# Implementation of State Auditor's Recommendations

Audits Released in January 2007 Through December 2008

Special Report to
*Senate Budget and Fiscal Review Subcommittee #2—Resources, Environmental Protection, Energy and Transportation*

February 2009 Report 2009-406 S2

CALIFORNIA STATE AUDITOR

The first five copies of each California State Auditor report are free. Additional copies are $3 each, payable by check or money order. You can obtain reports by contacting the Bureau of State Audits at the following address:

California State Auditor
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, California 95814
916.445.0255 or TTY 916.445.0033

OR

This report is also available on the World Wide Web http://www.bsa.ca.gov

The California State Auditor is pleased to announce the availability of an on-line subscription service. For information on how to subscribe, please contact the Information Technology Unit at 916.445.0255, ext. 456, or visit our Web site at www.bsa.ca.gov.

Alternate format reports available upon request.



For questions regarding the contents of this report,
please contact Margarita Fernández, Chief of Public Affairs, at 916.445.0255.

Elaine M. Howle
State Auditor
Doug Cordiner
Chief Deputy

# CALIFORNIA STATE AUDITOR
## Bureau of State Audits

555 Capitol Mall, Suite 300 Sacramento, CA 95814 916.445.0255 916.327.0019 fax www.bsa.ca.gov

February 24, 2009 2009-406 S2

The Governor of California
Members of the Legislature
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

The Bureau of State Audits presents its special report for the Senate Budget and Fiscal Review Subcommittee No. 2—Resources, Environmental Protection, Energy and Transportation. This report summarizes the audits and investigations we issued during the previous two years that are within this subcommittee's purview. This report includes the major findings and recommendations, along with the corrective actions auditees reportedly have taken to implement our recommendations. To facilitate the use of the report we have included a table that summarizes the status of each agency's implementation efforts based on its most recent response.

This information is also available in a special report that is organized by policy areas that generally correspond to the Assembly and Senate standing committees. This special policy area report includes an appendix that identifies monetary benefits that auditees could realize if they implemented our recommendations, and is available on our Web site at www.bsa.ca.gov. Finally, we notify auditees of the release of these special reports.

Our audit efforts bring the greatest returns when the auditee acts upon our findings and recommendations. This report is one vehicle to ensure that the State's policy makers and managers are aware of the status of corrective action agencies and departments report they have taken. Further, we believe the State's budget process is a good opportunity for the Legislature to explore these issues and, to the extent necessary, reinforce the need for corrective action.

Respectfully submitted,

Elaine M. Howle

ELAINE M. HOWLE, CPA
State Auditor

# Contents

# Introduction

This report summarizes the major findings and recommendations from audit reports we issued from January 2007 through December 2008, that relate to agencies and departments under the purview of the Senate Budget and Fiscal Review Subcommittee No. 2—Resources, Environmental Protection, Energy and Transportation. The purpose of this report is to identify what actions, if any, these auditees have taken in response to our findings and recommendations. We have placed this symbol ➲ in the margin of the auditee action to identify areas of concern or issues that we believe an auditee has not adequately addressed.

For this report, we have relied upon periodic written responses prepared by auditees to determine whether corrective action has been taken. The Bureau of State Audits' (bureau) policy requests that the auditee provides a written response to the audit findings and recommendations before the audit report is initially issued publicly. As a follow-up, state law requires the auditee to respond at least three times subsequently: at 60 days, six months, and one year after the public release of the audit report. However, we may request an auditee to provide a response beyond one year or we may initiate a follow-up audit if deemed necessary.

We report all instances of substantiated improper governmental activities resulting from our investigative activities to the cognizant state department for corrective action. These departments are required to report the status of their corrective actions every 30 days until all such actions are complete.

Unless otherwise noted, we have not performed any type of review or validation of the corrective actions reported by the auditees. All corrective actions noted in this report were based on responses received by our office as of January 2009. The table below summarizes the number of recommendations along with the status of each agency's implementation efforts based on its most recent response related to audit reports the office issued from January 2007 through December 2008. Because an audit report and subsequent recommendations may crossover several departments, they may be accounted for on this table more than one time. For instance, the E-Waste Report, 2008-112, is reflected under the California Highway Patrol, Department of Motor Vehicles, Department of Toxic Substances Control, Department of Transportation, and the Waste Management Board.

| | | FOLLOW-UP RESPONSE | | | STATUS OF RECOMMENDATION | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | INITIAL RESPONSE | 60-DAY | SIX-MONTH | ONE-YEAR | FULLY IMPLEMENTED | PARTIALLY IMPLEMENTED | PENDING | NO ACTION TAKEN | PAGE NUMBERS |
| **Resources, Environmental Protection, Energy and Transportation** | | | | | | | | | |
| **Air Resources Board** | | | | | | | | | |
| Carl Moyer Program Report 2006-115 | | | | ● | 3 | 1 | 0 | 0 | 3 |
| **California Environmental Protection Agency** | | | | | | | | | |
| Investigations Report I2008-2 [I2008-0678] | ● | | | | 0 | 2 | 0 | 0 | 11 |
| **Department of Conservation** | | | | | | | | | |
| Investigations Report I2007-1 [I2006-0908] | | | | ● | 1 | 1 | 0 | 0 | 13 |
| **Department of Fish and Game** | | | | | | | | | |
| Cosco Busan Report 2008-102 | | ● | | | 0 | 2 | 4 | 0 | 17 |
| Bay-Delta Stamp Report 2008-115 | | ● | | | 0 | 3 | 0 | 0 | 23 |
| **California Highway Patrol** | | | | | | | | | |
| Investigations Report I2007-2 [2007-0715] | | ● | | | 1 | 0 | 0 | 0 | 27 |
| CHP Contracting Report 2007-111 | | | ● | | 1 | 2 | 0 | 0 | 29 |
| E-Waste Report 2008-112 | ● | | | | 0 | 0 | 1 | 0 | 37 |
| **Department of Motor Vehicles** | | | | | | | | | |
| E-Waste Report 2008-112 | ● | | | | 0 | 0 | 3 | 0 | 37 |
| **Department of Toxic Substances Control** | | | | | | | | | |
| E-Waste Report 2008-112 | ● | | | | 0 | 0 | 1 | 0 | 37 |
| **Department of Transportation** | | | | | | | | | |
| Grade Separation Program Report 2007-106 | | | | ● | 0 | 1 | 0 | 0 | 43 |
| E-Waste Report 2008-112 | ● | | | | 0 | 0 | 2 | 0 | 37 |

*continued on next page . . .*

| | | FOLLOW-UP RESPONSE | | | STATUS OF RECOMMENDATION | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | INITIAL RESPONSE | 60-DAY | SIX-MONTH | ONE-YEAR | FULLY IMPLEMENTED | PARTIALLY IMPLEMENTED | PENDING | NO ACTION TAKEN | PAGE NUMBERS |
| **Waste Management Board** | | | | | | | | | |
| E-Waste Report 2008-112 | ● | | | | 0 | 0 | 1 | 0 | 37 |
| **Department of Water Resources** | | | | | | | | | |
| Flood Protection Corridor Report 2007-108 | | | | ● | 3 | 0 | 2 | 0 | 45 |

To obtain copies of the complete audit reports, access the bureau's Web site at www.bsa.ca.gov or contact the bureau at (916) 445-0255 or TTY (916) 445-0033.

# The Carl Moyer Memorial Air Quality Standards Attainment Program

## Improved Practices in Applicant Selection, Contracting, and Marketing Could Lead to More Cost-Effective Emission Reductions and Enhanced Operations

**REPORT NUMBER 2006-115, JUNE 2007**

***State Air Resources Board and local air districts' responses as of June 2008***

The Carl Moyer Memorial Air Quality Standards Attainment Program (Moyer Program) is an incentive program offered by the State Air Resources Board (state board) in conjunction with participating air pollution control districts and air quality management districts (collectively, local air districts). The Moyer Program provides funds to help private companies, public agencies, and individuals undertake projects to retrofit, repower, or replace existing engines to reduce pollution emissions beyond what is required by law or regulations. A local air district can fund a project that provides cost-effective emission reductions. Emission reductions are considered cost-effective when the cost to reduce one ton of emissions is at or below the cost ceiling imposed by the state board.

The Joint Legislative Audit Committee asked the Bureau of State Audits to review how the state board and key local air districts manage the Moyer Program. We limited our review to the four largest districts in terms of the Moyer Program funds they received—the Bay Area Air Quality Management District (Bay Area air district), Sacramento Metropolitan Air Quality Management District (Sacramento Metropolitan air district), San Joaquin Valley Unified Air Pollution Control District (San Joaquin Valley air district), and South Coast Air Quality Management District (South Coast air district). In addition to the findings and recommendations discussed below, we also examined the policies and procedures of the state board and the local air districts; the state board's use of liaisons to the local air districts and desk audits of reports from the local air districts to monitor their Moyer Programs; the high cancellation rate at one entity relative to others; the availability of Moyer Program funds to projects operating in multiple air districts; the project inspections local air districts conduct; monitoring of projects after they have been implemented; and the length of time it takes local air districts to move projects through the Moyer Program process. We found the following:

### Finding #1: State law impedes maximum emission reductions.

California law impedes emission reductions by allowing the state board to set aside only 10 percent of Moyer Program funds for projects that operate in more than one local air district. A higher cap could lead to emission reductions with lower costs per ton. For example, if the cap for multidistrict projects were increased to 15 percent for funds appropriated in fiscal year 2004–05, the state board could have selected three additional projects with intended emission reductions costing an average of $2,600 per ton. Shifting this funding would have reduced

***Audit Highlights . . .***

*Our review of the Carl Moyer Memorial Air Quality Standards Attainment Program (Moyer Program) revealed the following:*

- *California law impedes emission reductions by allowing the State Air Resources Board (state board) to set aside only 10 percent of Moyer Program funds for projects that operate in more than one local air district.*
- *The methodology the state board used to select projects for the multidistrict component undervalues the cost per ton of intended emission reductions.*
- *For fiscal year 2003–04, 14 of the 16 projects the Bay Area Air Quality Management District designated as matching projects exceeded the Moyer Program's ceiling for cost per ton of intended emission reductions.*
- *The South Coast Air Quality Management District did not spend $24.1 million in Moyer Program funds within the required two years and the state board is monitoring the district to ensure these funds are spent by July 1, 2007.*
- *We identified several best practices that, among other things, can help local air districts select projects with lower costs per ton of intended emission reductions.*

the money available to districts, thus preventing the four districts we visited from selecting 13 projects. However, the average cost of the intended emission reductions from those projects was nearly $11,000 per ton, clearly not as good a value as the multidistrict projects.

We recommended the state board seek legislation to revise state law to increase the 10 percent maximum proportion it can allocate for multidistrict projects. If the state board opts not to seek this revision, the Legislature may wish to consider it.

***Legislative Action: Legislation proposed.***

Senate Bill 895 and Assembly Bill 2865 were both introduced to increase to 20 percent the maximum proportion the state board can allocate for multidistrict projects. Neither bill passed the Legislature during the 2007–08 session.

**Finding #2: The methodology the state board uses to select projects has undervalued the cost-effectiveness of emission reductions.**

Three of the six categories the state board uses to assign points when scoring applications for multidistrict projects are neither required nor encouraged by state law. Of the 100 possible points, these three categories accounted for 35 and 55 points, respectively, in the two fiscal years we reviewed. An applicant who received no points for any one of the three categories likely had limited ability to compete with other applicants under consideration. As a result, the state board selected some projects with higher costs per ton of intended emission reductions than it would have if the point values for the three optional categories were lower.

We recommended the state board, when evaluating applications for multidistrict projects, assign more points to scoring categories that help the state board achieve the lowest cost per ton of emission reductions.

***State Board's Action: Corrective action taken.***

According to the state board, it increased the weight of the cost per ton of emission reductions for its 2008 projects from 45 percent to 70 percent.

**Finding #3: Some projects the Bay Area air district funded for matching purposes do not meet the Moyer Program requirements for cost-effective emission reductions.**

State law requires local air districts to provide their own funds to match Moyer Program funds provided by the state board. Further, projects funded with these matching funds must meet all Moyer Program criteria. Our review revealed that projects funded by one local air district did not meet the Moyer Program requirements for cost per ton of intended emission reductions. As allowed by state law, the Bay Area air district designated 16 projects funded by other programs it administered as matching projects for the Moyer Program for fiscal year 2003–04. However, 14 of the 16 projects it identified exceeded the state board's cost ceiling of $13,600 per ton. The Bay Area air district knew the costs per ton for the projects it selected for matching exceeded the cost ceiling. Instead of selecting other eligible projects, the district attempted to make the 14 projects qualify as match under the Moyer Program by counting only a portion of the projects' total costs when it calculated the projects' costs per ton. Specifically, the district counted as the matching fund portion for the Moyer Program only $740,000 of the $2.5 million it awarded to these 14 projects. This approach is contrary to state law and Moyer Program guidelines because the district did not include all funds under its budgetary control when it calculated the costs per ton of intended emission reductions.

We recommended that local air districts include all funds under their budgetary authority as part of the calculations when determining the cost per ton of a project's intended emission reductions. Further, districts should develop and implement policies and procedures that enable them to meet the requirements in the Moyer Program guidelines regarding matching funds.

***Bay Area Air District's Action: Partial corrective action taken.***

The Bay Area air district stated that most work to recalculate the cost per ton of emission reductions for Moyer projects has been completed. It also stated that the rest of this work will be completed in 2008 and that these recalculations will allow the district to reallocate matching funds if necessary. The air district also has updated its policies and procedures manual for the Moyer Program, which includes a discussion of sources of matching funds.

**Finding #4: Unspent Moyer Program funds remained at local air districts after availability had expired.**

State law requires that local air districts expend Moyer Program funds allocated by the state board by June 30 of the second year following the allocation; otherwise, the unexpended funds revert to the state board. As of December 2006 the South Coast air district had $24.1 million in Moyer Program funds it had not spent within the two-year time frame established by law. Unspent Moyer Program allocations are a strong indicator that intended emission reductions likely are not occurring. When allocating its fiscal year 2004–05 Moyer Program funds, the South Coast air district selected projects intended to reduce 1 ton of emissions for every $4,256 it spent, on average. Had the South Coast air district spent the $24.1 million on similarly cost-effective projects by the statutory deadline of June 30, 2006, 5,600 tons of pollutants would have been removed.

The South Coast air district interprets the word "expended," as it appears in state law, to mean obligated. Under that interpretation, as long as a local air district had obligated a specific amount of Moyer Program funds to pay for a project that will be completed in the future, unspent funds would not revert to the state board. However, both the state board and the Department of Finance (Finance) have criticized the South Coast air district for its lack of spending in audit reports issued in October 2006 and April 2007, respectively. It is clear that, within the context of their reports, both the state board and Finance expected the district to spend Moyer Program funds within the two-year availability period, not merely obligate them for projects.

