



Investigations of Improper Activities by State Agencies and Employees

Violations of State Law Including Failure to Seek Competitive Bids, Increase Rental Rates, Properly Dispose of Surplus Property, and Adequately Supervise
July 2014 Through June 2015

Report I2015-1

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August 27, 2015

Investigative Report I2015-1

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

Dear Governor and Legislative Leaders:

Pursuant to the California Whistleblower Protection Act, the California State Auditor presents its investigative report summarizing investigations that were completed between July 2014 and June 2015 concerning allegations of improper governmental activities.

This report details 10 substantiated allegations involving several state departments. Through our investigations, we found failure to seek competitive bids, failure to increase rental rates, waste of state funds, failure to properly dispose of surplus state property, an improper gift of public funds, and neglect of supervisory duties. In total for the 10 substantiated allegations, we identified over \$4.2 million in wasted funds, improper payments, and misuse of state time.

For example, California Correctional Health Care Services improperly used a master agreement when it procured \$17 million in goods and services to upgrade the electrical infrastructure within state prisons beginning 2011. Of this \$17 million, it wasted \$3.2 million because it paid the contractor to do nothing more than process invoices of the subcontractor, who performed all of the work. Furthermore, Correctional Health Care improperly paid the contractor \$1.6 million in advance for goods and services that the subcontractor did not provide until nearly a year later.

Another investigation revealed that the California Department of Transportation (Caltrans) failed to increase rental rates to reflect fair market value for state land rented by wireless communications companies. Caltrans' failure to increase rates cost the State nearly \$883,000 in revenue from July 1, 2012, through September 30, 2014.

State departments must report to the state auditor any corrective or disciplinary action taken in response to recommendations made by the state auditor no later than 60 days after we notify the agency or authority of the improper activity and monthly thereafter until corrective action is completed.

Respectfully submitted,



ELAINE M. HOWLE, CPA
State Auditor

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Contents

Summary	1
Chapter 1	
California Correctional Health Care Services: Failure to Seek Competitive Bids, Waste of State Funds, and Improper Advance Payments	7
Chapter 2	
California Department of Transportation: Failure to Increase Rental Rates, Loss of State Revenue	17
Chapter 3	
California Department of Corrections and Rehabilitation and California Correctional Health Care Services: Improper Payments	23
Chapter 4	
California Department of Water Resources: Failure to Properly Dispose of Surplus State Property, Gift of Public Funds	29
Chapter 5	
California Department of Transportation: Neglect of Supervisory Duties, Failure to Monitor Attendance, Approval of Inaccurate Time Sheets	37
Chapter 6	
California Department of Veterans Affairs, Chula Vista Veterans Home: Waste of State Funds	41
Chapter 7	
Other Investigative Results	43
Appendix	
The Investigations Program	53
Index	57

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Summary

Results in Brief

The California Whistleblower Protection Act (whistleblower act) empowers the California State Auditor (state auditor) to investigate and report on improper governmental activities by agencies and employees of the State. Under the whistleblower act, an *improper governmental activity* is any action by a state agency or employee related to state government that violates a law, is economically wasteful, or involves gross misconduct, incompetence, or inefficiency.¹

This report details the results of six particularly significant investigations completed by the state auditor or undertaken jointly by the state auditor and other state agencies between July 1, 2014, and June 30, 2015. This report also outlines the investigative results from another four investigations that were best suited for other state agencies to investigate on behalf of the state auditor during the same one-year period. The following paragraphs briefly summarize the investigations, which are discussed more fully in the individual chapters of this report.

California Correctional Health Care Services

California Correctional Health Care Services (Correctional Health Care) failed to seek competitive bids from vendors when it sought to upgrade the electrical infrastructure within state prisons beginning in 2011. Instead, it improperly used a master agreement and paid the contractor \$17 million even though the electrical goods and services that it needed could not lawfully be provided under that master agreement. As of May 2015 Correctional Health Care had yet to pay an additional \$4 million in billings from the contractor. Moreover, Correctional Health Care paid the contractor \$3.2 million to do nothing more than process invoices of the subcontractor, who performed all of the work. Further, Correctional Health Care improperly paid the contractor \$1.6 million in advance for goods and services that the subcontractor did not provide until about a year later, which violated the State's prohibition against advance payments. Finally, Correctional Health Care had little assurance that it received adequate value for the amounts it paid because the contractor's invoices contained only vague descriptions of goods and services provided under the master agreement, and the employees responsible for reviewing the invoices failed to

Investigative Highlights . . .

State employees and agencies engaged in improper activities, including the following:

- » *A state agency failed to seek competitive bids, wasted \$3.2 million of state funds, and improperly paid \$1.6 million in advance payments.*
- » *A state agency failed to increase rental rates for more than two years, which resulted in \$883,000 in lost revenue to the State.*
- » *State agencies improperly allowed three chief psychologists to earn extra compensation that totaled \$96,000.*
- » *Field division staff at a state agency improperly disposed of surplus state property that would cost at least \$5,300 to replace, received only \$300 from a recycler for the surplus property, and provided a gift of public funds by returning the money to the recycler.*
- » *A state supervisor neglected his duty when he failed to monitor a subordinate's attendance and approved inaccurate time sheets.*
- » *A state agency wasted \$50,000 when it purchased equipment that it has used minimally for five years.*

¹ For more information about the state auditor's investigations program, please refer to the Appendix.

take any steps to ensure that the billing of goods and services was proper and that the goods and services were actually delivered or performed.

California Department of Transportation

The California Department of Transportation (Caltrans) failed to increase rental rates to reflect the fair market value of state land rented by telecommunications companies in the San Francisco Bay Area, in violation of a provision in their license agreements. Caltrans' failure to increase rates cost the State nearly \$883,000 in revenue from July 1, 2012, through September 30, 2014.

California Department of Corrections and Rehabilitation and Correctional Health Care

For nearly two years, the California Department of Corrections and Rehabilitation (Corrections) and Correctional Health Care improperly allowed three chief psychologists to receive extra compensation for being on call or for returning to work after their shifts ended to perform additional duties. As a result, the State overpaid these employees a total of \$96,000.

California Department of Water Resources

A field division chief and a civil maintenance branch chief (maintenance manager) with the California Department of Water Resources (Water Resources) failed to follow the appropriate policies when disposing of accumulated surplus property. Specifically, the maintenance manager recycled property, including copper wire, without making the required notification to the branch in charge of property disposal. This denied Water Resources or another state agency the opportunity of reusing copper wire with an estimated replacement value of \$5,300 to \$7,900. Further, the maintenance manager did not monitor the recycling company's methods for assessing the value of the property. As a result, the recycler valued the property at only \$300, when we estimated that the recycled value of the copper wire portion of the property at more than \$2,200. Finally, Water Resources made a prohibited gift of public funds to the recycler when it failed to promptly deposit the recycler's \$300 check to Water Resources and instead returned it to the recycler.

Caltrans

From August 2012 through March 2014, a senior transportation engineer for Caltrans neglected his duty to ensure that a subordinate engineer's time sheets were accurate. Although the subordinate's time sheets indicated that he worked the day shift from August 2012 through March 2014, he actually was playing golf for part of 55 workdays during those months. The engineer was later reassigned to a different division, but he was not directly supervised from early May 2014 to early June 2014 because of a failure in communication between two senior transportation engineers. Consequently, Caltrans district management was unable to determine where the engineer was or how much work, if any, he actually performed during this period. Nevertheless, a district manager directed the senior transportation engineer to approve the subordinate's time sheets.

California Department of Veterans Affairs, Chula Vista Veterans Home

The Chula Vista Veterans Home wasted state funds when it purchased a piece of equipment in July 2010 for nearly \$50,000 and rarely used during the past five years, when it could have rented the equipment for much less.

Other Investigative Results

In addition to the investigations described previously, the state auditor referred numerous investigations to state departments to perform in response to whistleblower complaints that the departments were best suited to investigate on our behalf. The following investigations substantiated improper governmental activities.

Employment Development Department

An accounting officer at the Employment Development Department (EDD) misused state resources by using state equipment and materials to type and print a large volume of personal letters, emails, and other documents during work hours. She also used her position to improperly access EDD's database to adjust tax accounts and to obtain confidential information to assist friends, associates, and family members with their unemployment insurance claims.

Department of Industrial Relations

An office services supervisor for the Department of Industrial Relations misused state resources by using his state-compensated time and state email account to coordinate the sale of copied DVD movies and music CDs and to send and receive sexually suggestive emails during his work hours. The supervisor also misused state resources to print materials for a coworker's fitness studio using a state-owned printer.

California Department of Forestry and Fire Protection

A California Department of Forestry and Fire Protection senior personnel specialist misused state time by frequently arriving at work late without fully accounting for the missed time. Her supervisor also failed to ensure that the senior personnel specialist properly accounted for all of her missed time.

EDD

An employment program representative at EDD misused her state computer, state phone line, and state-compensated time for personal purposes.

Table 1 summarizes the improper governmental activities detailed in this report, the financial impact of the activities, and the status of recommendations made to address these activities.

Table 1
Issues, Financial Impact, and Status of Recommendations for Cases Described in This Report

CHAPTER	DEPARTMENT	ISSUE	COST TO THE STATE AS OF JUNE 30, 2015*	STATUS OF RECOMMENDATIONS		
				FULLY IMPLEMENTED	PARTIALLY IMPLEMENTED	PENDING
1	California Correctional Health Care Services (Correctional Health Care)	Failure to seek competitive bids, waste of state funds, and improper advance payments	\$3,218,636		●	
2	California Department of Transportation (Caltrans)	Failure to increase rental rates, loss of state revenue	882,942			●
3	California Department of Corrections and Rehabilitation and Correctional Health Care	Improper payments	96,245			●
4	California Department of Water Resources	Failure to properly dispose of surplus state property, gift of public funds	7,916			●
5	Caltrans	Neglect of supervisory duties, failure to monitor attendance, approval of inaccurate time sheets	NA		●	
6	California Department of Veterans Affairs	Waste of state funds	49,937			●
7	Employment Development Department (EDD)	Misuse of state resources	NA	●		
7	Department of Industrial Relations	Misuse of state resources	NA	●		
7	California Department of Forestry and Fire Protection	Misuse of state time	848		●	
7	EDD	Misuse of state resources	NA			●

Source: California State Auditor.

NA = Not applicable because the situation did not involve a dollar amount or because the finding did not allow us to quantify the financial impact.

* We estimated the costs to the State as noted in individual chapters of this report.

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Chapter 1

CALIFORNIA CORRECTIONAL HEALTH CARE SERVICES: FAILURE TO SEEK COMPETITIVE BIDS, WASTE OF STATE FUNDS, AND IMPROPER ADVANCE PAYMENTS CASE I2013-0440

Results in Brief

In 2011 California Correctional Health Care Services (Correctional Health Care) began a project to upgrade the electrical infrastructure within state prisons. Some aspects of Correctional Health Care operate under the direction of a federal court-appointed receiver. As the entity exercising the powers vested in the Secretary of the California Department of Corrections and Rehabilitation (Corrections), Correctional Health Care generally must comply with state laws, regulations, and administrative policies that govern state contracting practices unless exempted from doing so by the federal court, which was not the case here. To achieve the electrical upgrades, Correctional Health Care employees decided to procure the necessary goods and services through a master agreement, which allows state agencies to procure certain services from approved contractors. However, the services that could be provided under this master agreement did not include the electrical goods and services that Correctional Health Care needed. Therefore, Correctional Health Care should have solicited bids from various vendors that could provide the necessary electrical goods and services or used another appropriate contracting method. Nevertheless, Correctional Health Care failed to do this and instead paid the contractor \$17 million for electrical goods and services that were outside the scope of the master agreement. Correctional Health Care has yet to pay an additional \$4 million in billings from the contractor.

Of the amount it has paid, Correctional Health Care wasted at least \$3.2 million by using a contractor that paid a subcontractor to perform all the work. The contractor generally charged Correctional Health Care an extra 25 percent of what it paid to the subcontractor as an administrative fee, even though the contractor did not perform any additional work or add any value.

