

CALIFORNIA STATE AUDITOR

Bureau of State Audits

Implementation of State Auditor's Recommendations

Audits Released in January 2011 Through December 2012

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



February 2013 Report 2013-406 S2

SPECIAL REPORT

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.auditor.ca.gov>

The California State Auditor is pleased to announce the availability of an online 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.auditor.ca.gov.

Alternate format reports available upon request.

Permission is granted to reproduce reports.

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 28, 2013

2013-406 S2

The Honorable Jim Beall, Chair
Senate Budget and Fiscal Review Subcommittee No. 2
State Capitol
Sacramento, California 95814

Dear Senator Beall:

The California State Auditor presents this special report for the Senate Budget and Fiscal Review Subcommittee No. 2—Resources, Environmental Protection, Energy and Transportation. The report summarizes the audits and investigations we issued during the previous two years that are within this subcommittee's purview. Additionally, the report includes the major findings and recommendations, along with the corrective actions entities 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 entity'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 summarizes all audits and investigations we issued from January 2011 through December 2012. The special policy area report includes a table that identifies monetary values that entities could realize if they implemented our recommendations, and is available on our Web site at www.auditor.ca.gov.

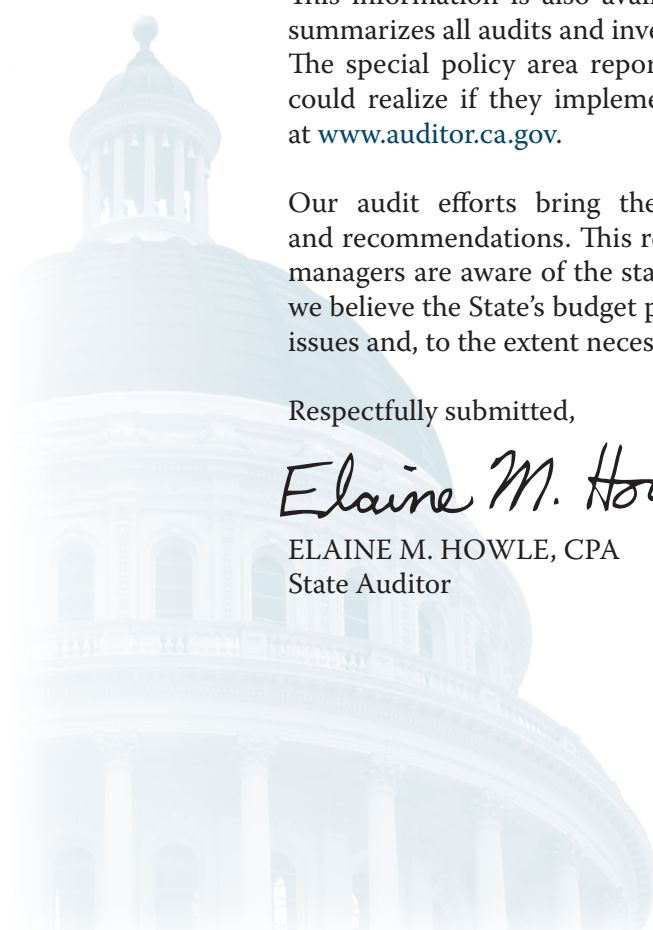
Our audit efforts bring the greatest returns when the entity acts upon our findings and recommendations. This report is one vehicle to ensure that the State's policy makers and managers are aware of the status of corrective action entities report they have taken. Further, we believe the State's budget 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	1
Table	
<i>Recommendation Status Summary</i>	1
California Conservation Corps	
Report Number I2010-2, Investigations of Improper Activities by State Employees: Delay in Reassigning an Incompetent Psychiatrist, Misuse of State Resources, Failure to Protect the Security of Confidential Documents, Theft of Registration Fees, and Other Violations of State Law, January 2011 Through June 2011	
Allegation [I2008-1021]	3
California Department of Forestry and Fire Protection	
Report Number 2011-103, California's Mutual Aid System: The California Emergency Management Agency Should Administer the Reimbursement Process More Effectively	5
California Department of Transportation	
Report Number 2011-106, Intellectual Property: An Effective Policy Would Educate State Agencies and Take Into Account How Their Functions and Property Differ	9
Report Number 2011-120, California Department of Transportation: Its Poor Management of State Route 710 Extension Project Properties Costs the State Millions of Dollars Annually, Yet State Law Limits the Potential Income From Selling the Properties	13
Report Number 2010-122, California Department of Transportation: Its Capital Outlay Support Program Should Strengthen Budgeting Practices, Refine Its Performance Measures, and Improve Internal Controls	25
Report Number I2011-1, Investigations of Improper Activities by State Agencies and Employees: Waste of State Funds, Misuse of State Resources, Falsification of Records, Inexcusable Neglect of Duty, Failure to Monitor Time Reporting, and Other Violations of State Law, July 2010 Through March 2011	
Allegation [I2008-0731]	31

California Energy Commission

Report Number 2011-106, Intellectual Property: An Effective Policy Would Educate State Agencies and Take Into Account How Their Functions and Property Differ
(see summary on page 9)

Report Number I2011-1, Investigations of Improper Activities by State Agencies and Employees: Waste of State Funds, Misuse of State Resources, Falsification of Records, Inexcusable Neglect of Duty, Failure to Monitor Time Reporting, and Other Violations of State Law, July 2010 Through March 2011

Allegation [I2010-0844] 33

Department of Fish and Game

Report Number 2011-123, Oil Spill Prevention and Administration Fund: The Department of Fish and Game and the Office of Spill Prevention and Response Need to Improve Their Administration of the Spill Fund 35

Report Number I2011-1, Investigations of Improper Activities by State Agencies and Employees: Waste of State Funds, Misuse of State Resources, Falsification of Records, Inexcusable Neglect of Duty, Failure to Monitor Time Reporting, and Other Violations of State Law, July 2010 Through March 2011

Allegation [I2009-0601] 39

Report Number I2012-1, Investigations of Improper Activities by State Agencies and Employees: Bribery, Conspiracy to Commit Mail Fraud, Improper Overtime Payments, Improper Use of Lease Proceeds, Improper Travel Expenses, and Other Violations of State Law, April 2011 Through June 2012

Allegation [I2009-1218] 41

Department of Food and Agriculture

Report Number 2011-106, Intellectual Property: An Effective Policy Would Educate State Agencies and Take Into Account How Their Functions and Property Differ
(see summary on page 9)

Department of Water Resources

Report Number 2010-117, General Obligation Bonds: The Departments of Water Resources and Finance Should Do More to Improve Their Oversight of Bond Expenditures 43

High-Speed Rail Authority

Report Number 2011-504, High-Speed Rail Authority Follow-Up: Although the Authority Addressed Some of Our Prior Concerns, Its Funding Situation Has Become Increasingly Risky and the Authority's Weak Oversight Persists 47

Office of Spill Prevention and Response

Report Number 2011-123, Oil Spill Prevention and Administration Fund: The Department of Fish and Game and the Office of Spill Prevention and Response Need to Improve Their Administration of the Spill Fund (see summary on page 35)

Natural Resources Agency

Report Number I2012-1, Investigations of Improper Activities by State Agencies and Employees: Bribery, Conspiracy to Commit Mail Fraud, Improper Overtime Payments, Improper Use of Lease Proceeds, Improper Travel Expenses, and Other Violations of State Law, April 2011 Through June 2012

Allegation [I2009-1321] 55

State Lands Commission

Report Number 2010-125, State Lands Commission: Because It Has Not Managed Public Lands Effectively, the State Has Lost Millions in Revenue for the General Fund 57

Report Number 2011-123, Oil Spill Prevention and Administration Fund: The Department of Fish and Game and the Office of Spill Prevention and Response Need to Improve Their Administration of the Spill Fund (see summary on page 35)

Introduction

This report summarizes the major recommendations from audit and investigative reports we issued from January 2011 through December 2012 that relate to agencies and department 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 entities have taken in response to our findings and recommendations. We have placed this symbol ● in the margin of the entity’s action to identify areas of concern or issues that we believe have not been adequately addressed.

For this report we have relied upon periodic written responses prepared by entities to determine whether corrective action has been taken. The California State Auditor’s (state auditor) policy requests that the entity provide 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 entities to provide updates on their implementation of audit recommendations. The state auditor requests these updates at 60 days, six months, and one year after the public release of the audit report. However, we may request an entity to provide a response beyond on 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 entity for corrective action. These entities 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 entities. All corrective actions noted in this report were generally based on responses received by our office as of December 31, 2012. The table below summarizes the status of an entity’s implementation of our recommendations¹ based on its most recent response received from each one. Because an audit or investigation may cross over several departments, it may be accounted for on this table more than one time. For instance, the Oil Spill Prevention and Administration Fund report is listed under both the Department of Fish and Game and the State Lands Commission.

Table
Recommendation Status Summary

AUDIT REPORT	FOLLOW-UP RESPONSE*				STATUS OF RECOMMENDATION				PAGE NUMBERS
	INITIAL RESPONSE	60-DAY	SIX-MONTH	ONE-YEAR	FULLY IMPLEMENTED	PARTIALLY IMPLEMENTED	PENDING	NO ACTION TAKEN	
California Department of Forestry and Fire Protection									
California's Mutual Aid System Report 2011-103			●		1		1		5
California Department of Transportation									
Capital Outlay Support Program Report 2010-122				●	4	5	2		25
Intellectual Property Report 2011-106				●	1				9
State Route 710 Extension Properties Report 2011-120		●				23	2	1	13
California Energy Commission									
Intellectual Property Report 2011-106				●	2				9

continued on next page...

¹ This table does not include recommendations directed to the Legislature; however, we discuss the status of legislative recommendations in the body of this report.

AUDIT REPORT	FOLLOW-UP RESPONSE*				STATUS OF RECOMMENDATION				PAGE NUMBERS
	INITIAL RESPONSE	60-DAY	SIX-MONTH	ONE-YEAR	FULLY IMPLEMENTED	PARTIALLY IMPLEMENTED	PENDING	NO ACTION TAKEN	
Department of Fish and Game†									
Oil Spill Prevention and Administration Fund Report 2011-123		●			3		2		35
Department of Food and Agriculture									
Intellectual Property Report 2011-106				●	2				9
Department of Water Resources									
Oversight of Bond Expenditures Report 2010-117				●	1			1	43
High-Speed Rail Authority									
High-Speed Rail Authority Follow-Up Report 2011-504			●		15	5	2	1	47
Office of Spill Prevention and Response									
Oil Spill Prevention and Administration Fund Report 2011-123		●			1		2		35
State Lands Commission									
Public Lands Report 2010-125				●	21	5		1	57
Oil Spill Prevention and Administration Fund Report 2011-123		●			1				35
INVESTIGATIVE REPORT									
DATE OF LAST RESPONSE									
California Conservation Corps									
Failure to Follow State Contracting Laws Investigations Report I2010-2, Allegation I2008-1021	April 2011				4				3
California Department of Transportation									
Inexcusable Neglect of Duty Investigations Report I2011-1, Allegation I2008-0731	January 2012				4				31
California Energy Commission									
Falsification of Time and Attendance Records Investigations Report I2011-1, Allegation I2010-0844	December 2011				4				33
Department of Fish and Game†									
Misuse of a State Vehicle, Improper Travel Reimbursements Investigations Report I2011-1, Allegation I2009-0601	September 2012				1	1		2	39
Improper Use of Lease Proceeds Investigations Report I2012-1, Allegation I2009-1218	December 2012							3	41
Natural Resources Agency									
Improper Travel Expenses Investigations Report I2012-1, Allegation I2009-1321	October 2012				2				55

* For audits issued between January 1, 2011, and October 31, 2011, this table generally reflects the agencies' one-year response. The California State Auditor's report 2012-041, *Recommendations Not Fully Implemented After One Year, the Omnibus Accountability Act of 2006*, released in January 2013, reflects these agencies' subsequent responses.

† As of January 1, 2013, the Department of Fish and Game became the Department of Fish and Wildlife.

California Conservation Corps

Failure to Follow State Contracting Laws (Case I2008-1021)

REPORT NUMBER I2010-2, CHAPTER 2, ISSUED JANUARY 2011

This report concludes that the California Conservation Corps (Conservation Corps) evaded competitive bidding requirements by splitting contracts to purchase uniforms costing \$64,666 from a single vendor. In addition, the Conservation Corps did not properly obtain price quotations when approving two other uniform purchases totaling \$19,812 from the same vendor.

In the report, the California State Auditor (state auditor) made the below recommendations to the Conservation Corps. The state auditor's determination regarding the current status of recommendations is based on the Conservation Corps' response to the state auditor as of April 2011.

Recommendation 1—See pages 15—17 of the investigative report for information on the related finding.

The Conservation Corps should take appropriate corrective action against the employees responsible for the improper purchases.

Conservation Corps' Action: Fully implemented.

The Conservation Corps reported in December 2010 that it had issued a corrective action memorandum to each employee responsible for the improper purchases.

