



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Director's Office
P.O. Box 944209
Sacramento, CA 94244-2090
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



June 26, 2020

Control Number:
WA-19-02

Ms. Donna Allred
Sacramento County Clerk/Recorder
P.O. Box 839
Sacramento, CA 95812-0839

Dear Ms. Allred:

COMPLIANCE REVIEW OF ASSEMBLY BILL 3158 ENVIRONMENTAL FILING FEES

This final management letter provides the results of the Assembly Bill 3158 Environmental Filing Fee (Chapter 1706, Statutes of 1990, effective January 1, 1991) compliance review of Sacramento County (County). The review was conducted to determine if the County complied with the requirements of the Fish and Game Code (FGC) Section 711.4, and the California Code of Regulations (CCR), Title 14, Division 1, Chapter 4, Section 753.5 et seq.

Compliance with laws and regulations applicable to the County is the responsibility of the County's management. As part of obtaining reasonable assurance as to whether the Environmental Filing Fee (EFF) documentation procedures were in compliance with the applicable laws and regulations, we tested the County's compliance with the FGC Section 711.4 and the CCR, Title 14, Section 753.5 et seq.

Our test results indicate that with respect to the items tested, the County complied, in all material respects, with the requirements of the FGC Section 711.4, and the CCR, Title 14, Section 753.5 et seq., except for missing required supporting documentation. With respect to items not tested, nothing came to our attention that caused us to believe that the County had not complied, in all material respects, with the provisions of the FGC Section 711.4 and the CCR, Title 14, Section 753.5 et seq.

The County's response to the management letter agrees with our audit findings and recommendations. The Audits Branch incorporated the County's response as Attachment A to this management letter.

Restricted Use

This report is solely for the information and use of the DFW, and the County of Sacramento. This audit report is not intended and should not be used by anyone other than those specified parties. This restriction is not intended to limit distribution of this report, which is a matter of public record.

Background and Information

State Law (AB 3158, Chapter 1706, Statutes of 1990, effective January 1, 1991) requires that the Department of Fish and Wildlife (DFW) collect filing fees to defray the cost of managing and protecting fish and wildlife trust resources (FGC Section 711.4). The purpose of these fees is to help fund the cost of consulting with other public agencies, reviewing environmental documents, recommending mitigation measures, developing monitoring requirements, and carrying out other activities to protect public trust resources under the California Environmental Quality Act (CEQA, Public Resources Code Section 21000 et seq.). The legislative intent is "to extend the current user-based funding system by allocating the transactional costs of wildlife protections and management to those who would consume those resources through urbanization and development..." [AB 3158, Chapter 1706, Statutes of 1990, effective January 1, 1991, Section 1(c)].

The fees are collected by a mechanism that is superimposed on the CEQA environmental review process. At the completion of that CEQA process, for most projects subject to CEQA, a public notice of approval (usually a Notice of Determination (NOD) is filed either with the appropriate county clerk, State Clearing House, or Resources Agency. On September 29, 2006, Senate Bill 1535 was passed increasing the amounts of filing fees collected by the DFW, and requires the DFW to adjust the fees annually pursuant to the FGC Section 713. The amount of the fee paid to the DFW is determined by whether a Negative Declaration (ND), Mitigated Negative Declaration (MND), an Environmental Impact Report (EIR), a Timber Harvest Plan (THP), or a Water Rights Application, is prepared for the project. The annual fee adjustments are based on changes in the Implicit Price Deflator for State and Local Government Purchases of Goods and Services, as published by the U.S. Department of Commerce. Annual filing fee adjustments are made available on the DFW website prior to November 1st of the year before they become effective.

The State recently updated Title 14, Section 753.5 of the California Code of Regulations (CCR). The updated regulations address filing fees and No Effect Determinations (NED) and became effective on July 16, 2009. The regulations were updated to conform with existing law (FGC Section 711.4) reflecting current DFW practice, and to clarify the procedures for NEDs.