Further, Correctional Health Care improperly paid the contractor \$1.6 million in advance for goods and services that the subcontractor did not provide until about a year later, which violated the State prohibition regarding advance payments. Finally, throughout the project Correctional Health Care had little assurance that it received adequate value for the amounts it paid because the invoices it received from the contractor contained only vague descriptions of

goods and services, and the employees responsible for reviewing the invoices failed to take any steps to ensure that Correctional Health Care was being properly billed for goods and services purchased and that they were actually delivered or performed.

Background

Correctional Health Care, which operates under the direction of a federal court-appointed receiver, maintains responsibility for providing adequate medical care to inmates throughout California's 34 adult prisons. More than 7,000 prison health care professionals, including doctors, nurses, pharmacists, and administrative staff, make up its ranks. To carry out its mission to provide adequate health care to inmates, Correctional Health Care often must procure various goods and services.

As the entity exercising the powers vested in the secretary of Corrections, Correctional Health Care generally must comply with state laws, regulations, and administrative policies that govern state contracting practices except to the extent that the federal court exempts it from doing so through the granting of a waiver, which was not the case in this situation. One such state law is section 10340 of the Public Contract Code, which generally requires state agencies to solicit competitive bids or proposals, allowing vendors an opportunity to compete for the State's business in a public manner. This type of competition promotes fairness, value, and the open disclosure of public purchasing, and few exceptions exist that allow a state agency to procure goods or services without competition.

The State allows the use of leveraged procurement agreements, which enables agencies to streamline purchases by removing repetitive and resource-intensive bid processes.

To help facilitate state agencies' efforts to procure goods and services while remaining in compliance with competitive bidding requirements, the State allows the use of leveraged procurement agreements, which enable agencies, including Correctional Health Care, to streamline purchases by removing repetitive and resource-intensive bid processes. A master agreement is one example of a statewide leveraged procurement agreement that is competitively bid by the California Department of General Services, but which is available for use by any state agency. Each master agreement establishes a prequalified list of vendors and simplifies the purchasing process for the user by defining fair and reasonable pricing for the provided goods or services.

One example of a master agreement is the California Integrated Information Network (CALNET) 2 contract, which is administered and overseen by the California Department of Technology (Technology). Technology established CALNET 2 to aid public entities in their efforts to procure telecommunication and data services.

Also, Correctional Health Care must abide by the *State Contracting Manual* (contracting manual), which prohibits advance payments. Specifically, volume 2, section 9.A2.o of the contracting manual states that agencies must not pay before services are performed or goods are received.

Correctional Health Care Avoided Competitive Bidding Requirements When It Procured Electrical Goods and Services

As early as 2008 Correctional Health Care learned that the electrical infrastructure within state prisons was insufficient to adequately support a new network dedicated to prison health care functions. Correctional Health Care also learned that the emergency power infrastructure within the prisons could not support key power outlets, leaving computers and devices dedicated to health care susceptible to power outages. To address the electrical deficiencies it discovered, in 2011 Correctional Health Care initiated a remediation project and decided to procure electrical goods and services from a contractor.

Instead of seeking competitive bids or proposals for these goods and services as required, Correctional Health Care opted to obtain the goods and services through a statewide master agreement known as CALNET 2. From 2012 through March 2015, Correctional Health Care procured electrical goods and services totaling \$17 million through this statewide agreement. As of May 2015 the contractor had billed Correctional Health Care for an additional \$4 million.

However, the electrical goods and services that Correctional Health Care procured were not within the scope of CALNET 2. Correctional Health Care procured the electrical goods and services under a section of CALNET 2 designated for “station wiring services.” Based on our review of CALNET 2, interviews with Correctional Health Care staff, and interviews with representatives from the contractor and the subcontractor, we determined that “station wiring services” included the installation of low-voltage telecommunication and data cables that connect to individual workstations, such as cubicles. This contrasted greatly with the scope of the electrical remediation project, which included installing hundreds of new power outlets and connecting them to prison emergency power supplies; repairing and upgrading circuit breakers; and purchasing and installing backup generators, transformers, and electrical panels. When we questioned a former Correctional Health Care official who initiated the electrical remediation project regarding some of those specific goods and services, she acknowledged that they were not within the scope of CALNET 2.

Instead of seeking competitive bids or proposals for these goods and services, Correctional Health Care opted to obtain the goods and services through a statewide master agreement known as CALNET 2. However, those goods and services were not within the scope of that contract.

More importantly, we consulted with Technology, which administers and oversees the use of CALNET 2, and its representatives confirmed that the electrical goods and services that Correctional Health Care procured did not fall within the scope of CALNET 2. Therefore, Correctional Health Care should not have used this master agreement. Instead, it should have used another procurement method, such as competitive bidding.

Nonetheless, Correctional Health Care did not even consider soliciting competitive bids. We interviewed the individuals involved in the decision to use CALNET 2 to procure the electrical goods and services, and they either stated that they could not recall whether they had considered soliciting bids or stated that they never seriously considered the idea. They generally acknowledged that it was easier and quicker to use CALNET 2 than to solicit competitive bids or proposals.

In addition to using an improper mechanism to obtain the electrical goods and services, Correctional Health Care failed to comply with the terms of the CALNET 2 master agreement. Specifically, one of the provisions of CALNET 2 states that when an agency wishes to procure certain goods and services that do not have defined prices in the master agreement, Technology must review the proposed projects and pricing to determine whether the proposed pricing methodology is adequate and feasible, and whether the service is within the scope of the agreement. Normally, the contractor submits this information to Technology in a letter along with other required documents, including a form that requires signatures from the contractor and Technology. However, in this instance neither the contractor nor Correctional Health Care submitted to Technology the signature form, or any information regarding the goods and services or the proposed pricing. Instead, the contractor submitted the letter and signature form to Correctional Health Care, leaving Technology unaware of the specifics concerning the project. Neither the contractor nor Correctional Health Care officials could explain why Technology was not informed. If Technology had reviewed the proposed information regarding the project, it may have identified that the proposed goods and services were outside the scope of CALNET 2.

Because the electrical goods and services were not included within the scope of CALNET 2, Correctional Health Care's use of this contract to procure \$17 million worth of goods and services was improper.

Because the electrical goods and services were not included within the scope of CALNET 2, Correctional Health Care's use of this contract to procure \$17 million worth of goods and services was improper. As described previously, Correctional Health Care had not received a waiver from the federal court from competitively bidding this type of project, and therefore should have used competitive bidding or another appropriate procurement method.

Correctional Health Care Wasted at Least \$3.2 Million When It Paid an Excessive Amount for the Electrical Goods and Services

We attempted to examine the reasonableness of the amount the contractor charged, and we found that Correctional Health Care significantly overpaid for the electrical goods and services. A key indicator that Correctional Health Care had overpaid was the fact that the contractor hired a subcontractor for the entire project. In fact, well before it decided to hire the contractor, Correctional Health Care was aware that the subcontractor would be performing all the work. We found that the contractor provided no value to the project beyond the work performed by the subcontractor and did not even participate in a final walkthrough of the project. The contractor mainly processed the subcontractor’s invoices and created its own invoices to submit to Correctional Health Care for payment. For these minimal administrative efforts, the contractor significantly marked up all of the subcontractor invoices, generally by 25 percent.

As illustrated in Figure 1, Correctional Health Care paid the contractor \$17 million for the electrical goods and services provided in the contract; however, the subcontractor billed the contractor only \$13.8 million, a difference of \$3.2 million.

Figure 1
Contractor’s \$3.2 Million Mark Up on the Invoices It Received From the Subcontractor
 (In Millions)



Sources: Correctional Health Care’s accounting records and the contractor’s accounting records.

Correctional Health Care might incur a total of \$4 million in wasted funds.

Although we cannot say with certainty how much the subcontractor or other qualified contractors would have bid on the project had Correctional Health Care solicited bids or used another appropriate contracting mechanism, we concluded that Correctional Health Care could have obtained the goods and services for at least as little as the amount the subcontractor charged the contractor. In fact, several staff members agreed that Correctional Health Care could have procured the goods and services for much less by contracting directly with the subcontractor. Thus, Correctional Health Care wasted at least \$3.2 million in its purchase of electrical goods and services. Further, if Correctional Health Care proceeds to pay the additional \$4 million that the contractor has billed to it, which is comprised of \$3.2 million paid to the subcontractor and \$831,676 for the contractor's minimal administrative efforts, it might waste the additional \$831,676. Thus, Correctional Health Care might incur a total of \$4 million in wasted funds.

Furthermore, evidence indicates that Correctional Health Care might have been able to obtain the electrical goods and services for less than the amount the subcontractor billed the contractor. One of the contractor's representatives indicated that the overall cost associated with the project was not based on an independent quote provided by either the contractor or the subcontractor. Instead, he stated that the cost was based on the funds available in Correctional Health Care's budget. Correctional Health Care provided the amount of the budgeted funds to the contractor, and then the contractor and subcontractor created their quotes for electrical goods and services based on the amount Correctional Health Care had communicated.

Moreover, we consulted several correctional staff with professional expertise who reviewed the amounts the contractor quoted and billed Correctional Health Care. These individuals stated that the amounts billed appeared to be significantly inflated. One of these staff, a licensed electrician who oversees prison construction projects for Corrections, estimated that some of the amounts the contractor charged Correctional Health Care were inflated by more than 400 percent. For example, the electrician reviewed the contractor's estimates for installing power outlets and connecting those outlets to emergency power supplies at two prisons. The contractor's quotes ranged from approximately \$25,000 to \$41,000 per outlet; however, the electrician estimated that the contractor could have completed the work for about \$5,000 per outlet. Thus, Correctional Health Care likely wasted even more than \$3.2 million for the electrical goods and services.

Correctional Health Care Violated State Policy by Paying for Goods and Services Nearly One Year Before They Were Delivered

Correctional Health Care violated a provision of the contracting manual when it prepaid \$1.6 million to the contractor for providing a large backup generator and other services at Chuckawalla Valley State Prison (CVSP). Although Correctional Health Care paid the bill in April 2014, we determined that the subcontractor did not even begin performing electrical services at CVSP until September or October 2014, nearly six months after Correctional Health Care had paid the invoice. The project manager, who was a consultant hired by Correctional Health Care, explained that he signed off on the work as being completed, knowing that the subcontractor would eventually complete it. Based on the timing of when Correctional Health Care had initially encumbered the funds, Correctional Health Care likely agreed to pay in advance for the work because the encumbered funds were going to expire and revert back to the State's General Fund. After we began inquiring about the work at CVSP, roughly a year after receiving the payment, the subcontractor finally completed the work and the contractor accounted for the prepaid funds.

Correctional Health Care Did Little to Ensure It Received Adequate Value for the Costs It Paid

Our investigation found that Correctional Health Care was fiscally irresponsible in its efforts to complete the electrical remediation work and showed little regard for the costs incurred on the project. Most notably, Correctional Health Care accepted and agreed to the contractor's initial price quotes that used lump-sum amounts with little detail regarding anticipated hours, hourly rates, and specific line items for materials. In addition, we were unable to locate evidence that, prior to our investigation, Correctional Health Care ever questioned the quoted amounts or took steps to ensure they were reasonable. Likewise, the contractor's billings contained lump-sum amounts with scant details. The official who initiated the project indicated that such bills were not acceptable. Nevertheless, neither she nor the two other managers who reviewed and approved the invoices requested additional details regarding the amounts the contractor billed before approving the bills for payment.

Correctional Health Care's prepayment of \$1.6 million for work to be performed at CVSP is a clear example of this fiscal irresponsibility. Correctional Health Care based the payment on a vague and somewhat undefined statement of work, which acted as the contractor's quote. It contained only very brief language describing the work to be performed: "Generators add CVSP 450 KW Backup Generator for prison complex for Emergency Backup for Medical."

Correctional Health Care violated state contracting rules when it prepaid \$1.6 million to the contractor for providing a large backup generator and other services at CVSP.

Based on that language alone, Correctional Health Care paid the contractor \$1.6 million, without any additional understanding regarding how the contractor calculated the amount, including how many generators were included and specifically what other goods and services had been or would be provided. In this particular case, as discussed in the previous section, the contractor had provided no goods or services at the time Correctional Health Care paid the bill.