Recommendation 2—See pages 15—17 of the investigative report for information on the related finding.

The Conservation Corps should implement controls to ensure that staff do not split contracts to evade competitive bidding requirements and that staff obtain and document in the procurement file the appropriate number of price quotations from certified small businesses prior to purchasing goods.

Conservation Corps' Action: Fully implemented.

The Conservation Corps created a new procedure in February 2011 that requires field staff to submit bid information with every purchase or service order to ensure that staff follow the proper procedures regarding bidding documents and price quotations. The procedure also requires business services staff to review the information to ensure compliance. The Conservation Corps also told us that it randomly had conducted reviews of purchase orders from fiscal years 2007–08 through 2010–11, but it did not keep documentation of the results of these reviews.

Recommendation 3—See pages 15—17 of the investigative report for information on the related finding.

The Conservation Corps should provide adequate training to staff responsible for preparing and approving purchases.

Conservation Corps' Action: Fully implemented.

The Conservation Corps stated that it holds quarterly meetings with its business services officers to discuss procurement matters, including new policies and procedures. In March 2011 it held training for business services officers that focused on proper bidding procedures and other procurement activities. Further, the Conservation Corps stated that it had provided procurement training to its staff in 2007, 2008, and 2009.

Recommendation 4—See pages 15—17 of the investigative report for information on the related finding.

The Conservation Corps should correct inconsistent accounting practices and require staff to associate expenditures directly with the purchase orders that authorized the expenditures.

Conservation Corps' Action: Fully implemented.

To correct inconsistent accounting practices, the Conservation Corps reported that it planned to provide additional training to supervisors who authorize purchasing documents to ensure consistency in basic accounting principles. In March 2011 it held training for business services officers that focused on proper bidding procedures and other procurement activities.

California's Mutual Aid System

The California Emergency Management Agency Should Administer the Reimbursement Process More Effectively

REPORT NUMBER 2011-103, ISSUED JANUARY 2012

This report concludes that the California Emergency Management Agency (Cal EMA) generally processes local agencies' requests for reimbursement within 120 business days and the agencies generally receive their reimbursements in a timely manner. However, Cal EMA can improve its oversight of other aspects of the reimbursement process by ensuring local agencies calculate correctly the average actual hourly rates used to determine their reimbursements. Our analysis of 718 transactions processed between 2006 and 2010 found that inaccuracies in the average actual hourly rates may have resulted in some agencies overbilling for personnel costs by nearly \$674,000, while other agencies were underbilling by nearly \$67,000.

Cal EMA also may need to improve the system it uses to generate invoices on behalf of local agencies that provide assistance. A March 2011 audit conducted by the U.S. Department of Homeland Security's Office of the Inspector General found that the California Department of Forestry and Fire Protection (CAL FIRE) was not in compliance with the Federal Emergency Management Agency's (FEMA) reimbursement criteria. FEMA is actively reviewing this issue and its review may result in a decision to recover some or all of the \$6.7 million identified in the audit report. If FEMA determines the CAL FIRE calculations and claims identified in the audit were erroneous, Cal EMA will need to modify its invoicing system to comply with FEMA's reimbursement criteria. For example, applying FEMA's reimbursement criteria, we found that CAL FIRE may have billed FEMA \$22.8 million more than it should have.

Finally, the majority of 15 local fire and five local law enforcement agencies we interviewed stated that they had not evaluated how providing mutual aid affects their budgets. Some of the 15 local fire agencies and the majority of the five local law enforcement agencies stated that, although their budgets had been reduced in the last five years, they did not believe that budget restrictions hindered their ability to respond to mutual aid requests. Four of the 15 local fire agencies and one of the five local law enforcement agencies said that they were projecting budget reductions in future years. However, only one local fire agency we spoke with has evaluated the impact that budget restrictions will have on its ability to provide mutual aid.

In the report, the California State Auditor (state auditor) made the following recommendations to Cal EMA and CAL FIRE. The state auditor's determination regarding the current status of recommendations is based on Cal EMA and CAL FIRE's responses to the state auditor as of September and October 2012, respectively.

Recommendation 1.1—See pages 20 and 21 of the audit report for information on the related finding.

To make certain that emergency response agencies receive reimbursements on time, Cal EMA should establish procedures to ensure that paying entities do not delay reimbursements.

Cal EMA's Action: Partially implemented.

Cal EMA stated that it is difficult to ensure that paying entities do not delay reimbursements for those emergencies or disasters that are not reimbursed under FEMA's Fire Management Assistance Grant (FMAG) Program. Under the FMAG, states can submit a request for assistance to FEMA at the time a major disaster exists. Cal EMA stated that, because it administers the entire FMAG process, it is able to prioritize workload and expeditiously submit to FEMA the project worksheet that documents the scope of work and cost estimate for each project. However, Cal EMA stated that it has little or no control over reimbursements for FEMA's Public Assistance (PA) Program.

Under the PA, states can submit a request for assistance so that they can quickly respond to and recover from major disasters and emergencies declared by the President. CAL EMA stated that, because it jointly administers the PA Program with FEMA, it is difficult to ensure the expeditious processing of project worksheets that require several layers of federal review and subsequent funding obligations.

Further, to ensure that paying entities do not delay reimbursements for mutual aid provided under the California Fire Assistance Agreement (CFAA), Cal EMA is implementing a new Mutual Aid Reimbursement Program that focuses largely on migrating from a Lotus Notes application to a Web-based application. Cal EMA stated that this system will produce a stable platform and build in appropriate business rules to more effectively administer the CFAA terms and conditions and reduce reimbursement timelines. According to Cal EMA, the first phase of this new program was deployed in July 2012 and eliminated many workarounds and limitations found in the current system.

Recommendation 1.2.a—See pages 20 and 21 of the audit report for information on the related finding.

To ensure that it receives reimbursements on time, Cal EMA should identify ways to reduce the amount of time it takes to submit project worksheets to FEMA and to draw down funds.

Cal EMA's Action: Fully implemented.

Cal EMA incorporated language into its FMAG Program standard operating procedures that outlines the grant process, including the reimbursement process. Cal EMA stated that, because it jointly administers the PA Program with FEMA, it is difficult to ensure the expeditious processing of project worksheets that require several layers of federal review and subsequent funding obligations.

Recommendation 1.2.b—See pages 20 and 21 of the audit report for information on the related finding.

To ensure that it receives reimbursements on time, Cal EMA should establish procedures for submitting project worksheets to FEMA and drawing down funds that reflect the time-saving measures resulting from its efforts to implement recommendation 1.2.a.

Cal EMA's Action: Fully implemented.

Cal EMA incorporated language into its FMAG Program standard operating procedures that outlines the grant process, including the reimbursement process. Cal EMA stated that, because it jointly administers the PA Program with FEMA, it is difficult to ensure the expeditious processing of project worksheets that require several layers of federal review and subsequent funding obligations.

Recommendation 1.3.a—See pages 22—24 of the audit report for information on the related finding.

To make certain that local agencies calculate correctly their average actual hourly rates, Cal EMA should audit a sample of invoices each year and include in the review an analysis of the accuracy of the local agencies' average actual hourly rates reported in the agencies' salary surveys.

Cal EMA's Action: Pending.

Cal EMA did not specifically address this recommendation. Instead, Cal EMA stated it evaluated its options, along with its partner agencies, for ensuring the accuracy of and the accountability for the financial information that the local agencies submit. Cal EMA stated its options for ensuring financial integrity included better defined invoicing instructions, enhanced training of the partner agencies, and, if necessary, revisions to the statutes.

Cal EMA, along with several key committee members signatory to the CFAA, provided workshops in June 2012 to instruct local agencies on how to correctly develop average actual hourly rates, salary surveys, and actual administrative rates. Cal EMA stated it also held a Web conference in July 2012 for those local agencies that were unable to attend the workshops because of budgetary constraints or other commitments.

Recommendation 1.3.b—See pages 22—24 of the audit report for information on the related finding.

To make certain that local agencies calculate correctly their average actual hourly rates, if Cal EMA determines that the local agencies' rates are incorrect, it should advise the agencies to recalculate the rates reported in their salary survey. Local agencies that fail to submit accurate average actual hourly rates should be subject to the base rates.

Cal EMA's Action: Pending.

Cal EMA did not address this recommendation, which is contingent upon the results of its audit of a sample of the local agencies' invoices.

Recommendation 1.3.c—See pages 22—24 of the audit report for information on the related finding.

To make certain that local agencies calculate correctly their average actual hourly rates, if Cal EMA does not believe that it has the statutory authority and resources to audit the average actual hourly rates reported in the local agencies' salary surveys, it should either undertake the necessary steps to obtain both the authority and the necessary resources or obtain statutory authority to request that the State Controller's Office perform the audits.

Cal EMA's Action: Pending.

Cal EMA did not specifically address this recommendation. Instead, Cal EMA stated it evaluated its options, along with its partner agencies, for ensuring the accuracy of and the accountability for the financial information that the local agencies submit. Cal EMA stated its options for ensuring financial integrity included better defined invoicing instructions, enhanced training of the partner agencies, and, if necessary, revisions to the statutes.

Recommendation 1.4.a—See pages 24—27 of the audit report for information on the related finding.

If FEMA determines that the calculations and claims identified in the Office of Inspector General's audit report were erroneous, Cal EMA should modify the time sheets to track the actual hours that the responding agency works as well as the dates and times that the agency committed to the incident and returned from the incident.

Cal EMA's Action: Pending.

On March 5, 2012, FEMA deobligated \$5.7 million in funding related to hours claimed that were in excess of its recovery policy, which permits the reimbursement of personnel costs up to 24 hours for each of the first two days and up to 16 hours for each of the following days in the response period. However, Cal EMA did not specifically address whether or not it modified the time sheets to track the actual hours the responding agency works as well as the dates and times that the agency committed to the incident and returned from the incident. Instead, Cal EMA stated that it has worked with CAL FIRE to make the appropriate adjustments to CAL FIRE's accounting methodologies to ensure that the overtime costs CAL FIRE submits to it do not exceed FEMA's recovery policy.

Recommendation 1.4.b—See pages 24—27 of the audit report for information on the related finding.

If FEMA determines that the calculations and claims identified in the Office of Inspector General's audit report were erroneous, Cal EMA should ensure that the replacement for its current invoicing system can calculate the maximum number of reimbursable personnel hours under both FEMA's policy and the CFAA.

Cal EMA's Action: Pending.

Cal EMA did not specifically address whether or not its new Mutual Aid Reimbursement Program will be able to calculate the maximum number of reimbursable personnel hours under both FEMA's policy and the CFAA.

Recommendation 1.5.a—See pages 24—27 of the audit report for information on the related finding.

If FEMA determines that the calculations and claims identified in the Office of Inspector General's audit report were erroneous, CAL FIRE should revise its method of claiming reimbursement for personnel hours to comply with FEMA's policy.

CAL FIRE's Action: Fully implemented.

On March 5, 2012, FEMA deobligated \$5.7 million in funding related to hours claimed that were in excess of its recovery policy, which permits the reimbursement of personnel costs up to 24 hours for each of the first two days and up to 16 hours for each of the following days in the response period. CAL FIRE stated that it revised its method of claiming reimbursement for personnel hours to comply with FEMA's policy.

Recommendation 1.5.b—See pages 24—27 of the audit report for information on the related finding.

If FEMA determines that the calculations and claims identified in the Office of Inspector General's audit report were erroneous, CAL FIRE should collaborate with Cal EMA to establish a system that calculates the maximum number of reimbursable personnel hours in accordance with both FEMA's policy and the CFAA.

CAL FIRE's Action: Pending.

CAL FIRE stated that it continues to coordinate with Cal EMA and its federal mutual aid partners to ensure as much consistency as possible between the CFAA and the FEMA Disaster Assistance program. However, CAL FIRE did not specifically address its collaboration efforts with Cal EMA to establish a system that calculates the maximum number of reimbursable personnel hours in accordance with both FEMA's policy and the CFAA.

Intellectual Property

An Effective Policy Would Educate State Agencies and Take Into Account How Their Functions and Property Differ

REPORT NUMBER 2011-106, ISSUED NOVEMBER 2011

Intellectual property typically consists of copyrights, trademarks, patents, and trade secrets. In November 2000, the California State Auditor (state auditor) issued a report titled *State-Owned Intellectual Property: Opportunities Exist for the State to Improve Administration of its Copyrights, Trademarks, Patents, and Trade Secrets*—report number 2000-110 (2000 audit report). The 2000 audit report recommended the Legislature take steps to help state agencies manage and protect the State's intellectual property.

