



## CDFW MITIGATION FEE PROGRAM PERFORMANCE

The California Ecological Restoration Business Association (CalERBA) represents the state’s growing ecological restoration industry specializing in land stewardship, protection, and delivery of wetland, stream, water quality, and species restoration projects. Member businesses create environmental and economic value through job creation and restoration of critical ecological services that provide flood resiliency and biodiversity benefits. These benefits are often delivered via mitigation and conservation bank projects that require upfront investment in landscape scale restoration/protection to generate advance mitigation credits ahead of impacts to protected resources. CalERBA members work daily with regulators at the California Department of Fish and Wildlife (CDFW) to permit mitigation bank credits that offset the unavoidable impacts of necessary infrastructure development by permittees such as home builders, CalTrans, DWR, California High Speed Rail, and Southern California Edison.<sup>1</sup>

However, ecological restoration firms are currently discouraged from investing in new mitigation banks because of compounding CDFW regulatory delays and a chronic program staffing shortage. In some instances, CalERBA members have even withdrawn applications to generate CDFW approved mitigation credits due to the timeline uncertainty inherent in the current review process.<sup>2</sup> CDFW is currently issuing permits to negatively impact the environment faster than they are issuing approvals to restore the environment in advance of those impacts. The resulting shortage of mitigation credits is bad for the environment and the state’s essential infrastructure and housing growth. Recognizing mitigation banks’ great value from environmental and efficiency standpoints,<sup>3</sup> a decade ago the Legislature established a fee structure to facilitate timely bank reviews. Legislative action is now needed again to incentivize investment in restoration and rectify agency staffing to meet climate and biodiversity goals.

### Background

In 2012 the Legislature enacted Chapter 7.9, Sections 1797-1799.1 on Conservation Bank and Mitigation Bank Applications and Fees. The Chapter established a schedule of fees for various bank applications to cover the cost of CDFW staffing to review and process the applications. In exchange for the fees, the Chapter obligates CDFW to meet certain specified review timelines. For example, “*Within 30 calendar days following its receipt of a draft bank amendment package and any fee required... the department shall determine whether or not the package is complete and give written notice of that determination to the person who submitted the package*” (emphasis added). The Chapter also requires CDFW to submit an annual report to the Legislature on the effectiveness of the program, including an accounting of fees collected and how often the stipulated timelines were met by CDFW.<sup>4</sup>

---

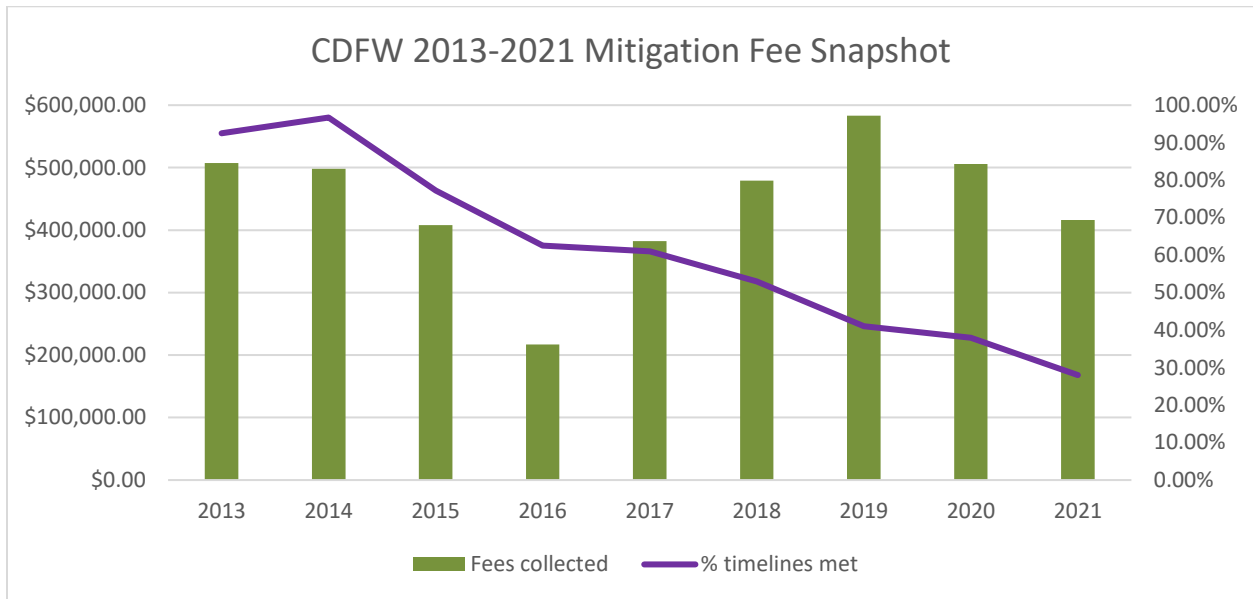
<sup>1</sup> See 2021 Cap-to-Cap Land Use and Natural Resources handout discussion on the shortage of bank credits.