Figure 2 depicts an example of the contractor's invoices, which led Correctional Health Care to pay nearly \$600,000 for design and engineering charges. Other than an additional sheet that noted that the charges were for *design and engineering*, the invoice contained no details regarding the number of hours worked, who worked them, or even to which prisons the charges related.

In addition, for the last several months of the project, Correctional Health Care did not have a project manager looking out for the interests of the State by verifying that the contractor had completed the work for which it was billing the State. Around December 2014 Correctional Health Care reassigned the consultant who had previously acted as the project manager to focus the majority of his time on another project. Although he estimated that he continued to spend approximately 20 percent of his time on the electrical remediation project, the subcontractor began compensating him for his time on this project instead of Correctional Health Care. Therefore, for the remaining five months of the project the State was left without a dedicated project manager to look out for its interests, and Correctional Health Care had less assurance that it received all of the goods and services for which it paid.

After we began questioning Correctional Health Care about its review of the contractor's invoices and the lack of detail contained in those invoices, Correctional Health Care began reviewing the invoices more closely. In fact, it has withheld payment for the final \$4 million until the contractor provides additional detail and support for the amounts billed.

Recommendations

To remedy the effects of the improper governmental activities substantiated by this investigation and to prevent them from recurring, we recommend that Correctional Health Care take the following actions:

- Develop a process to ensure that it uses master agreements to procure only goods and services that are within the scope of those agreements.
- Ensure that it or its contractor submits to Technology all projects that require Technology's review.

Figure 2
 Example of an Approved Invoice

Customer ID SV119952	Invoice Number 69001473	Invoice Date 09/20/2012	Customer Service [REDACTED]	[REDACTED]
Past Due \$0.00	Unapplied Payments & Adjustments \$0.00	Current Amount \$599,990.72	Total Amount Due US\$ 599,990.72	
			Payment Due Date 10/20/2012	

CPHCS [REDACTED] HERP
 ATTENTION TO: [REDACTED]
 [REDACTED]

STATEMENT SUMMARY (for period through 08/31/2012)

Current Month's Charges		
Usage Charges		\$0.00
Recurring Charges		\$0.00
Non-Recurring Charges		\$599,990.72
Discounts and Promotions		\$0.00
Taxes and Surcharges		\$0.00
Current Period Adjustments		\$0.00
Total Current Month's Charges		\$599,990.72
Past Due Amount		\$0.00
Unapplied Payments and Adjustments (not associated with an invoice)		\$0.00
Total Amount Due		US\$ 599,990.72

OK TO PAY
 [signature redacted]

DEC 10 2012

Page 1

If paying by mail, please return this section with your payment

Customer ID SV119952	Invoice Number 69001473	Payment Due Date 10/20/2012	Total Amount Due US\$ 599,990.72	Amount Enclosed [REDACTED]
--------------------------------	-----------------------------------	---------------------------------------	--	--------------------------------------

(For further information on how to pay please see other side)

RECEIVED
 SEP 20 2012

Source: California Correctional Health Care Services' accounting records.

- Ensure that it has received all of the goods and services for which it already paid the contractor, or for which it has been invoiced to pay by the contractor.
- Provide appropriate counseling and training to the staff and officials involved in project procurements so they are aware of the proper procedures for contracting and for reviewing and approving invoices, including ensuring that all goods and services have been received prior to paying contractors.
- Consider whether any disciplinary action is warranted.

Agency Response

In response to the report, Correctional Health Care contended that its employees acted in good faith in choosing to procure the electrical goods and services through the CALNET 2 contract. It explained that its staff operated with the understanding that the CALNET 2 section on “station wiring services” was written in such a way as to allow flexibility, including presumably using the section to procure extensive electrical services and equipment. However, this explanation contradicts evidence presented in our report. In particular, as we stated in the report, the former official who initiated the electrical remediation project was aware that some of the electrical goods and services Correctional Health Care procured were not within the scope of CALNET 2.

Correctional Health Care’s response did not address the \$3.2 million in wasteful spending for the contractor’s excessive mark-up or the improper advance payment of \$1.6 million.

Correctional Health Care concurred with our recommendations and indicated it has taken the following actions:

- It is training its staff regarding the specifications of CALNET 3, the subsequent agreement that will replace CALNET 2.
- It has implemented a process to ensure that it receives all of the goods and services for which it has already paid the contractor.
- It has trained appropriate staff so that they are aware of the proper procedures for contracting and for reviewing and approving invoices.
- It has determined that additional training was warranted for its staff rather than disciplinary action.

Chapter 2

CALIFORNIA DEPARTMENT OF TRANSPORTATION: FAILURE TO INCREASE RENTAL RATES, LOSS OF STATE REVENUE CASE I2014-1440

Results in Brief

The California Department of Transportation (Caltrans) failed to increase rental rates to reflect the fair market value for state land rented by wireless telecommunications companies in the San Francisco Bay Area (Bay Area), in violation of a provision in their license agreements. Caltrans' failure cost the State \$882,942 in rental revenue from July 1, 2012, through September 30, 2014. Unfortunately, Caltrans employees were unaware of the license agreement provision that allowed this increase and, therefore, failed to take action. By October 2014 Caltrans began the process of collecting some of the \$882,942 owed to the State by the telecommunications companies, although it is unable to show how much it has actually collected so far.

Background

Caltrans' Wireless Licensing Program (program) is responsible for renting certain state land to telecommunications companies. The program is responsible for renting land that is within the right-of-way areas of certain state highways, such as interstates 80, 280, 580, 880, and 980 in the Bay Area. In addition, Caltrans rents land located at Caltrans facilities, such as its maintenance yards, toll plazas, and park-and-ride lots. The telecommunications companies use the land to install telecommunications equipment, such as cellular towers, which provide voice and data service to their customers.

When renting land to telecommunications companies, Caltrans uses standard license agreements that have two parts. The larger part, known as the master license agreement, contains the majority of the license's terms and conditions. Caltrans has updated the master license agreement every few years since it was first created in 1997. The site license agreement, contained with each license agreement, specifically identifies the location of the rented site and contains all of the information unique to the site.

All license agreements used from May 2, 1997, through October 26, 2008, required that rental rates be increased by 3.5 percent each year until 2012. In addition, a provision in the license agreements required Caltrans and each telecommunications company to renegotiate the rental rate to reflect the fair market value as of July 1, 2012. If Caltrans and a telecommunications company could not agree on the fair market value, the license agreement provision required that they submit the matter to an appraiser, who then would make a binding determination regarding the rental rate. In practice, Caltrans uses a price list, described below, to determine how much to charge a telecommunications company for a site.

Caltrans bases the rental rates it charges the telecommunications companies on several factors. Caltrans places each telecommunications company in a price category based on the equipment and amount of space used. It also assigns each company to a category based on the population density and location. Almost all licenses in the Bay Area are located within the highest price category regarding density and location.

Caltrans has 12 district offices statewide, and it administers the program at the district level. The District 4 office in Oakland administers the program in the Bay Area. District 4 has two right of way agents who work with telecommunications companies to establish and extend license agreements when appropriate. Once an agreement is signed, they also ensure that each telecommunications company makes its rent payment. Their supervisor is responsible for overseeing the right-of-way agents' work related to the program as well as the work of several employees in various other Caltrans programs.

Caltrans Failed to Increase Rental Rates to Reflect Their Fair Market Value as of July 1, 2012

Our investigation found that Caltrans' failure to increase rental rates for telecommunications companies in the Bay Area cost the State \$882,942. For the 59 license agreements we reviewed, which were executed from May 2, 1997, through October 26, 2008, Caltrans charged the telecommunications companies the incorrect rental rates as of July 1, 2012. Instead of increasing each rental rate to reflect the fair market value, Caltrans increased the rental rates for the sites identified in Figure 3 by only 3.5 percent, the annual increase that it had previously applied in the earlier years of the license agreement, as described in the Background.

Caltrans' failure to increase lease rates for telecommunications companies in the Bay Area cost the State \$882,942.

Figure 3
 Location of Sites With Undercharged Rental Revenue



= Number of license agreements within an approximate geographic location.

Source: California State Auditor's analysis of license agreements from the California Department of Transportation.

According to Caltrans, the basis for determining fair market rental rates for existing license agreements as of July 1, 2012, should have been the rental rates that it charged telecommunications companies in the Bay Area that entered into new license agreements in 2012. Caltrans employs staff to determine the fair market rental rates for its properties located throughout the State. As shown in Table 2 on the following page, the fair market rental rates for new license agreements in 2012 were significantly higher than the rates that resulted from the telecommunications companies increasing their prior year's rental rates by only 3.5 percent. For example, Caltrans charged existing telecommunications companies with license agreements for large sites in high density locations in the Bay Area \$7,305 less per year than it should have charged. Similarly, Caltrans undercharged telecommunications companies with medium and small sites by \$6,297 and \$5,239 per year, respectively.

Table 2**Comparison of 2012 Annual Rental Rates for High Density Locations in the San Francisco Bay Area**

SIZE OF SITE*	RENTAL RATE WITHOUT RENEGOTIATION	RENTAL RATE AT FAIR MARKET VALUE†	UNDERCHARGED AMOUNT
Large	\$35,184	\$42,489	\$7,305
Medium	30,156	36,453	6,297
Small	25,128	30,367	5,239

Source: California Department of Transportation (Caltrans) license agreements.

* The cost of a site depended, in part, on the equipment and amount of space used by the telecommunications company.

† The fair market value is based on the rental rates that Caltrans would have charged the telecommunications companies in 2012 had they entered into new license agreements.

By failing to increase the rental rates for 59 license agreements to the correct amounts listed in Table 2, Caltrans cost the State a total of \$882,942 in rental revenue over the 27-month period from July 2012 through September 2014. Table 3 shows that, although the undercharged rent and number of affected license agreements have decreased slightly over time as some telecommunications companies have chosen to terminate their agreements for various reasons, the cost remained significant in 2014.

Table 3**Undercharged Rental Rates and the Number of Affected License Agreements in the San Francisco Bay Area by Year**

YEAR*	UNDERCHARGED RENT	NUMBER OF AFFECTED LICENSE AGREEMENTS
2012	\$329,227	57
2013	316,321	56
2014	237,394†	52
Totals	\$882,942	59‡

Source: Analysis of California Department of Transportation (Caltrans) accounting reports and license agreements.

* Each telecommunications company makes one annual rent payment for each site that is due by July 1 of each year.

† This amount consists of all undercharged rent as of September 30, 2014. After this date, Caltrans began taking remedial steps.

‡ Although the total number of license agreements with undercharged rent is 59, the number of these agreements varied from year to year.

Caltrans Employees Were Unaware of the Agreement Provision That Provided for the Rate Increase in 2012

Caltrans failed to increase license agreement rates beginning July 2012 because the two right-of-way agents, who were responsible for managing the agreements in District 4, were

unaware of the license agreement provision that required the renegotiation. Although these right-of-way agents were required to ensure that Caltrans received the appropriate amount of rent from the telecommunications companies, they were unfamiliar with all of the license agreement provisions regarding rate increases. They mistakenly believed Caltrans needed only to increase the rent by 3.5 percent each year throughout the entire term of each agreement. However, the 3.5 percent increase applied to every year except 2012. In 2012, the right-of-way agents should have charged the telecommunications companies a higher rate that reflected the fair market value of the licensed land.

The current supervisor of the two right-of-way agents, who began in that position in November 2012, was similarly unaware of the license agreement provision. In fact, he did not have detailed knowledge of their license agreement-related work and did not know how to calculate rental rates for tenants. Therefore, he could not verify the accuracy of rental rates. He simply received the information from the two right-of-way agents and relied on them for the accuracy of the rates.