This report concludes that the State has not enacted a statutory framework, nor has it implemented the recommendations made in the 2000 audit report or otherwise provided guidance to state agencies regarding the management and protection of intellectual property. The four state control agencies we spoke to—the Department of Finance, the Department of General Services (General Services), the State Controller's Office, and the California Technology Agency—generally do not provide policies or guidance to other state agencies regarding the management and protection of intellectual property because they do not believe that they are responsible for providing this type of guidance. However, more than half of the state agencies that responded to our survey about intellectual property stated that the State should establish statewide guidance for managing and protecting intellectual property. Moreover, the four state agencies we visited—the Department of Transportation (Caltrans), Department of Food and Agriculture (Food and Agriculture), California Energy Commission (Energy Commission), and Department of Health Care Services (Health Care Services)—had only limited written policies and instead generally relied on informal practices to manage and protect their intellectual property. To move forward, the State will need to clearly articulate the goals of any policy related to intellectual property. We believe that an effective policy would educate state agencies on their intellectual property rights and would be flexible and take into account that state agencies perform different functions and work with different types of intellectual property.

In the report, the state auditor made the following recommendations to Caltrans, Food and Agriculture, Energy Commission, Health Care Services, the Legislature, and the governor. The state auditor's determination regarding the current status of recommendations is based on the agencies' responses to the state auditor as of November 2012.

Recommendation 1.1—See pages 19—21, 31—32, and 35—40 of the audit report for information on the related finding.

Caltrans, the Energy Commission, Food and Agriculture, and Health Care Services should put in writing those policies and procedures related to intellectual property that they believe are necessary and appropriate to enable their staff to identify, manage, and protect their intellectual property.

Caltrans' Action: Fully implemented.

In June 2012 Caltrans issued a written policy related to ownership and use of its intellectual property. Further, Caltrans stated that it issued interim guidelines in October 2012 to assist its managers and employees to better manage and protect Caltrans' intellectual property. Finally, Caltrans stated that it will modify its interim guidelines as its program develops and General Services issues direction per Assembly Bill 744 (AB 744) [Chapter 463, Statutes of 2012], which was signed by the governor in September 2012.

Energy Commission's Action: Fully implemented.

The Energy Commission updated its policies and procedures to educate staff about intellectual property and how to protect it. It completed the policies and procedures in January 2012, and the Energy Commission stated that it made the information available to all staff on its intranet.

Food and Agriculture's Action: Fully implemented.

Food and Agriculture issued intellectual property policy and guidelines in July 2012.

Health Care Services' Action: No action taken.

- ➔ Health Care Services indicated that it has not yet implemented the recommendation because of other high priority projects and staff vacancies. However, Health Care Services stated that pursuant to AB 744 it will coordinate with General Services to track and manage its intellectual property.

Recommendation 1.2—See page 20 of the audit report for information on the related finding.

Food and Agriculture should ensure that it has developed intellectual property terms and conditions that are appropriate for the types of agreements into which its contracts office enters.

Food and Agriculture's Action: Fully implemented.

Food and Agriculture issued intellectual property policy and guidelines in July 2012. The policy specifies responsibility for developing and registering Food and Agriculture's intellectual property including language in contracts that is appropriate and necessary.

Recommendation 1.3—See pages 21 and 22 of the audit report for information on the related finding.

The Energy Commission should take the necessary steps to strengthen its royalty process to ensure that it receives the proper amounts from all contractors that owe it royalties.

Energy Commission's Action: Fully implemented.

The Energy Commission stated that it has modified its annual Public Interest Energy Research (PIER) royalty letter to require a response and added language to its PIER solicitations indicating that bidders who have not responded to the royalty repayment letter may be screened out from participating in future PIER funding opportunities. The Energy Commission also stated that it amended a contract with the State Controller's Office to include review of PIER royalty payments and that those reviews are underway. The Energy Commission stated it has drafted new PIER terms and conditions, which require certification that the royalty amount paid is correct. Finally, the Energy Commission stated that it hired a contractor to perform follow-up calls and independent market assessment on PIER researchers who might have sold intellectual property products and not yet paid royalties and to identify current PIER researchers that will be required to pay future royalties. The Energy Commission expected work on this contract to begin in December 2012.

Recommendation 1.4.a—See pages 25—28 of the audit report for information on the related finding.

The Legislature and the governor should consider developing a statewide intellectual property policy that educates state agencies on their intellectual property rights without creating an administrative burden. Specifically, this policy should provide guidance to agencies that will give them the understanding necessary to identify when potential intellectual property may exist, including when contractors' work may result in intellectual property, and that will provide them with specific information on intellectual property protections.

Legislative Action: Legislation partially implemented.

AB 744 requires General Services to develop an outreach campaign informing state agencies of their rights and abilities concerning intellectual property. However, the outreach campaign requirement is specific to intellectual property state employees create and does not mention contractors.

Recommendation 1.4.b—See pages 25—28 of the audit report for information on the related finding.

The Legislature and the governor should consider developing a statewide intellectual property policy that educates state agencies on their intellectual property rights without creating an administrative burden. Specifically, this policy should recognize that not all agencies have the same needs and that a one-size-fits-all approach may not be feasible. An effective policy should provide agencies with flexibility regarding ownership of intellectual property rights.

Legislative Action: Legislation enacted.

AB 744 requires General Services to develop various samples and other information for state agencies to consider for owning and managing intellectual property. AB 744 does not require General Services to develop a strict policy that state agencies must follow and in that respect provides the flexibility called for.

Recommendation 1.4.c—See pages 25—28 of the audit report for information on the related finding.

The Legislature and the governor should consider developing a statewide intellectual property policy that educates state agencies on their intellectual property rights without creating an administrative burden. Specifically, this policy should have as one of its primary goals the promotion of the greatest possible public benefit from intellectual property the State creates or funds.

Legislative Action: Legislation enacted.

AB 744 requires General Services to develop various samples and other information for state agencies to consider for owning and managing intellectual property. In passing AB 744, the Legislature declared its intent that the rights of state agencies and departments to track and manage intellectual property created with any state funds shall be interpreted so as to promote the benefit to the public.

Recommendation 1.4.d—See pages 25—28 of the audit report for information on the related finding.

The Legislature and the governor should consider developing a statewide intellectual property policy that educates state agencies on their intellectual property rights without creating an administrative burden. Specifically, this policy should recognize that although additional revenue may be a potential benefit of the State's intellectual property, it is not the only benefit, nor should it be the driving force behind a state policy. However, the policy should provide guidance for identifying valuable intellectual property and how to commercialize it, if appropriate.

Legislative Action: Legislation enacted.

AB 744 requires General Services to develop an outreach campaign to educate state agencies about their rights and abilities concerning intellectual property, to develop factors that state agencies should consider when deciding whether to sell their intellectual property or license it, and to develop sample invention assignment agreements to secure the rights to potentially patentable intellectual property.

Recommendation 1.4.e—See pages 25—28 of the audit report for information on the related finding.

The Legislature and the governor should consider developing a statewide intellectual property policy that educates state agencies on their intellectual property rights without creating an administrative burden. Specifically, this policy should establish the minimum rights agencies should obtain for intellectual property developed by its contractors.

Legislative Action: Unknown.

The state auditor is not aware of any action taken by the Legislature as of December 18, 2012.

Recommendation 1.5—See pages 28 and 43—51 of the audit report for information on the related finding.

If the Legislature and governor believe it would be valuable to understand the amount of intellectual property the State holds on an ongoing basis, they should consider establishing a mechanism to track the State's intellectual property.

Legislative Action: Legislation enacted.

AB 744 requires General Services, beginning January 2015, to track intellectual property generated by state employees or with state funding. General Services must develop a database to track intellectual property that includes certain information, such as date of creation and sources of funding. General Services is to update the database every three years.

California Department of Transportation

Its Poor Management of State Route 710 Extension Project Properties Costs the State Millions of Dollars Annually, Yet State Law Limits the Potential Income From Selling the Properties

REPORT NUMBER 2011-120, ISSUED AUGUST 2012

This report concludes that the California Department of Transportation (Caltrans) has spent nearly \$22.5 million to repair the properties it owns between July 1, 2008, and December 31, 2011, which exceeds the rental income it collected by \$9.7 million. Caltrans charges the majority of the State Route 710 (SR 710) property tenants rents that are, on average, 43 percent below market rate. By doing so, we estimate that Caltrans has foregone \$22 million in rental income between July 1, 2007, and December 31, 2011. Further, our legal counsel advises us that generally Caltrans' rental of the SR 710 properties at below-market rates may constitute a prohibited gift of public funds.

Caltrans has spent an average of \$6.4 million per year on repairs to the SR 710 properties; however, it could not demonstrate that the repairs for many of the properties were reasonable or necessary. Caltrans maintains the SR 710 properties by either contracting directly with service providers or requesting that the Department of General Services (General Services) complete specific repairs. However, Caltrans did not always perform annual inspections to determine whether repairs were necessary. Furthermore, Caltrans often authorized repairs that far exceeded the properties' potential rental income. Also, General Services exerts insufficient oversight over several repair project cost areas. For example, General Services' construction unit does not properly monitor its labor charges. General Services also did not follow state law and policies governing purchases from small businesses. We found that the owner of a small business that does a large amount of business with General Services is related to the owners of two other small businesses that General Services made purchases from, and these companies with related owners bid against each other. Consequently, other qualified suppliers may not have had a fair opportunity to participate in the competitive solicitation process.

As of March 1, 2012, Caltrans estimated that the market value of the SR 710 parcels was \$279 million, with single- and multi-family residential parcels comprising \$238 million, or 85 percent, of the estimated market value. However, if the State were to deem these residential parcels as surplus and sell them in accordance with the state law known as the Roberti Bill, it could potentially receive only \$40 million, or 17 percent of their estimated market value. Further, if the SR 710 residential parcels were sold under the Roberti Bill, they would generate only a fraction of the property tax revenues that they would otherwise if the State sold them at fair market value. While Caltrans is determining whether it will proceed with the SR 710 extension project, the State could consider certain alternatives that would allow it to retain access to the right-of-way needed for the extension project. One option Caltrans could consider is contracting with one or more private contractors to provide property management services to maintain the SR 710 properties. Another option to consider is the establishment of a joint powers authority (JPA) that would include Caltrans and the cities of Pasadena, South Pasadena, and Los Angeles to manage the SR 710 properties.

In the report, the California State Auditor (state auditor) made the following recommendations to Caltrans and General Services. The state auditor's determination regarding the current status of recommendations is based on Caltrans' and General Services' responses to the state auditor as of October 2012.

Recommendation 1.1.a—See pages 20—24 of the audit report for information on the related finding.

To ensure that it collects fair market rents for the SR 710 properties on the State's behalf, Caltrans should, using the fair market rent determinations for all SR 710 properties it recently prepared and excluding those in its affordable rent program, adjust the tenants' rents to fair market after providing them with proper notice.

Caltrans' Action: Partially implemented.

Caltrans stated that it is in the process of assessing rental rate increases to fair market rent and has sent letters to all SR 710 tenants requesting their financial information. Caltrans also stated that, once it completes its analysis of all of the information, it will work with the Business, Transportation and Housing Agency (agency) to determine the best course of action for it and the State. Caltrans anticipates that, after providing the affected tenants with the requisite 60-day notice, rental rate increases will be effective March 1, 2013.

Recommendation 1.1.b—See pages 21—24 of the audit report for information on the related finding.

To ensure that it collects fair market rents for the SR 710 properties on the State's behalf, Caltrans should make only limited exceptions to charging fair market rent and document the specific public purpose that is served in any case that it does not charge fair market rent.

Caltrans' Action: Partially implemented.

Caltrans stated that it is in the process of assessing rental rate increases to fair market rent and has sent letters to all SR 710 tenants requesting their financial information. Caltrans also stated that, once it completes its analysis of all of the information, it will work with the agency to determine the best course of action for it and the State. Caltrans anticipates that, after providing the affected tenants with the requisite 60-day notice, rental rate increases will be effective March 1, 2013.

Recommendation 1.2.a—See pages 24—27 of the audit report for information on the related finding.

To ensure that all taxable fringe benefits or gifts state employees receive are appropriately included in their gross income, Caltrans should establish procedures to notify state employees who rent SR 710 properties that they may be subject to tax implications.

Caltrans' Action: Partially implemented.

Caltrans stated that it has notified state employees who rent SR 710 properties that they may be subject to tax implications. However, Caltrans did not specifically address whether or not it established procedures.

Recommendation 1.2.b—See page 25 of the audit report for information on the related finding.

To ensure that all taxable fringe benefits or gifts employees receive are appropriately included in their gross income, Caltrans should continue to work with its information technology division to generate the reports necessary for it to provide the State Controller's Office (state controller) with the value of the state housing for its employees monthly.

Caltrans' Action: No action taken.

➔ Caltrans did not specifically address this recommendation.

Recommendation 1.2.c—See pages 24—27 of the audit report for information on the related finding.

To ensure that all taxable fringe benefits or gifts state employees receive are appropriately included in their gross income, Caltrans should work with the state controller to identify the statute of limitations for employers to report adjustments to employee gross income to the federal Internal Revenue Service and the California Franchise Tax Board.

Caltrans' Action: Partially implemented.