The state board is withholding future Moyer Program allocations to the South Coast air district until it spends its expired funds. The state board noted that it has the district's assurance that it will fully expend all applicable Moyer Program funds by July 1, 2007. The state board is monitoring the district to ensure that this happens.

We recommended that the South Coast air district ensure that it spends by July 1, 2007, all remaining Moyer Program funds that are beyond the two-year availability period.

Also, to help ensure that the South Coast air district spends the allocations, the state board should continue monitoring the district's efforts and take appropriate action should its efforts falter. If the South Coast air district does not spend the funds by July 1, 2007, the state board should initiate appropriate administrative action, up to or including recovering all remaining unspent funds.

***State Board's and South Coast Air District's Actions: Corrective action taken.***

The state board determined that the South Coast air district had met its expenditure requirements for the unspent funds. Further, the state board reported that it continues to monitor the South Coast air district's expenditures through quarterly progress reports; the April 2008 progress report shows that the district is on track with the timely expenditure of funds. In addition, the state board stated that it updated the Moyer Program guidelines regarding consequences for local air districts

should they fail to meet the two-year expenditure requirement. The guidelines explicitly require air districts that fail to meet the expenditure deadline to either return unspent funds within 60 days or have the funds deducted from their next allocation.

**Finding #5: Infrequent on-site audits are a concern.**

The state board may not be performing on-site audits of local air districts with sufficient frequency. It conducted four on-site audits in 2006 and plans to complete four more in 2007. If it maintains the rate of four audits per year, the state board will audit districts participating in the Moyer Program, on average, once every seven years. Audits released in 2006 demonstrate that some local air districts improperly administer the Moyer Program. More frequent audits would address identified problems earlier.

The state board is updating the procedures it uses to conduct on-site audits of local air districts, according to a program manager. These changes are based on findings from a 2006 review by Finance of the Moyer Program guidelines as well as feedback from the audited districts and from the state board's audit staff about the on-site audits it had already completed. In its report in December 2006, Finance made eight observations with recommendations for ways the state board could improve the Moyer Program guidelines and procedures, including a recommendation that the state board adopt a systematic, risk-based approach to selecting local air districts to audit. Finance also recommended 12 revisions to the guidelines to make the language clearer, define terms, and provide more detail.

We recommended that, to ensure that it monitors local air districts' implementation of the Moyer Program effectively, the state board continue to implement its planned changes to audit procedures and address the recommendations in Finance's 2006 audit report, including the development of a risk-based approach to selecting districts to audit. As part of this effort, the state board should consider how frequently it will audit districts.

***State Board's Action: Corrective action taken.***

According to the state board, it has taken several steps to improve its evaluation and audit procedures for local air districts. It has created and fully staffed a new oversight section; updated its procedures for auditing the Moyer Program, in part to incorporate Finance's recommendations; and released plans to audit seven air districts in 2008. To select the air districts to be audited, the state board stated that it used a risk-based methodology developed in cooperation with Finance. The state board plans to audit at least 10 percent of the annual program funds each year, and audit large air districts at least once every four years, medium air districts at least once every six years, and small air districts at least once every eight years.

**Finding #6: Although local air districts market the Moyer Program in various ways, they could do more to evaluate the results of their efforts.**

Local air districts use various methods to market the Moyer Program, such as brochures, mailing lists, Web pages, and workshops, but they do not adequately evaluate their efforts to determine whether they are reaching the business sectors that might be able to provide more cost-effective emission reductions. The districts rely primarily on one measure—whether they receive enough applications to distribute all Moyer Program funds—to evaluate their marketing efforts. Thus, they cannot ensure that their marketing efforts are resulting in applications that help maximize cost-effective emission reductions.

We recommended that the local air districts develop and implement techniques to measure the effectiveness of their marketing methods. Specifically, local air districts should identify business sectors from which they will obtain applications for more cost-effective projects, evaluate whether their current marketing efforts are reaching those sectors, implement marketing efforts to target sectors not being reached, and assess whether their marketing efforts enable them to select projects with more cost-effective emission reductions.

***Local Air Districts' Actions: Partial corrective action taken.***

Two of the four local air districts included in our review are taking steps regarding this finding. The Bay Area air district stated that it initiated a marketing study and developed an updated marketing plan designed to maximize outreach. The Bay Area district also stated that its consultants will follow up with a report on the successes of the marketing strategy. The district anticipates this work will be completed in 2008. The South Coast air district stated that it entered into a contract with a company to complete this task and that it had received a final report, which contained a proposed marketing strategy. According to the South Coast district, it used this report for Moyer Program funds appropriated for fiscal year 2007–08. It also stated that the number of applications increased from 133 to 242 over the prior year and the number of applications from individual owner-operators or small businesses increased over prior years. On the other hand, the San Joaquin Valley air district acknowledged that as emission reductions become more expensive, it may be necessary to perform more targeted outreach while the Sacramento Metropolitan air district stated that, based on the results of a survey it conducted, it believes the best way to reach participants is to continue to provide a high level of customer support to applicants.

**Finding #7: Timing requirements for preinspections can be overly restrictive.**

Timing requirements for conducting preinspections—inspecting the engine to be retrofit, repowered, or replaced to ensure that it is still operational—are overly restrictive. The Moyer Program guidelines generally require local air districts to perform preinspections after the districts have awarded funds but before they execute the related contracts. One district chose not to follow this requirement because delaying the execution of the contract would have delayed project implementation.

We recommended that, to help streamline the process for performing preinspections, the state board revise its requirement that local air districts must perform preinspections before executing contracts.

***State Board's Action: Partial corrective action taken.***

The state board amended its guidelines to give air districts flexibility to conduct preinspections after executing contracts provided that the districts include contract provisions for revising or voiding contracts based on information collected during the preinspections and any additional procedures necessary to ensure the projects provide acceptable emission reductions.

**Finding #8: Local air districts use some best practices for contracting and administering Moyer Program funds.**

During our visits to the state board and the four local air districts, we observed best practices that we believe can help districts select projects with lower costs per ton of intended emission reductions, reduce district workloads, and allow more time for project completion. Given the differences that exist among the districts, these practices may not be applicable in all cases. However, we believe they deserve serious consideration by the districts.

The Bay Area and South Coast air districts included a measure of pollution or the effects of pollution in their approaches for identifying disproportionately impacted communities—those communities with the most significant exposure to air contaminants, including communities of minority or low-income populations or both.

The state board included a measure of the cost per ton of emission reductions when selecting projects from disproportionately impacted communities for the multidistrict component of the Moyer Program, which increases the state board's ability to maximize emission reductions from multidistrict projects.

The Bay Area and Sacramento Metropolitan air districts include requirements in their contracts that projects selected from disproportionately impacted communities must continue to operate at least a specified percentage of their time in those communities after the project is completed and operational, which helps ensure that completed projects reduce emissions in disproportionately impacted communities.

The Sacramento Metropolitan air district uses only one application form for all its incentive programs, including the Moyer Program, which streamlines the application process for potential projects.

All but one of the four local air districts we visited had, by December 31, 2006, already allocated to projects their Moyer Program funds appropriated in fiscal year 2005–06, well ahead of the June 30, 2007, deadline. By making allocations before the deadline, these three districts allow more time for completing projects before the end of the two-year availability period.

Three local air districts issue one contract per project owner, as opposed to one contract per vehicle, which reduces the administrative burden on the districts.

The Bay Area and South Coast air districts included more detailed project milestones in their contracts, which allows the districts to more easily track the progress of their Moyer Program projects and take appropriate action if the projects veer off track.

The local air districts required projects to be completed before the statutory limit for expending funds, which helps districts ensure that they have sufficient time to perform required inspections and pay project owners before the two-year availability period for Moyer Program funds expires.

The Sacramento Metropolitan and San Joaquin Valley air districts delegated limited project approval and contract execution authority to staff of the local air districts, which may enable local air districts to issue contracts more quickly, thereby allowing more time for implementing projects before the end of the availability period.

The South Coast air district performed multiple inspections at the same time when possible. The district's staff found that this practice allowed them to save time and allowed the affected projects to move forward without unnecessary delay.

The South Coast and San Joaquin Valley air districts imposed stricter funding requirements on some projects, such as requiring certain types of projects to meet a lower threshold for cost per ton of emission reductions, or requiring project owners to pay a greater share of the costs. These practices could enable the districts to fund more projects with their Moyer Program dollars.

We recommended that, to improve their administration of the Moyer Program, local air districts consider implementing the following best practices:

- Include measures of pollution or the effects of pollution in their approaches for identifying disproportionately impacted communities.
- Include a measure for comparing the cost per ton of intended emission reductions when selecting projects from disproportionately impacted communities.
- Include in their contracts the requirement that projects selected from disproportionately impacted communities continue to provide benefits from reduced emissions to those communities after implementation.

- Use a single application for their Moyer Program application process.
- Allocate Moyer Program funds to applicants as soon as possible.
- Implement a system of one contract per project owner.
- Include in their contracts specific milestones against which the project owners and local air district staff can measure the progress of their projects.
- Include in their contracts the requirement that project owners complete projects and submit invoices a specific number of days or weeks before the June 30 deadline.
- Obtain delegated authority from their governing boards to approve Moyer Program projects and execute contracts. If their governing boards are not comfortable in providing delegated authority to approve all Moyer Program projects, obtain delegated authority to approve the more routine projects or projects costing less than a specified amount.
- Conduct consolidated preinspections to the extent practicable.
- Impose stricter standards (for example, caps on individual contract amounts or lower costs per ton of intended emission reductions) on project categories to the extent that such action does not reduce involvement in the Moyer Program.

***Local Air Districts' Actions: Partial corrective action taken.***

The four local air districts we reviewed have considered the best practices we identified. In many instances, the air districts have implemented or are implementing many of the best practices we identified. For instance, three of the four air districts report they have implemented the best practice of using one contract per project owner while the fourth has adopted it as a goal for 2008.

However, the air districts also indicate that some best practices are not practicable for them. Regarding best practices related to disproportionately impacted communities, the South Coast air district states that upon review by its legal counsel, it does not believe it is possible to incorporate language in its contracts that requires continued use of equipment in a specific location. We question the South Coast air district's limiting our recommendation for this best practice to a "specific location." Although our legal counsel has advised us that districts have considerable discretion when making spending decisions related to disproportionately impacted communities, districts must spend those funds to achieve statutory goals. As we mention in our audit report, the Bay Area and Sacramento Metropolitan air districts include requirements in their contracts that projects selected from disproportionately impacted communities must continue to operate at least a specified percentage of their time in those communities [emphasis added] after the project is completed and operational. This requirement helps local air districts ensure that completed projects reduce emissions in these communities as required by law. We do not suggest that the requirement be limited to a specific location.

# California Environmental Protection Agency

## Investigations of Improper Activities by State Employees, January 2008 Through June 2008

### INVESTIGATION I2008-0678 (REPORT I2008-2), OCTOBER 2008

***California Environmental Protection Agency's response as of September 2008***

An employee of the California Environmental Protection Agency (Cal/EPA) failed to promptly submit time sheets that accurately reported her absences from work during the period August 2006 through June 2008. In addition, the officials responsible for managing her daily activities and for monitoring her time and attendance did not ensure that the employee documented her absences correctly and that Cal/EPA charged the absences against her leave balances. Consequently, Cal/EPA did not charge the employee's leave balances for the 768 hours that she was absent from work; instead, it paid her $23,320 for these hours.

***Investigative Highlight . . .***

*An employee of the California Environmental Protection Agency (Cal/EPA) failed to promptly submit accurate time sheets during a 23-month period. As a result, Cal/EPA did not charge the employee's leave balances for 768 hours when she was absent, and it paid her $23,320 for those hours.*

**Finding #1: A Cal/EPA employee failed to promptly submit time sheets that accurately reported her absences from work during a 23-month period.**

From August 2006 through June 2008, the employee did not submit monthly time sheets at the end of each pay period that accurately documented the time she spent working and the time she was absent. For the 23 pay periods we examined during the investigation, the employee never submitted time sheets for five pay periods, she submitted time sheets up to several months late for 12 pay periods, and she promptly submitted time sheets for just six pay periods. However, management declined to approve nearly all of the time sheets that the employee submitted late or on time because the time sheets either did not account for all absences or because the time sheets reported overtime work that had not received preapproval. Without the approved time sheets, Cal/EPA did not record the employee's absences or overtime in its leave accounting system. Consequently, Cal/EPA did not charge the employee's leave balances for the 768 hours that she was absent from work during the 23-month period; instead, it paid her $23,320 for these hours.

***Cal/EPA's Action: Partial corrective action taken.***

Cal/EPA approved the 23 timesheets in September 2008. In addition, it reported in September 2008 that it had recalculated, updated, and corrected the employee's leave balances to reflect her actual absences and overtime worked, based on the latest approved time sheets, for all pay periods through August 2008. Further, Cal/EPA notified us that it planned to establish an accounts receivable for 24 hours the employee was docked pay in September 2006.

**Finding #2: Cal/EPA officials failed to take sufficient actions to correct the employee's lax time reporting and because of their inaction, the employee's absences were not charged against her leave balances.**

Not only did the employee fail to submit her time sheets accurately and promptly, but the Cal/EPA officials responsible for managing her day-to-day activities and monitoring her time and attendance also failed to ensure that the employee submitted monthly time sheets that correctly reported her absences and time worked. The employee worked for Official A, who assigned Official B and then Official C to monitor the employee's time and attendance and to approve her time sheets. In particular, the efforts made by Official A and Official C in 2007 and early 2008 did little to resolve the employee's failure to accurately report her absences and overtime, and to promptly complete her time sheets. Official A assigned Official C around March 2007 to monitor the employee's time and attendance and to approve her time sheets. In May 2007 Official A met with the employee to counsel her about her absenteeism. However, the meeting notes indicate that Official A did not discuss the employee's failure to submit her time sheets promptly and accurately. Furthermore, Official C offered evidence that she tried to pressure the employee to comply with the time-reporting requirements through some oral conversations and numerous e-mails but the employee did not comply. Yet, Official C took no action to enforce her requests for compliance.

***Cal/EPA's Action: Partial corrective action taken.***

In September 2008 Cal/EPA informed us that Official A had issued a counseling memorandum to the employee, which discussed the employee's failure to promptly submit time sheets that accurately accounted for her absences. Moreover, Cal/EPA notified us that Official C had issued another counseling memorandum to the employee, which described the implementation of administrative controls to ensure that the employee correctly accounts for her absences and promptly completes her time sheets and other time reporting documents. Furthermore, Cal/EPA reported that, as soon as possible, it planned to transfer the employee to another position with a different assignment that does not require significant overtime. It stated that the new assignment would allow the employee to be more closely monitored by a different supervisor.