The CEQA filing fee will be waived if a project will have no effect on fish and wildlife [FGC Section 711.4 (c)(2)(A)]. Projects that are statutorily or categorically exempt from CEQA are also not subject to the filing fee, and do not require a NED [Title 14, CCR, Sections 15260 through 15333 and FGC Section 711.4 (d)(1)]. Regional DFG environmental review and permitting staff are responsible for determining whether a project within their region will qualify for a NED and if the CEQA filing fee will be waived.

If a lead agency or applicant anticipates their project will have no effect on fish and wildlife, the appropriate DFW Regional Office should be contacted. The corresponding CEQA document may need to be provided to the appropriate DFW Regional Office along with a written request. The request should be submitted when the CEQA document is released for public review, or as early as possible in the public comment period. The NED requests submitted to the DFW should include sufficient documentation to support a No Effect Determination. Documentation should include a site description, project description, description of the project location, aerial and/or topographic map of the project site, State Clearinghouse number or county filing number, and applicant contact information. Documents submitted in digital format are preferred (e.g. compact disk).

All project applicants subject to CEQA must pay an Environmental Filing Fee (EFF) for each non-exempt project for which a NOD, EIR, or certified regulatory program document (e.g., THP or Water Rights Application) has been approved. The EFF is due upon filing of the NOD. The FGC Section 711.4 (c) (3) (C) provides that, "no project shall be operative, vested, or final" until the required filing fees are paid. County clerks may charge a documentary handling fee of \$50 per filing in addition to the specified EFF. If so, this should be reflected on the EFF Cash Receipt.

Review Scope

The review was limited to the record retention period of the previous 12 months, July 1, 2018 through June 30, 2019 as specified in the CCR, Title 14, Section 753.5 (f).

Review Objectives

The objectives of the review were to determine if the County was complying with the EFF requirements as described below:

- Provide accountability of the EFFs collected by County;
- Project determinations were proper and the correct EFFs were collected, remitted, and reported to the State; and

- The County project folders contain the required relevant evidential supporting documentation.

Review Methodology

The following procedures were performed:

- Reviewing County policies and procedures for EFF collections, filing, and types of documentation maintained;
- Interviewing key personnel regarding their understanding of the County policies and procedures; and
- Confirming EFFs were remitted to the State.

Finding 1 – Inadequate Supporting Documentation: Alternative Cash Receipts Do Not Contain Required Information

Audits Branch (AB) determined that twenty-five (25) out of fifty (50) NODs filed with Sacramento County do not conform to the informational requirements for use of an alternative EFF Cash Receipt as promulgated by California Code of Regulations (CCR) Title 14, Section 753.5(e)(6)(7) which states, "(6) To maintain accountability and to track all project applications, the department has developed press numbered and fill and print Environmental Filing Fee Cash Receipts (Form FG 753.5a - 07/08). These cash receipts, or a department approved alternative cash receipt, shall be used in conjunction with county clerk collection procedures. The original receipt shall be issued to a project applicant when payment is made in conjunction with filing a notice of determination (Public Resources Code, section 21152). The first copy shall be submitted to the department on a monthly basis. Remaining copies shall be retained by the county (one for the lead agency and one for the county clerk). (7) Alternative receipts must provide the same information as Form DFG 753.5a, contain four copies for distribution, and be submitted to the department for approval prior to use. The department shall issue a letter of approval to the requesting county if the alternative receipt contains all required information."

Sacramento County stated that they were approved to use an alternative cash receipts method prior to 2016. However, no evidence of approval was provided indicating that alternative EFF Filing Fee cashing receipts were reviewed and approved by CDFW for use by the County. Additionally, the cash receipts utilized prior to 2016 did not contain the required information as indicated on Form DFG 753.5a. The alternative cashing receipts reviewed generically states "State Fees" and did not provide the same information as Form DFG 753.5a. The information prescribed on Form DFG 753.5a (EFF Cash Receipt) includes the following information:

- Receipt Number;
- Lead Agency ;
- Date;
- County/State agency;
- Project Title;
- Project Applicant name, address, phone number;
- Category of Project Applicant;
- Type of Applicable Fees;
- Total Received;
- Payment Method; and
- Signature and title of person receiving payment.

All the exceptions identified during this review were prior to March 2016 and the County has since been following the requirements of CCR Title 14, Section 753.5 (e)(6)(7).