Caltrans stated that it obtained consent from the Attorney General's Office (attorney general) to retain independent legal counsel specializing in taxation to provide legal advice on the tax issues raised in this recommendation. Caltrans also stated that it sent a request for proposal on September 14, 2012, to several law firms listed on the State Bar of California's (state bar) Web site. According to Caltrans, upon receiving a legal opinion from the selected firm, it and the agency will evaluate the appropriate course of action for it and the State.

Recommendation 1.2.d—See pages 24—27 of the audit report for information on the related finding.

To ensure that all taxable fringe benefits or gifts state employees receive are appropriately included in their gross income, Caltrans should work with the state controller to identify the difference between the fair market rental value of the SR 710 housing and the rent state employees paid for that housing during the applicable calendar years related to the federal and state statute of limitations.

Caltrans' Action: Partially implemented.

Caltrans stated that it obtained consent from the attorney general to retain independent legal counsel specializing in taxation to provide legal advice on the tax issues raised in this recommendation. Caltrans also stated that it sent a request for proposal on September 14, 2012, to several law firms listed on the state bar's Web site. According to Caltrans, upon receiving a legal opinion from the selected firm, it and the agency will evaluate the appropriate course of action for it and the State.

Recommendation 1.2.e—See pages 24—27 of the audit report for information on the related finding.

To ensure that all taxable fringe benefits or gifts state employees receive are appropriately included in their gross income, Caltrans should work with the state controller to determine if it needs to revise the W-2 forms for the other employees to whom Caltrans provided housing benefits, including the four employees who worked at its Chilao Maintenance Station.

Caltrans' Action: Partially implemented.

Caltrans stated that it obtained consent from the attorney general to retain independent legal counsel specializing in taxation to provide legal advice on the tax issues raised in this recommendation. Caltrans also stated that it sent a request for proposal on September 14, 2012, to several law firms listed on the state bar's Web site. According to Caltrans, upon receiving a legal opinion from the selected firm, it and the agency will evaluate the appropriate course of action for it and the State.

Recommendation 1.2.f—See pages 24—27 of the audit report for information on the related finding.

To ensure that all taxable fringe benefits or gifts state employees receive are appropriately included in their gross income, Caltrans should provide information to the other state agencies so that they can submit the standard form for reporting the value of the housing provided to their employees for the applicable past calendar years to the state controller. Caltrans should continue to submit this information monthly to the applicable state agencies until the state employees are no longer renting the SR 710 properties at below-market rates.

Caltrans' Action: Partially implemented.

Caltrans stated that it obtained consent from the attorney general to retain independent legal counsel specializing in taxation to provide legal advice on the tax issues raised in this recommendation. Caltrans also stated that it sent a request for proposal on September 14, 2012, to several law firms listed on the state bar's Web site. According to Caltrans, upon receiving a legal opinion from the selected firm, it and the agency will evaluate the appropriate course of action for it and the State.

Recommendation 1.3.a—See pages 27—29 of the audit report for information on the related finding.

To ensure that the affordable rent policy is enforceable and that only eligible tenants receive the benefit of the policy, Caltrans should adopt regulations in accordance with the Administrative Procedure Act (APA) if the director determines that it is appropriate to continue to offer affordable rent to certain tenants.

Caltrans' Action: Pending.

Caltrans stated that the director is reviewing the affordable rent program to determine if it is appropriate to continue offering it to certain tenants and/or to expand it to include other tenants. Caltrans also stated that it is expected that the director will make a decision by November 2012.

Recommendation 1.3.b—See pages 27—29 of the audit report for information on the related finding.

To ensure that the affordable rent policy is enforceable and that only eligible tenants receive the benefit of the policy, Caltrans should annually review and document the tenants' household incomes using income certification forms. If tenants no longer qualify for the program because their income exceeds the income requirement or one of the income-producing tenants in the household has been replaced by a new tenant, it should increase their rent to fair market rates after giving proper notice.

Caltrans' Action: Pending.

Caltrans stated that the director is reviewing the affordable rent program to determine if it is appropriate to continue offering it to certain tenants and/or to expand it to include other tenants. Caltrans also stated that the director's decision is expected by November 2012.

Recommendation 2.1.a—See page 32 of the audit report for information on the related finding.

To ensure that the repairs it makes to the SR 710 properties are necessary and reasonable, Caltrans should document its rationale for approving project change orders.

Caltrans' Action: Partially implemented.

Caltrans' District 7 office management issued a memo on September 27, 2012, instructing staff to document their rationale for approving project change orders, effective immediately. Caltrans also stated that it is on track to complete the specific policy and procedures to ensure compliance and the related training by December 31, 2012.

Recommendation 2.1.b—See pages 32 and 33 of the audit report for information on the related finding.

To ensure that the repairs it makes to the SR 710 properties are necessary and reasonable, Caltrans should conduct annual field inspections of the properties.

Caltrans' Action: Partially implemented.

Caltrans' District 7 office management issued a memo on September 27, 2012, instructing staff to conduct annual field inspections of the properties, effective immediately. Caltrans stated that as of October 9, 2012, it had completed 371 of the 433 inspections and that it is on target to complete the remaining inspections by December 31, 2012.

Recommendation 2.1.c—See page 33 of the audit report for information on the related finding.

To ensure that the repairs it makes to the SR 710 properties are necessary and reasonable, Caltrans should discontinue performing roofing repairs on properties its roof assessments indicate are in good condition, unless a new assessment indicates a repair is needed.

Caltrans' Action: Partially implemented.

Caltrans' District 7 office management issued a memo on September 27, 2012, requiring all roof repair orders to have an updated assessment to determine if the repairs are necessary, effective immediately. Caltrans also stated that it is on track to complete the specific policy and procedures to ensure compliance by December 31, 2012.

Recommendation 2.1.d—See pages 32 and 33 of the audit report for information on the related finding.

To ensure that the repairs it makes to the SR 710 properties are necessary and reasonable, Caltrans should incorporate roof assessments as part of its annual field inspections of the properties.

Caltrans' Action: Partially implemented.

Caltrans stated that it incorporated roof assessments as part of its annual inspections of properties. Caltrans also stated that it is on track to complete the specific policy and procedures to ensure compliance by December 31, 2012.

Recommendation 2.1.e—See pages 34—36 of the audit report for information on the related finding.

To ensure that the repairs it makes to the SR 710 properties are necessary and reasonable, Caltrans should develop a written policy to ensure that it considers the cost-effectiveness of repair costs for historic and nonhistoric projects in relation to the potential rental income for the property. Such a policy should establish the maximum acceptable cost-recovery period for the amount it will spend for repairs, above which the repairs will be considered wasteful.

Caltrans' Action: Partially implemented.

Caltrans stated that it is developing a policy to assess the cost-effectiveness of repair costs, which will include evaluating a cost-recovery period for repairs. Caltrans also stated that it is on track to issue the policy and provide training to all employees by December 31, 2012.

Recommendation 2.1.f—See pages 34—36 of the audit report for information on the related finding.

To ensure that the repairs it makes to the SR 710 properties are necessary and reasonable, Caltrans should establish a process to ensure it evaluates the cost-effectiveness of any repair before authorizing it.

Caltrans' Action: Partially implemented.

Caltrans stated that its District 7 office management is developing a standardized process for evaluating the cost-effectiveness of repairs. Caltrans also stated that it anticipates implementing this process and providing training to the appropriate staff by December 31, 2012.

Recommendation 2.1.g—See pages 32—36 of the audit report for information on the related finding.

To ensure that the repairs it makes to the SR 710 properties are necessary and reasonable, Caltrans should retain in its project files evidence to support the necessity and reasonableness of repairs, such as change orders, annual field inspections, and analyses of cost-effectiveness.

Caltrans' Action: Partially implemented.

Caltrans' District 7 office management issued a memo on September 27, 2012, instructing staff to retain the required evidence to support the necessity and reasonableness of repairs in the project files, effective immediately. Caltrans also stated that it is on track to issue the specific policy and provide training to the appropriate staff by December 31, 2012.

Recommendation 2.2—See pages 38 and 39 of the audit report for information on the related finding.

To ensure that the State achieves cost savings for the repairs made to the SR 710 properties, Caltrans should periodically perform more comprehensive analyses of viable options for repairing the properties. If Caltrans determines that General Services is the best option, it should ensure that it properly executes an interagency agreement in accordance with the *State Contracting Manual*.

Caltrans' Action: Partially implemented.

Caltrans stated that it is evaluating the best method to perform a cost comparison of options for the maintenance of the SR 710 properties. Caltrans anticipates completing the cost comparison by December 31, 2012. Caltrans also stated that, in the meantime, it initiated the execution of an interagency agreement with General Services.

Recommendation 2.3—See pages 36—38 of the audit report for information on the related finding.

To ensure that it appropriately executes interagency agreements with other state agencies, General Services should provide training to construction unit staff.

General Services' Action: Pending.

General Services stated that the construction unit will schedule its staff to attend the Services Contracting course offered by the California Procurement and Contracting Academy (Cal-PCA). General Services also stated that this course is taught by staff from its office of legal services and includes coverage of the State's requirements for the use of interagency agreements to contract with other state agencies.

Recommendation 2.4.a—See pages 39—40 of the audit report for information on the related finding.

To ensure that General Services performs only necessary repairs and that its costs are reasonable, Caltrans should ensure that its staff adhere to relevant contracting policies, including retaining evidence of its approval of General Services' repair work before and after the completion of a project in the project file.

Caltrans' Action: Partially implemented.

Caltrans' District 7 office management issued a memo on September 27, 2012, instructing staff to retain the required evidence to support the necessity and reasonableness of repairs in the project files, effective immediately. Caltrans stated the required evidence would include approval of General Services' work before and after project completion. Caltrans also stated that it is on track to issue the specific policy and provide training to the appropriate staff by December 31, 2012.

Recommendation 2.4.b—See pages 40 and 41 of the audit report for information on the related finding.

To ensure that General Services performs only necessary repairs and that its costs are reasonable, Caltrans should reconcile General Services' estimates for the repair projects with the scope of work the Department of Finance (Finance) approved in the transfer request form, and, if applicable, explain any differences.

Caltrans' Action: Partially implemented.

Caltrans stated that it is meeting with General Services to develop a process to reconcile the estimates for repairs with the scope of work in the transfer request forms. Caltrans expects this process to be in place by December 31, 2012.

Recommendation 2.4.c—See pages 40 and 41 of the audit report for information on the related finding.

To ensure that General Services performs only necessary repairs and that its costs are reasonable, Caltrans should reconcile the actual work General Services performs to the scope of work approved in the project work plans.

Caltrans' Action: Partially implemented.

Caltrans stated that it is meeting with General Services to develop a process to reconcile the actual work performed to the scope of work approved in the project work plans. Caltrans expects this process to be in place by December 31, 2012.

Recommendation 2.4.d—See pages 40 and 41 of the audit report for information on the related finding.

To ensure that General Services performs only necessary repairs and that its costs are reasonable, Caltrans should reconcile the actual expenditures for the projects listed in the transfer request form approved by Finance and the approved budget in the project work plans with General Services' actual expenditures for each project.

Caltrans' Action: Partially implemented.

Caltrans stated that it is using its March 2012 tracking spreadsheet to reconcile actual expenditures to the approved budget for the work being done by General Services. However, the effectiveness of this spreadsheet is contingent upon Caltrans' implementation of recommendation 2.4.e. Further, Caltrans did not specifically address whether or not it reconciles the actual expenditures for the projects listed in the transfer request form approved by Finance.

Recommendation 2.4.e—See pages 40 and 41 of the audit report for information on the related finding.

To ensure that General Services performs only necessary repairs and that its costs are reasonable, Caltrans should modify its March 2012 tracking spreadsheet to ensure that it contains sufficient information for Caltrans to effectively monitor repair costs.

Caltrans' Action: Partially implemented.

Caltrans stated that it is working with General Services to obtain the necessary data to monitor repair costs. Caltrans anticipates it will complete the final modifications to its March 2012 tracking spreadsheet on or before December 31, 2012.

Recommendation 3.1.a—See pages 43—45 of the audit report for information on the related finding.

To ensure that it charges its clients appropriately for the work it performs, General Services should reassess the construction unit's methodologies for determining the hourly burden rate and direct administration fees.

General Services' Action: Partially implemented.

General Services stated that its construction unit will revise its rate-setting process for fiscal year 2013–14 to fully address the state auditor's concerns. General Services also stated that the revised process will ensure that the construction unit's hourly burden rate and direct administration fees are accurately and properly calculated based on prior year expenditure data and projected billable hours. Further, General Services stated that, to date, the construction unit has consulted with General Services' budget, accounting, and information technology staff on improvements that can be made to its rate and fees calculation function.

Recommendation 3.1.b—See pages 43—45 of the audit report for information on the related finding.

To ensure that it charges its clients appropriately for the work it performs, General Services should ensure that the construction unit's methodologies are sound and that it can properly support them.

General Services' Action: Partially implemented.

