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Fees from AB 32: Where is the money going?

By Dorothy Rothrock

It started out as a simple question. The California Air Resources Board (CARB) collected \$57 million in fees to pay for administration of AB 32 (Global Warming Solutions Act) from 2007 to 2009.

So we asked – how was the money spent? It's a basic rule that public agencies must justify how fee revenues are spent. How much for staff, equipment, travel, and consultants? No answer. Our lawyers then asked for the information through a Public Records Act request and weeks later we saw a few documents. But these didn't show how the \$57 million was spent.

With no other option, a group of eleven business and taxpayer organizations filed a lawsuit to require CARB to show where money was spent. CARB released thousands of pages of documents. Unfortunately, after reading through the material we could account for only 18 percent or \$10 million, of the \$57 million.

Where did \$47 million go?

CARB asked the judge to keep that information secret, at least for now. CARB's lawyers gave two reasons. First, the accounting numbers are all mixed up with "deliberative communications" among CARB staff. The law allows agencies to keep such "privileged" information confidential. Second, they plan to reveal the accounting information after the CARB Board adopts the AB 32 fee regulation on September 25. The judge agreed to let CARB reveal the information later.

Better late than never, but why do we have to wait until after CARB adopts the fee? Shouldn't we have access to the information so we can fully participate in the regulation development before it is adopted? And wouldn't CARB Board members want to know where these millions were spent before they make a decision on the fee?

There is another worrisome element here. CARB didn't keep its accounting data separate from staff communications about the fee regulation, thus making it all "privileged" and not subject to disclosure under the Public Records Act. This sets a troublesome precedent if agencies can hide material they would rather not make public by burying it inside privileged staff communications.

California deserves better than this. We urge CARB to make future fee regulations more transparent to avoid needless delay, expense and litigation. And we hope to get our simple question answered soon.