Caltrans Has Begun the Process to Recover Some of the Undercharged Rent

By October 2014 Caltrans began to take action to remedy its failure to increase rental rates. Specifically, it began sending emails to the telecommunications companies notifying them that Caltrans had undercharged them for their license agreements from 2012 through 2014, and it requested prompt payment of the rent still owed. Similar to the analysis we performed, Caltrans based its new rental rates on the rates it charged telecommunications companies for new license agreements in 2012 and later. However, as of August 2015, Caltrans was unable to identify how much of the uncharged rent it had collected. In addition, we found that Caltrans' accounting records do not consistently and clearly show how much was actually owed to it in 2014. Moreover, our review of the same records showed that Caltrans still did not ensure that it charged the correct rental rates to the telecommunications companies as of July 1, 2015. For example, in July 2015 Caltrans charged one telecommunications company \$33,432 instead of the \$40,416 that it should have charged.

When we asked whether Caltrans would try to recover the undercharged rent from 2012 and 2013, it informed us that it would not seek recovery for those two years. Specifically, a Caltrans attorney and the office chief of Caltrans' real property services stated that Caltrans determined that the undercharged rental payments from 2012 and 2013 are uncollectable because of legal impediments resulting from Caltrans' failure to provide

Caltrans informed us that it would not seek recovery for the undercharged rental payments from 2012 and 2013.

timely notification to telecommunications companies of the new rental rates that reflected the fair market value. Thus, Caltrans lost the opportunity to collect \$645,548 that it failed to charge the telecommunications companies in 2012 and 2013.

Recommendations

To remedy the effects of the improper governmental activity substantiated in this report and to prevent it from recurring, Caltrans should take the following actions:

- Continue its efforts to recover the undercharged rent from the telecommunications companies.
- Ensure that accounting records accurately reflect the funds received and owed to Caltrans from the telecommunications companies.
- Establish a process and train the two District 4 right-of-way agents to ensure that they consistently adjust rental rates in accordance with license provisions. The process should include a method to calculate and notify each telecommunications company of its annual rental rate before the payment is due on July 1 of each year.
- Provide sufficient training to the supervisor in District 4 to ensure that he has a necessary understanding of the license provisions and process so he can provide adequate oversight to the program's right-of-way agents.

Agency Response

Caltrans reported in August 2015 that it agreed with the recommendations and would implement them. Specifically, Caltrans explained that it would continue with its effort to recover the undercharged rent from the telecommunications companies. In addition, it stated that it would ensure that the correct rates are used in an internal property management system, which would ensure that the correct amounts are reflected in the accounting records. Further, Caltrans reported that it would develop and provide training to its District 4 right-of-way agents who manage license agreements. Similarly, Caltrans stated it would provide training to its District 4 supervisor who is responsible for the program. The training will focus on provisions in the license agreements. Finally, Caltrans stated that it planned to complete the training for the right-of-way agents and supervisors by September 30, 2015.

Chapter 3

CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION AND CALIFORNIA CORRECTIONAL HEALTH CARE SERVICES: IMPROPER PAYMENTS CASE I2014-1011

Results in Brief

From January 2013 through November 2014, the California Department of Corrections and Rehabilitation (Corrections) and California Correctional Health Care Services (Correctional Health Care) improperly allowed three chief psychologists to receive extra compensation for being on call or for returning to work after their shifts ended to perform additional duties. As a result, the State overpaid these employees a total of \$96,245.

Background

Some staff at state prisons are required to be available for calls during their off hours (on-call) or to return to work to address mental-health needs of inmates after hours (call-back). Although many employees are required to perform these duties, only certain employees are permitted to receive extra compensation for these hours. For example, Bargaining Unit 19 (unit 19), the bargaining unit for psychologists and other health and social services employees, reached an agreement with the State that specifies only employees subject to the requirements of the Fair Labor Standards Act (FLSA), or “covered employees,” may earn extra compensation when called back to work.

In contrast, until December 2014, unit 19 employees who were not subject to FLSA requirements, or “exempt employees,” could not earn extra compensation for performing on-call or call-back duties. Thus, prior to December 2014, a chief psychologist, who is an exempt employee in unit 19, could be required to be on call or to perform call-back duties, but he or she would not receive any extra compensation for these hours.

In January 2015 the California Department of Human Resources authorized the State, effective December 2014, to pay certain exempt employees, including chief psychologists, additional compensation for being on call. Employees who are eligible to earn additional pay are typically given the option to earn either cash or compensating time off leave hours (CTO leave) for the additional hours worked.

August 2015

California Department of Corrections and Rehabilitation and

California Correctional Health Care Services

Three Chief Psychologists Received Extra Compensation to Which They Were Not Entitled for Being On Call or for Returning to Work After Hours

From January 2013 through November 2014, three chief psychologists provided on-call coverage and performed call-back duties but, according to their bargaining agreement in effect at the time, were improperly compensated. Employee A and Employee B worked at Prison 1, while Employee C worked at Prison 2. Although these employees provided on-call coverage and performed call-back duties in good faith based on staff telling them they would receive extra compensation, they nonetheless were not entitled to receive any additional pay or CTO leave hours during this period. For example, Employee A reported that he was on call for 10 days in August 2014. In return, he received 51.25 CTO leave hours. In another example, Employee C received \$1,619 for being on call for seven days in November 2014. In both these examples, neither employee was entitled to the additional pay or CTO hours. Table 4 lists the amounts each employee was overpaid or the hours improperly received for providing on-call coverage or performing call-back duties from January 2013 through November 2014.

Table 4
Three Chief Psychologists Received Compensation to Which They Were Not Entitled
January 2013 Through November 2014

EMPLOYEE	COMPENSATORY TIME OFF (CTO) HOURS IMPROPERLY CREDITED	AMOUNT OVERPAID IN CASH	VALUE OF CTO HOURS	TOTAL OVERPAYMENT
Employee A	886	\$5,754	\$49,557	\$55,311
Employee B*	319	22,766	0	22,766
Employee C	261	18,168	0	18,168
Totals	1,466	\$46,688	\$49,557	\$96,245

Source: California State Controller's Office payment and leave history reports.

* Employee B's overpayment represents the amount of CTO leave he received from January 2013 through November 2014. He cashed out all of his remaining CTO leave hours upon retirement in April 2015.

Of the 319 CTO leave hours Employee B was not entitled to receive, he used 88 hours in May, June, and November 2014 to take time off. Since he was also not entitled to use CTO hours he received during this period, he should have used 88 hours of leave from another category, such as annual leave. Like all other state employees, Employee B had the option to cash out his leave balances when he retired in April 2015. As a result of Employee B's failure to charge a leave category other than the CTO leave category to which he was not entitled, the accumulated leave he cashed out at retirement

was 88 hours higher than it should have been, representing an overpayment of \$6,293, which is reflected as part of the total overpayment shown in Table 4.

Prison Officials Continued to Authorize Improper Payments Despite Being Told That These Employees Could Not Earn Extra Compensation for On-Call or Call-Back Hours

We interviewed representatives at the two prisons where the three chief psychologists worked to determine why these employees received compensation to which they were not entitled. A high-level official (Official A) from Prison 1 reported that several years ago the prison had only one psychiatric employee who was allowed to perform on-call or call-back duties. As a result, Official A told us that this employee suffered the undue hardship of frequently being required to work his normal shift and then, without any break, be on call or perform call-back duties. According to Employee A, to alleviate the hardship on this employee, the former chief of mental health began allowing other psychologists to perform on-call or call-back duties. Employee A asserted that he began performing such duties on January 2013.

When asked about whether psychologists could perform on-call and call-back duties, Official A recalled that she and Employee B discussed this issue in early 2014 because psychologists had not performed these duties routinely in the past. To seek clarification, Employee B sought guidance from the prison's labor relations analyst. In January 2014 the labor relations analyst at Prison 1 advised Employee B that a provision for on-call and call-back pay in another bargaining unit (unit 16) agreement with the State applied to chief psychologists. After being told orally by the labor relations analyst in February 2014 that psychologists could receive CTO compensation to perform on-call duties, Official A formally approved the use of psychologists to cover on-call and call-back assignments. However, the former chief of mental health had been staffing on-call and call-back assignments with psychologists since January 2013, apparently without Official A's approval. The labor relations analyst stated that he based his advice on an oral confirmation he received from the Office of Labor Relations at Corrections that psychologists were entitled to receive CTO compensation for their on-call or call-back assignments. The labor relations analyst never documented any information to support his assertion that he received approval from Corrections.

In September 2014 a representative from the Office of Labor Relations at Corrections sent an email to the labor relations analyst stating that chief psychologists were not entitled to receive compensation for being on call. However, even after receiving this

Official A told us that a psychiatric employee from Prison 1 suffered the undue hardship of frequently being required to work his normal shift and then, without any break, be on call or perform call-back duties.

August 2015

California Department of Corrections and Rehabilitation and

California Correctional Health Care Services

email, Prison 1 continued to allow Employee A and Employee B to receive 175 hours of CTO leave from September through November 2014. Specifically, even though Employee B received a copy of the email, which stated that exempt employees are not entitled to on-call or call-back pay, he continued to submit time sheets that included his on-call and call-back time and, because he was Employee A's supervisor, he signed Employee A's time sheets reporting the on-call and call-back time as well.

At Prison 2, a high-level official (Official B) asserted that he was informed by his personnel staff that he had the authority to decide whether psychologists could receive on-call compensation. However, in emails on this subject between personnel and labor relations at Prison 2 sent between May and July 2014—of which Official B received a copy in July 2014—they shared the opinion that psychologists could not earn on-call compensation because the State's agreement with unit 19 did not allow for it. However, the personnel staff stated that they took their direction from Official B, who said they should continue to pay psychologists, including Employee C, at Prison 2 for being on call and performing call-back duties.

Recommendations

To recoup the payments and leave accumulations to which its employees were not entitled, Corrections and Correctional Health Care should take the following actions:

- Reduce the accumulated leave balances of Employee A by 886 hours. If his accumulated leave balances are not sufficient, offset any remaining hours against future accumulations of leave.
- For Employee B, who retired in April 2015, work with the California Public Employees' Retirement System and attempt to recoup the \$22,766 in CTO leave hours he cashed out but to which he was not entitled.
- Reduce the accumulated leave balances of Employee C by 261 hours. If his accumulated leave balances are not sufficient, offset any remaining hours against future accumulations of leave.
- Develop a policy requiring all labor relations analysts, including the labor relations analyst at Prison 1, to document any communications from the Office of Labor Relations at Corrections that affect employee compensation.

- Run a query of exempt positions related to the chief psychologist classification, such as clinical psychologists and senior psychologists, to determine whether any other exempt employees were improperly credited or paid for on-call or call-back assignments prior to December 2014, and seek recovery through reducing those employees' accumulated leave balances.

Agency Response

Corrections reported in July 2015 that it would coordinate with Correctional Health Care on a statewide level to determine whether employees were improperly credited with leave hours or paid for on-call assignments. Corrections also reported that it would take appropriate corrective action, including seeking repayment or reduction in leave accumulations, for employees who were improperly credited with leave hours. Finally, it reported that its Office of Labor Relations would remind labor relations staff throughout the State to verify that policies and contract provisions have been implemented prior to sharing the information with interested parties.

Correctional Health Care stated in July 2015 that it deferred to Corrections regarding the recovery of any leave accumulations to which employees A, B, and C were not entitled. In addition, Correctional Health Care reported that it is creating a unit within its human resources office to ensure that policies, procedures, and guidelines are uniformly applied and comply with applicable bargaining unit agreements and state laws and regulations. Further, Correctional Health Care reported that it is conducting on-call compliance reviews at three institutions.

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Chapter 4

CALIFORNIA DEPARTMENT OF WATER RESOURCES: FAILURE TO PROPERLY DISPOSE OF SURPLUS STATE PROPERTY, GIFT OF PUBLIC FUNDS CASE I2014-1398

Results in Brief

In August 2014 a field division chief (division chief) and a civil maintenance branch chief (maintenance manager) with the California Department of Water Resources (Water Resources) failed to follow the appropriate policies when disposing of accumulated surplus property. The maintenance manager recycled the property—which included usable copper wire with an estimated replacement value ranging from \$5,277 to \$7,916—without first notifying the branch in charge of property disposal, as required by Water Resources’ policy. This denied Water Resources or another state agency the opportunity to reuse the valuable copper wire. Further, the maintenance manager did not monitor the recycling company’s methods for assessing the value of the property. As a result, the recycler valued the property at only \$300, while we estimated that the recycled value of the copper wire portion of the surplus property was at least \$2,233. Finally, Water Resources made a prohibited gift of public funds to the recycler when it failed to promptly deposit the recycler’s \$300 check to Water Resources and instead returned it to the recycler.