General Services stated that its construction unit will revise its rate-setting process for fiscal year 2013–14 to fully address the state auditor's concerns. General Services also stated that the revised process will ensure that the construction unit's hourly burden rate and direct administration fees are accurately and properly calculated based on prior year expenditure data and projected billable hours. Further, General Services stated that, to date, the construction unit has consulted with General Services' budget, accounting, and information technology staff on improvements that can be made to its rate and fees calculation function.

Recommendation 3.2—See pages 46—48 of the audit report for information on the related finding.

To determine if the construction unit's use of casual laborers to perform work not in their job specifications, such as procurement, is cost-effective, General Services should perform an analysis comparing the cost of paying the casual laborers at the prevailing wage rate and the cost of paying permanent civil service employees. If it finds that using permanent employees is cost-effective for the State, General Services should seek approval for additional permanent employees to perform those functions.

General Services' Action: Partially implemented.

General Services stated that its construction unit is in the final stages of analyzing the cost effectiveness of its practice of using a limited number of casual laborers to occasionally perform office administrative type tasks, such as procurement.

Recommendation 3.3.a—See pages 46—50 of the audit report for information on the related finding.

To ensure that the casual laborers charge only for their actual hours worked on projects, General Services should require that the civil service supervisor who has knowledge of the time the casual laborer works approve the casual laborer's daily time report and the Activity Based Management System time charges.

General Services' Action: No action taken.

General Services did not specifically address this recommendation.



Recommendation 3.3.b—See pages 46—50 of the audit report for information on the related finding.

To ensure that the casual laborers charge only for their actual hours worked on projects, General Services should ensure that the daily time reports for casual laborers contain the appropriate task codes, the laborer's signature, and the approval of a civil service supervisor.

General Services' Action: No action taken.

General Services did not specifically address this recommendation.



Recommendation 3.3.c—See pages 48—50 of the audit report for information on the related finding.

To ensure that the casual laborers charge only for their actual hours worked on projects, General Services should update its construction unit manual to formalize its standard practice of using daily job reports for each project.

General Services' Action: No action taken.

General Services did not specifically address this recommendation.



Recommendation 3.3.d—See pages 48—50 of the audit report for information on the related finding.

To ensure that the casual laborers charge only for their actual hours worked on projects, General Services should retain the daily job reports and the daily time reports in the project files.

General Services' Action: No action taken.

General Services did not specifically address this recommendation.



Recommendation 3.4—See page 50 of the audit report for information on the related finding.

To ensure that it complies with its nepotism policy, General Services should have its office of human resources review and approve its existing temporary authorization appointments for casual laborers. If the office of human resources finds that personal relationships exist, General Services should take appropriate action in accordance with its policy.

General Services' Action: Partially implemented.

General Services stated that its office of audit services is conducting a review of the construction unit's operations to determine compliance with the nepotism policy. General Services also stated that it is updating its nepotism policy, as well as the nepotism process contained in its Personnel Operations Manual, to provide additional guidance to staff. General Services plans to issue its updated nepotism policy by October 31, 2012. Further, General Services stated that, upon issuance of the new policy, its office of human resources will work with the construction unit to ensure that the construction unit's staff are fully trained on its nepotism policy and practices.

Recommendation 3.5.a—See page 55 of the audit report for information on the related finding.

To ensure that the construction unit complies with the State's procurement laws and policies, General Services should require the construction unit to immediately discontinue its current procurement practices that are inconsistent with the State's procurement laws and policies.

General Services' Action: Partially implemented.

General Services stated that the construction unit has taken actions to discontinue any procurement practices that do not comply with state requirements, including the implementation of additional policies and procedures that ensure the rotating of suppliers and obtaining a minimum of two quotes for all purchases. Further, General Services stated that the construction unit headquarters staff are actively monitoring compliance with the new operating requirements.

Recommendation 3.5.b—See page 55 of the audit report for information on the related finding.

To ensure that the construction unit complies with the State's procurement laws and policies, General Services should require the construction unit to modify the procurement section of its manual to conform to the State's procurement laws and policies.

General Services' Action: Partially implemented.

General Services stated that the construction unit is updating the procurement section of its policy manual to conform to the State's procurement requirements and plans to issue its updated policies by November 30, 2012.

Recommendation 3.5.c—See pages 50—55 of the audit report for information on the related finding.

To ensure that the construction unit complies with the State's procurement laws and policies, General Services should provide training to its construction unit employees regarding the State's procurement laws and policies.

General Services' Action: Partially implemented.

General Services stated that, based on course availability, the construction unit is actively enrolling its purchasing staff in Cal-PCA courses that provide acquisition specialists with the knowledge essential to conduct purchases in accordance with state requirements.

Recommendation 3.5.d—See page 56 of the audit report for information on the related finding.

To ensure that the construction unit complies with the State's procurement laws and policies, General Services should clarify the waiver process in the administrative order governing the small business participation goal.

General Services' Action: Partially implemented.

General Services stated that it will amend its administrative order to include additional examples of situations in which waivers may be granted. General Services plans to issue its amended administrative order by November 30, 2012.

Recommendation 3.5.e—See page 56 of the audit report for information on the related finding.

To ensure that the construction unit complies with the State's procurement laws and policies, General Services should continue its efforts to implement regulations that govern the small business certification process related to defining and enforcing violations of commercially useful function requirements.

General Services' Action: Partially implemented.

General Services expects the Office of Administrative Law (OAL) will approve the final regulations by January 31, 2013.

Recommendation 3.5.f—See pages 50—57 of the audit report for information on the related finding.

To ensure that the construction unit complies with the State's procurement laws and policies, General Services should conduct an investigation of the small businesses we discussed in the report to determine if they are performing a commercially useful function.

General Services' Action: Partially implemented.

General Services stated that its office of audit services, in consultation with its construction unit and office of small business and disabled veterans business enterprise services, is investigating the small businesses discussed in the report to determine if they are performing a commercially useful function.

Recommendation 4.1—See pages 59—64 of the audit report for information on the related finding.

To ensure the State properly manages its resources, the Legislature should consider amending the state law known as the Roberti Bill to allow Caltrans to sell SR 710 properties that have high market value at fair market prices.

Legislative Action: Legislation vetoed.

The governor vetoed Senate Bill 204 of the 2011–12 Regular Legislative Session on September 30, 2012. This bill would have required the California Transportation Commission and Caltrans to declare as excess certain state properties acquired for the SR 710 surface freeway extension and required Caltrans to expeditiously release those properties for sale, with the tenants of those properties being offered the first right of refusal to purchase the properties at fair market value.

Recommendation 4.2—See page 60 of the audit report for information on the related finding.

To comply with the 2007 court ruling and the APA until such time as the Legislature may choose to act, Caltrans should establish regulations to govern the sales process for the SR 710 properties affected by the Roberti Bill.

Caltrans' Action: Partially implemented.

Caltrans stated it anticipates submitting its proposed regulations to OAL for approval by the end of 2012.

Recommendation 4.3.a—See page 65 of the audit report for information on the related finding.

To pursue alternatives to its management of the SR 710 properties, Caltrans should prepare a cost-benefit analysis to determine if the State would save money by hiring a private vendor to manage the properties. If such savings would occur, Caltrans should seek an exemption under Government Code, Section 19130 (a), to hire a private vendor.

Caltrans' Action: Partially implemented.

Caltrans stated it hired a consultant to perform an independent cost-benefit analysis of the following property management options for the SR 710 properties: hiring a private vendor, establishing a JPA, and transferring the properties to a local transportation entity. The local transportation entity would take over ownership and management of the properties and use the proceeds of the sale for local transportation improvements. Caltrans also stated that its first meeting with the consultant would be held in October 2012 to develop a work plan with target dates.

Recommendation 4.3.b—See page 66 of the audit report for information on the related finding.

To pursue alternatives to its management of the SR 710 properties, Caltrans should perform an analysis to compare the cost of establishing a JPA to its current costs of managing the properties.

Caltrans' Action: Partially implemented.

Caltrans stated it hired a consultant to perform an independent cost-benefit analysis of the following property management options for the SR 710 properties: hiring a private vendor, establishing a JPA, and transferring the properties to a local transportation entity. The local transportation entity would take over ownership and management of the properties and use the proceeds of the sale for local transportation improvements. Caltrans also stated that its first meeting with the consultant would be held in October 2012 to develop a work plan with target dates.

Recommendation 4.4—See pages 64—66 of the audit report for information on the related finding.

To pursue alternatives to the State's management of the SR 710 properties that would preserve its access to the right-of-way needed for the extension project, to the extent that Caltrans has determined it to be cost-beneficial to do so, the Legislature should consider the establishment of a JPA that would allow Caltrans and the affected cities to jointly manage the SR 710 properties.

Legislative Action: Unknown.

The state auditor is not aware of any action taken by the Legislature as of December 18, 2012.

California Department of Transportation

Its Capital Outlay Support Program Should Strengthen Budgeting Practices, Refine Its Performance Measures, and Improve Internal Controls

REPORT NUMBER 2010-122, ISSUED APRIL 2011

This report concludes that, despite a stated goal to reduce overruns in its support project budgets, the California Department of Transportation (Caltrans) has performed little analysis to determine the frequency or magnitude of support cost budget overruns. Our review of projects that completed construction in fiscal years 2007–08 through 2009–10 indicates that 62 percent of the projects had support costs that exceeded their respective budgets. These overruns totaled more than \$305 million of the \$1.4 billion in total support cost expenditures for the projects that completed construction during these fiscal years. Our analysis found that the primary cause for support cost overruns was an increase in the hourly rate for support costs. For example, one project was approximately 14,600 hours under budget but exceeded its budgeted dollar amount by nearly \$6.8 million, representing a support cost overrun of 83 percent. The changes in the hourly rate for support costs were due, in part, to salary increases of more than 40 percent during fiscal years 2005–06 through 2008–09 for certain Caltrans employees, including engineers. We also found that project managers for 12 of the 40 projects we reviewed monitored their budgets based primarily on the hours charged and not dollars spent. If project managers do not pay attention to costs, escalations in the rate paid per hour could cause a support cost overrun, even if the project remains under its budgeted hours. Further, project managers for 10 of the 40 projects we reviewed did not use a detailed approach to develop a support budget when a project was ready for construction.

Moreover, although Caltrans has established a goal of reducing support costs to represent a ratio of 32 percent of the total capital costs (support-to-capital ratio), according to our assessment Caltrans generally did not meet its goal for fiscal years 2007–08 through 2009–10. In addition, Caltrans has failed historically to use a consistent method to calculate this ratio over time, thus decreasing the value of the ratio for assessing Caltrans' performance in managing the support program. Furthermore, the support-to-capital ratio has limitations and could be defined more precisely to better measure efficiency, given that support costs can vary greatly depending on a project's size and type.

We also noted that Caltrans' time-reporting system lacks strong internal controls, and better project monitoring and consistent use of performance metrics, such as earned value metrics, could help it minimize support cost overruns. Further, although Caltrans recently sought to hire consultants rather than permanent employees to address a temporary increase in workload, it was not successful in doing so because requests for consultants have historically been revised during the legislative budget process to align with a staffing ratio of 10 percent consultants to 90 percent state staff.

In the report, the California State Auditor (state auditor) made the following recommendations to Caltrans. The state auditor's determination regarding the current status of recommendations is based on Caltrans' one-year response to the state auditor as of April 2012.

Recommendation 1.1.a—See pages 28—37 of the audit report for information on the related finding.

To improve accountability internally and with the public, Caltrans should create and incorporate an analysis of support cost budget variances in its quarterly report to the agency and in its annual report to the Legislature and the governor. The analysis should report on the number of completed projects with budget variances and on the number of open projects for which the estimates at completion predict budget variances. Further, the analysis should report on the overrun and underrun ratios for those projects, and the portions of the variances due to rates and hours. Also, Caltrans should include in its strategic plan a measurable goal for reducing variances.

Caltrans' Action: Partially implemented.

Caltrans established a performance measure that targets support expenditures that are within a specified range of the support budget. The performance measure is now in place and Caltrans stated that it is now included in the quarterly project delivery reports submitted to the California Transportation Commission (CTC). The report was not included in the 2011 annual report to the Legislature and governor due to timing issues; however, Caltrans stated that it will be included in future reports. Further, Caltrans did not state whether it will include in its reports an analysis of the portions of budget variances due to rates and hours.

Recommendation 1.1.b—See pages 32 and 33 of the audit report for information on the related finding.

To improve accountability internally and with the public, Caltrans should establish budgets for those State Transportation Improvement Program (STIP) projects programmed before the passage of Senate Bill 45 so that overruns may be reported in the quarterly report to the agency and in the annual report to the Legislature and the governor.

Caltrans' Action: Fully implemented.

Caltrans has established support budgets for the 24 projects it identified as having started (projects programmed) prior to the passage of Senate Bill 45.

Recommendation 1.1.c—See page 33 of the audit report for information on the related finding.

To improve accountability internally and with the public, Caltrans should develop a system to report on the total budgets of support program projects—including initial project support budgets—of projects that have been divided into multiple projects or combined into a larger project.