# Department of Conservation

## Investigations of Improper Activities by State Employees, July 2006 Through January 2007

### INVESTIGATION I2006-0908 (REPORT I2007-1), MARCH 2007

***Department of Conservation's response as of January 2008***

We investigated and substantiated an allegation that an employee with the Department of Conservation (Conservation) engaged in various activities that were incompatible with his state employment, including using the prestige of his state position and improperly using state resources to perform work for the benefit of his spouse's employer, a charitable organization.

**Finding #1: The employee misused state resources to engage in improper activities.**

We found that the employee misused state resources to engage in numerous activities that were incompatible with his state employment, including misusing the prestige of his state position. We believe that the nature and extent of these improper activities caused a discredit to the State. Specifically, the employee engaged in the following improper activities:

- Failed to disclose stock ownership in oil industry companies and regulated companies.[1]
- Owned stock in a company at the time he issued permits to that company.
- Used state time and resources for fundraising.
- Solicited charitable contributions from oil industry companies and regulated companies.
- Used his state position to assist a charity.
- Requested and received personal discounts from a state vendor.
- Sent more than 65 e-mails that were insubordinate or of a nature to discredit the State.

The employee owns or has owned stock in a number of oil industry companies, including at least two regulated companies (Company A and Company J). However, he failed to disclose his ownership of stock in these companies, in violation of the Political Reform Act of 1974 (act).

As required by the act, Conservation requires the employee, who works in Conservation's Division of Oil, Gas & Geothermal Resources (division), and others in his job classification to annually complete

[1] The employee is required to disclose his stock ownership in companies regularly engaged in oil and gas exploration and related industries (oil industry companies), which includes regulated companies.

***Investigative Highlights . . .***

*An employee at the Department of Conservation:*

» *Failed to disclose his stock ownership in at least 18 instances.*

» *Owned stock in two companies at the time he made business decisions affecting those companies.*

» *Misused state resources to assist his spouse's employer.*

» *Used his state e-mail to directly solicit donations from oil industry and regulated companies.*

» *Used the prestige of his state position to obtain discounts on his personal cell phone purchases.*

» *Sent more than 65 e-mails that were insubordinate or were of such a nature to cause a discredit to the division.*

*In addition, the employee's manager failed to adequately monitor the employee's improper activities and failed to disclose his own stock ownership in at least seven instances.*

statements of economic interests because these employees have the authority to approve permits that allow companies to extract or produce oil or geothermal resources. Accordingly, the employee, his manager, and others in their job classifications are required to include on their statements of economic interests any investments in, interests in business positions in, and income from any business entity of the type that may be affected by their decisions. This includes, but is not limited to, stock ownership with a value of $2,000 or more in businesses that are regularly engaged in the extraction and/or production of oil, gas, or geothermal resources.

We obtained the employee's statements of economic interests for each year from 2000 to 2005. In each statement, the employee certified under penalty of perjury that he had no reportable business interests. However, information the employee stored on his state computer that he later confirmed as accurate indicated that the employee failed to disclose reportable investments every year during this time period. In particular, we found for those years at least 18 instances where the employee failed to disclose that his stock ownership in various companies exceeded $2,000 in value.

In addition, we believe the employee conducted himself in a questionable manner when he communicated with and approved permits for Company A, a company whose stock he owned at the time he approved its permit requests. Specifically, we believe that in doing so the employee may have violated the common law doctrine against conflicts of interest (doctrine). Similarly, we believe he also violated the doctrine when he made business decisions affecting Company B, the division's vendor for cellular phone services, while he owned stock in that company. The doctrine provides that a public officer is implicitly bound to exercise the powers conferred on him with disinterested skill, zeal, and diligence and primarily for the benefit of the public. Because he owned stock at the same time he approved permits for Company A and made purchases in his state capacity from Company B, we question whether the employee was able to make these business decisions with disinterested skill for the primary benefit of the State.

Further, we found that the employee misused his state e-mail—as well as other state resources—in a number of ways, and engaged in activities that were incompatible with his state employment while assisting his spouse in securing contributions on behalf of her employer, a charitable organization (Charity 1) in various capacities. These activities include soliciting donations from regulated companies even though he had been admonished for doing so in the past, and using his state position to facilitate Charity 1's potential purchase of a property on which he previously performed regulatory work.

The employee used his work e-mail account to send or receive more than 340 e-mails involving discussions of Charity 1 activities and events over the three-year period we reviewed. Nearly 80 of these e-mails involved soliciting donations for Charity 1 and in several instances he directly solicited donations from either oil industry or regulated companies. Many of the 340 e-mails indicate that the employee spent considerable state time and resources when serving as co-chairperson for an annual sponsorship event benefiting Charity 1 by assisting in planning and organizing the event and soliciting sponsorship donations from regulated and other oil industry companies for the event.

The employee also misused his state e-mail and improperly used his state position to facilitate Charity 1's attempt to purchase property from a property owner with whom he had previously interacted in his regulatory capacity as a state employee. The employee violated state law and Conservation's policy prohibiting its employees from using the prestige of their state positions for the gain of themselves or others when he contacted the property owner on behalf of Charity 1.

Moreover, the employee serves as the contact for the division's vendor for cell phone services, Company B. In this capacity, he has regular dealings with representatives of Company B. On two separate occasions the employee requested Company B to waive a $35 fee associated with his personal cell phone purchases. In his e-mail requests, the employee informed Company B that a large number of Conservation offices switched to Company B based on his recommendations. One could easily surmise from this request that Company B may have felt compelled to provide the discount in exchange for his continued efforts to recommend Company B to other Conservation offices. The employee's e-mail records show that Company B's representative agreed to waive the fee on both occasions.

Finally, our review of the employee's e-mail records also indicates that he regularly misused his state e-mail and engaged in a pattern of behavior that likely could be considered insubordinate or apt to cause a discredit to the State. Specifically, for the three-year period we reviewed, the employee sent or received more than 130 e-mails regarding personal financial matters. Most of these e-mails pertain to the potential value of specific stocks. At least 15 of them involved discussions of potential investments in either the oil industry or oil and gas industry companies. Further, we found that the employee sent more than 65 e-mails to coworkers, superiors, representatives of oil industry and regulated companies, and others that we believe were insubordinate or were of such a nature as to discredit the division.

***Conservation's Action: Corrective action taken.***

Conservation reported that it pursued adverse action against the employee and he resigned from state service. In addition, Conservation reported it has taken action to ensure that similar misconduct is not repeated. Included in its corrective action, Conservation stated that it:

- Developed a web page that its employees can use to review ethics and conflict-of-interest requirements.
- Established an internal ethics advisory panel that issued a report in October 2007. In the report the panel concluded that the types of misconduct we identified were not widespread. The panel's report also included several recommendations for conservation to consider.
- Required all employees who complete statements of economic interests to complete the Attorney General's online ethics training seminar.

**Finding #2: The manager failed to adequately monitor the employee and failed to disclose his own interests in oil industry companies.**

Information the employee stored on his state computer indicates that the manager should have known that the employee was involved in charitable functions involving regulated companies and Charity 1. These documents show that the manager participated in the annual charity event in 2005 and 2006 for which the employee and a representative of a regulated company were co-chairpersons in 2006. Additionally, these documents indicate that nine oil industry companies were sponsors for the event. We determined that six of them had previously submitted applications to the manager's district office for approval. Thus, it appears that the manager was aware—or should have been aware—that the employee was again soliciting donations from the regulated companies.

Documents stored on the employee's state computer also indicate that Company L, a company engaged in an industry related to oil and gas exploration, paid the manager's $150 entry fee for the annual charity event in 2006. When we questioned the manager, he stated that he was not certain whether Company L paid his entry fee but said he did not pay the fee. The manager added that he also did not pay for his entry into the previous year's event and stated that it was not uncommon for oil industry companies to pay for his entry into similar events. When we reviewed information relating to the annual charity event held in 2005, we found indications that Company M, which has submitted applications to the manager's office for his approval, paid his entry fee for the event. By accepting gifts from companies his office regulates, the manager may have violated conflict-of-interest laws and policies that prohibit a state employee from receiving any gift from anyone seeking to do business of any kind with the employee or his department under circumstances from which it reasonably could be substantiated that the gift was intended to influence the employee or was intended as a reward for official actions performed by the employee.

Finally, in the course of our interview, the manager also acknowledged that he has owned stock in a regulated company as well as in other oil and gas industry companies. Specifically, the manager informed us that in 2004 he held stock exceeding $2,000 in value in three oil and gas industry companies, including Company A, and four oil and gas industry companies in 2005. When we asked why he did not report his ownership of stock in regulated companies on his annual statement of economic interests, the manager responded that he did not believe he owned enough to require him to report them.

***Conservation's Action: Partial corrective action taken.***

Conservation reported in January 2008 that it had entered into a settlement agreement with the manager that required him to retire after he exhausted his leave credits.

# Office of Spill Prevention and Response

## It Has Met Many of Its Oversight and Response Duties, but Interaction With Local Government, the Media, and Volunteers Needs Improvement

**REPORT NUMBER 2008-102, AUGUST 2008**

***Office of Spill Prevention and Response's response as of October 2008***

In November 2007 the Cosco Busan, an outbound container ship, hit a support on the San Francisco—Oakland Bay Bridge, releasing about 53,600 gallons of oil into the bay. This event, known as the Cosco Busan oil spill, focused public attention on California's Office of Spill Prevention and Response (spill office), a division of the Department of Fish and Game (Fish and Game). The spill office, created in 1991, is run by an administrator appointed by the governor, who is responsible for preventing, preparing for, and responding to oil spills in California waters.

The spill office, along with the contingency plans it oversees, fits into a national framework for preventing and responding to oil spills, with entities at every level of government handling some aspect of the planning effort. When an oil spill occurs, the response is overseen by a three-part unified command consisting of representatives from the spill office; the party responsible for the spill and its designated representatives; and the federal government, represented by the U.S. Coast Guard (Coast Guard), which retains ultimate authority over the response.

### Finding #1: The spill office has fulfilled most of its oversight responsibilities related to contingency planning but coordination with local governments could improve.

The spill office has met most of its oversight responsibilities for contingency planning but could improve several aspects of its oversight role. Specifically, the California Oil Spill Contingency Plan (state plan), which the spill office maintains, has not been updated since 2001 and is missing elements required by state law. The state plan also lacks references to other plans or documents that would better integrate it into the overall planning system. In addition, the spill office has carried out its duties to review and approve local government contingency plans (local plans) and to provide grant funding. However, only six of the 22 local governments participating have revised their plans since 2004, and seven of the 16 remaining local plans have not been revised since 1995 or before. Further, the spill office reported that few local governments in the San Francisco Bay Area have regularly participated in other oil spill response planning activities.

The outdated state plan and local plans and weak participation by local governments in oil spill response planning activities may have led to problems with integrating state and local government activities into the Cosco Busan response.

***Audit Highlights . . .***

*Our review of the Department of Fish and Game's Office of Spill Prevention and Response (spill office) found that:*

- *The spill office has met many of its oversight responsibilities; however, the California Oil Spill Contingency Plan is outdated and missing required elements.*
- *Only six of 22 local government contingency plans were revised after 2003 and local participation in joint planning efforts has been low.*
- *The spill office, the Governor's Office of Emergency Services, and private entities responding to the November 2007 Cosco Busan oil spill met their fundamental responsibilities.*
- *The spill office's shortage of trained liaison officers and experienced public information officers led to communication problems during the Cosco Busan oil spill.*
- *The spill office's lack of urgency in calculating the spill volume from the Cosco Busan may have delayed the mobilization of additional resources.*
- *Reserves for the Oil Spill Prevention and Administration Fund (fund) totaled $17.6 million as of June 30, 2007, but are projected to drop by half over the next two years.*
- *Payroll testing indicates the need to better assure that only oil spill prevention activities are charged to the fund.*

We recommended that the spill office regularly update the state plan and include references to sections of regional and area contingency plans that cover required elements. We also recommended that the spill office work with local governments to improve participation and should consider whether additional grant funding is needed.

***Spill Office's Action: Pending.***

The spill office said it has initiated an effort to update the state plan and expects to complete the update in fiscal year 2008–09. To help integrate local government participation before and during an oil spill, the spill office says that it expects to issue awards to local governments by the beginning of 2009 under a one-time budget augmentation of $650,000. Finally, it is working with the San Francisco Bay and Delta Area Committee to include the participation of a local government representative in the unified command during oil spill responses.

**Finding #2: The spill office is fulfilling most of its review and approval responsibilities for vessel contingency plans (vessel plans) and oil spill response organizations (response organizations).**

The spill office has an established system for reviewing vessel plans and has ensured that vessel plans are approved before any vessel enters California waters. In addition, it has generally assured that annual tabletop exercises have been conducted for vessel plans, and has conducted drills to verify the rating and equipment information related to response organizations. However, the spill office has not always ensured that it receives and maintains documentation showing that annual tabletop exercises have been conducted for each vessel plan. In addition, the spill office does not require owners to submit reviews of their vessel plans after oil spills (postspill reviews) when applicable. The spill office's deputy administrator said that he believes the postspill review requirement is worthwhile, but that the spill office needs to consider whether it is reasonable to ask vessel owners to admit problems when the admissions may influence penalties.

We recommended that the spill office obtain and retain documentation related to completion of required tabletop exercises. We also recommended that the spill office determine whether postspill reviews are an effective means for identifying areas for plan improvement and then take steps to either ensure the reviews are submitted or eliminate them from its regulations.

***Spill Office's Action: Pending.***

The spill office said it was hiring and training new staff in November 2008 to address documentation problems related to tabletop exercises. It also said that it has trained employees on compliance with the postspill review regulation, but is evaluating the effectiveness of the regulation and is considering removing the regulation in 2009.

**Finding #3: State and private entities met their fundamental duties in the Cosco Busan response, but communication breakdowns caused problems.**

The spill office, the Governor's Office of Emergency Services, and private contractors responding to the Cosco Busan incident performed the fundamental duties set forth in oil spill contingency plans. However, changes are needed in several areas to improve responses to future oil spills. We found that weaknesses in the spill office's handling of its liaison role during the initial days of the response, including a shortage of communications equipment and trained liaison officers, led to communication problems with local governments. The counties we spoke with confirmed these problems and expressed dissatisfaction with the spill office's role as a liaison. In addition, the spill office's lack of urgency in reporting its measurement of the spill quantity, as well as the understated spill amounts reported by others, may have delayed the mobilization of additional response resources on the first day of the spill and contributed to the delayed notification of local governments.