Background

To ensure the appropriate disposal of all excess state-owned personal property, otherwise known as *surplus property*, the *State Administrative Manual* prescribes a process designed to maximize an item’s usefulness and value. Before Water Resources employees begin the State’s formalized process, they must first follow Water Resources’ internal process for identifying and disposing of surplus property.

ABOUT THE DEPARTMENT

The California Department of Water Resources (Water Resources) manages and protects California’s water.

- The State Water Project is Water Resources’ water storage and delivery system for California.
- The State Water Project includes a system of reservoirs, aqueducts, power plants, and pumping plants.
- Water Resources has five field divisions throughout the State that help manage the reservoirs, aqueducts, power plants, and pumping plants used to deliver water.

RELEVANT CRITERIA

- Government Code section 8547.2, subdivision (c), expressly provides that any activity by a state agency or employee that is economically wasteful of state resources is an improper governmental activity.
- *State Administrative Manual* section 3520 requires that prior to an agency’s disposal of any state-owned surplus property, the agency must obtain approval from the California Department of General Services.
- *State Administrative Manual* section 3520.9 requires that to the maximum extent possible, state agencies are required to recycle state-owned surplus property with no useful life remaining.
- California Constitution, Article 16, prohibits state employees from giving any public money or thing of value to any individual or corporation.

Sources: Water Resources’ website, California Constitution, Government Code, and *State Administrative Manual*.

Water Resources' policy defines surplus property as state-owned property that is no longer undergoing normal and continuous use or is outdated. Its policy also states that Water Resources is responsible for realizing any value in the surplus property and for seeking alternatives for its use rather than its disposal. When a field division identifies surplus property, it must report this information to the Facilities and Property Branch (property branch) located at headquarters. The property branch then determines whether another division within Water Resources can use the property and, if so, arranges for its transfer. If Water Resources cannot use the property, the property branch must submit a report identifying the available surplus property to the California Department of General Services (General Services), which oversees the State's surplus property program. In submitting this report to General Services, the property branch must identify how it plans to dispose of the property. Available disposal options include recycling, selling, or donating the property. Alternatively, Water Resources can transfer the property to another state agency.

If General Services informs Water Resources that the surplus property can be recycled, the field division with the surplus property makes arrangements for the property to be recycled. Figure 4 outlines the surplus property process at Water Resources and General Services.

Water Resources' policy states that any proceeds from recycling are state property, which must be deposited into Water Resources' accounts. The amount received in recycling proceeds depends on the type and weight of the property. Some items, such as copper metal, have a very high recycling value. When copper wire is recycled, the recycler calculates the recycling value of the wire based on the estimated portion of copper in the wire.

The Division Chief and Maintenance Manager Failed to Follow Water Resources' and State Policies When They Recycled Surplus Property

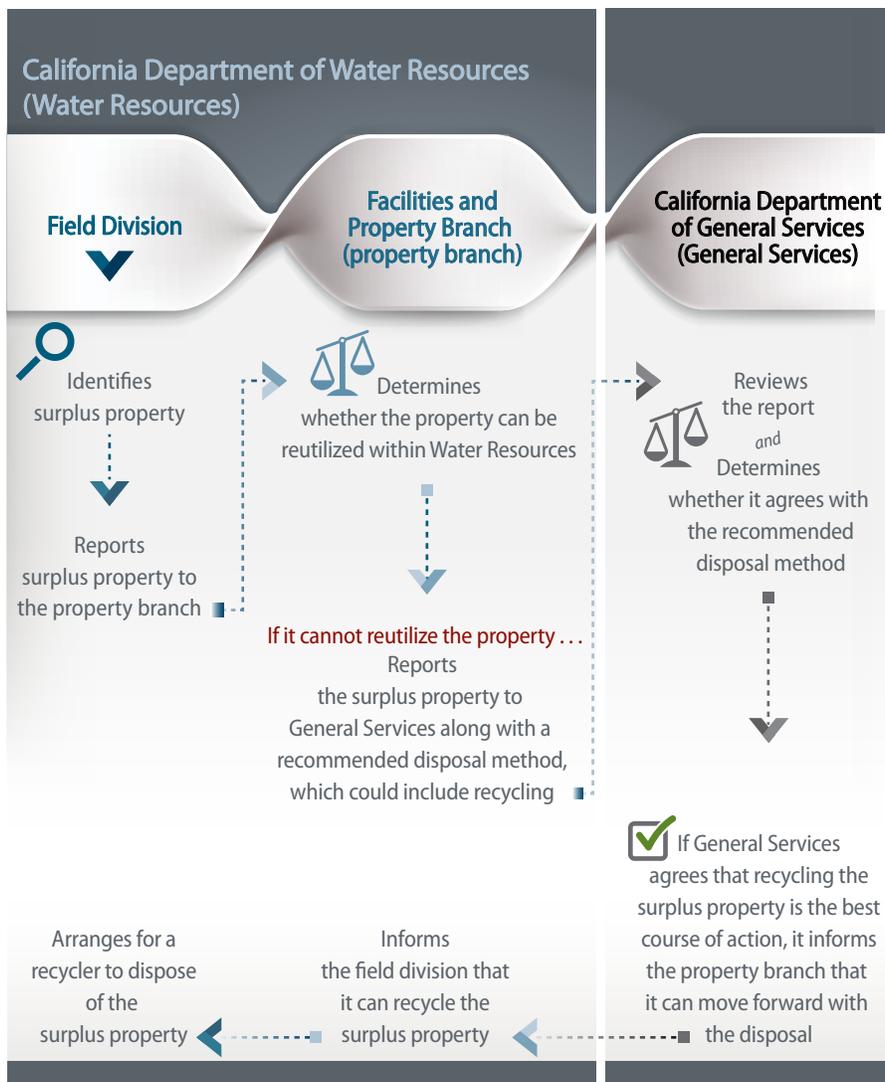
Around August 2014 the chief of utility operations directed the division chief at one of Water Resources' plants to clean up the field division's warehouse to make space for new equipment and other property. The division chief delegated this task to the maintenance manager. Water Resources employees identified 7,510 pounds of property, an estimated one-third of which was copper wire, as surplus property.

Because the maintenance manager had little experience with the administrative process for disposing of surplus property, she relied on the division chief's guidance regarding the required policies and procedures Water Resources should follow when disposing

Water Resources employees identified 7,510 pounds of property, an estimated one-third of which was copper wire, as surplus property.

of the property it no longer needed. However, the division chief mistakenly thought that the policies or procedures regarding surplus property applied only to valuable items that had an inventory tag. The division chief admitted that he knew the copper wire was valuable, but because the wire did not have inventory tags attached, he determined that the policies and procedures regarding surplus property did not apply. Therefore, based on the division chief's improper guidance, the maintenance manager recycled the copper wire without applying the proper surplus property policies and procedures.

Figure 4
 California Department of Water Resources' and California Department of General Services' Surplus Property Process



Source: California State Auditor's analysis of the surplus property process.

Field division management and staff who looked through the copper wire before it was recycled estimated that only 25 percent to 50 percent of the nearly 7,000 feet of copper wire was obsolete or unusable.

As a result, the maintenance manager did not prepare any of the required forms for the property branch or otherwise notify the property branch of her plan to dispose of the copper wire, as required by the surplus property procedures. Therefore, the property branch did not determine whether another division within Water Resources could use the copper wire. In addition, the property branch did not inform General Services of the field division's plans to recycle the wire. This prevented General Services from considering whether Water Resources' decision was appropriate, whether another state agency could use any of the wire, or whether it could auction the copper wire for a greater financial return than recycling would provide. As a result, the maintenance manager improperly recycled all of the copper wire. Figure 5 shows the wire recycled by the maintenance manager.

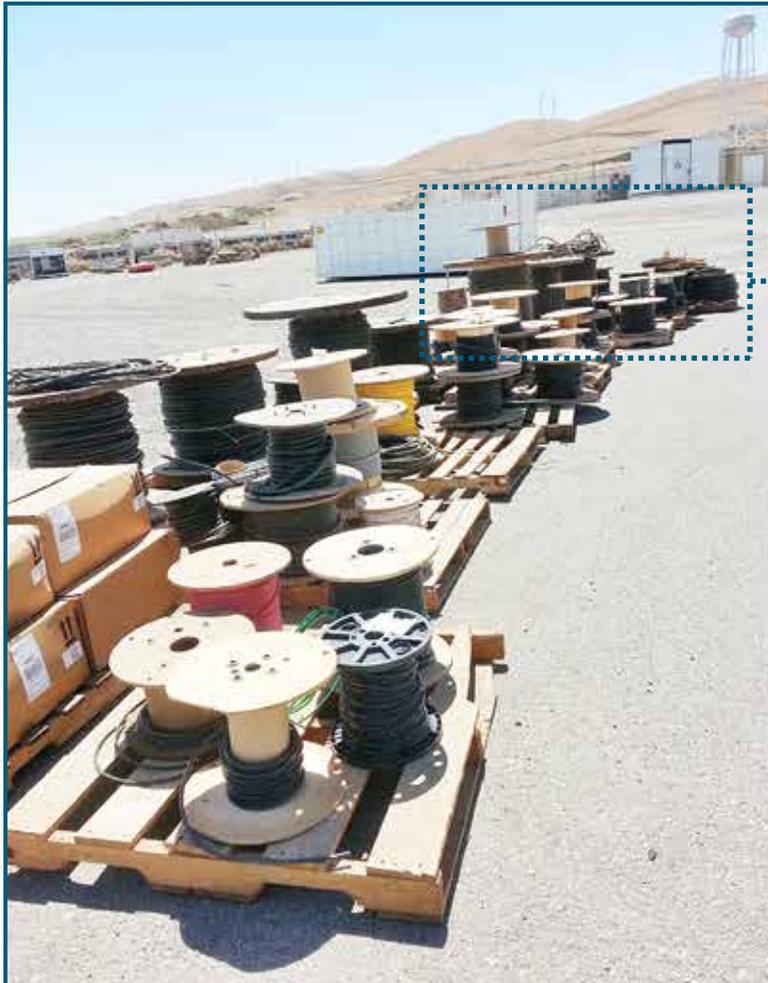
Field division management and staff who looked through the copper wire before it was recycled estimated that only 25 percent to 50 percent of the nearly 7,000 feet of copper wire was obsolete or unusable. Thus, another Water Resources division or state agency possibly could have used the rest of the wire. Nevertheless, based on that estimate and the current purchase price of the various recycled wire, we estimated that the cost to replace the wire that may have been reused totaled between \$5,277 and \$7,916.

The Maintenance Manager Failed to Obtain Fair Market Recycling Value for the Copper Wire

As described in the Background, the proceeds received when recycling property depend on the type and weight of the property, as some items have a very high recycling value. Therefore, to ensure that the State maximizes its recycling proceeds, Water Resources should have set apart the copper wire and instructed the recycler to weigh it separately prior to recycling. Unfortunately, the recycler weighed all of the surplus property as miscellaneous mixed scrap metal at a rate of just 4 cents per pound, instead of separately sorting and weighing the copper wire, which had a recycling value of at least \$2.55 per pound. As a result, the recycler paid the field division only \$300 for 7,510 pounds of recycled surplus property.

Water Resources likely would have received much more than \$300 if the maintenance manager had separated the valuable copper wire and asked the recycler to pay according to the applicable copper rates. To estimate how much Water Resources could have recovered by properly sorting and weighing the materials, we asked several experienced Water Resources employees to identify the type and weight of a large portion of the recycled wire. In addition, a reputable recycler's commercial manager explained that from the types of wire recycled, she would anticipate that the copper recovered from

Figure 5
Wire Recycled by the Civil Maintenance Branch Chief



Source: California Department of Water Resources' image, August 2014.

the wire after the recycler removed the wire's insulation to be no less than 40 percent of the initial weight. Using this information, we conservatively estimated that Water Resources should have received at least \$2,233 for recycling its copper wire. Figure 6 shows the calculation of the estimated fair market value of the recycled copper.