Caltrans' Action: Fully implemented.

Caltrans stated that it has developed improved business practices to allow for easier tracking of project budgets. Specifically, Caltrans provided a project management directive outlining a process for managing project funding and costs when projects are split or combined into one or more construction contracts. The process allows for tracking the origin of projects split into multiple projects or combined into one project. That directive took effect in August 2011.

Recommendation 1.2.a—See pages 41—43 of the audit report for information on the related finding.

To improve performance metrics related to the support program, Caltrans should devise, use, and publicize a consistent method for reporting the support-to-capital ratio on its Web site and in other reports to the public. Further, Caltrans should recalculate past support-to-capital ratios using the method devised to allow for comparison across years.

Caltrans' Action: Partially implemented.

Caltrans stated that it developed a consistent methodology for reporting the support-to-capital ratio and posted the methodology on its project management intranet site. Caltrans also recalculated past support to capital ratios consistent with this new methodology. However, it did not indicate that it has or will publish this information on its Web site or in other reports to the public. Further, Caltrans stated that it would incorporate these measures into a quarterly report to the CTC by the third quarter of fiscal year 2011–12.

Recommendation 1.2.b—See pages 43—45 of the audit report for information on the related finding.

To improve performance metrics related to the support program, Caltrans should develop goals—and publicly report on the progress against those goals—for the support-to-capital ratio, based on project type—STIP or the State Highway Operation and Protection Program (SHOPP)—and project size.

Caltrans' Action: Partially implemented.

Caltrans stated it established support-to-capital ratio goals based on the capital cost of STIP and SHOPP projects. For example, projects with a capital cost greater than \$25 million would have a support-to-capital ratio goal of below 30 percent. Caltrans stated it would include the established measures in the CTC Project Delivery Report starting with the third quarter of fiscal year 2011–12.

Recommendation 1.2.c—See pages 45 and 46 of the audit report for information on the related finding.

To improve performance metrics related to the support program, Caltrans should continue to explore the use of additional metrics, such as a measure based on a productivity index as described in a March 2011 draft study by the University of California, Davis.

Caltrans' Action: Pending.

Caltrans stated that it has been moving away from using the support-to-capital ratio as a measure of performance but will continue to use it as an indicator. Caltrans stated that it is on track to develop an additional metric by July 2012.

Recommendation 1.3—See pages 37—39 of the audit report for information on the related finding.

To better develop and manage project budgets for support, Caltrans should instruct project managers to submit requests to update the budget when assumptions on which the budget was based are no longer valid, regardless of the phase of the project. Additionally, it should direct its project managers to use a detailed approach based on project tasks, such as those included in a project work plan, when finalizing project support budgets before construction.

Caltrans' Action: Fully implemented.

Caltrans issued a project management directive titled “Management of Capital Outlay Support,” in August 2011. The directive gives direction on updating budgets for construction on or before the date the project is voted on by the CTC and proceeds to the construction phase. Further, the directive includes instruction to update estimated hours in the project’s work plan when hours change and to review and update—if needed—resource estimates on an ongoing basis, and at least quarterly. Further, the directive requires that the project development team review and update support budgets at the completion of each major milestone.

Recommendation 1.4.a—See pages 38 and 39 of the audit report for information on the related finding.

To ensure that it monitors the status of projects, Caltrans should continue to implement the policies described in its February 2010 memorandum to the districts describing an approach Caltrans will take to monitor support costs within budget. Moreover, Caltrans should direct its project managers to monitor budgets for all projects according to both hours and costs.

Caltrans' Action: Fully implemented.

Caltrans issued a project management directive in August 2011 clarifying the responsibility of project managers in the development and maintenance of project workplans, including planned hours and support costs throughout the life of the project. Further, Caltrans stated that it has added a standing agenda item to a quarterly teleconference to discuss support budget corrective action plans.

Recommendation 1.4.b—See pages 48—50 of the audit report for information on the related finding.

To ensure that it monitors the status of projects, Caltrans should implement earned value management throughout its districts in a manner similar to the implementation in the Los Angeles district. To allow for performance evaluation of project work, Caltrans should ensure that these performance metrics are available at the task level for both active and completed projects. Caltrans should instruct districts to aggregate this information for all projects by task level, to better assess the effectiveness and efficiency of support costs by task level. Caltrans should also make available to project managers graphical displays of project cost and schedule performance.

Caltrans' Action: Partially implemented.

In its 60-day response, Caltrans stated that it was reviewing policies, business processes, existing systems and data, to implement a statewide standard approach to earned value management in advance of the implementation of its Project Resource and Schedule Management (PRSM) system. In its six-month response, Caltrans stated that it is on track for having a standard approach to earned value management in place by December 31, 2011. Caltrans issued a "Project Delivery Directive" effective 2012 stating that Caltrans utilizes earned value management as one of the tools to manage capital outlay projects' cost and schedule. The directive provides definitions of earned value management measures and indicates the responsibilities of managers at various levels to implement earned value management. However, the directive does not indicate whether there are reports available for managers to use in implementing earned value management, such as reports on metrics at the task level for both active and completed projects and graphical displays of project cost and schedule performance available to managers. Finally, past responses tied Caltrans' implementation of earned value management to its adoption of the PRSM system; however, Caltrans' one-year response does not mention the PRSM system in relation to earned value management.

Recommendation 1.5.a—See pages 46—48 of the audit report for information on the related finding.

To better address costs associated with the support program, Caltrans should ensure that the PRSM system contains strong controls that ensure employees only charge time to projects and phases for which they are assigned.

Caltrans' Action: Pending.

Caltrans stated that when the PRSM system is fully implemented, only those employees with approved cost centers will be allowed to charge to projects. According to Caltrans, it initially expected full implementation of the PRSM system to be complete by the summer of 2012; however, several factors have contributed to a delay in the system's implementation including data conversion and a change in approach to training. Caltrans expects full implementation of the PRSM system by June 2013.

Recommendation 1.5.b—See pages 50—52 of the audit report for information on the related finding.

To better address costs associated with the support program, Caltrans should commission an independent study of the costs and benefits of using consultants to address temporary increases in workload and, if the study reveals cost savings, use consultants. To the extent possible, Caltrans should also use temporary staff appointments for temporary increases in workload when consultants are unavailable.

Caltrans' Action: Partially implemented.

Caltrans Division of Research and Innovation contracted with CTC and Associates LLC to compare in-house staff and consultant costs for highway design and construction. Caltrans has received two reports, one dated July 2011 and another dated October 2011, from CTC and Associates LLC, which compared the use of in-house staff and consultants. In general, according to Caltrans, these reports concluded that cost should not be an overriding factor in deciding whether to outsource. Caltrans explained that other factors such as expediting project delivery and managing workload should be taken into consideration when determining when and what work to outsource. Caltrans stated it is in the process of contracting for an independent study to identify options or tools to improve decision-making processes regarding resource mix during workload peaks and valleys. Caltrans stated in its one-year response that it expects the final report to be complete within six to 12 months.

Recommendation 1.6—See pages 42 and 43 of the audit report for information on the related finding.

To ensure that it receives more complete information on the support program, the Legislature should require Caltrans to include in its annual report an expanded methodology for reporting support to capital ratios to include, in addition to a support-to-cost ratio analysis based on costs incurred up to the award of the construction contract of STIP projects, a separate support-to-capital ratio analysis for STIP projects that have completed construction. Further, the Legislature should require Caltrans to report on similar ratios for SHOPP projects based on costs incurred up to the award of the construction contract and for those projects that completed construction.

Legislative Action: Legislation enacted.

Chapter 6, Statutes 2011 (Assembly Bill 105), requires the department to submit to the Legislature information to substantiate the proposed capital outlay budget. In addition, Chapter 38, Statutes 2011 (Assembly Bill 115), requires the department to include in that submittal the capital-to-support ratio for all projects completed in the prior fiscal year.

Recommendation 1.7—See page 40 of the audit report for information on the related finding.

To increase accountability for budget overruns of support costs, the Legislature should consider legislation that would expressly require CTC to review and approve project construction support costs when they differ from the amount budgeted by 20 percent or more.

Legislative Action: Legislation enacted.

Chapter 272, Statutes of 2012 (Senate Bill 1102), among other things, requires the department, no later than November 15, 2014, and annually thereafter, to report the difference between the original allocation made by the CTC and the actual construction capital and support costs at project close for all state transportation improvement program projects completed during the previous fiscal year.

Recommendation 1.8—See pages 50—52 of the audit report for information on the related finding.

To ensure that Caltrans does not hire permanent state staff beyond its need for such staff, the Legislature should consider appropriating funding for consultants to address temporary increases in Caltrans' workloads when Caltrans requests such funding.

Legislative Action: Unknown.

The state auditor is not aware of any action taken by the Legislature as of December 18, 2012.

California Department of Transportation

Inexcusable Neglect of Duty (Case I2008-0731)

REPORT NUMBER I2011-1, CHAPTER 4, ISSUED AUGUST 2011

This report found that for nearly three years, a transportation planning supervisor for the California Department of Transportation (Caltrans) neglected his duty to supervise the work of a subordinate transportation planner, resulting in the transportation planner receiving compensation, including overtime pay, for which the State lacked assurance that the transportation planner performed adequate work to justify the compensation.

In the report, the California State Auditor (state auditor) made the following recommendations to Caltrans. The state auditor's determination regarding the current status of recommendations is based on Caltrans' response to the state auditor as of January 2012.

Recommendation 1.a—See pages 28—31 of the investigative report for information on the related finding.

To address the inexcusable neglect of duty, Caltrans should take appropriate corrective action against the senior transportation planner for neglecting his duty to supervise the transportation planner.

Caltrans' Action: Fully implemented.

Caltrans reported that it issued a corrective memorandum to the supervisor and placed a copy in the supervisor's personnel file. However, it stated that the memorandum would be removed from the file after one year, provided that the supervisor does not engage in similar actions or otherwise fail in his duties.

Recommendation 1.b—See page 29 of the investigative report for information on the related finding.

To prevent similar improper acts from occurring, Caltrans should institute training to ensure that all Caltrans employees are aware of the requirement that all overtime work be preapproved.

Caltrans' Action: Fully implemented.

Caltrans reported in December 2011 that it revised its overtime policy. In January 2012 Caltrans reported that it required its supervisors and managers to review the policy with all of their employees.

Recommendation 1.c—See pages 29 and 30 of the investigative report for information on the related finding.

Caltrans should establish controls to ensure that its telecommuting agreements are reviewed and renewed annually in order for an employee to be allowed to continue telecommuting.

Caltrans' Action: Fully implemented.

In July 2011 Caltrans revised its employee telework directive, which defines the responsibilities of managers and supervisors to ensure that telecommuting agreements are reviewed annually. It reported subsequently that its telework unit distributes notifications monthly to supervisors about the need to review telecommuting agreements nearing their expiration.

Recommendation 1.d—See pages 29—31 of the investigative report for information on the related finding.

Caltrans should revise its telecommuting policy to require that employees participating in the telecommuting program provide regular documentation of the work they perform away from the office.

Caltrans' Action: Fully implemented.

Caltrans reported that it had revised its Telework Program Policy and Procedures guidelines in March 2011. According to Caltrans, these guidelines require managers and supervisors to provide specific, measurable, and attainable performance expectations for their telecommuting employees. The agreements must define in writing detailed work tasks, corresponding deadlines, and expected work performance. The policy also requires managers and supervisors to review their expectations with their telecommuting employees at least quarterly.

California Energy Commission

Falsification of Time and Attendance Records (Case I2010-0844)

REPORT NUMBER I2011-1, CHAPTER 3, ISSUED AUGUST 2011

This investigation found that an employee and a personnel specialist at the California Energy Commission (Energy Commission) falsified time and attendance records to enable the employee—at the time of her retirement—to receive a payment for unused annual leave that was higher than the amount to which she was entitled, costing the State an estimated \$6,589.

In the report, the California State Auditor (state auditor) made the following recommendations to the Energy Commission. The state auditor's determination regarding the current status of recommendations is based on the Energy Commission's response to the state auditor as of December 2011.

Recommendation 1—See pages 23—25 of the investigative report for information on the related finding.

The Energy Commission should seek to recover the amount it improperly paid the retiring employee for unused annual leave hours. If it is unable to recover any or all of this reimbursement, the Energy Commission should explain and document its reasons for not obtaining recovery of the funds.

Energy Commission's Action: Fully implemented.

The Energy Commission reported that in December 2011 the retired employee reimbursed it for leave hours she used inappropriately.

Recommendation 2.a—See pages 24 and 25 of the investigative report for information on the related finding.

The Energy Commission should take appropriate disciplinary action against the personnel specialist for making unauthorized changes to the retiring employee's leave balances.

Energy Commission's Action: Fully implemented.

The Energy Commission reported that the personnel specialist retired in June 2011. Nevertheless, in October 2011 the Energy Commission reported it had placed a memorandum in the personnel specialist's personnel file describing her actions related to the falsification of the retiring employee's time sheets and the unauthorized changes she made to the employee's leave balances.