We recommended that the spill office collaborate with area committees in California to identify potential command centers that are sized appropriately and possess all necessary communications equipment. Additionally, the spill office should continue with its plans to develop qualification standards for liaison officers and to train more staff for that role and should ensure that staff in its operations center provide all necessary support to liaison officers in the field. Moreover, the spill office should ensure that staff assigned as liaison officers participate in drills to gain experience.

We also recommended that the spill office collaborate with the Coast Guard to establish spill calculation protocols and establish procedures to ensure that staff promptly report spill calculations to the State on scene coordinator. Finally, the spill office should include spill calculations as part of its drills.

***Spill Office's Action: Partial corrective action taken.***

The spill office stated that area committees are continuing to identify potential command posts and that these sites will be incorporated in future area drills. It also said that it coordinated an extensive liaison officer training course for 30 of its employees, assigned liaison officers to all 13 drills in 2008 where an agency liaison officer was requested, and plans to develop specific training and experience criteria for staff assigned to spill incidents. The spill office indicates that in its next response to the bureau, it will describe additional steps it is taking to strengthen operations center support of liaison officers in the field. Finally, the spill office indicates that it has established spill calculation protocols with the Coast Guard, has directed its field response teams to report spill quantification results promptly to the State on-scene coordinator, and will make spill quantification protocols part of its drills.

**Finding #4: A lack of information officers with oil spill experience impaired the spill office's ability to assist with media relations and an insufficient number of trained responders may have hindered wildlife rescue efforts.**

When the Cosco Busan spill occurred, an information officer experienced in oil spill response was not available to represent the State within the information center. This deficiency during the early days of the response appears to have hindered the dissemination of information about the role of volunteers in spill cleanups. Additional missteps by the Coast Guard, which managed the information center, and the spill office, appear to have contributed to the public's frustration with the clean-up effort and received widespread media attention. In addition, insufficient staffing may have hindered wildlife rescue efforts carried out by the spill office and the Oiled Wildlife Care Network (wildlife network) after the Cosco Busan spill. The number of staff mobilized for recovery and transportation of oiled wildlife remained lower than the general guidelines laid out in the California wildlife response plan for the first three days of the spill. Staffing increased only after the unified command loosened the requirements for hazardous waste training for volunteers participating in the response. The network director noted that the wildlife network has had difficulty maintaining trained personnel capable of serving on recovery teams because of the requirement to have 24 hours of hazardous waste training, supplemented by a yearly eight-hour refresher course.

We recommended that public relations staff in Fish and Game's communications office participate in spill drills, and that the spill office develop protocols to ensure that key information, such as the role of volunteers, is disseminated early in a spill response. We also recommended that the spill office ensure that the wildlife network identifies and trains a sufficient number of staff to carry out recovery activities. Furthermore, the spill office should continue to clarify with California Occupational Safety and Health Administration (Cal/OSHA) whether reduced requirements for hazardous waste training are acceptable for volunteers assisting on recovery teams, and should consider working with the wildlife network to ensure that this training is widely available to potential volunteers before a spill.

***Spill Office's Action: Pending.***

The spill office said that communications office staff continue to be trained in incident command and oil spill response. It also indicated that it has a communications structure in place to issue key information to the public during an oil spill, and has identified funding to develop a Web site that can be activated during a spill to allow widespread access to key response information. Moreover, the spill office noted that Assembly Bill 2911 provided $500,000 in additional funding for the wildlife network, which the spill office intends to distribute in the fiscal year 2009–10 budget. Finally, the spill office states it has corresponded with Cal/OSHA regarding training standards for volunteers engaged in oil spill responses.

**Finding #5: The Oil Spill Prevention and Administration Fund (fund) has a high reserve balance and has paid for inappropriate personnel charges.**

The amount of reserves in the Oil Spill Prevention and Administration Fund (fund) has increased significantly over the past several years, leading to a reserve of $17.6 million at June 30, 2007, or six months of budgeted expenditures for the next year. A fee increase without corresponding expenditure increases and failure of the spill office to annually assess the level of the reserve, as required by law, contributed to the high balance. A more reasonable reserve for a fund with a fairly stable level of expenditures would be about one and a half months, according to the spill office's deputy administrator.

Money in the fund can only be used for statutorily defined purposes relating to spill prevention activities. Based on our review of selected transactions and spending trends from fiscal years 2001–02 through 2006–07, we determined that expenditures charged to the fund generally appear to be consistent with the spill office's authorizing statute. However, our review of a sample of 30 employees' labor distribution reports (time sheets), as well as our interviews with spill office managers and employees, disclosed several instances in which employee salaries are being charged to the fund for time spent on general activities. These instances include spill office employees who sometimes perform general activities and, in one instance, an attorney who works for another Fish and Game unit and performs no spill prevention activities.

We recommended that the spill office annually assess the reasonableness of the reserve balance and the per-barrel fee on crude oil and petroleum products. Further, we recommended that the spill office and Fish and Game provide guidelines to employees concerning when to charge activities to the fund, take steps—such as performing a time study—to ensure that spill prevention wardens' time is charged appropriately, and discontinuing charges to the fund for the attorney we identified.

***Spill Office's Action: Partial corrective action taken.***

The spill office indicated that it would prepare a plan projecting revenues and expenses for the fund by January 20, 2009. It also said that all staff will be trained on the proper use of the fund by the end of 2008, and that supervisors will now be responsible for ensuring staff compliance. Additionally, the spill office said that Fish and Game's Law Enforcement Division would conduct a time study of all enforcement personnel operating in the marine zone of southern California in the first quarter of 2009. Finally, the spill office made adjustments to correctly charge the time of the referenced attorney.

**Finding #6: Restructuring of positions appears to have caused friction between the spill office and Fish and Game management.**

Since 2000 Fish and Game has restructured 45.5 staff positions from the direct control of the spill office to other Fish and Game units. Although it does not appear to have affected the spill office's overall ability to carry out its mission related to the three largest restructured units, the limited problems

we did identify, plus serious reservations by both the past administrator of the spill office and the current deputy administrator, suggested the need for a better understanding between Fish and Game management and the spill office on their roles and authority related to these employees.

We recommended that the spill office and other Fish and Game units discuss their respective authorities and better define the role of each in the management of spill prevention staff consistent with the administrator's statutory responsibilities and the other needs of Fish and Game.

***Spill Office's Action: Pending.***

The spill office said that it continues to improve communication and cohesiveness on an internal level with Fish and Game.

# Department of Fish and Game

## Its Limited Success in Identifying Viable Projects and Its Weak Controls Reduce the Benefit of Revenues From Sales of the Bay-Delta Sport Fishing Enhancement Stamp

**REPORT NUMBER 2008-115, OCTOBER 2008**

***Department of Fish and Game's response as of December 2008***

The Joint Legislative Audit Committee (audit committee) asked the Bureau of State Audits to independently develop and verify information related to the Bay-Delta Sport Fishing Enhancement Stamp (fish stamp) program. Generally speaking, the audit committee's request focused on spending authority for the fish stamp revenues, the appropriateness of expenditures incurred in the program, and the required reporting to the fish stamp advisory committee (committee).

**Finding #1: The Department of Fish and Game has not fully used revenues from the fish stamp program.**

The Department of Fish and Game (Fish and Game) has not identified or pursued a course of action to ensure the full use of the revenues that it generates through sales of the fish stamp. Since the inception of the fish stamp program, Fish and Game has sold nearly 1.5 million annual fish stamps, generating $8.6 million in revenue and interest; however, as of June 2008, it had approved only 17 projects representing $2.6 million in commitments to funding. In addition, during the first two fiscal years in which it collected the fish stamp fee, Fish and Game did not request any spending authority to use the revenue to fund fish stamp projects. Further, during this same period Fish and Game did not reallocate unused funding from other accounts within the Fish and Game Preservation Fund (preservation fund), which holds money collected under state laws governing the protection and preservation of birds, mammals, fish, reptiles, and amphibians.

Therefore, it did not have the authority to spend any of the revenues generated to pay either for projects or for related administrative expenses. Even though it did request spending authority in fiscal years 2005–06 through 2007–08, Fish and Game still did not actively identify and fund projects up to the level of spending authority obtained. As a result, the balance in the fish stamp account continues to increase, and individuals who pay for fish stamps are not receiving the full benefit from their purchases.

To ensure that the fish stamp fulfills its intended benefit, we recommended that Fish and Game work with the committee to develop a spending plan that focuses on identifying and funding viable projects and on monitoring revenues to assist Fish and Game in effectively using the fish stamp revenues.

***Audit Highlights . . .***

*Our review of the Department of Fish and Game's (Fish and Game) Administration of the Bay-Delta Sport Fishing Enhancement Stamp (fish stamp) program revealed the following:*

- *Fish and Game's use of the money collected from fish stamp sales has been limited.*
- *Fish and Game and the fish stamp advisory committee (committee) have been slow in identifying and approving projects.*
- *As of June 30, 2008, the fish stamp account had an unspent balance of over $7 million, although a portion of this amount was committed to approved projects that have not yet been funded.*
- *Fish and Game does not have an accurate accounting of either its administrative expenditures or individual project expenditures for the fish stamp program.*
- *Periodic reports Fish and Game provides to the committee do not include all the required information.*
- *During fiscal years 2005–06 through 2007–08, Fish and Game spent an estimated $201,000 in fish stamp funds to pay for payroll costs and goods and services unrelated to fish stamp activities.*

***Fish and Game's Action: Partial corrective action taken.***

According to Fish and Game, its staff has prepared a draft spending plan that is currently being reviewed by management. The draft will be provided to the audit committee for comment and review at the next business meeting, scheduled for January 2009. Fish and Game officials expect a final spending plan to be completed by April 2009.

**Finding #2: Weak controls limit Fish and Game's ability to monitor and report project activity.**

Fish and Game does not have a sufficient system of internal or administrative controls to monitor fish stamp project activity. For example, the department's accounting system does not adequately track project expenditures. As a result, project expenditures are difficult to reconcile, and have been incorrectly charged to other funding sources. For example, in fiscal year 2005–06, Fish and Game approved using $50,000 in fish stamp funds to enhance its efforts to enforce laws against sturgeon poaching. However, Fish and Game actually charged the $50,000 to another of its funding sources. In another instance, the agreement for one fish stamp project required Fish and Game to pay a specified percentage of annual lease payments from the fish stamp account. However, according to a department official, Fish and Game paid this expenditure out of its general fund appropriation in fiscal year 2005–06 and 2006–07 rather than from the fish stamp account.

Additionally, information provided by Fish and Game to the committee both in periodic reports and in committee meetings is not always accurate or complete. Therefore, the committee is less able to make informed decisions on funding fish stamp projects.

To track and report project costs adequately, we recommended that Fish and Game improve the tracking of individual project expenditures by assigning each fish stamp project its own project cost account within the accounting system. Additionally, we recommended that Fish and Game require that project managers approve all expenditures directly related to their projects and periodically reconcile the records for their respective projects to accounting records and report expenditures to the staff responsible for preparing the advisory committee reports. We also recommended that Fish and Game reimburse its general fund appropriation for the lease payments that should have been paid from the fish stamp account.

Further, we recommended that Fish and Game should, at least annually, provide the committee with written reports of actual project expenditures and detailed information on project status as well as total administrative expenditures. Finally, we recommended that Fish and Game ensure that the information it communicates to the committee is accurate.

***Fish and Game's Action: Partial corrective action taken.***

Fish and Game reports that fish stamp staff and the Accounting Services Branch have met to discuss options to better track and monitor project expenditures. Fish and Game decided that project costs could be isolated with a unique index code. The index code is associated with the division, unit, or region performing the work. In situations where project costs cannot be isolated by an index/project cost account (PCA) combination, new PCA's will be added as needed. All new projects funded by the fish stamp will be uniquely identified by an index code or PCA.

Additionally, according to Fish and Game, officials have contacted all fish stamp project managers requesting detailed expenditure data to date and will continue to request this information quarterly or as needed depending on the project's duration. Fish and Game officials also stated that fish stamp staff have begun reconciling expenditures with CalSTARS reports. Fish stamp staff will also be requesting detailed expenditure information quarterly or as needed. Fish and Game expects to have all project expenditures reconciled by the beginning of 2009.

Fish and Game also reports that the fiscal year 2006–07 lease payments have been adjusted from its general fund appropriation and reflected in the fish stamp account. Fish and Game is continuing to research the prior year payments and expects to complete adjustments by April 2009.

Fish and Game plans to provide the committee with a detailed financial overview at the next business meeting, scheduled for January 2009. According to Fish and Game, the detailed overview will include administrative costs, project costs, amount encumbered, actual expenditures, and project status. Finally, according to Fish and Game, fish stamp staff always strive to provide accurate information and are continuing to work to ensure budget and expenditure data are accurate.

**Finding #3: Expenditures charged to the fish stamp account were inaccurate.**

During fiscal years 2005–06 through 2007–08, Fish and Game charged expenditures totaling an estimated $201,000 to the fish stamp account that were unrelated to fish stamp activities. Although state law cites a broad definition of expenditures allowed under the fish stamp program, the expenditures we identified as inappropriate were payroll and invoice costs that were not related to any approved fish stamp project or administrative activity.

In addition, Fish and Game did not charge the account for certain administrative expenditures it incurred during the fish stamp program's first two fiscal years. Appropriate administrative expenditures would include costs for staff assigned to facilitate operating the program. These administrative expenditures also include indirect charges, which are agency wide costs proportionally distributed among all the agency's funds or accounts. The manager of the program management branch stated that the administrative expenditures for these two years were charged to the nondedicated account within the preservation fund. Based on invoices provided by Fish and Game, we know that during fiscal years 2003–04 and 2004–05, Fish and Game incurred at least $18,000 in administrative expenditures for printing the fish stamps sold in 2004 and 2005. We also know that Fish and Game should have charged these costs to the fish stamp account but that it did not do so.

We recommended that Fish and Game provide guidelines to its employees to ensure that they appropriately charge their time to fish stamp projects. In addition, we recommended that Fish and Game discontinue the current practice of charging payroll costs to the fish stamp account for employee activities we identified as not pertaining to the program. Finally, we recommended that Fish and Game determine whether it inappropriately charged any other expenditures to the fish stamp account and make the necessary accounting adjustments.

***Fish and Game's Action: Partial corrective action taken.***

Although Fish and Game did not directly address our recommendation that it provide guidelines to staff concerning when to charge activities to the fish stamp account, it believes that regular reconciliations of project manager detailed expenditures against CalSTARS reports will ensure that any inappropriate charges made to the fish stamp account will be identified and corrected.

Fish and Game reports that current year charges that were inappropriately made to the fish stamp account have been corrected. Fish and Game has also retrieved some of the prior year time sheets that had inappropriate charges to the fish stamp account and are waiting on the receipt of other time sheets. Once these time sheets are corrected to reflect the appropriate charges, Fish and Game will make adjustments to correct the payroll costs to the correct funds. Fish and Game expects to have all payroll adjustments made by April 2009.