<sup>2</sup> And the problem extends to existing banks; members have several instances where banks wait over a year for CDFW to approve and release credits, well past the required 30-day timeline.

<sup>3</sup> See Chap. 7.9, Section 1797: (a) *Mitigation banks and conservation banks provide for the conservation of important habitats and habitat linkages, take advantage of economies of scale that are often not available to individualized mitigation projects, and simplify the state regulatory compliance process while achieving conservation goals.; (h) The Legislature recognizes that mitigation and conservation banking is important to the state because banks provide regulatory efficiencies, environmental benefits, and economic advantages. Properly developed and monitored banks have demonstrated their value and efficacy and are important tools in mitigating impacts to resources and in conserving a wide range of habitat lands.*

<sup>4</sup> Available here: <https://wildlife.ca.gov/Conservation/Planning/Banking/Publications>

Agency reports to the legislature from 2013 to 2021 reveal that CDFW is annually collecting around half a million dollars in fees, equating to \$4.1M in total collected fees at the end of 2021.<sup>5</sup> But, for the past several years CDFW has only been able to devote the time equivalent of 2.2 full time employees (FTEs) towards the program to process mitigation applications and requests statewide. This severe staffing shortage has resulted in an increasing trend of significant noncompliance with the program’s mandated review timelines, from a one-time high of 96.7% compliance to a low most recently of 28% compliance.<sup>6</sup> The following graph illustrates this delay trend against annual fees collected.<sup>7</sup>



Besides these annual program reports, CDFW also recently undertook a comprehensive service-based budgeting (SBB) analysis, which found that CDFW’s Species & Habitat Conservation and Permitting & Environmental services are the department’s most under-resourced services relative to mission level (needing a respective 4x and 3.5x increase in the staff hours currently available for those services).<sup>8</sup> Clearly, the current staffing numbers and program management are not working to meet the demands of the mitigation & conservation banking program.

<sup>5</sup> Note that as banks are approved, CDFW will receive more revenue. Under the current fee schedule, the largest fee, Implementation (currently \$72,731.75 per bank), is paid upon CDFW’s bank approval. So, faster processing of bank prospectus and instruments currently in queue would help CDFW realize more funds to apply towards additional staffing.

<sup>6</sup> CalERBA members’ experience indicates that compliance with timelines is likely even lower than 38%. For example, several members have had instances when CDFW declares a document incomplete on the completeness determination deadline to then trigger a timeline extension, despite other agencies’ determination that the document is complete and CDFW also later determining the initial submission was complete. This delay tactic gives the agency additional time to review while appearing to meet the required deadline.

<sup>7</sup> Note that the green bars represent additional fees collected in that specific calendar year and do not also reflect any funds from prior years that might have rolled over or be held by the program to maintain a base level of funding. Per CDFW’s 2021 report to the legislature, the program has collected a total of \$4.10M in fees.