Recommendation 2.b—See page 22 of the investigative report for information on the related finding.

The Energy Commission should monitor the personnel specialist's payroll and leave balance transactions to ensure that she follows Energy Commission policies.

Energy Commission's Action: Fully implemented.

The Energy Commission reported that the personnel specialist retired in June 2011, before it learned of our recommendation. Nevertheless, as previously mentioned, it placed a memorandum in her personnel file describing her improper activities.

Recommendation 2.c—See page 22 of the investigative report for information on the related finding.

The Energy Commission should provide training to employees responsible for managing leave balance and time-sheet transactions to ensure that they understand the Energy Commission's policies for safeguarding their accuracy and respecting the limitations on the use of sick leave for family member illness as specified by the law and applicable collective bargaining agreements.

Energy Commission's Action: Fully implemented.

The Energy Commission stated that it provided training to its personnel specialists in September 2011. It stated that it stressed the importance of accuracy and thoroughness in processing leave usage, the limitations on the use of sick leave for family member illnesses as specified in various bargaining unit agreements, and obtaining supervisory approval on all amended time sheets.

Oil Spill Prevention and Administration Fund

The Department of Fish and Game and the Office of Spill Prevention and Response Need to Improve Their Administration of the Spill Fund

REPORT NUMBER 2011-123, ISSUED AUGUST 2012

The Department of Fish and Game's¹ (Fish and Game) Office of Spill Prevention and Response (spill office) is responsible for preventing and responding to oil spills and the administrator of the spill office is responsible for administering the Oil Spill Prevention and Administration Fund (spill fund). The revenue for the spill fund is mostly derived from its per-barrel fees, which are charged to owners or operators of crude oil and petroleum products received in California, and the fees paid by certain vessels carrying cargo other than oil, known as nontank vessels. Combined, these fees fund the majority of the spill office's oil spill prevention activities.

This report concludes that Fish and Game misstated the financial condition of the spill fund appearing in the governor's budget for four of the five fiscal years during our audit period from fiscal years 2006–07 through 2010–11. These misstatements were, in part, a result of Fish and Game's budget branch not having written procedures directing staff to reconcile the spill fund's financial condition to the State Controller's Office records. Moreover, the analysts in Fish and Game's budget branch lacked experience and training regarding the preparation of fund condition statements.

State law requires the administrator to produce a three-year projection of the spill fund's future revenues and expenses. Relying at least in part on financial information prepared by the spill office in June 2011, the Legislature recently approved a temporary increase to the per-barrel fee to cover projected deficits in the spill fund. However, the spill office's three-year projection contained inaccuracies because the spill office did not take the steps necessary to verify the accuracy of the financial information included in the projection. A factor that may have affected the three-year projection is the method Fish and Game used to calculate the federal government's share of its indirect administrative costs, such as those costs associated with accounting, personnel services, and general administration. Fish and Game's method for calculating the federal government's share led to an undercharge of \$27.3 million to the Federal Trust Fund that was incurred by other funds administered by Fish and Game. The federal government has agreed to allow Fish and Game to recover this amount over the next three fiscal years. As a result, the spill office will need to consider the reduction in the spill fund's indirect administrative costs when projecting its fund balance and, if necessary, adjust the fees accordingly moving forward.

This report also follows up on recommendations issued in our August 2008 report titled *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 2008-102. In that report, we concluded that Fish and Game's restructuring of certain spill office positions appeared to have caused friction between the spill office and Fish and Game management. To help reduce friction, we recommended that the spill office and other Fish and Game units discuss their respective authority and better define their roles. This report concludes that some of these issues still exist and that they may be resolved with the development of written policies and procedures. Our 2008 report also raised concerns regarding certain employees' salaries being improperly charged to the spill fund; however, we found that Fish and Game has since resolved these issues by providing guidance to its employees and implementing a new time reporting system.

In the report, the California State Auditor (state auditor) made the following recommendations to Fish and Game. The state auditor's determination regarding the current status of recommendations is based on Fish and Game's response to the state auditor as of October 2012.

¹ As of January 1, 2013, the Department of Fish and Game became the Department of Fish and Wildlife.

Recommendation 1.1.a—See pages 17—19 of the audit report for information on the related finding.

To prepare and report accurate fund condition statements for inclusion in the governor's budget each year, Fish and Game should ensure that staff in its budget branch follow written procedures to develop fund condition statements.

Fish and Game's Action: Fully implemented.

Fish and Game developed written procedures for completing fund condition statements. It also stated that its budget branch has been following these procedures since fiscal year 2011–12. In addition, Fish and Game indicated that, as required by the Department of Finance, starting in fiscal year 2012–13, the budget branch is also completing the Prior Year Adjustments to Special Funds Worksheet (worksheet).

Recommendation 1.1.b—See pages 17—19 of the audit report for information on the related finding.

To prepare and report accurate fund condition statements for inclusion in the governor's budget each year, Fish and Game should train both new and existing staff on how to prepare fund condition statements for inclusion in the governor's budget.

Fish and Game's Action: Fully implemented.

Fish and Game stated that its budget branch has a primary analyst and back-up analyst assigned to develop fund condition statements and that both current analysts have been trained in using its new written procedures and the worksheet. Fish and Game explained that if staff change, either due to attrition or assignment changes, new staff will be trained in using the written procedures and the worksheet to ensure that the budget branch continues to follow these procedures when developing the fund condition statements.

Recommendation 1.2.a—See pages 20 and 21 of the audit report for information on the related finding.

To ensure that three-year projections of the spill fund's revenues, expenditures, and fund balances, all of which are used to determine fee rates, are based on accurate financial information, the spill office should develop written procedures directing staff on how to prepare the three-year projection, including steps to verify the accuracy of the financial information in the projection. In developing these procedures, the spill office should consult with Fish and Game's accounting branch and budget branch to confirm that these procedures are thorough and complete.

Fish and Game's Action: Fully implemented.

Fish and Game developed written procedures that direct staff on how to prepare the three-year projection of the spill fund's revenues, expenditures, and fund balances.

Recommendation 1.2.b—See pages 21—23 of the audit report for information on the related finding.

To ensure that three-year projections of the spill fund's revenues, expenditures, and fund balances, all of which are used to determine fee rates, are based on accurate financial information, the spill office should consider the reduction in the spill fund's costs, as a result of the recovery of indirect administrative costs, when projecting its fund balance moving forward.

Fish and Game's Action: Pending.

Fish and Game stated that its budget office will factor the recovery of indirect administrative costs in its determination of the spill fund's share of these recovered costs. It also indicated that the spill office will consider this recovery when estimating fund projections.

Recommendation 1.3—See pages 21—23 of the audit report for information on the related finding.

To prevent under- or over-recovery of federal funds, Fish and Game should regularly reassess whether using budgeted expenditures or actual expenditures will produce the most accurate results.

Fish and Game's Action: Pending.

Fish and Game stated that its accounting services branch (accounting branch) submits its Indirect Cost Rate Proposal annually to the U.S. Department of Interior and that in November 2012, the accounting branch will be preparing the new proposal for fiscal year 2013–14. Fish and Game asserted that it will reassess the method used at that time as well as make adjustments as needed.

Recommendation 1.4—See pages 23—26 of the audit report for information on the related finding.

To eliminate confusion about the authority of the spill office and its relationship with Fish and Game, the Legislature should consider amending state law to clarify its intent regarding the administrator's authority.

Legislative Action: Unknown.

The state auditor is not aware of any action taken by the Legislature as of December 18, 2012.

Recommendation 1.5.a—See pages 23—26 of the audit report for information on the related finding.

To ensure that the spill office continues to work consistently with other entities to resolve issues with the use of staff and equipment and that it has the necessary resources to carry out its operations, the spill office should develop written policies and procedures with Fish and Game enforcement regarding staffing decisions.

Spill Office's Action: Pending.

Fish and Game explained that it has completed draft guidelines regarding the coordination of the spill office and Fish and Game enforcement and the current target for adoption of these guidelines is January 1, 2013.

Recommendation 1.5.b—See pages 23—26 of the audit report for information on the related finding.

To ensure that the spill office continues to work consistently with other entities to resolve issues with the use of staff and equipment and that it has the necessary resources to carry out its operations, the spill office should develop written policies and procedures with Fish and Game's IT unit regarding the coordination of response to system outages.

Spill Office's Action: Pending.

Fish and Game stated that it has completed draft guidelines regarding the coordination of the spill office and Fish and Game's IT unit, and the current target for adoption of these guidelines is January 1, 2013.

Recommendation 1.5.c—See pages 23—26 of the audit report for information on the related finding.

To ensure that the spill office continues to work consistently with other entities to resolve issues with the use of staff and equipment and that it has the necessary resources to carry out its operations, the spill office should develop written policies and procedures with the State Lands Commission (State Lands) regarding its disclosure of budget change proposals affecting the spill fund.

Spill Office's Action: Fully implemented.

The spill office and State Lands have completed a memorandum of understanding (MOU) regarding the spill fund. State Lands stated that this MOU will ensure that the two entities share budget change concept proposals, budget change proposals, and the spill fund's fund condition and fund projection information.

Recommendation 1.6—See pages 26—29 of the audit report for information on the related finding.

To comply with state law, State Lands should develop time sheet review procedures to ensure that its employees charge the spill fund only for oil spill prevention activities and that those charges are accurate.

State Lands' Action: Fully implemented.

State Lands has updated its time reporting instructions, which are included in its employee information guide and are accessible by all State Lands' employees on its intranet. State Lands' executive officer also sent a memorandum to all State Lands' managers and supervisors emphasizing the importance of the time report review and approval process. Finally, it stated that administrative staff have also been directed to conduct time reporting training for all staff.

Department of Fish and Game

Misuse of a State Vehicle, Improper Travel Reimbursements (Case I2009-0601)

REPORT NUMBER I2011-1, CHAPTER 5, ISSUED AUGUST 2011

This report found that a manager at the Department of Fish and Game¹ (Fish and Game) improperly directed an employee under his supervision to use a state vehicle for commuting between her home and work locations at a cost to the State of \$8,282 during a nine-month period. In addition, the employee improperly requested—and the manager improperly approved—reimbursement for \$595 in lodging and meal expenses incurred by the employee near her headquarters.

In the report, the California State Auditor (state auditor) made the following recommendations to Fish and Game. The state auditor's determination regarding the current status of recommendations is based on Fish and Game's response to the state auditor as of September 2012.

Recommendation 1.a—See pages 35 and 36 of the investigative report for information on the related finding.

To recover the cost of the improper use of the state vehicle, Fish and Game should follow the guidelines established in state regulations and initiate repayment from the manager for the costs associated with the misuse of the state vehicle.

Fish and Game's Action: No action taken.

In September 2012 Fish and Game provided us with an update to this case; however, it did not indicate any action taken in response to this recommendation.



Recommendation 1.b—See page 36 of the investigative report for information on the related finding.

To recover the cost of the improper travel reimbursements, Fish and Game should seek recovery of the \$595 in lodging and meal reimbursements that were paid to the employee.

Fish and Game's Action: No action taken.

Fish and Game provided an update in September 2012; however, it did not indicate any action taken in response to this recommendation.



Recommendation 1.c—See pages 35 and 36 of the investigative report on the related finding.

Fish and Game should take appropriate disciplinary action against the manager for directing the misuse of a state vehicle.

Fish and Game's Action: Fully implemented.

Fish and Game reported that it issued a corrective counseling memo to the supervisor in June 2011.

Recommendation 1.d—See pages 33—36 of the investigative report for information on the related finding.

Fish and Game should provide training to the manager and the employee about state rules for the payment of employee travel expenses.

¹ As of January 1, 2013, the Department of Fish and Game became the Department of Fish and Wildlife.

Fish and Game's Action: Partially implemented.

In September 2012 Fish and Game reported that it provided the manager with training related to our investigation; however, Fish and Game did not indicate that it provided the employee with any training regarding state rules for payment of employee travel expenses.

Department of Fish and Game

Improper Use of Lease Proceeds (Case I2009-1218)

REPORT NUMBER I2012-1, CHAPTER 4, ISSUED DECEMBER 2012

This report concludes that a supervisor with the Department of Fish and Game (Fish and Game)¹ improperly implemented an agricultural lease agreement. He directed the lessee to use state funds derived from the lease to purchase \$53,813 in goods and services that did not provide the improvements and repairs the lease required. In addition, the supervisor required the lessee to provide the State with \$5,000 in Home Depot gift cards, but the supervisor could not demonstrate that the purchases he and other state employees made with the gift cards paid for improvements or for any identifiable state purpose.

In the report, the California State Auditor (state auditor) made the following recommendations to Fish and Game. The state auditor's determination regarding the current status of recommendations is based on Fish and Game's failure to respond as of December 2012.

Recommendation 1—See pages 27—29 of the investigative report for information on the related finding.