# California Highway Patrol

## Investigations of Improper Activities by State Employees, February 2007 Through June 2007

### INVESTIGATION I2007-0715 (REPORT I2007-2), SEPTEMBER 2007

***Investigative Highlights . . .***

*The California Highway Patrol:*

» ***Paid $881,565 for 51 vans it had not used for their intended purposes more than two years after it purchased them.***

» ***Did not postpone its purchase of the vans until it needed them, resulting in $90,685 in lost interest earnings to the State.***

***California Highway Patrol's response as of November 2007***

We investigated and substantiated an allegation that the California Highway Patrol (CHP) wasted state funds when it purchased numerous vans that it left virtually unused for at least two years.

**Finding: The CHP wasted state funds.**

Using three purchase orders, the CHP bought 51 vans for its Motor Carrier program, surveillance, and mail delivery. However, as of June 30, 2007, the 30 vans purchased in October 2004 and the 21 vans purchased in August 2005—at a combined cost of $881,565—had not been used for the special purposes for which they had been purchased. In addition, the CHP has left all but five of the 51 vehicles virtually unused since it purchased them. Further, because the CHP did not postpone its purchases of the vans until it needed them, the State lost interest earnings of approximately $90,385.[1]

The CHP intended to use 48 vans for field inspections in its Motor Carrier program, two vans for surveillance purposes, and one van for mail delivery. Vehicles must be specially modified before they can be put to use for field inspections, surveillance, or mail delivery. However, the CHP does not expect to have any of the 48 vehicles that it purchased for field inspections modified and available for that use until October 2007—more than two years after they were purchased. The CHP completed the necessary modifications to the mail van in June 2007, and as of August 2007 it reported that the modifications to the two surveillance vans were only 50 percent complete because of the State's failure to approve a budget in a timely manner.

In addition, our review of vehicle mileage information shows that the CHP left 46 of the 51 vans almost entirely idle, parked on the CHP property in an outdoor location. Specifically, we determined that as of April 2007 the CHP had driven the 46 vans a total of only 401 miles—an average of nine miles for each van—since it had purchased them in 2004 and 2005. We found that 14 vans had not been driven at all, another 27 vans had been driven from one to 20 miles, and five vans had been driven from 21 to 34 miles. Most of the mileage related to trips to facilities where various items such as roof vents, antennas, and flooring needed to modify these vehicles for their intended purpose were installed. The CHP used the remaining five vans for temporary assignments or to transport equipment. As of April 2007 the Highway Patrol had driven each of the five vans between 167 and 3,420 miles, or an average of 1,901 miles.

[1] This amount is based on interest rates available to the State through its Pooled Money Investment Account Earning Yield Rate.

The CHP gave several reasons for not using the 51 vans for their intended purposes between the time it purchased them in 2004 and 2005 and the completion of our investigation in June 2007. The CHP told us that it planned to assign the vans to the field in fiscal year 2006–07. Further, it stated that modification of the vans had been delayed because of competing priorities, staff shortages, and the development of an equipment strategy that could meet all its users' needs. The CHP officials we interviewed told us that the vans were originally intended for modification and use within the CHP's normal replacement cycle time of approximately 18 months from purchase. However, the CHP stated that because of its workload, the labor-intensive installation of equipment in the two vehicles it purchased for surveillance was delayed beyond the normal cycle. In addition, the CHP officials stated that, although it completed modifications to the mail van, the CHP did not plan to use it until the mail van it was intended to replace either reaches the replacement mileage target of 150,000 miles or was no longer cost-effective to operate. Further, the CHP stated that modification of the 30 vans it received in October 2004—originally scheduled for April 2006—was canceled because of an unforeseen increase in demand for marked patrol cruisers. However, it appears the CHP had not yet developed an equipment strategy for the Motor Carrier program vans at the time it was modifying the marked patrol cruisers.

The CHP did not develop a workable strategy to make the 48 vans it purchased for the Motor Carrier program available for field use prior to making the purchases in 2004 and 2005. We believe the primary cause for delays was the CHP's attempt to develop a prototype vehicle design that could meet the needs of all of its employees who perform field inspections. The CHP developed two prototypes and it expected to complete the second prototype in September 2007, more than two years after it received its first shipment.

***CHP's Action: Corrective action taken.***

The CHP stated that as of November 6, 2007, all 51 vans had been assigned to locations across the State.

# California Highway Patrol

## It Followed State Contracting Requirements Inconsistently, Exhibited Weaknesses in Its Conflict-of-Interest Guidelines, and Used a State Resource Imprudently

**REPORT NUMBER 2007-111, JANUARY 2008**

***California Highway Patrol's and the Department of General Services' responses as of November 2008***

The Joint Legislative Audit Committee (audit committee) directed the Bureau of State Audits to review the California Highway Patrol's (CHP) purchasing and contracting practices and its use of state resources. Specifically, the audit committee asked us to:

- Review the CHP contracts awarded since January 1, 2004, for helicopters, motorcycles, guns and accessory equipment, patrol car electronics, and counseling services to determine whether the CHP had complied with laws related to purchasing and whether the contracts were cost-beneficial and in the best interest of the State.
- Ascertain whether the State could cancel any noncompetitive purchasing agreements that were not compliant with laws or in the best interest of the State and repurchase goods using competitive bidding.
- Examine relevant internal audits and personnel policy or financial reviews to determine whether the CHP responded to the issues raised and took recommended corrective actions.
- Evaluate the CHP's contracts for specified goods and services and determine whether conflicts of interest existed.
- Identify the CHP's policies and practices for using state equipment, including aircraft, and determine whether the CHP complied with these policies and laws and whether its employees reimbursed the State for any personal use of state property.

**Finding #1: The CHP and the Department of General Services (General Services) insufficiently justified awarding a $6.6 million handgun contract.**

In early 2006 the CHP submitted documents to General Services to purchase more than 9,700 handguns of a particular make and model. By specifying a particular make and model, the CHP intended to make a sole-brand purchase, which required it to justify why only that make and model would fulfill its needs. However, the CHP did not fully justify the sole-brand purchase. For example, the CHP did not fully explain the handgun's unique features or describe other handguns it had examined and rejected and why. Rather than explain how the specifications and performance factors for this model of handgun were unique, the CHP focused on the projected service life of the previous-model handgun, the CHP's inventory needs, officer safety, the costs for a new weapons system, and the time it would need

***Audit Highlights . . .***

*Our review of the California Highway Patrol's (CHP) purchasing and contracting practices and use of state resources revealed the following:*

» *The CHP did not include all the justifications recommended by the State Administrative Manual in its $6.6 million handgun purchase request, nor did it sufficiently justify the cost of its planned $1.8 million patrol car electronics purchase.*

» *The Department of General Services approved the CHP's purchases even though the CHP's purchase documents did not provide all the requisite justifications for limiting competition or for the cost of the product.*

» *Despite the deficiencies in the handgun and patrol car electronics procurements, our legal counsel advised us that those deficiencies did not violate the provisions of law that would make a contract void for failure to comply with competitive bidding requirements.*

» *The CHP has weaknesses in its conflict-of-interest guidelines including not requiring employees who deal with purchasing to make financial interest disclosures, and not consistently following its procedures to annually review its employees' outside employment.*

» *Between 1997 and 2007, the CHP owned and operated a Beechcraft brand King Air airplane (King Air), but could not substantiate that it always granted approval to use the King Air in accordance with its policy, and its decisions to use the King Air were not always prudent.*

to procure a new weapons system.[1] None of these issues describe the new-model handgun's unique performance factors or why the CHP needed those specific performance factors. The CHP's sole-brand justification also did not explain what other handguns it examined and rejected and why. Further, despite its oversight role, General Services approved the CHP's purchase request, although the CHP did not fully justify the exemption from competitive bidding requirements. Because the CHP did not fully justify the handgun purchase, and General Services did not ensure that the purchase was justified, neither can be certain that the purchase was made in the State's best interest.

Moreover, General Services' procurement file for the CHP handgun purchase did not contain sufficient documentation showing how the CHP chose its proposed suppliers or how those suppliers would meet the bid requirements. According to a General Services acquisitions manager, when conducting the CHP's handgun procurement, General Services relied on a list of potential bidders supplied by the CHP and did not verify whether the bidders were factory-authorized distributors. Because it did not adequately document how the CHP chose its proposed suppliers, General Services did not fulfill its oversight role of ensuring that various bidders could compete and that the State received the best possible value.

We recommended that the CHP provide a reasonable and complete justification for purchases in cases where competition is limited, such as sole-brand or noncompetitive bidding purchases. Further, we recommended that it plan its contracting activities to allow adequate time to use the competitive bid process or to prepare the necessary evaluations to support limited-competition purchases. We also recommended that the CHP fully document its process for verifying that potential bidders are able to bid according to the requirements in the bid solicitation document and that General Services verify that the lists of bidders that state agencies supply it reflect potential bidders that are able to bid according to the requirements specified in the bid.

***CHP's Action: Corrective action taken.***

The CHP told us that is has implemented a new documentation process for its sole-brand purchases requiring authorization through its Administrative Services Division with final approval by the assistant commissioner for staff operations. CHP also noted that it takes the same approach with noncompetitive bid documentation to ensure that its noncompetitive justification documents address all the necessary factors.

The CHP reported that it is verifying potential bidders through General Services' Small Business/ Disabled Veteran Business Enterprise Web site and other on-line searches, and through speaking directly with potential bidders. The CHP updated staffs' desk procedures to reflect the necessary verification.

***General Services' Action: Corrective action taken.***

General Services told us that verifying the bidder list represents existing procedures and best practices. In January 2008 it issued instructions to acquisitions staff reemphasizing the requirement to verify that potential bidders are able to bid according to bid requirements. Further, General Services held meetings with acquisitions staff during February 2008 to emphasize the importance of verifying potential bidders lists to ensure adequate competition for the requirements specified in the bid. General Services used the CHP's handgun procurement as a case study during those meetings.

**Finding #2: The CHP supplied insufficient price justification for spending $1.8 million for TACNET™ systems (TACNET™), and General Services was inconsistent in approving the purchase.**

In 2005 the CHP submitted to General Services a $1.8 million purchase estimate for a sole-brand purchase of 170 TACNET™s, which consolidate radio and computer systems in patrol cars to allow for a single point of operation.[2] General Services appropriately denied the CHP's sole-brand request to purchase the TACNET™ when it found a lack of competition among the bidders. The CHP resubmitted

[1] A weapons system comprises the handgun and the ammunition the handgun fires.
[2] TACNET™ stands for tactical network and is a registered trademark of Visteon Corporation.

the procurement as a noncompetitive purchase request but did not include an adequate cost analysis demonstrating that it had determined that the TACNET™'s unit price was fair and reasonable. For example, the CHP stated in its noncompetitive justification that an actual cost comparison was not possible because the TACNET™ was not duplicated elsewhere in the industry. Thus, rather than conducting an actual cost comparison of the TACNET™ with other systems, the CHP compared the cost of the TACNET™ to the cost of separate products that offered at least one of the features of the system. The CHP then concluded that the price for a TACNET™ system was fair and reasonable. The cost analysis is an important part of the contract justification and serves to ensure that state agencies receive a fair and reasonable price in the absence of price competition.

Moreover, General Services did not ensure that the revised procurement documents contained the required analysis. General Services' policy states that it will reject an incomplete noncompetitive justification, but it did not do so in this instance. Also, General Services did not fulfill its procurement oversight role by ensuring that the State received fair and reasonable pricing on a purchase contract in which the marketplace was not invited to compete.We recommended that the CHP provide a complete analysis of how it determines that the offered price is fair and reasonable when it chooses to follow a noncompetitive bid process.

***CHP's Action: Corrective action taken.***

CHP reported that it has included in its procurement checklist steps for staff to follow in a noncompetitive procurement. These steps include staff documenting their efforts to identify similar goods and providing an evaluation for why the similar goods are unacceptable. Additionally, staff must examine the California State Contracts Register to identify suppliers and document the examination. CHP stated that when it can identify no other suppliers, it will use the information gathered from similar goods to justify the cost of a noncompetitive procurement is fair and reasonable.

**Finding #3: The sole-brand procurement method may sometimes allow state agencies to avoid the stricter justification requirements for noncompetitive procurements.**

Although state law requires General Services to review state agencies' purchasing programs every three years, General Services cannot specifically screen for sole-brand purchases because data related to these procurements is kept only in the individual department's purchasing files. The justifications and authority needed for a sole-brand purchase are less stringent than those needed for a noncompetitive procurement. For example, state agencies must document more information for a noncompetitive bid, such as why the item's price is appropriate. In addition, state agencies are typically authorized to make sole-brand purchases with higher values than are allowed for noncompetitive purchases. For example, when making a sole-brand purchase of information technology goods and services, the purchase limit is $500,000, but the limit for making a noncompetitive purchase is only $25,000. As a result, the opportunity exists for state agencies to inappropriately use the sole-brand procurement method as a way to limit competition and avoid the more restrictive criteria associated with a noncompetitive bid.

We discussed the need to review sole-brand purchases with General Services, and it agreed that the information necessary to target sole-brand procurements is not currently available. However, General Services told us that it recently added specific steps to its review procedures related to sole-brand purchases and indicated that if it determines that an individual state agency has risk in this area, General Services will include sole-brand purchases in its review.

To ensure that state agencies use the sole-brand procurement method appropriately and not in a manner to avoid the stricter justification requirements for noncompetitive procurements, we recommended that General Services study the results from its review procedures related to sole-brand purchases. Based on the results of its study, General Services should assess the necessity of incorporating specific information on sole-brand purchases into its existing procurement reporting process to evaluate how frequently and widely the sole-brand purchase method is used.

***General Services' Action: Partial corrective action taken.***

General Services reported that it conducted a survey during July and August 2008 and found that a significant number of state agencies conduct sole-brand procurements. General Services is drafting revisions to the State Contracting Manual to include a requirement for state agencies to justify, document, and report sole-brand procurement requests in the same manner as noncompetitive procurements.

**Finding #4: The State does not have sufficient justification to cancel the CHP's handgun or TACNET™ contracts.**

The State has several ways that it can end its contractual relationship with a contractor, two of which could be applicable for the contracts we reviewed. The State's standard contract provisions allow the State to terminate a contract for specified reasons, and state law provides that a contract that is formed in violation of law is void. Based on the contractors' performance under the handgun and TACNET™ contracts, our legal counsel has advised us that General Services would not have a basis for relying on the standard contract provisions to cancel these contracts. Moreover, although a broadly worded contract provision permits termination of a state contract when it is in the interest of the State, our legal counsel advised us that it is unlikely that the State could successfully cancel the handgun and TACNET™ contracts on that basis, particularly because the contractors have already provided the goods called for under the contract and have otherwise performed their duties.

