- Statute allows the fee to be used for the review of environmental documents as well as resource management.
- Statute establishes the amount of fee based on the type of environmental document under CEQA that is filed.
 - Environmental Impact Reports (EIRs) are charged \$850.
 - Negative Declarations are charged \$1,250.
- Statute allows lead agencies under CEQA to file exemptions for projects that have no impact on the effect of fish and wildlife. These exemptions are referred to as “de minimis.” Most projects file a de minimis exemption.
- Fees are paid to the county clerk (who collects the fees on behalf of DFG) at the time of filing the final CEQA documents. Fees are then remitted to DFG.
- Statute requires the department to prepare an annual review of these filing fees and to recommend to the Legislature adjustments to the statutory fee structure.



AB 3158 Fees: A Fee Case Study *(Continued)*



History of Implementation of AB 3158 Fees

- In 1991, a suit was filed against DFG alleging that the fees were unconstitutional on the basis that they were in law taxes because there was no nexus between the services provided by DFG in reviewing environmental documents and the amount of fees charged.
- Between June 1995 and April 2000, DFG did not actively collect the fees because of the fee's legal uncertainty.
- In April 2000, the Third District Court of Appeal ruled that the fees were constitutional because the AB 3158 fees are only imposed to cover the reasonable cost of providing services to implement CEQA. Furthermore, the court found that the amount of fees generated by AB 3158 was far less than the cost of the environmental reviews provided.
- In March 2001, DFG notified all counties of their role in collecting 3158 fees.



AB 3158 Revenues

- DFG projects AB 3158 revenues to be \$2.2 million in each of 2002-03 and 2003-04.
- AB 3158 revenues are deposited in the Fish and Game Preservation Fund and used for a variety of departmental activities, including CEQA review and resource assessment activities.



AB 3158 Fees: A Fee Case Study *(Continued)*



AB 3158 Fees Implementation Issues

- **Limited Oversight of Lead Agencies' Use of Fee Exemptions.** Although DFG has conducted audits focusing on the administrative processing of the fees, the department has not analyzed the extent to which lead agencies properly identify projects as de minimis so as to seek an exemption from the fee.
- **Inconsistent Interpretation by Lead Agencies of De Minimis Concept.** Lead agencies are given broad discretion and limited guidance in statute to determine when a project will have no adverse impact on fish and wildlife issues.
- **Concerns Raised About the Equity of Fee Structure.** Many lead agencies have expressed concern that the current fee structure is not equitable because project proponents are required to pay the same fee regardless of the project's size and environmental impact. This perceived inequity in the fee structure may result in lead agencies incorrectly trying to fit a project within the fee exemption.
- **No Annual Review of Fees as Required by Statute.** To date, the department has not reviewed the fee structure or recommended fee adjustments in an amount necessary to pay the department's costs for CEQA review and resource management.



AB 3158 Fees: A Fee Case Study *(Continued)*



Lessons Learned From AB 3158 Fee Implementation

- Provisions of a fee statute should clearly define activities that are subject to fees and those that are not.
- Implementing departments should have staff resources for compliance activities.
- In order to generate maximum compliance from those collecting and paying the fee, the fee structure should be perceived as generally equitable among fee payers and proportional to the level of impact from the proposed activity.
- Implementing departments should submit regular reports on the fee program in order to improve legislative oversight and allow for adjustments in the fee structure as necessary.