Figure 6

Calculation of Estimated Fair Market Value of the Recycled Copper Wire

$$\left(\begin{array}{l} \mathbf{2,189} \text{ pounds} \\ \text{Weight of Wire} \end{array} \right) \times \begin{array}{l} \mathbf{\$2.55} \text{ / pound} \\ \text{Copper Price} \end{array} \times \begin{array}{l} \mathbf{40\%} \\ \text{Copper Recovery Rate} \end{array} = \begin{array}{l} \mathbf{\$2,233} \\ \text{Estimated Recycling Value} \end{array}$$

Source: California State Auditor.

The Division Chief Improperly Returned the Recycling Proceeds to the Vendor, Which Constituted a Gift of Public Funds

In October 2014 the recycler sent the administrative manager a check for \$300 for the surplus property. The check was left on the desk of the business services supervisor to deal with when he began working at the field division two weeks later. The administrative manager stated that she did not know who placed the check on his desk. When the business services supervisor found the check on his desk when he started work, he recommended to the division chief that, since the amount was only \$300, the field division return the proceeds to the recycler. The division chief agreed with the recommendation, since the division was “never in it for the money” and the amount of the check was not “worth sending through the chain” due to the labor costs associated with processing checks. However, the process only entailed preparing a cover sheet and mailing it to headquarters along with the check and the recycler's weight receipts. Despite the apparent simplicity of the process, the division chief allowed the business services supervisor to return the check to the recycler. As a result, Water Resources failed to receive any compensation for recycling the valuable copper wire, and the division chief's return of the proceeds constituted a gift of public funds.

By not following Water Resources' or state policies regarding the disposal of state surplus property, Water Resources employees recycled 7,510 pounds of surplus property, including usable copper wire valued at between \$5,277 and \$7,916, without first determining whether another Water Resources division or state agency could have reused the wire. Furthermore, by failing to monitor the recycling company's methods for assessing the value of the wire, the maintenance manager failed to ensure that the State received the fair market value of the surplus property. As a result, the

recycler gave Water Resources only \$300 in recycling proceeds, while we estimated that the value of the copper wire had a recycled value of more than \$2,200. Finally, by failing to safeguard and deposit the recycler's check and instead returning it to the recycler, Water Resources made a prohibited gift of public funds to the recycler of \$300.

Recommendations

To address the improper activities identified in this report, Water Resources should take the following actions:

- Train the division chief, maintenance manager, administrative manager, and business services supervisor regarding the proper procedures for disposing of state-owned surplus property and for handling recycling proceeds.
- Establish a policy requiring valuable surplus property that will be recycled to be set apart and separately weighed to maximize the recycling proceeds.
- Develop an internal control process to ensure that each field division properly documents, tracks, safeguards, and promptly deposits all checks received into Water Resources' accounts.

Agency Response

Water Resources reported in July 2015 that it had begun to implement the recommendations. It intends to provide additional information by September 2015 regarding the specific actions it plans to take.

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Chapter 5

CALIFORNIA DEPARTMENT OF TRANSPORTATION: NEGLECT OF SUPERVISORY DUTIES, FAILURE TO MONITOR ATTENDANCE, APPROVAL OF INACCURATE TIME SHEETS CASE I2012-1655

Results in Brief

For 19 months a senior transportation engineer (Supervisor A) for the California Department of Transportation (Caltrans) neglected his duty to ensure that a subordinate engineer's (Employee 1) time sheets were accurate. Although Employee 1's time sheets indicated that he worked the day shift from August 2012 through March 2014, he actually was playing golf for part of 55 workdays during those months. In April 2014 the engineer was reassigned to a different division. Due to a lack of communication between Supervisor A and Supervisor B, Employee 1 was not directly supervised for an entire month from early May to early June 2014. Although Caltrans district management was unable to determine where Employee 1 was or how much work, if any, he actually performed during this month, a district manager directed Supervisor A to approve the engineer's time sheets during this month-long period.

Background

Caltrans develops and maintains California's transportation system. It employs transportation engineers who are responsible for all or a portion of the administration of a transportation construction contract. Engineers may be required to work in various locations and in staggered shifts during days and nights. Caltrans also employs senior transportation engineers, who act as first-line supervisors, responsible for varied and difficult transportation engineering work in the field or office and for the supervision of engineers and others engaged in transportation development activities. Senior transportation engineers may supervise subordinate engineers who work in various field offices on different projects.

California Code of Regulations, title 2, section 599.665, provides that state agencies must keep complete and accurate time and attendance records for all of their employees. Caltrans' policy requires employees to submit complete and accurate time sheets weekly at the close of business on Friday or on the last day they are scheduled to work in the week. It also requires supervisors to review and approve time sheets no later than the Tuesday of the

following workweek. Further, Caltrans' supervisors have a duty to ensure that the time sheets submitted by their subordinates are accurate.

A state employee's inexcusable neglect of duty, defined as "an intentional or grossly negligent failure to exercise due diligence in the performance of a known official duty"² is prohibited misconduct that constitutes grounds for discipline under Government Code section 19572, subdivision (d).

A Caltrans Supervisor Neglected His Duty to Monitor an Engineer's Attendance and Approved Inaccurate Time Sheets

For 19 months Supervisor A approved Employee 1's time sheets without knowing the specific hours he actually worked. Specifically, from August 2012 through March 2014, Employee 1 played golf on 55 workdays for an estimated four and a half hours each day during the hours he was supposed to be working and did not take leave. Employee 1 admitted to playing golf as much as possible but said he only golfed during the day on a weekday if he worked at night that week or if he had already accrued at least 40 hours for that workweek. Although it is common for an engineer to work an erratic schedule that varies from day to day depending on the project, when we reviewed the time sheets that Employee 1 submitted during the weeks that he also played golf, the time sheets showed that he regularly worked an eight-hour day shift, five days a week.

Caltrans' policy requires employees to submit complete and accurate time sheets. In addition, supervisors have a duty to know the work that their employees are performing and to approve the time sheets only if they accurately represent the hours worked or the leave used by the employees they supervise. However, Supervisor A approved all of Employee 1's time sheets, which had at least 55 discrepancies between the engineer's actual work hours on the days he played golf and those reflected on his time sheets.

Supervisor A did not keep track of the hours Employee 1 worked and did not require him to keep any records regarding the hours he worked. Supervisor A explained that if Employee 1 worked an eight-hour night shift following an eight-hour day shift, he was not required to work the next day. Although Supervisor A's subordinates were expected to tell him orally, via email, or via text message when they were working at night or on the weekend,

Supervisor A did not keep track of the hours Employee 1 worked and did not require him to keep any records regarding the hours he worked.

² Jack Tolchin (1996) SPB Dec. No. 96-04, page 11, citing *Gubser v. Dept. of Employment* (1969) 271 Cal. App.2d 240, 242.

Supervisor A admitted that he did not keep a record of this information and he could not accurately keep track of each of his 25 subordinates' work hours.

One option that would have allowed Supervisor A to keep track of Employee 1's hours was through the use of a Resident Engineer's Daily Report (daily report), in which an engineer indicates the times he or she began and ended work for the day. Although Supervisor A said he occasionally spot-checked his subordinates' daily reports, Employee 1 stated that he had not completed a daily report for any of his projects in 16 years. Furthermore, Employee 1 did not track the hours he worked and could not offer any explanation regarding how he could accurately state the hours that he worked, especially since he often submitted time sheets between two weeks and two months late.

Consequently, through Supervisor A's failure to exercise due diligence for 19 months in confirming the accuracy of Employee 1's time sheets before approving them, Supervisor A inexcusably neglected a duty of his position. Unfortunately, because neither Supervisor A nor Employee 1 kept accurate records of the hours Employee 1 actually worked, there is no way to prove whether Employee 1 truly worked the total number of hours that he reported on his time sheets.

Through Supervisor A's failure to exercise due diligence for 19 months in confirming the accuracy of Employee 1's time sheets before approving them, the supervisor inexcusably neglected a duty of his position.

A Caltrans District Manager Directed the Supervisor to Approve the Engineer's Time Sheets for a Month Without Assurance of the Time Sheets' Accuracy

On March 20, 2014, Caltrans district management transferred Employee 1 to a different division and directed him to report to Supervisor B no later than April 3, 2014. However, Employee 1 did not report to Supervisor B on that date; instead, he went on medical leave from April 4, 2014, until May 5, 2014. At the conclusion of his medical leave, Employee 1 reported to Supervisor B, who told him she was not ready for him to begin work. Employee 1 then stated that he would go back to his previous assignment under the direction of Supervisor A. Neither Supervisor B nor Employee 1 communicated this change in plans to Supervisor A. Employee 1 stated that for the next month he worked in his previous office reviewing plans for a possible future project. However, neither Supervisor A nor Supervisor B knew what Employee 1 was doing during this time because each thought that he was under the direction of the other supervisor. Employee 1 finally reported back to his new assignment with Supervisor B on June 5, 2014.

Because neither Supervisor A nor Supervisor B believed that Employee 1 was under his or her respective supervision, neither could verify the accuracy of the weekly time sheets that the engineer submitted for this one-month period. Although state law requires state agencies to ensure they keep accurate time and attendance records for each employee, a district manager instructed Supervisor A to approve the engineer's time sheets for the month of May 2014 without any assurance that the time sheets were accurate.

Recommendations

To remedy the effects of the improper governmental activity substantiated by this investigation and to prevent it from recurring, we recommend that Caltrans take the following actions:

- Take the appropriate disciplinary action to address Supervisor A's neglect of duty.
- Provide appropriate counseling and training to the district staff and management involved so that they are aware of the proper procedures of maintaining daily reports and recording, reviewing, and approving accurate time sheets.

Agency Response

Caltrans reported that Employee 1 retired in July 2015 and stated that it planned to place in his personnel file a letter acknowledging that he retired during an active investigation. In addition, Caltrans reported that Supervisor A planned to retire in August 2015 and stated that it would place a similar letter in his personnel file, acknowledging his retirement during an active investigation. Further, Caltrans stated that in June 2015, the district director issued a memorandum to all district employees, stating her expectation that by July 1, 2015, the district would comply fully with a Caltrans directive regarding the timely submission and approval of time sheets. Since then, Caltrans stated that the district had noticed improvement in the timely submission and approval of time sheets. Finally, Caltrans reported the district is implementing mandatory weekly submission of daily activity reports from all construction resident engineers to senior engineers and stated that noncompliance would be reported to district management.

Chapter 6

CALIFORNIA DEPARTMENT OF VETERANS AFFAIRS, CHULA VISTA VETERANS HOME: WASTE OF STATE FUNDS CASE I2015-0384

Investigative Results

The California Department of Veterans Affairs (Veterans Affairs), Chula Vista Veterans Home (home) wasted state funds when in July 2010 it purchased the Genie boom lift shown in Figure 7 for nearly \$50,000. During the past five years, the home rarely used the boom lift and instead could have rented it, saving thousands of dollars. An official at the home, who did not work there at the time of the purchase, explained that the home purchased the boom lift for \$49,937 after a finance and purchasing manager—who no longer works at the home—submitted a purchase request for the boom lift to use to change light bulbs in the home’s parking lot, maintain light fixtures, paint the home’s exterior walls, and trim trees. However, since the purchase five years ago, the home has used the lift for a total of only 16 hours, or an average of 3.2 hours per year.

Figure 7
Photograph of Genie Boom Lift



Source: Photograph provided by Chula Vista Veterans Home.

The official acknowledged that the home has a minimal need for the boom lift but stated that using it reduces safety and liability risks when home employees perform work in hard-to-reach areas. However, the official also acknowledged that he would

not have authorized purchasing the boom lift and would have rented one instead if he had worked at the home at the time of the purchase request. In fact, as of June 2015 the same vendor who sold the lift to the home also had a lift available for rent on a daily, weekly, or monthly basis, as shown in Table 5.

Table 5
Cost to Rent a 45-Foot Boom Lift

DURATION OF RENTAL*	COST OF RENTAL
Daily	\$259
Weekly	865
Monthly	2,244

Sources: Vendor records as of June 2015.