In addition, although we identified deficiencies in the procurements of the handguns and TACNET™, our legal counsel advised us that those deficiencies did not violate the provisions of law that would make a contract void for a failure to comply with competitive bidding requirements. The State Administrative Manual, Section 3555, recommends, but does not require, that the statements justifying sole-brand procurements and noncompetitive bids address certain questions, such as what other comparable products were examined and why they were rejected. Because these statements are merely recommended and not legally required, a failure to provide them did not constitute a violation of law that would make these contracts void. Nonetheless, we believe that it is important for state agencies to demonstrate to General Services that they examined other comparable products and to explain why the products were rejected or, if there are no other comparable products, to explain how the state agency reached that conclusion, to ensure that competitive bidding occurs whenever possible.

To ensure that state procurements are competitive whenever possible, we recommended that General Services revise Section 3555 to require that state agencies address all of the factors listed in that section when submitting justification statements supporting their purchase estimates for noncompetitive or sole-brand procurements. In addition, if General Services believes that the law exempting provisions in the State Administrative Manual and the State Contracting Manual related to competitive procurement requires clarification to ensure that the requirements in those publications are regulations with the force and effect of law, General Services should seek legislation making that clarification.

***General Services' Action: Corrective action taken.***

In March 2008 General Services revised the State Administrative Manual, Section 3555, to require state agencies to fully address all of the factors listed in the section when submitting justification statements supporting a sole-brand purchase estimate. In addition, General Services reported that it issued information to state agencies explaining the need to adequately justify sole-brand procurements and gave staff additional direction for processing such requests internally. Finally, General Services told us that it believed it had sufficient enforcement authority in current statute and that additional clarifying legislation was unnecessary.

**Finding #5: The CHP could not demonstrate that all employees complied with the necessary disclosures in its conflict-of-interest policies.**

Although the CHP has policies on conflicts of interest, it could not show that it consistently applied those policies. The CHP carries out its conflict-of-interest procedures through employee submission of the following four documents: the Fair Political Practices Commission's (FPPC) Form 700, Statement of Economic Interests (Form 700); the secondary-employment request; the vendor/contractor/consultant business relationships memorandum (business relationships memo); and an inconsistent and incompatible activities statement. The CHP's conflict-of-interest policies and procedures rely heavily on employee disclosure, yet the policies do not encompass all of the individuals involved with its purchasing and contracting process. In addition, the CHP could not demonstrate that all employees required to do so made the necessary disclosures. As a result, neither we nor the CHP is able to fully determine whether potential conflicts of interest exist at the CHP.

For example, the CHP has not designated as Form 700 filers employees in key positions with purchasing responsibility or approval authority, such as the staff in its purchasing services unit, a position within the Office of the Commissioner that has purchasing approval authority, or positions in which employees develop product specifications used as the basis for purchasing necessary goods.

The CHP's secondary-employment policy requires its employees to disclose employment outside of the CHP by submitting a request for approval of secondary employment. The requests and the CHP's reviews give the agency an ongoing opportunity to evaluate whether employees' second jobs create a conflict of interest; however, the CHP does not always adhere to this policy. The CHP also uses a business relationships memo and its inconsistent and incompatible activities statement to inform employees of their conflict-of-interest responsibilities and remind them of the policy surrounding conflicts of interest. Based on our testing, the CHP follows its procedure for having employees sign a statement regarding inconsistent and incompatible activities, but it does not always obtain a signed business relationships memo.

Furthermore, the CHP's draft conflict-of-interest policy does not adequately define the employees and procurements to which the policy applies, nor does the policy address vendor conflicts of interest.

To ensure that it informs employees about and protects itself against potential conflicts of interest, we recommended that the CHP include as designated employees for filing the Form 700, all personnel who help to develop, process, and approve procurements. In addition, we recommended that the CHP ensure that it documents, approves, and reviews secondary-employment requests annually in accordance with its policy. We also recommended that the CHP revise its employee statement regarding conflicts of interest to include employees involved in all stages of a procurement. In addition, the CHP should reexamine its reasons for developing the conflict-of-interest and confidentiality statement for vendors, and ensure that this form meets its needs.

***CHP's Action: Partial corrective action taken.***

The CHP stated that its major departmental reorganization, finalized in June 2008, invalidated the draft conflict-of-interest code it had submitted to the FPPC. The CHP further noted that its Personnel Management Division has recommenced working on the conflict-of-interest code, including embarking on an extensive analysis and review of positions required to be included in the code that will require notification to be given to collective bargaining units. When submitted to the FPPC, the CHP anticipates its conflict-of-interest code will be approved and implemented by September 2009.

The CHP reported that its Office of Investigations has included in its annual citizens' complaint review an examination of secondary employment requests and that the reviews for 2008 will be complete in December 2008.

In July 2008 the CHP published its policy addressing which procurements require the Conflict of Interest Statement – Employee, and which employees are required to complete the statement.

The CHP updated the Conflict of Interest and Confidentiality Statement for its vendors and included the revised form in its Highway Patrol Manual.

**Finding #6: Conflicts of interest caused General Services to declare void two motorcycle contracts.**

During 2002 and 2004, General Services formed two statewide contracts with a single motorcycle dealership for CHP to acquire motorcycles for its use. These two contracts generally covered the period from January 2002 to April 2006 and allowed the CHP to purchase motorcycles as needed, for a total amount not to exceed $13.7 million. The CHP purchased motorcycles, obtained warranty services, and exercised a motorcycle buyback provision under these contracts. However, General Services determined that the contracts were entered into in violation of the California Government Code, Section 1090, which prohibits state employees from having a financial interest in contracts they make. Therefore, in June 2005 General Services declared the contracts void.

Although General Services secured a $100,000 monetary settlement from the motorcycle dealer, General Services did not finalize a settlement with the manufacturer, BMW Motorrad USA, a division of BMW of North America, LLC (BMW Corporation), which had provided assurances related to the contracts. The CHP estimates that it has incurred $11.4 million in lost buyback opportunities and motorcycle maintenance costs because General Services declared the two contracts void. This estimate covers the period October 2005 to October 2007 and reflects that the CHP and General Services were not successful in securing another motorcycle contract in 2006. General Services told us in November 2007 that it had reestablished negotiations with BMW Corporation. In its initial response to this audit, General Services disclosed the BMW Corporation had no interest in buying back the existing motorcycles. We are unaware of any other points General Services and BMW Corporation may be negotiating. Therefore, it is unclear if or when a settlement will be reached and what benefits, if any, will be derived from it.

We recommended that General Services continue negotiating with BMW Corporation regarding the canceled contracts for motorcycles to develop a settlement agreement that is in the State's best interest.

***General Services' Action: Corrective action taken.***

General Services' disclosed that it had concluded in January 2008 its negotiations with BMW Corporation when BMW Corporation informed General Services that it had no interest in initiating a buyback program.

**Finding #7: The CHP's broad policies for using its King Air aircraft may have led to some imprudent decisions.**

Between 1997 and 2007, the CHP owned and operated an eight-passenger aircraft: a Beechcraft brand model A200 King Air (King Air). The CHP's policies for using the King Air consisted of both an air operations manual that applies to all of the CHP's aircraft and standard operating procedures specific to the King Air. These policies stated that the CHP could use the King Air for missions that supported the agency or for unofficial use, as authorized by the Office of the Commissioner.

Based on our review of the CHP's flight logs from calendar years 2006 and 2007, the purposes of some flights do not seem prudent. For example, the CHP's management used the King Air for two round-trips to destinations in close proximity to Sacramento. Given the State's reimbursement rate at the time of 48.5 cents per mile, the cost to the State of driving to these two locations would have been about $150. Using the CHP's calculation from January 2005 that the King Air's operating cost was $1,528 per hour of flight time, the cost of flying the King Air was at least $1,980 for these two round trips, more than 13 times the cost of driving.

For 14 of the King Air's 69 mission flights during 2006, the purpose of the flight was not aligned well with the CHP's function, as its policy dictates, or for state business. For example, on one occasion, the commissioner's wife accompanied her husband and four of his staff on a round-trip flight between Sacramento and Burbank to attend a function hosted by a nonprofit organization affiliated with the CHP. Although the presence of the commissioner's wife on the flight could be questioned, the commissioner later reimbursed the State $254, the amount of a commercial flight, for his wife's share of the flight. Furthermore, the CHP used the King Air to transport from Portland, Oregon, the family of an officer killed while on duty to that officer's memorial service and the subsequent sentencing hearing of the responsible motorist. Although we understand the CHP's desire to provide support to the officer's grieving family, the CHP's choice to use the King Air for this purpose was not the best use of a State resource. Twelve of the King Air's 69 mission flights during 2006 transported these family members to various destinations, or the flights were required to position the plane to accommodate the family's transportation. Using the CHP's operating cost calculation, the total cost of all the flights we questioned exceeded $24,000 and, other than the reimbursement for the commissioner's wife, the CHP was not reimbursed for these costs.

To ensure that the use of state resources of a discretionary nature for purposes not directly associated with the CHP's law enforcement operations receives approval through the Office of the Commissioner, we recommended that the CHP develop procedures for producing, approving, and retaining written documentation showing approval for these uses.

***CHP's Action: Partial corrective action taken.***

The CHP told us that it has revised its policy to emphasize usage of state resources for business purposes and that any exceptions must be approved in writing by the Office of the Commissioner. The CHP is planning a meeting with one of its bargaining units and pending that meeting will approve the policy. CHP anticipates issuing the new policy by December 2008.

# Electronic Waste

## Some State Agencies Have Discarded Their Electronic Waste Improperly, While State and Local Oversight Is Limited

**REPORT NUMBER 2008-112, NOVEMBER 2008**

***Responses from eight audited state agencies as of November 2008***

The Joint Legislative Audit Committee asked the Bureau of State Audits to review state agencies' compliance with laws and regulations governing the recycling and disposal of electronic waste (e-waste). The improper disposal of e-waste in the State may present health problems for its citizens. According to the U.S. Environmental Protection Agency (USEPA), computer monitors and older television picture tubes each contain an average of four pounds of lead and require special handling at the end of their useful lives. The USEPA states that human exposure to lead can present health problems ranging from developmental issues in unborn children to brain and kidney damage in adults. In addition to containing lead, electronic devices can contain other toxic materials such as chromium, cadmium, and mercury. Humans may be exposed to toxic materials from e-waste if its disposal results in the contamination of soil or drinking water.

### Finding #1: State agencies appear to have improperly discarded some electronic devices.

In a sample of property survey reports we reviewed, two of the five state agencies in our audit sample—the Department of Motor Vehicles (Motor Vehicles) and the Employment Development Department (Employment Development)—collectively reported discarding 26 electronic devices in the trash. These 26 electronic devices included such items as fax machines, tape recorders, calculators, speakers, and a videocassette recorder that we believe could be considered e-waste. The property survey reports for the other three state agencies in our sample—the California Highway Patrol (CHP), the Department of Transportation (Caltrans), and the Department of Justice (Justice)—do not clearly identify how the agencies disposed of their electronic devices; however, all three indicated that their practices included placing a total of more than 350 of these items in the trash.

State regulations require waste generators to determine whether their waste, including e-waste, is hazardous before disposing of it. However, none of the five state agencies in our sample could demonstrate that they took steps to assess whether their e-waste was hazardous before placing that waste in the trash. Further the California Integrated Waste Management Board (Waste Management Board) has advised consumers, "Unless you are sure [the electronic device] is not hazardous, you should presume [that] these types of devices need to be recycled or disposed of as hazardous waste and that they may not be thrown in the trash."

***Audit Highlights . . .***

*Our review of five state agencies' practices for handling electronic waste (e-waste) revealed that:*

- *The Department of Motor Vehicles and the Employment Development Department improperly disposed of electronic devices in the trash between January 2007 and July 2008.*
- *The California Highway Patrol, Department of Transportation, and Department of Justice did not clearly indicate how they disposed of some of their e-waste; however, all indicated that they too have discarded some e-waste in the trash.*
- *The lack of clear communication from oversight agencies, coupled with some state employees' lack of knowledge about e-waste, contributed to these instances of improper disposal.*
- *State agencies do not consistently report the amount of e-waste they divert from municipal landfills. Further, reporting such information on e-waste is not required.*
- *State and local oversight of e-waste generators is infrequent, and their reviews may not always identify instances when state agencies have improperly discarded e-waste.*

To avoid contaminating the environment through the inappropriate discarding of electronic devices, we recommended that state agencies ascertain whether the electronic devices that require disposal can go into the trash. Alternatively, state agencies could treat all electronic devices they wish to discard as universal waste and recycle them.

***State Agencies' Actions: Pending.***

According to their responses to our audit report, the five state agencies we sampled—CHP, Motor Vehicles, Caltrans, Employment Development, and Justice—indicated that they were taking steps to implement our recommendation. CHP stated that it will establish internal policies and procedures to ensure future compliance with e-waste standards. Motor Vehicles stated that as of August 1, 2008, its property and equipment control unit does not allow any electronic equipment to be disposed of in a landfill; it donates this equipment to public schools or, if in bad condition, disposes of it through a recycler that will properly dispose of the equipment. Caltrans stated that it will issue a memorandum to staff responsible for e-waste disposal, clarifying responsibilities and providing direction on implementation of new electronic disposal procedures to include managing all electronic equipment as if it contains hazardous waste. Employment Development stated that it will evaluate the opportunity to dispose of all its electronic devices as universal waste. Finally, Justice stated that it concurs with the report's recommendations and will continue to dispose of surplus equipment through recycling.

**Finding #2: Opportunities exist to efficiently and effectively inform state agencies about the e-waste responsibilities.**

Because all five state agencies in our sample had either discarded some of their e-waste in the trash or staff asserted that the agencies had done so, we concluded that some staff members at these agencies may lack sufficient knowledge about how to dispose of this waste properly. We therefore examined what information oversight agencies, such as the Department of Toxic Substances Control (Toxic Substances Control), the Waste Management Board, and the Department of General Services (General Services) provided to state agencies and what steps state agencies took to learn about proper e-waste disposal. Staff members at the five state agencies we reviewed—including those in charge of e-waste disposal, recycling coordinators, and property survey board members who approve e-waste disposal—stated that they had received no information from Toxic Substances Control, the Waste Management Board, or General Services related to the recycling or disposal of e-waste.

Further, based on our review of these three oversight agencies, it appears they have not issued instructions specifically aimed at state agencies describing the process they must follow when disposing of their e-waste. At most, we saw evidence that General Services and the Waste Management Board collaborated to issue guidelines in 2003. These guidelines state: "For all damaged or nonworking electronic equipment, find a recycler who can handle that type of equipment." However, the Waste Management Board indicated that state agencies are not required to adhere to these guidelines; General Services deferred to the Waste Management Board's opinion.