<sup>8</sup> See SBB Appendix F “Gaps by Service Level,” p. 3 and 13, and SBB “Report to Legislature March 4-5 2020,” p. 6, 10, 12-13, both available here: <https://wildlife.ca.gov/budget/service-based-budgeting>

## Need for Legislative Action

The benefits of banks enumerated by the Legislature a decade ago are more relevant than ever as California works to both meet conservation goals and responsibly deploy state and federal infrastructure project funding. As acknowledged by CDFW in their most recent 2022 legislative report, banks support “the Cutting Green Tape Initiative by providing a streamlined approach for permittees to meet the mitigation requirements of a permit while providing permanent protection of critical habitat.” Increasing the availability of CDFW approved mitigation bank credits will enable shovel-ready infrastructure and incentivize more investment in conservation. CalERBA recommends that the Legislature:

1. Modify the process for CDFW bank approval (currently stipulated in Chapter 7.9, Section 1798) to allow for assumed approval during each completeness review and the prospectus, draft BEI, and initial bank agreement review stages if CDFW has not provided the bank sponsor with a decision by the applicable mandated review deadline. Assuming approval is the current approach under other CDFW permitting regimes that authorize detrimental impacts to the environment. CDFW approval to create positive environmental uplift, like that generated by conservation banks, should be subject to process streamlining at least equal to that of permits impacting the environment. This shift towards assumed approval will provide needed consequences for CDFW’s failure to timely review bank proposals and appropriately incentivize CDFW to prioritize conservation bank reviews alongside their other permitting obligations. CalERBA would welcome the opportunity to work with staff on targeted revisions to implement this recommendation.
2. Supplement currently collected fees with an allocation from the budget surplus to immediately hire more staff at the regional level specifically for the banking program. Direct CDFW to establish dedicated banking program specialists for regional bank review and processing, rather than spreading program administration across staffers tasked with several other competing program obligations. If, even with supplemental funding, there is not enough funding to support a dedicated mitigation staffer within each Region, then CalERBA recommends expanding the regional footprint of each dedicated mitigation program staffer based on existing and proposed mitigation bank distributions. Regional coverage should be divided as evenly as possible between staffers. For example, one staffer could cover northern CA Regions and a second staffer cover central and southern CA Regions.
3. Annually fund CDFW’s mitigation and conservation banking program at a base level to support sustained FTE hires dedicated to the program. Mitigation application fees paid by sponsors would then be collected on top of base level funding to support program administration. Based on CDFW’s SBB analysis, collective funding at a minimum should support 3.5x the current staffing of 2.2 FTEs, or roughly 8 regional staffers.
4. Direct CDFW to elevate bank coordinator roles at the Region level to a title and salary on par with supervisory/manager roles to attract and retain top talent in these important positions. Over the past decade, CalERBA members have seen CDFW’s banking program work fairly well when knowledgeable staff lead conservation bank project reviews and dedicate the bulk of their time to understanding the program and bank sponsors. Because conservation projects are so complex across multiple ecological, legal, and financial elements, the program warrants agency efforts and incentives to train and then maintain staff with specialized knowledge of the program’s merits, projects, and bank sponsors.

5. Establish performance metrics for CDFW compliance with bank review timelines and require CDFW to publicly track compliance via a dashboard with periodic updates throughout the year. Use of a dashboard will provide transparency and help CDFW and the Legislature identify opportunities for process improvements. Along with performance metrics, establish incentives for staff to meet the statutory bank review deadlines, such as assuming CDFW's approval of the document if CDFW comments were not received by the deadline. CalERBA recommends looking to the Section 1600 Permit process as a model for more efficiently issuing decisions in compliance with deadlines.
6. Audit CDFW's application of annual fees towards regional staffers, the project management tools used to meet the mandated timelines, and the amount of time spent on programmatic tasks like template development. This report should also analyze the circumstances that led to CDFW's current low staffing level of 2.2 FTEs, despite annual reports from 2013 and 2014 stating that "fees support two full time positions plus portions of 8 additional positions to process bank documents," and "up to 7 newer positions have been authorized for 2015."

Thank you for your consideration of CalERBA's comments to improve CDFW's banking program administration. Investment is currently shrinking away from creation of CDFW mitigation bank credits because of unworkable delays. The recommendations above would incentivize investment towards high quality, durable habitat for protected species and resources. Please do not hesitate to reach out to CalERBA with any questions at [sjohnson@ecologicalrestoration.org](mailto:sjohnson@ecologicalrestoration.org).