* The vendor also charges a delivery and pickup fee that totals \$170 for all rentals.

Renting the boom lift, rather than purchasing it, would have addressed the home's safety concerns, while also saving thousands of dollars during a time when the State was suffering from a significant budget crisis. If the home had rented a boom lift at the current daily rental rate for one day every year for its maintenance projects, it would have paid only \$429 annually, or \$2,145 during the last five years. Instead, the home spent \$49,937 and wasted more than \$47,000 to purchase a piece of equipment that sits idle virtually all of the time.

Recommendation

To recoup some of the wasted funds the home spent on purchasing the boom lift, Veterans Affairs should determine the boom lift's present-day value and consider either selling or auctioning it.

Agency Response

Veterans Affairs reported in July 2015 that it planned to promptly assess the current value of the boom lift and, if appropriate, take steps to dispose of the boom lift by sale or auction, in accordance with state policy.

Chapter 7

OTHER INVESTIGATIVE RESULTS

In addition to the investigations reported in the previous chapters, during the period from July 1, 2014, through June 30, 2015, the California State Auditor referred numerous complaints to state departments to investigate on our behalf in instances where they were best suited to conduct the investigation. Based on our evaluation of these investigations, four substantiated the occurrence of improper governmental activities by one or more state employees. The following identifies the improper governmental activities substantiated through these investigations.

Employment Development Department Case I2012-2137

An accounting officer at the Employment Development Department (EDD) in Sacramento misused state resources by using state equipment and materials to type and print a large volume of personal letters, emails, and other personal documents during her state work hours. In addition, the accounting officer used her position to improperly access EDD's database to adjust tax accounts and to obtain confidential information to assist friends, associates, and family members with their unemployment insurance claims.

The accounting officer's actions violated state laws related to the misuse of state resources. In particular, Government Code section 8314 prohibits state employees from using state resources, including state-compensated time and equipment, for private gain or personal purposes. Government Code section 19990, subdivision (b), prohibits state employees from using state time, facilities, equipment, or supplies for private gain or advantage. In addition, Government Code section 19990, subdivision (a), states that employees should not use the influence or prestige of the State for their own or another's private gain or advantage. Further, EDD requires its employees to sign confidentiality statements specifically acknowledging that wrongful access, use, or disclosure of confidential information is a crime under state laws. After we received a complaint that an EDD employee misused state resources, we requested EDD to investigate and report the findings of its investigation to us.

EDD reported that from as early as July 2012 the accounting officer in question frequently misused state equipment, supplies, and time. Specifically, it determined that she typed and printed more than 700 hundred pages of personal letters to one individual, as well as created numerous personal emails and other personal documents.

EDD's review of the accounting officer's email history over a five-month period in 2014 revealed that she sent from 30 to 97 personal emails on a daily basis.

According to EDD, the accounting officer used state equipment and materials to type and print the letters, each of which was between two and 26 pages long, as often as four times a day during her state-compensated work hours. EDD was unable to quantify the amount of time the accounting officer spent on personal matters; nevertheless, these personal matters unquestionably affected the performance of her normal job duties. In fact, EDD's review of the accounting officer's email history over a five-month period in 2014 revealed that she sent from 30 to 97 personal emails on a daily basis. In addition, EDD determined the accounting officer created myriad personal documents on her computer during her work hours, including letters to her attorney; résumés for herself, friends, and family; and children's homework assignments.

EDD also reported that the accounting officer used the prestige and influence of her position to assist friends and family who had pending unemployment and disability claims, and to adjust a family member's tax account. According to her email history, the accounting officer received Social Security numbers from these friends and family members. She then asked coworkers to search EDD's database for information on their unemployment insurance claims that is normally provided through EDD's public phone number. EDD did not find evidence suggesting that any EDD employees manipulated the database to allow friends and family members to receive more benefits than what they were already entitled to receive. However, the accounting officer's supervisor stated that EDD had not authorized the accounting officer to assist with unemployment insurance or disability insurance claims; therefore, her inquiries about these claims alone were inappropriate. One of the EDD employees who assisted the accounting officer stated that she looked up unemployment claim statuses "quite a few times" over the years at the behest of the accounting officer. The accounting officer also inappropriately accessed EDD's tax databases on numerous occasions to add notes on her sister's tax accounts, which violated an EDD policy that prohibited her from taking any action on a family member's account.

The accounting officer engaged in these activities even after receiving warnings about misusing state resources. Specifically, the accounting officer's supervisor had informally counseled her in the past about her low production at work because she "was busy doing too many personal things at work." In addition, the accounting officer's supervisor and manager orally warned her in October 2012 about misusing her state email for personal purposes.

When EDD questioned her, the accounting officer admitted to misusing state resources, accessing her sister's business tax account on multiple occasions, and requesting coworkers to access EDD's databases to assist friends and family. The accounting officer

acknowledged that she wrote personal letters and conducted personal business on state time using state resources. She also admitted that she used state email to conduct personal business in a manner that exceeded minimal and incidental use. In addition, she admitted to taking action on her sister's tax accounts. She further stated that she involved two other EDD employees in providing preferential treatment to her friends, family, and associates.

EDD served the accounting officer with an adverse action for dismissal from state service by mail in December 2014. However, before the dismissal became effective, she submitted her resignation. EDD stated that it would not include the adverse action in the accounting officer's personnel file because she resigned prior to its effective date. Consequently, the accounting officer's personnel file does not include any record of her improper activities. As of January 2015 the accounting officer had not been reappointed to another state agency, but she had applied for—and received—unemployment insurance benefits.

We recommended that to ensure state departments that are considering whether to hire the accounting officer are aware of her improper activities, EDD should determine what documentation, if any, it should place in her personnel file to indicate that she resigned while under investigation.

EDD reported in April 2015 that it appealed the decision to award unemployment insurance benefits to the accounting officer. Subsequently, the accounting officer's unemployment insurance benefits were denied. In addition, EDD reported in June 2015 that it placed a memorandum in the accounting officer's personnel file stating that it served her with a notice of dismissal in December 2014 and that she resigned from state service prior to its effective date.

Department of Industrial Relations Case I2012-1250

An office services supervisor for the Department of Industrial Relations (Industrial Relations) in Southern California misused state resources by using his state-compensated time and state email account to coordinate the sale of copied DVD movies and music CDs and to send and receive sexually suggestive emails during his work hours. The supervisor also misused state resources to print materials for a coworker's fitness studio using a state-owned printer.

EDD served the accounting officer with an adverse action for dismissal from state service by mail in December 2014, but she submitted her resignation before the dismissal became effective.

The supervisor sent and received numerous emails about DVD movies and music CDs he had for sale and sent and received emails containing sexually suggestive language.

The supervisor's actions violated state laws regarding the misuse of state resources. Specifically, Government Code section 8314 prohibits state employees from using state resources, including state-compensated time and equipment, for private gain or personal purposes. In addition, Government Code section 19990, subdivision (b), prohibits state employees from using state time, facilities, equipment, or supplies for private gain or advantage. When we received a complaint that the office services supervisor had used state resources to sell copied DVD movies, we asked Industrial Relations to investigate and report the results to us.

Industrial Relations determined that from about 2007 through October 2014, the supervisor misused his Industrial Relations email account for personal purposes. The supervisor sent and received numerous emails about DVD movies and music CDs he had for sale and sent and received emails containing sexually suggestive language. The emails about movies and music generally showed that customers sent the supervisor emails to his state email address asking about the availability of specific movies. The supervisor then replied using his state email to set up arrangements for payment. The emails included the names of the movies or music the customers had requested and usually their purchase prices. His emails showed that some customers asked to purchase up to 20 movies at a time. Industrial Relations also determined that the supervisor sent and received sexually suggestive emails during his state-compensated work hours. He sent these emails to, and received them from, his friends and coworkers. As a result of these activities, Industrial Relations determined the supervisor's use of his state email account for nonwork purposes constituted misuse.

In addition to coordinating the sales with his Industrial Relations email, the supervisor used state office space to sell the DVDs. Specifically, he maintained a catalog of available movies in a binder that he kept at work so that customers could browse through his existing inventory. Customers who wanted to view this catalog asked for it either from the supervisor or from other Industrial Relations staff if he was not available. The supervisor kept the binder in an easily accessible cabinet. Industrial Relations determined that the supervisor likely used the office's calendar desk to allow customers to view the catalog from about 2007 through July 2011. After Industrial Relations promoted him in August 2011, the supervisor allowed customers to browse his catalog in a private office. Although the supervisor asserted that he did not sell movies or music on state time or at the office, other employees reported that he conducted his transactions in an office conference room and that his customers regularly asked for the movie catalog. The use of office space, whether it be his cabinet, private office, or conference room, to sell DVD movies for personal gain was a misuse of state resources.

Further, Industrial Relations discovered that the supervisor misused an office printer for more than one and a half years to print materials to promote a coworker's fitness studio. Specifically, the supervisor used a color printer to print flyers, class schedules, and gift certificates at a coworker's request several times a month from October 2012 through June 2014.

Although Industrial Relations could not precisely identify the amount of state time the supervisor spent misusing state resources, he engaged in the various inappropriate activities previously discussed for seven years. When Industrial Relations interviewed the supervisor as part of the investigation, the supervisor denied misusing state resources; however, days after the interview the supervisor submitted his resignation.

Industrial Relations accepted the supervisor's resignation but opted to omit the details of his resignation from his state personnel file. Specifically, a few days after interviewing the supervisor on October 23, 2014, Industrial Relations signed an agreement with the supervisor that allowed him to resign without Industrial Relations placing any notice of adverse action in his personnel file. However, by not including in the supervisor's personnel file that he resigned while under investigation, Industrial Relations prevented other state agencies from knowing that the supervisor misused state resources if he were to apply for a position in state service. In December 2014 another state department appointed the supervisor to a position.

We recommended in March 2015 that to address the improper governmental activities substantiated by this investigation and to prevent similar activities from occurring in the future, Industrial Relations should take the following actions:

- To alert future state employers to the supervisor's improper activities, Industrial Relations should determine what documentation, if any, it should place in the supervisor's personnel file indicating that he resigned while under investigation.
- To ensure that employees limit their personal use of state resources to minimal and incidental use, Industrial Relations should remind employees of the prohibitions against misusing state resources, including time, email, and office space.

Industrial Relations responded to our recommendations in May 2015. It reported that after it learned the supervisor intended to resign in October 2014 but before it could take any formal disciplinary action, it executed a settlement agreement in which the supervisor agreed never to apply for employment with Industrial Relations or the Labor and Workforce Development Agency.

Although Industrial Relations could not precisely identify the amount of state time the supervisor spent misusing state resources, he engaged in the various inappropriate activities for seven years.

In addition, Industrial Relations reported that in cases of serious misconduct, it could place in an employee's personnel file a notice that the employee resigned while under investigation. However, Industrial Relations stated that it must weigh this option against an employee's collective bargaining rights and civil service rights. Consequently, in this instance Industrial Relations stated that it would not place any documentation in the supervisor's personnel file indicating that he resigned while under investigation. Finally, in June 2015 Industrial Relations sent email memoranda to all employees reminding them of Industrial Relations' electronic information and communication policies and the prohibited use of state resources for personal purposes.

California Department of Forestry and Fire Protection Case I2013-1902

A California Department of Forestry and Fire Protection (Cal Fire) senior personnel specialist misused state time by frequently arriving to work late without fully accounting for the missed time. In addition, her supervisor failed to ensure that the senior personnel specialist properly accounted for all of her missed time.

Several laws govern the use of state time, time reporting, and supervision of state employees. Government Code section 8314 prohibits state employees from using state resources, including state-compensated time, for personal purposes. California Code of Regulations, title 2, section 599.665, requires state agencies to maintain complete and accurate time and attendance records. Government Code section 19572, subdivision (d), states that inexcusable neglect of duty, which includes the duty to supervise, constitutes a cause for discipline.

Cal Fire estimated that from January 2014 through March 2015, the senior personnel specialist arrived to work late on 82 percent of her workdays.