Alternatively, some state agencies we spoke with learned about e-waste requirements through their own research. For example, the recycling coordinator at Justice conducted her own on-line research to identify legally acceptable methods for disposing of e-waste. Through her research of various Web sites at the federal, state, and local government levels, she determined which electronic devices Justice would manage as e-waste and located e-waste collectors who would pick up or allow Justice to drop off its e-waste at no charge.

While Justice's initiative is laudable, we believe that it is neither effective nor efficient to expect staff at all state agencies to identify e-waste requirements on their own. Some state agencies may not be aware that it is illegal to discard certain types of electronic devices in the trash, and it may never occur to them to perform such research before throwing these devices away. Further, having staff at each of the more than 200 state agencies perform the same type of research is duplicative.

The State could use any of at least five approaches to convey to state agencies more efficiently and effectively the agencies' e-waste management responsibilities. One approach would be to have Toxic Substances Control, the Waste Management Board, or General Services, either alone or in collaboration with one or more of the others, directly contact by mail, e-mail, or other method the director or other appropriate official, such as the recycling coordinator or chief information officer, at each state agency conveying how each agency should dispose of its e-waste. Other approaches include:

- Having the Waste Management Board implement a recycling program for electronic devices owned by state agencies.
- Including e-waste as part of the training related to recycling provided by the Waste Management Board.
- Having General Services, Toxic Substances Control, and the Waste Management Board work together to amend applicable sections of the State Administrative Manual that pertain to recycling to specifically include electronic devices.
- Modifying an existing executive order or issuing a new one related to e-waste recycling that incorporates requirements aimed at e-waste disposal.

To help state agencies' efforts to prevent their e-waste from entering landfills, we recommended that Toxic Substances Control, the Waste Management Board, and General Services work together to identify and implement methods that will communicate clearly to state agencies their responsibilities for handling and disposing of e-waste properly and that will inform the agencies about the resources available to assist them.

***State Agencies' Actions: Pending.***

The three oversight agencies included in our audit concurred with our recommendation and agreed to work collaboratively with each other to implement solutions for ensuring that e-waste from state agencies is managed legally and safely. Further, General Services stated that after consulting with other entities, it will amend applicable sections of the State Administrative Manual to ensure that they clearly require the recycling or disposal of e-waste in accordance with applicable laws, regulations, and policies.

**Finding #3: State agencies report inconsistently their data on e-waste diverted from municipal landfills.**

Most of the five state agencies in our sample reported diverting e-waste from municipal landfills. Waste diversion includes activities such as source reduction or recycling waste. In 1999 the State enacted legislation requiring state agencies to divert at least 50 percent of their solid waste from landfill disposal by January 1, 2004. State agencies annually describe their status on meeting this goal by submitting reports indicating the tons of various types of waste diverted. A component of the report pertains specifically to e-waste. Between 2004 and 2007, four of the five state agencies in our sample reported diverting a combined total of more than 250 tons of e-waste. The fifth state agency, Caltrans, explained that it reported its e-waste diversion statistics in other categories of its reports that were not specific to e-waste.

Several factors cause us to have concerns about the reliability and accuracy of the amounts that these state agencies reported as diverted e-waste. First, these state agencies were not always consistent in the way they calculated the amount of e-waste to report or in the way they reported it. For example, Employment Development's amount for 2007 include data only from its Northern California warehouse; the amount did not include information from its Southern California warehouse. Also for 2007, the CHP included its diverted e-waste in other categories, while Caltrans did so for all years reported. Further, although instructions call for reporting quantities in tons, for 2007 Justice reported 3,951 e-waste items diverted. Moreover, diversion of e-waste does not count toward compliance with

the solid waste diversion mandate, so state agencies may not include it. The Waste Management Board explained that e-waste is not solid waste, and thus state agencies are not required to report how much they divert from municipal landfills.

The Waste Management Board also allows state agencies to use various methods to calculate the amounts that they report as diverted. For instance, rather than conduct on-site disposal and waste reduction audits to assess waste management practices at every facility, a state agency can estimate its diversion amounts from various sampling methods approved by the Waste Management Board.

If the Legislature believes that state agencies should track more accurately the amounts of e-waste they generate, recycle, and discard, we recommended it consider imposing a requirement that agencies do so.

***Legislative Action: Unknown.***

We are not aware of any legislative action at this time.

**Finding #4: State agencies' compliance with e-waste requirements receives infrequent assessments that are simply components of other reviews.**

A state agency's decision regarding how to dispose of e-waste is subject to review by local entities, such as cities and counties, as well as by General Services. We found that the Sacramento County program agency and General Services perform reviews infrequently, and these reviews may not always identify instances in which state agencies have disposed of e-waste improperly.

Local agencies certified by the California Environmental Protection Agency are given responsibility under state law to implement and enforce the State's hazardous waste laws and regulations, which include requirements pertaining to universal waste. These local agencies, referred to as program agencies, perform periodic inspections of hazardous waste generators. The inspections performed by the program agency for Sacramento County are infrequent and may fail to include certain state agencies that generate e-waste. According to this program agency, which has the responsibility to inspect state agencies within its jurisdiction, its policy is to inspect hazardous waste generators once every three years. For the five state agencies in our sample, we asked the Sacramento County program agency to provide us with the inspection reports that it completed under its hazardous waste generator program. The inspection reports we received were dated between 2005 and 2008. We focused on the hazardous waste generator program because Sacramento County's inspectors evaluate a generator's compliance with the State's universal waste requirements under this program (universal waste is a subset of hazardous waste, and it may include e-waste). In its response to our request, the Sacramento County program agency provided seven inspection reports that covered four of the five state agencies in our sample. The Sacramento County program agency provided three inspection reports for Caltrans, one report for Justice, one for the CHP, and two inspection reports for Motor Vehicles. The program agency did not provide us with an inspection report for Employment Development, indicating that this department is not being regulated under the program agency's hazardous waste generator program. The Sacramento County program agency explained that it targets its inspections specifically toward hazardous waste generators and not generators that have universal waste only, although the program agency will inspect for violations related to universal waste during its inspections. As a result, the Sacramento County program agency may never inspect Employment Development if it generates only universal waste.

The State Administrative Manual establishes a state policy requiring state agencies to obtain General Services' approval before disposing of any state-owned surplus property, which could include obsolete or broken electronic devices. In addition to reviewing and approving these disposal requests, General Services periodically audits state agencies to ensure they are complying with the State Administrative Manual and other requirements. General Services' reviews of state agencies are infrequent and it is unclear whether these reviews would identify state agencies that have inappropriately disposed of their e-waste. According to its audit plan for January 2007 through June 2008, General Services conducts "external compliance audits" of other state agencies to determine whether they comply with requirements that are under the purview of certain divisions or offices within General Services.

One such office is General Services' Office of Surplus Property and Reutilization, which reviews and approves the property survey reports that state agencies must submit before disposing of surplus property. According to its audit plan, General Services' auditors perform reviews to assess whether state agencies completed these reports properly and disposed of the surplus equipment promptly. General Services' audit plan indicates that it audited each of the five state agencies in our sample between 1999 through 2004, and that it plans to perform another review of these agencies within the next seven to eight years.

When General Services does perform its reviews, it is unclear whether General Services would identify instances in which state agencies improperly discarded e-waste by placing it in the trash. General Services' auditors focus on whether state agencies properly complete the property survey reports and not on how the agencies actually dispose of the surplus property. For example, according to its audit procedures, General Services' auditors will review property survey reports to ensure that they contain the proper signatures and that the state agencies disposed of the property "without unreasonable delay." After the end of our fieldwork, General Services revised its audit procedures to ensure that its auditors evaluate how state agencies are disposing of their e-waste. General Services provided us with its final revised audit guide and survey demonstrating that its auditors will now "verify that disposal of e-waste is [sent] to a local recycler/salvage company and not sent to a landfill."

If the Legislature believes that more targeted, frequent, or extensive oversight related to state agencies' recycling and disposal of e-waste is necessary, we recommended that the Legislature consider assigning this responsibility to a specific agency.

***Legislative Action: Unknown.***

We are not aware of any legislative action at this time.

**Finding #5: Some state agencies use best practices to manage e-waste.**

During our review we identified some state agencies that engage in activities that we consider best practices for managing e-waste. These practices went beyond the requirements found in state law and regulations, and they appeared to help ensure that e-waste does not end up in landfills. One best practice we observed was Justice's establishment of very thorough duty requirements for its recycling coordinator. These requirements provide clear guidelines and expectations, listing such duties as providing advice and direction to various managers about recycling requirements, legal mandates, goals, and objectives. The duties also include providing training to department staff regarding their duties and responsibilities as they pertain to recycling. In addition, the recycling coordinator maintains current knowledge of recycling laws and works with the Waste Management Board and other external agencies in meeting state and departmental recycling goals and objectives. Three of the remaining four state agencies in our sample did not have detailed duty statements specifically for their recycling coordinators. These three state agencies—the CHP, Motor Vehicles, and Employment Development—briefly addressed recycling coordination in the duty statement for the respective individual's position. Caltrans, the remaining state agency in our sample, indicated that it did not have a duty statement for its recycling coordinator. The creation of a detailed duty statement similar to the one used by Justice would help state agencies ensure that they comply with mandated recycling requirements, that they maintain and distribute up-to-date information, and that agencies continue to divert e-waste from municipal landfills.

A second best practice we noted was state agencies' use of recycling vendors from General Services' master services agreement. General Services established this agreement to provide state agencies with the opportunity to obtain competitive prices from prequalified contractors that have the expertise to handle their e-waste. For a contractor to be listed on General Services' master services agreement, it must possess three years of experience in providing recycling services to universal waste generators, be registered with Toxic Substances Control as a hazardous waste handler, and ensure that all activities resulting in the disposition of e-waste are consistent with the Electronic Waste Recycling Act of 2003.

The master services agreement also lists recycling vendors by geographic region, allowing state agencies to select vendors that will cover their area. Many recycling vendors under the agreement offer to pick up e-waste at no cost, although most require that state agencies meet minimum weight requirements. Based on a review of their property survey reports, we saw evidence that the CHP, Caltrans, Justice, and Employment Development all used vendors from this agreement to recycle some of their e-waste.

We recommended that state agencies consider implementing the two best practices we identified.

***State Agencies' Actions: Pending.***

Regarding a thorough duty statement for a recycling coordinator, as we mentioned in our audit report, Justice already follows this best practice. In their responses to our audit report, Motor Vehicles, Caltrans, and Employment Development stated that they would take steps to implement this best practice; CHP thanked us for suggesting it.

Regarding the use of recyclers from the master services agreement, we noted in our audit report that CHP, Caltrans, Justice, and Employment Development all used vendors from the master services agreement. Motor Vehicles stated that in the future, its property and equipment control unit will make an effort to use the master services agreement when disposing of obsolete equipment and that its asset management section will adopt the recommendation and develop guidelines on the use of the master services agreement. Motor Vehicles stated that the guidelines will be disseminated to all divisions by February 2009.

# Grade Separation Program

## An Unchanged Budget and Project Allocation Levels Established More Than 30 Years Ago May Discourage Local Agencies From Taking Advantage of the Program

### REPORT NUMBER 2007-106, SEPTEMBER 2007

***California Department of Transportation's response as of September 2008***

The Joint Legislative Audit Committee (audit committee) requested that the Bureau of State Audits (bureau) perform an audit of the funding and approval process required for state and local transportation agencies for grade separation projects. Specifically, the audit committee asked the bureau to assess the roles and responsibilities of the various agencies involved in the funding and approval of grade separation projects to determine if any duplication of effort or program exists. Further, the audit committee requested that the bureau determine whether the Grade Separation Program is being administered and operated in accordance with the appropriate statutes and regulations, and that it identify any obstacles that state and local agencies face in meeting the program's legislative goals.

We also were asked to identify the funding sources for the Grade Separation Program and to determine whether the program uses the sources available and whether funding levels are reasonable and consistent with other comparable programs. The audit committee asked that we identify any changes in statutes that would improve the program's administration or any alternative funding mechanisms that could facilitate meeting its legislative goals. In addition, we were asked to determine which local agencies have received state funding for grade separation projects and, to the extent possible, to review estimated and actual costs for the projects. We also were asked to review a sample of these projects to determine the reasons for any cost overruns, the efforts local agencies made in planning and funding the projects, best practices available to local agencies to improve projections and control costs, and whether all local agencies face similar issues with projecting and controlling costs.

#### Finding #1: Local agencies believe allocations are not sufficient to allow them to take advantage of the Grade Separation Program.

Once they have nominated a grade separation project to the Public Utilities Commission (Commission) and the project has been placed on the Commission's priority list, many local agencies we surveyed are not taking the additional steps to apply to the California Department of Transportation (Caltrans) for funding under the Grade Separation Program. Many of these agencies indicated that they are not applying for this funding because they are having difficulty securing the funds to cover their portion of the costs of grade separation projects. We found that the portion of project costs that local agencies are expected to pay has increased dramatically over the past 30 years. According to data provided by the Commission, the average cost of a grade separation project increased from $2.5 million in 1974 to more than $26 million currently, while the annual budget of $15 million for the Grade Separation Program has remained unchanged since 1974. A report prepared by the Commission showed that $165 million is needed

***Audit Highlights . . .***

*Our review of the Grade Separation Program found that:*

» ***Although the average cost of a grade separation project has increased from $2.5 million in 1974 to a current average of just more than $26 million, the annual funding of $15 million available for the Grade Separation Program has not changed since 1974.***

» ***Local agencies say they are experiencing difficulties securing the funding necessary to pay for their share of grade separation projects; thus, some are not nominating new projects to be included on the Public Utilities Commission's (Commission) priority list and many are not applying for funds for the projects already on the priority list.***

» ***A report prepared by the Commission in March 2007 showed that $165 million is needed to provide funding for the same number of grade separation projects that $15 million provided in 1974.***

» ***Additional funding will be available for grade separation projects from a bond measure approved by California voters in November 2006, which will provide a one-time amount of $250 million to improve railroad crossing safety.***

» ***The California Department of Transportation does not always comply with state regulations when allocating supplemental funds to projects for which the final costs exceed the preliminary cost estimates.***

to provide funding for the same number of grade separation projects as $15 million provided in 1974. However, some local agencies have been able to secure funding from other sources to pay for their projects without using funds from the Grade Separation Program. A recently approved bond measure will provide additional funding for grade separation projects. In addition to the proceeds from the bond measure, the State Transportation Improvement Program can also fund various local transportation projects including grade separation projects.