This is a repeat finding and was an issue noted in two prior audit reports dated March 17, 2006 and November 30, 2001.

Recommendation

We recommend that the County prepare EFF cash receipts in accordance with the informational requirements of CCR, Title 14, Section 753.5 (e)(6)(7). Since March 2016, the County has used DFW 753.5a to meet the information requirements of the applicable code.

Finding 2 – Missing Required Supporting Documentation

AB determined that five (5) of fifty (50) NODs filed with the County and selected for review did not include the EFF cash receipts indicating that projects were previously paid as no previously issued cash receipts were attached to the NODs. Additionally, three (3) projects requesting a no effect determination did not include an attached “no effect determination” letter.

The County is required to maintain a receipt indicating that required fees were paid as stated in CCR, Title 14, Section 753.5(e)(4), “In the event a project requires multiple notices of determination by lead and/or responsible agencies, the fee shall be paid at or before the time the lead agency files the first notice of determination. Upon payment, the applicant shall retain the receipt for presentation to any additional agencies whose approval may be required. A copy of that receipt shall be attached to any additional

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notices of determination that may be required for the same project. The copy shall suffice as documentation that the fee was paid.”

The County did not maintain the documentation as required by CCR, Title 14, Section 753.5(e)(9) which states, “For projects that the department has found to have no effect on fish and wildlife, it is mandatory that a copy of the no effect determination, signed by an authorized representative of the department, be attached to the notice of determination.”

Recommendation

We recommend that the County attach and maintain all previously paid and issued cash receipts to any additional notices of determination that may be required for the same project. Any EFFs exempt from collection should contain the proper supporting documentation.

Should you have any questions, please contact Andrea Baker at (916) 373-6637.

Sincerely,



Ky Nguyen, CPA
Audits Branch Chief

cc: Valerie Termini, Chief Deputy Director, Department of Fish and Wildlife

James Robbins, Deputy Director-Administration Division, Department of Fish and Wildlife

Dan Reagan, Assistant Deputy Director- Fiscal Operations of Administration Division, Department of Fish and Wildlife

Andrea Baker, Auditor, Department of Fish and Wildlife

Dianna Richards, Assistant Chief Deputy Clerk/Recorder, Sacramento County Clerk-Recorder's Office

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Piper Wilson, Deputy Clerk/Recorder, Sacramento County Clerk-Recorder's
Office

Audit File

ATTACHMENT A

County Clerk/Recorder Department

Donna Allred
County Clerk/Recorder



Divisions

Administration
Customer Service
Document Management

County of Sacramento

May 28, 2020

Ky Nguyen, CPA, Audits Branch Chief
California Department of Fish and Wildlife
1010 Riverside Parkway, Room 150
West Sacramento, CA 95605

Subject: COMPLIANCE REVIEW OF ASSEMBLY BILL 3158 ENVIRONMENTAL FILING FEES

Dear Mr. Nguyen:

This letter is in response to your draft management letter issued April 27, 2020 which provides the results of the compliance review for Sacramento County.

The first finding is noted as inadequate supporting documentation as the alternative cash receipts in use at that time did not contain required information. The County provided correspondence to support our position that the alternative receipts had been deemed acceptable by prior Fish and Wildlife staff, however the current audit staff did not agree with the interpretation. Regardless, as noted in the Recommendation, Sacramento has been using DFW 753.5a since March 2016 so the County is in full compliance.

The second finding is for missing required supporting documentation. While all required documentation is verified by Clerk staff when reviewing Fish and Wildlife transactions, there have been limitations to the cashiering and document retention for old receipts and additional documentation. The County agrees with the Recommendation and will be addressing this item with the implementation of a new Clerk and cashiering software system that will be better suited to track and retain all supporting documentation.

Thank you for your handling of this review. Please contact me with any questions.

Sincerely,

A handwritten signature in blue ink that reads "Donna Allred". The signature is fluid and cursive, with the first name "Donna" being larger and more prominent than the last name "Allred".

Donna Allred
County Clerk/Recorder

cc: Piper Wilson, Deputy Clerk/Recorder
Dianna Richards, Assistant Deputy Clerk/Recorder