We requested Cal Fire to investigate the complaint that a senior personnel specialist was misusing state time, and it determined that the senior personnel specialist regularly arrived to work 15 to 30 minutes late without charging leave hours. In fact, Cal Fire estimated that from January 2014 through March 2015, the senior personnel specialist arrived to work late on 82 percent of her workdays. She asserted that she regularly worked through her lunch break to account for being late and calendared which days she worked through her lunch break; however, after reviewing her calendar, Cal Fire found that she did not always work through her lunch break when she arrived late. Cal Fire determined the senior personnel specialist failed to account for 32 hours of leave, at a cost to the State of at least \$848.

In addition, the supervisor did not provide sufficient and proper supervision, which contributed to the senior personnel specialist not accounting fully for her tardiness. The supervisor did not know how much time the employee had missed as a result of arriving late to work. He stated that he relied on her “word” that she made up the time when she was late arriving to work, but he did not require the senior personnel specialist to notify him each time she actually arrived at work and left for the day, or verify that she made up the time when she was late.

The supervisor also did not reinforce office expectations for arriving to work on time and had not given the senior personnel specialist any performance evaluations during his six years as her supervisor. The supervisor stated that in 2013 he issued the senior personnel specialist a letter of warning about arriving to work late, but she continued her habitual tardiness without any follow-up action from him. In addition, in September 2013 each staff member in the office was given a memorandum to review and sign, which outlined the expectations for attendance and how to report tardiness. The specialist did not sign the memorandum because she expected to discuss it with her supervisor. However, she and the supervisor never reviewed and discussed the expectations. Consequently, Cal Fire concluded that the supervisor’s neglect of duty and failure to provide adequate supervision and corrective counseling enabled the senior personnel specialist’s time and attendance abuse to continue by not ensuring the time sheets he signed were an accurate reflection of the senior personnel specialist’s time worked.

Cal Fire reported in May 2015 that it has started taking disciplinary action against the senior personnel specialist and plans to complete its action by December 2015. However, as of June 2015, it had not taken any disciplinary action against the supervisor.

We recommended that Cal Fire should take the following actions:

- Take disciplinary action against the senior personnel specialist to ensure that she fully and accurately accounts for her time.
- Recover \$848 for the 32 hours of leave the senior personnel specialist did not use for being late during the period of investigation.
- Require the supervisor to provide the senior personnel specialist with a formal annual performance evaluation so that both parties understand office expectations for arriving to work on time and for reporting absences and tardiness.

The supervisor did not reinforce office expectations for arriving to work on time and had not given the senior personnel specialist any performance evaluations during his six years as her supervisor.

- Take disciplinary action against the supervisor to ensure that he properly supervises his employees and ensures they are fully and accurately accounting for their time.

Cal Fire reported in July 2015 that it agreed with the recommendations. In addition, Cal Fire stated that it suspended the senior personnel specialist for one week and stated that it was working to recover the 32 hours of leave that she failed to use. It also stated that the senior personnel specialist appealed the suspension. Further, management in the office where the senior personnel specialist works has shared with all staff its expectations about arriving to work on time and about reporting absences and tardiness. Finally, Cal Fire reported that it issued a letter of warning to the supervisor.

EDD

Case I2013-0082

An employment program representative at EDD misused her state computer, state phone line, and state-compensated time for personal purposes. These actions violated Government Code section 8314, which prohibits the use of public resources for personal purposes that exceed minimal and incidental use.

EDD determined that the employee frequently used her state time and computer to browse the Internet throughout her workday. The employee initially denied this finding, but EDD determined that the employee's Internet usage history refuted her denial. It showed the employee browsing sites such as a foreign-language news site, a banking site, and other online shopping sites.

In addition to using her state computer to browse the Internet, the employee frequently made personal phone calls at her desk.

In addition to using her state computer to browse the Internet, the employee frequently made personal phone calls at her desk. The employee's job is to answer calls from EDD claimants about their unemployment insurance claims; thus, she is required to be available to answer work-related calls throughout the day. To ensure employees are available to perform this job, the policy in the office where the employee works prohibits personal calls at the respective employee's desk. In cases of emergency, EDD instructs the employees in this office to provide the main office number for family members to call. EDD interviewed three individuals who stated that they frequently observed the employee taking and making personal phone calls at her desk and that these calls were disruptive to the work environment. The employee denied taking personal phone calls and insisted she was merely listening to music and singing along with the music on her mobile phone. However, coworkers observed the employee speaking to her cell phone as if she was having a conversation rather than singing. EDD had

warned the employee in January 2014 and again in April 2014 about frequently making personal calls during her workday. EDD also had warned the employee in July 2014 about her misuse of state time. Despite these warnings, the employee's misuse of public resources continued.

We recommended that EDD should pursue appropriate disciplinary action against the employee to ensure that she discontinues misusing public resources.

EDD responded in July 2015 that it agreed with our recommendation and that it takes very seriously the misuse of state equipment and state time for personal purposes by any of its employees. In addition, EDD stated that it was reviewing the matter and would take appropriate administrative action.

Respectfully submitted,



ELAINE M. HOWLE, CPA
State Auditor

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Appendix

THE INVESTIGATIONS PROGRAM

The California Whistleblower Protection Act (whistleblower act) authorizes the California State Auditor (state auditor) to investigate allegations of improper governmental activities by state agencies and employees. Contained in the Government Code, beginning with section 8547, the whistleblower act defines an improper governmental activity as any action by a state agency or employee during the performance of official duties that violates any state or federal law; is economically wasteful; or involves gross misconduct, incompetence, or inefficiency.

To enable state employees and the public to report suspected improper governmental activities, the state auditor maintains a toll-free Whistleblower Hotline (hotline) at (800) 952-5665. The state auditor also accepts reports of improper governmental activities by mail and over the Internet at www.auditor.ca.gov.

The whistleblower act provides that the state auditor may independently investigate allegations of improper governmental activities. In addition, the whistleblower act specifies that the state auditor may request the assistance of any state entity in conducting an investigation. After a state agency completes its investigation and reports its results to the state auditor, the state auditor's investigative staff analyzes the agency's investigative report and supporting evidence and determines whether it agrees with the agency's conclusions or whether additional work must be done.

Although the state auditor conducts investigations, it does not have enforcement power. When it substantiates an improper governmental activity, the state auditor confidentially reports the details to the head of the state agency or to the appointing authority responsible for taking corrective action. The whistleblower act requires the agency or appointing authority to notify the state auditor of any corrective action taken, including disciplinary action, no later than 60 days after transmittal of the confidential investigative report and monthly thereafter until the corrective action concludes.

The whistleblower act authorizes the state auditor to report publicly on substantiated allegations of improper governmental activities as necessary to serve the State's interests. The state auditor may also report improper governmental activities to other authorities, such as law enforcement agencies, when appropriate.

Improper Governmental Activities Identified by the State Auditor

Since 1993, when the state auditor activated the hotline, it has identified improper governmental activities totaling \$575.4 million. These improper activities include theft of state property, conflicts of interest, and personal use of state resources. For example, the state auditor reported in March 2014 that the Employment Development Department failed to participate in a key aspect of a federal program that would have allowed it to collect an estimated \$516 million owed to the State in unemployment benefit overpayments between February 2011 and September 2014. The investigations have also substantiated improper activities that cannot be quantified in dollars but have had negative social impacts. Examples include violations of fiduciary trust, failure to perform mandated duties, and abuse of authority.

Corrective Actions Taken in Response to Investigations

The chapters of this report describe the corrective actions that departments implemented on individual cases that the state auditor completed from July 2014 through June 2015. Table A summarizes all of the corrective actions that departments took in response to investigations between the time that the state auditor opened the hotline in July 1993 until June 2015. In addition to the corrective actions listed, these investigations have resulted in many departments modifying or reiterating their policies and procedures to prevent future improper activities.

Table A
Corrective Actions
July 1993 Through June 2015

TYPE OF CORRECTIVE ACTION	TOTALS
Convictions	12
Demotions	22
Job terminations	87
Resignations or retirements while under investigation*	16
Pay reductions	55
Reprimands	324
Suspensions without pay	27
Total	543

Source: California State Auditor (state auditor).

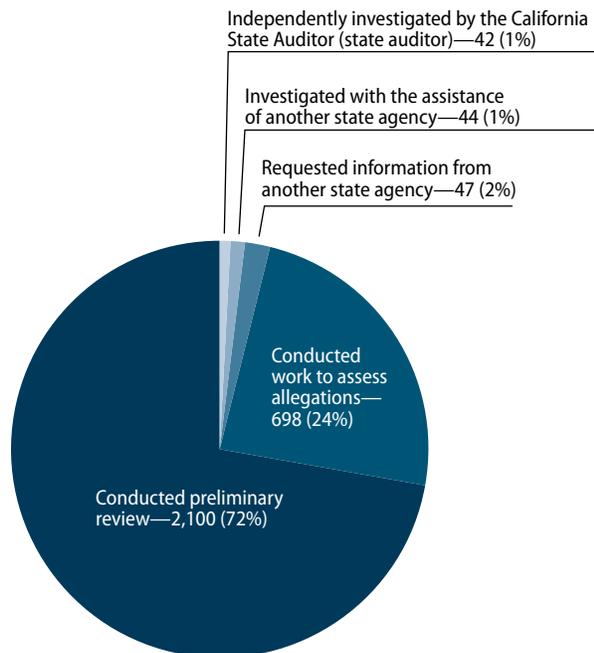
* The number of resignations or retirements consists of those that occurred during investigations that the state auditor has completed since 2007.

The State Auditor’s Investigative Work From July 2014 Through June 2015

The state auditor receives allegations of improper governmental activities in several ways. From July 1, 2014, through June 30, 2015, the state auditor received 1,207 calls or inquiries. Of these, 510 came through the state auditor’s website, 454 through the mail, 237 through the hotline, three through individuals who visited the state auditor’s office, and three were generated internally. When the state auditor determined that allegations were outside its jurisdiction, it referred the callers and inquirers to the appropriate federal, local, or state agencies, when possible.

During this one-year period, the state auditor conducted investigative work on 2,931 cases that it opened either in previous periods or in the current period. As Figure A shows, after conducting a preliminary review of these allegations, the state auditor’s staff determined that 2,100 of the 2,931 cases lacked sufficient information for investigation. For another 698 cases, the staff conducted work—such as analyzing available evidence and contacting witnesses—to assess the allegations. In addition, the staff requested that state departments gather information for 47 cases to assist in assessing the validity of the allegations. The state auditor’s staff investigated 44 cases with assistance from other state agencies and independently investigated 42 cases.

Figure A
Status of 2,931 Cases
July 2014 Through June 2015



Source: State auditor.

Of the 42 cases the state auditor independently investigated, it substantiated an improper governmental activity in 16 of the investigations it completed during the period and conducted follow-up work for nine cases it had publicly reported previously. In addition, the state auditor conducted analyses of the 44 investigations that state agencies conducted under its direction. It substantiated an improper governmental activity in 16 of the investigations completed by the state agencies and conducted follow-up work for seven cases it had publicly reported previously. The results of 10 investigations with substantiated improper governmental activities appear in this report.

Index

DEPARTMENT/AGENCY	CASE NUMBER	ALLEGATION	PAGE NUMBER
California Correctional Health Care Services	I2013-0440	Failure to seek competitive bids, waste of state funds, and improper advance payments	7
	I2014-1011	Improper payments	23
Corrections and Rehabilitation, California Department of	I2014-1011	Improper payments	23
Employment Development Department	I2012-2137	Misuse of state resources	43
	I2013-0082	Misuse of state resources	50
Forestry and Fire Protection, California Department of	I2013-1902	Misuse of state time	48
Industrial Relations, Department of	I2012-1250	Misuse of state resources	45
Transportation, California Department of	I2012-1655	Neglect of supervisory duties, failure to monitor attendance, approval of inaccurate time sheets	37
	I2014-1440	Failure to increase rental rates, loss of state revenue	17
Veterans Affairs, California Department of	I2015-0384	Waste of state funds	41
Water Resources, California Department of	I2014-1398	Failure to properly dispose of surplus state property, gift of public funds	29