We recommended that in light of local agencies' limited participation in the Grade Separation Program, the Legislature should reconsider its intent for the program and the extent to which it wishes to continue assisting local agencies with their grade separation projects. Among possible courses of action, the Legislature could discontinue the program after the proceeds from the bond measure approved in November 2006 have been allocated and require local agencies to compete with a broader range of projects for funding available to them through other programs such as the State Transportation Improvement Program. Alternatively, the Legislature could continue the program and increase the annual budget of $15 million and allocation limits per project because it desires to continue providing a specific source of funding focused on grade separation projects.

***Legislative Action: Legislation passed.***

Assembly Bill 660, among other things, increased the maximum amount available to a single project that meets certain requirements. This bill was chaptered during the 2007-08 Legislative Session.

**Finding #2: Caltrans does not always follow regulations when allocating supplemental funds, and some regulations are inconsistent with statutes.**

We found that Caltrans does not always comply with state regulations when allocating supplemental funds to projects for which the final costs exceed the preliminary cost estimates. For example, four of the six applications we reviewed did not include one or more of the required certifications, and two were missing a statement explaining in detail why the original allocation was insufficient. Additionally, Caltrans' current regulations are inconsistent with statutes; thus, applicants may not be aware of changes in law and may either choose not to submit an application or submit inconsistent applications.

To ensure that it administers the Grade Separation Program in compliance with state regulations, we recommended that Caltrans follow state regulations when making supplemental allocations. Further, to be consistent with statute, it should seek to revise current regulations to conform to recent amendments to statute.

***Caltrans' Action: Partial corrective action taken.***

According to Caltrans, it has developed a checklist to verify that requests for supplemental allocations include all of the documentation required by the California Code of Regulations. It also indicated that its Legal Division submitted revised regulations for the Office of Administrative Law 2008, Rulemaking Calendar. The public hearing on the regulations will be held on September 8, 2008, and Caltrans anticipates adopting the revised regulations before the end of the calendar year.

# Department of Water Resources

## Its Administration of Grants Under the Flood Protection Corridor Program Needs Improvement

**REPORT NUMBER 2007-108, NOVEMBER 2007**

***Department of Water Resources' response as of November 2008***

The Joint Legislative Audit Committee (audit committee) requested that the Bureau of State Audits review the Department of Water Resources' (Water Resources) administration of the Flood Protection Corridor Program (flood protection program). California's voters created the flood protection program by approving the Safe Drinking Water, Clean Water, Watershed Protection and Flood Protection Bond Act (Proposition 13) in March 2000. With an initial funding of $70 million, of which $57 million was available for projects, the program aims to increase flood protection, agricultural land preservation, and wildlife habitat protection throughout the State by taking various actions, such as acquiring real property interests and setting back and strengthening existing levees. The audit committee asked us to review and evaluate Water Resources' processes for selecting projects under the flood protection program. We were also asked to assess Water Resources' policies and procedures for monitoring projects and its fiscal controls over payments to grantees. In addition, the audit committee asked us to assess how Water Resources holds grantees accountable to the terms of their grant agreements and to determine whether it has properly reported on project status.

In November 2006 California's voters approved two propositions—the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 (Proposition 84) and the Disaster Preparedness and Flood Prevention Bond Act of 2006 (Proposition 1E)—that will provide Water Resources an additional $330 million for similar flood protection projects.

### Finding #1: Water Resources selected projects using poorly defined criteria and made funding decisions based on incomplete information.

Decisions made by Water Resources to award first $28 million and then $29.1 million more in local grants were based on poorly defined selection criteria and incomplete information. Water Resources awarded the initial $28 million to five projects without a scoring process to consistently compare the benefits in flood protection, agricultural land conservation, and wildlife habitat protection specified in each project proposal. Although Water Resources had developed a scoring tool for this purpose, it chose not to use the tool based on the advice of its legal counsel. As a result, it is unclear why the five projects Water Resources chose to fund were better investments of Proposition 13 funds from the flood protection program than the six projects it rejected. Most notably, the flood protection program's highest priced grant, the purchase of Staten Island at a cost of $17.6 million, has yet to result in a tangible flood protection project.

***Audit Highlights . . .***

***Our review of the Department of Water Resources' (Water Resources) administration of the Flood Protection Corridor Program revealed that:***

- ***When Water Resources awarded $28 million for grants in 2001, it based the decisions on a weak selection process with poorly defined selection criteria.***
- ***It is unclear whether the highest priced grant, the acquisition of Staten Island, will result in a tangible flood protection project in return for the $17.6 million in funds awarded.***
- ***Water Resources awarded an additional $29.1 million for grants in 2003 without the aid of key information called for in its regulations to evaluate potential projects' flood protection benefits.***
- ***Water Resources has not enforced many of the monitoring procedures it established.***
- ***Water Resources has not contacted the city of Santee since March 2004, when it disbursed the final $3.65 million remaining on a $4.75 million project, despite the city's failure to submit required reports.***
- ***Water Resources neither resolved its appraisal staff's concerns nor those of the Department of General Services that the appraised value of Staten Island was too high, and as a result, the State potentially paid more than fair market value for the property.***

When awarding $29.1 million in a second round of grants, Water Resources did not require applicants to submit two key types of information mandated in the flood protection program's regulations—hydrologic studies and evidence that owners were willing to sell their properties—for Water Resources to evaluate the relative merits of potential projects. Water Resources was also inconsistent when deciding whether to approve funding requests for structural and recreational enhancements, like pedestrian bridges and bike trails.

To provide consistency in its project selection process and to better justify its future funding decisions for the additional $330 million that it will receive from propositions 84 and 1E, we recommended that Water Resources select projects in a manner that allows it to justify its funding decisions. One way Water Resources could achieve this would be to develop and use a consistent scoring process and use the scores as a basis for making funding decisions. We also recommended that Water Resources adhere to the flood protection program regulations by requiring applicants to submit hydrologic studies and evidence that owners are willing to sell their properties. Finally, Water Resources should develop policies and procedures to consistently evaluate whether proposed structural and recreational enhancements conform to the goals of the flood protection program and are the most effective use of funds.

***Water Resources' Action: Pending.***

Since the audit, Water Resources' flood protection program has awarded $24 million in competitive grants for eight projects being funded under Proposition 84. Water Resources awarded this funding in May 2008 and it is currently developing a Flood Protection Corridor Program Guidelines document that appears to address many aspects of this recommendation. While still in draft form as of late October 2008, Water Resources intends to use this document to guide how it will allocate funding for additional projects under propositions 84 and 1E. The document appears to address many aspects of our recommendation including evaluating the merits of noncompetitive grants [direct-expenditure grants] using a point-based system, requiring applicants to submit evidence that affected landowners are willing participants in any proposed real-property transactions, and evaluating the potential impact of scope changes on a project's benefits. Water Resources has also developed guidelines that should promote greater consistency when it evaluates the merits of a project's proposed structural or recreational enhancements. Specifically, Water Resources will limit project funding for these activities to no more than 30 percent of the award, unless the grant recipient obtains prior approval from the director of Water Resources.

Water Resources' draft guidelines do not change its prior practice of evaluating the merits of potential projects without complete hydrological studies. Instead, Water Resources continues to allow program applicants to submit an engineer or hydrologist's opinion of a project's flood benefits in lieu of a hydrological study, as long as the applicant completes a full analysis early in the project's schedule. However, it does not appear that Water Resources is following this policy in practice. Specifically, Water Resources disbursed more than $4.5 million in 2008 to a grant recipient without a hydrological study. Instead, Water Resources relied on an engineer's opinion of the project's flood benefits. When we asked a manager in Water Resources why his program had not obtained the full study, he indicated that the project's flood benefits were obvious and requiring a hydrological study was unnecessary and expensive. However, as we state on page 24 of the audit report, such a practice is inconsistent with state regulations and is counter to its intent to use these studies to help reduce the risk of funding projects with uncertain flood protection benefits. Further, our recommendation on page 29 of the audit report suggested that program funds could be used to pay for the hydrologic studies upfront before Water Resources committed more funding to projects.

**Finding #2: Water Resources has not adequately monitored projects.**

Although Water Resources has established a monitoring approach that would be effective if enforced, it did not always follow good monitoring practices. Progress reports for nine of 12 projects we reviewed failed to discuss schedule and budget status, did not include records of project expenditures to support

costs incurred, and did not report on any key issues affecting timely project completion. This lack of critical information has compromised Water Resources' ability to effectively monitor these flood protection program projects.

Further undermining the inadequate progress reports received was Water Resources' inability to meet its goal of regularly visiting project sites to monitor progress, inconsistent documentation of communication with grantees, and inadequate tracking of project expenditures against their budgets. Additionally, Water Resources chose not to withhold a percentage of each progress payment to grantees to ensure project completion, which may have contributed to the delays that most projects have encountered. Water Resources claims that staff turnover, staff redirection, vacancies caused by the hiring freeze, and travel restrictions due to budget restrictions contribute to these monitoring weaknesses, but its lack of formal procedures to guide staff also likely contributed to its inconsistent monitoring approach.

To effectively monitor projects, we recommended that Water Resources develop policies and procedures to ensure that it receives sufficiently detailed and complete progress reports from grantees; communicates to staff its expectations for conducting and documenting site visits; develops a process to consistently record communication with grantees; and accurately track and monitor funds disbursed to grantees. To help ensure projects are completed timely and in accordance with the grant agreements, Water Resources should withhold a percentage of payments to a grantee when appropriate and release the funds only after it is satisfied that the project is reasonably complete.

***Water Resources' Action: Pending.***

Since the audit was published in November 2007, Water Resources has awarded $24 million for eight projects; however, only one of the eight projects has received funding. As a result, it is too early to assess whether Water Resources is adequately monitoring its projects. Nevertheless, we noted that Water Resources' staff now use software that may help them better monitor their projects. Through the use of templates and procedures that are built in to the software, as well as the requirements described in its guidelines document, we noted the following:

- Water Resources requires grantees to submit progress reports containing actions taken since the previous report, key issues to resolve, an update on whether the project remains on budget and on schedule, and supporting documentation for expenditures.
- Water Resources has communicated its expectations that staff contact grant recipients at least once every six months, regardless of whether any progress has been made and for staff to retain this documentation in project files.
- Water Resources has communicated its expectations that staff should generally conduct site visits twice each year. In addition, it has developed standardized site visit checklists to assess a project's status, timeline, and key issues to be resolved.
- Water Resources has developed a policy of withholding up to 10 percent of certain grant payments to ensure the timely completion of projects. We saw evidence that Water Resources withheld more than $50,000 for one project when the payment was not going into escrow for land acquisition.

Further, Water Resources indicates hiring an analyst who will be responsible for ensuring that project budget-tracking sheets are accurate and kept up to date.

**Finding #3: Water Resources failed to adequately monitor the $5 million project with the city of Santee.**

Even though Water Resources executed what appears to be a strong letter of agreement with the city of Santee, its efforts to enforce the fiscal and reporting provisions governing the project were minimal. Proposition 13 specifically earmarked $5 million to Santee for flood protection of its streets and highways, of which Water Resources withheld $250,000 for its administrative costs. We found that Water Resources had not contacted the city of Santee since March 2004, when it disbursed the

remaining $3.65 million to the city. Although Water Resources' agreement with Santee required the city to submit semiannual progress reports detailing the project's progress and expenditures, we noted that Santee had submitted only two progress reports to Water Resources since November 2000, when the agreement between them was executed. Water Resources issued a letter in March 2004 asking the city to provide an accounting of its spending, but did not follow up or take any further action when it did not receive the requested information. Additionally, Water Resources has not received from Santee an audit report with an accounting of how the $4.75 million disbursed to the city was spent or a final inspection report by a registered civil engineer, even though they are required in the letter of agreement. Our inquiry of Santee resulted in obtaining expenditure records that were not always consistent with the invoices the city had previously submitted to Water Resources for payment.

We recommended that Water Resources follow up with Santee to determine how the city spent its allocated funds. Additionally, because Water Resources has not spent most of the $250,000 withheld for its administrative costs, it should release these funds to the city only after Santee demonstrates it can use the funds for flood protection purposes, provides an audit report with an accounting of how the city used the $4.75 million previously disbursed, and submits a final inspection report by a registered civil engineer as the letter of agreement with Santee requires.

***Water Resources' Action: Corrective action taken.***

Water Resources reports that this project is now complete and that the grant recipient has provided its final progress report detailing accomplishments and project expenditures. Water Resources was able to provide a letter dated July 30, 2008, from a civil engineer employed by the city of Santee certifying that the project was completed as planned. Further, Water Resources provided a copy of a report from an independent auditor indicating that the project's expenditures were allowable under the grant agreement. As a result, Water Resources reported that the remaining $250,000 available for the project is included in the Governor's fiscal year 2009–10 budget, and it will release these funds when the budget is approved.

**Finding #4: Water Resources needs to develop a process for reporting future costs of the flood protection program.**

Although Water Resources has informally reported project status in the past, it lacks an adequate internal reporting process on the flood protection program. Because the flood protection program will administer additional grants and projects with the $330 million it will receive from propositions 84 and 1E, Water Resources will need to develop processes to report to the Legislature and the Department of Finance to comply with the State General Obligation Bond Law and a January 2007 executive order from the governor that directs agencies to exhibit greater accountability over expenditures financed by bonds.

To comply with reporting requirements for projects it funds with propositions 84 and 1E, and to ensure that its management is kept apprised of key issues, we recommended that Water Resources develop a process for reporting project status. This process should include regular reporting of each project's budget and costs, progress in meeting the goals and time schedules of the grant agreement, and any key events affecting the project.

***Water Resources' Action: Corrective action taken.***

Water Resources states it has been providing quarterly updates to its management showing project status. Water Resources provided us with copies of these status reports, which describe each project's status, expenditures, and the anticipated completion date.

**Finding #5: Although it is not legally required to do so, Water Resources has voluntarily chosen to seek General Services' advice on some land acquisition grants.**

Water Resources is not legally required to obtain the advice of the Department of General Services (General Services) on appraisals for land acquisitions unless it is taking title to property valued at $150,000 or more. Nevertheless, on several occasions Water Resources did seek General Services' advice but did not always heed it, potentially resulting in overpaying for land. In the case of the acquisition of Staten Island, Water Resources did not resolve the concerns noted by its staff or General Services that the appraised value of the land was too high. Specifically, both its staff and General Services noted problems with the appraisal for Staten Island, which General Services noted at that time could be a basis for negotiating a lower overall value for the island.

To avoid paying more than fair market value for properties, we recommended that before disbursing funds, Water Resources take steps to ensure that it resolves concerns about the quality of appraisals raised by its staff, and General Services, when its advice is sought.

***Water Resources' Action: Corrective action taken.***

In its six-month response to the audit, Water Resources indicated that all appraisals are being reviewed by department staff or staff at General Services. To the extent that disagreement exists between its staff and General Services, Water Resources indicates that such disagreement will be elevated to upper management for resolution.