Fish and Game should seek either corrective or disciplinary action against the supervisor for his failure to ensure that Fish and Game used lease proceeds in accordance with the terms of the lease and to ensure that these proceeds were accounted for in the State Treasury where necessary.

Fish and Game's Action: No action taken.

Fish and Game has failed to provide a response.



Recommendation 2—See pages 27—29 of the investigative report for information on the related finding.

Fish and Game should amend the terms of its leases either to require that the lessee make lease payments to the State or to include specific improvements and repairs of comparable value that the lessee must perform in lieu of making lease payments. In either instance, Fish and Game should include a provision in the lease for payment if the lessee owes money to the State at the end of the lease period. If it decides that future leases should require a lessee to make specific improvements and repairs, Fish and Game should do the following:

- Develop a system to track all pertinent information related to a lessee's cost for improvements and repairs to be credited against the lease.
- Require the supervisor to reconcile payment records at least annually with each lessee to ensure that the State's records are accurate and that the State receives full benefit from leasing the state property.

Fish and Game's Action: No action taken.

Fish and Game has failed to provide a response.



Recommendation 3—See pages 27—29 of the investigative report for information on the related finding.

Fish and Game should provide training to those involved with the lease to ensure that it properly accounts for and reconciles future work and payments related to the leased property, that it does not pay operational and equipment expenses with proceeds derived from the lease, and that all parties understand what work Fish and Game expects as the result of the agreement.

¹ As of January 1, 2013, the Department of Fish and Game became the Department of Fish and Wildlife.

Fish and Game's Action: No action taken.

- ➔ Fish and Game has failed to provide a response.

General Obligation Bonds

The Departments of Water Resources and Finance Should Do More to Improve Their Oversight of Bond Expenditures

REPORT NUMBER 2010-117, ISSUED MAY 2011

This report concludes that the Department of Water Resources (Water Resources) demonstrated effective oversight of general obligation bonds, but it could improve in certain areas. During our review of a sample of 10 projects, we noted that Water Resources made appropriate decisions when awarding bond funds and making payments for project activities. However, for two of the 10 projects, Water Resources could not demonstrate that it performed site visits or took other steps to ensure the projects achieved their expected outcomes. We also found that Water Resources lacks a documented review process to ensure information posted to the Bond Accountability Web site is correct. Our review of the Web site revealed instances where Water Resources posted inaccurate award information for certain projects and in some cases did not post any information at all.

We also found that the Department of Finance (Finance) should do more to ensure transparency and accountability for bond spending related to the general obligation bonds approved by voters in November 2006 to fund the State's Strategic Growth Plan. The former governor's executive order from January 2007 required Finance to establish a Bond Accountability Web site that was to include information on the amounts spent on each bond-funded project. However, Finance's approach to establishing the Web site required departments to post information on the amounts awarded and not the amounts spent. By not providing the public with periodic information on the amounts spent for each project—to then compare against amounts awarded—the public lacks a way to measure each project's progress towards completion. In addition, Finance lacks a tracking process to ensure that state departments update the Bond Accountability Web site and describe the expected or realized benefits of bond-funded projects in terms the public can readily understand. Finally, we noted that the executive order requires state agencies to either contract with Finance for audits of bond expenditures or make alternative arrangements for audits with Finance's approval. However, as of late April 2011, Finance had issued audit reports on only three of the state agencies administering the general obligation bonds that support the State's Strategic Growth Plan, and none were of Water Resources.

In the report, the California State Auditor (state auditor) made the following recommendations to the Governor and the audited agencies. The state auditor's determination regarding the current status of recommendations is based on Water Resources' response as of June 2012 and Finance's response as of July 2011.

Recommendation 1.1—See pages 22—27 of the audit report for information on the related finding.

To ensure that its expenditures of bond funds achieve the intended purposes, Water Resources needs to strengthen its monitoring of project deliverables. For example, it should review the policies and practices of its various divisions, ensuring that periodic progress reports are obtained from grant recipients, and that final site visits document the results of the reviews performed.

Water Resources' Action: Fully implemented.

In its one-year response, Water Resources provided evidence that it updated various policy manuals establishing expectations for conducting site visits and ensuring that deliverables are obtained. For example, Water Resources' division of flood management developed a desk reference manual that includes project close-out procedures and a checklist for staff to follow. Key aspects of this close-out process include ensuring and documenting that project objectives are met. Similarly, Water Resources' Division of Integrated Regional Water Management developed written procedures establishing expectations for conducting site visits and specifying items to evaluate during such visits. Water Resources also provided examples of documented site visits it had performed.

Recommendation 1.2—See pages 31—34 of the audit report for information on the related finding.

To provide the public with accurate and complete information on the bond-funded projects it administers, Water Resources should develop and consistently use a formalized, documented review process that will provide greater assurance that project information posted to the Bond Accountability Web site is regularly updated and contains accurate information.

Water Resources' Action: No action taken.

➔ In its one-year response, Water Resources indicated that it had implemented our recommendation but did not provide evidence to substantiate its assertion. We requested Water Resources provide evidence of a systemic and documented review process for information posted to the Bond Accountability Web site. Specifically, we asked Water Resources to provide evidence that its management had reviewed and approved the information posted for three projects listed on the Bond Accountability Web site. Water Resources was unable to provide documentary evidence of these approvals.

Recommendation 1.3—See pages 36—42 of the audit report for information on the related finding.

To enhance transparency and accountability regarding the State's use of general obligation bond funds, the governor should require administering agencies to report actual amounts spent on bond funded projects and update the expenditure information at least semiannually.

Governor's Action: Unknown.

We are unaware of any additional guidance issued by the Governor's Office.

Recommendation 1.4.a—See pages 36—42 of the audit report for information on the related finding.

To enhance the value of the Bond Accountability Web site, Finance should require administering agencies to provide information about the actual amounts of bond funds spent on posted projects at least semiannually.

Finance's Action: No action taken.

➔ Finance does not intend to implement this recommendation. In its 60-day update to the audit, Finance stated that its current practice requires state departments and agencies to post the amounts awarded for specific projects on the Bond Accountability Web site. Finance further explained its expectation that state departments and agencies update a project's awarded amount with actual expenditures if there is a difference once the project is complete. Finance maintains that its current policies comply with the former governor's executive order. Further, Finance questions the benefits of this recommendation and stated that it would be costly for many state departments and agencies to implement. Finance did not provide a six-month or one-year response to the audit.

Recommendation 1.4.b—See pages 42—45 of the audit report for information on the related finding.

To enhance the value of the Bond Accountability Web site, Finance should develop a tracking and review process to periodically assess the completeness of the project information posted to the Bond Accountability Web site. Such a process should include a review of whether state agencies are describing, in terms the public can easily understand, the expected or realized benefits of bond-funded projects.

Finance's Action: No action taken.

Finance does not intend to take any additional steps to implement this recommendation. In its 60-day update, Finance stated that it will continue to review state agencies compliance during department audits and during special project reporting compliance reviews. Finance explained that its audits include a review of whether state departments are appropriately reporting project information. Finance did not provide a six-month or one-year response to the audit.

Recommendation 1.5—See pages 45—47 of the audit report for information on the related finding.

To ensure that expenditures were consistent with bond laws and that the project achieved the intended benefits or outcomes agreed to when the project was originally awarded, Finance should conduct audits of, or approve and assure that, Water Resources and other agencies obtain audits of, Strategic Growth Plan (SGP) bond expenditures.

Finance's Action: Partially implemented.

In its 60-day update, Finance stated that since the audit was published, Finance has issued four additional audit reports, for a total of six SGP bond audit reports in fiscal year 2010–11. Additionally, Finance indicated that all state agencies administering SGP bonds have either entered into interagency agreements with Finance to conduct audits or have made arrangements with other entities, with the approval of Finance, to conduct the required audits. Accordingly, Finance intends to continue to conduct audits as required by the former governor's executive order. Finance's 60-day update did not provide any additional material to corroborate its assertions. Finance did not provide a six-month or one-year response to the audit.

High-Speed Rail Authority Follow-Up

Although the Authority Addressed Some of Our Prior Concerns, Its Funding Situation Has Become Increasingly Risky and the Authority's Weak Oversight Persists

REPORT NUMBER 2011-504, ISSUED JANUARY 2012

In January 2012 we issued a report that presents the results of a follow-up review the California State Auditor (state auditor) conducted concerning the efforts by the High-Speed Rail Authority (Authority) to implement recommendations from an earlier audit report that we issued in April 2010. The state auditor's report titled *High-Speed Rail Authority: It Risks Delays or an Incomplete System Because of Inadequate Planning, Weak Oversight, and Lax Contract Management*, Report 2009-106, examined the Authority's readiness to manage funds authorized for building the high-speed rail network (program) in California, including the \$9 billion in general obligation bonds the voters authorized in November 2008. As a result of our follow-up audit, we concluded that the Authority has fully implemented four recommendations, partially implemented five, and taken no action on the remaining one.

Although the Authority has implemented some of the recommendations we made in our prior report, significant problems persist. For example, the program's overall financial situation has become increasingly risky. This is in part because the Authority has not provided viable funding alternatives in the event that its planned funding does not materialize. In its 2012 draft business plan, the Authority more than doubled its previous cost estimates for phase one of the program, to between \$98.1 billion and \$117.6 billion. Of this amount, the Authority has secured only approximately \$12.5 billion as of January 2012. Further, the Authority's 2012 draft business plan still lacks key details about the program's costs and revenues.

In addition to our concerns related to the Authority's 2012 draft business plan, we also identified a number of critical, ongoing problems involving its oversight of the program. Specifically, in part because the Authority is significantly understaffed, it has delegated significant control to its contractors—especially the entity that manages the program (Program Manager). The Authority relies on the Program Manager to provide accurate, consistent, and useful information in its monthly progress reports. However, we found that these reports were often inaccurate and that at times the Program Manager appeared to misinform the Authority about the speed with which contractors for each region performed their assigned tasks. Finally, even though the majority of the Authority's role in administering the program involves its management of contracts, we discovered during the course of our work that the Authority had engaged in inappropriate contracting practices involving information technology services. The nature of these problems suggests that the Authority needs to significantly improve its internal controls to ensure that it effectively manages its contracts.

In the follow-up report, the state auditor made the following recommendations to the Authority, one to the Legislature, and one to the Department of General Services (General Services). The state auditor's determination regarding the current status of recommendations is based on the Authority's and General Services' response to the state auditor as of August 2012.

Recommendation 1.1.a—See page 54 of the follow-up audit report for information on the related finding.

To ensure that it can respond adequately to funding levels that may vary from its business plan, the Authority should develop and publish alternative funding scenarios that reflect the possibility of reduced or delayed funding from the planned sources. These scenarios should detail the implications of variations in the level or timing of funding on the program and its schedule.

Authority's Action: Partially implemented.

The Authority stated that it continues to work with stakeholders to define alternative delivery scenarios on blended system operations. Additionally, the Authority asserted that in the spring of 2012, the Department of Finance and the Administration identified cap-and-trade revenues as a

potential funding source for the program. Further, the Authority stated that it will work with the Department of Finance to define a specific plan for the use of cap-and-trade funds, which it claims will be presented in detail in the next business plan to be issued in draft in the fall of 2013. However, although the Authority's business plan includes three alternative funding scenarios, all three assume a similar or increased level of federal funding compared to the Authority's primary plan—which the federal government has not indicated will occur.

Recommendation 1.1.b—See page 54 of the follow-up audit report for information on the related finding.

In order to respond effectively to circumstances that could significantly delay or halt the program, the Authority should ensure that it implements planned actions related to managing risk.

Authority's Action: Fully implemented.

The Authority hired a risk manager in August 2012. The Authority asserts that the risk manager will attend the risk management meetings related to updating the risk register, identifying new risks, performing qualitative risk analyses, and coordinating and tracking risk responses.

Recommendation 1.1.c—See page 54 of the follow-up audit report for information on the related finding.

To avert possible legal challenges, the Authority should ensure that the independent peer review panel adheres to the Bagley-Keene Open Meeting Act or seek a formal opinion from the Office of the Attorney General (attorney general) regarding whether the panel is subject to this act.

Authority's Action: No action taken.

- ➔ The Authority originally addressed our recommendation by requesting an opinion from the attorney general on January 5, 2012. Subsequently, on October 16, 2012, it withdrew its request for a legal opinion stating that it did so because the independent peer review group is appointed by the State Treasurer, the State Controller, the Director of Finance, and the Secretary of Business, Transportation and Housing. The Authority explained that although it provides information requested by the peer review group, it believes that it does not have the legal authority to direct how the peer review group conducts its meetings including providing legal advice to the group about open meeting law requirements. Nevertheless, while the Authority does not appoint the members of the peer review group, state law requires the Authority to “establish” the independent peer review group and, as such, we believe the Authority would be an appropriate entity to request the opinion. In addition, the peer review group informed us that it believes its actions are not covered by the Bagley-Keene Open Meeting Act when it conducts its meetings. The peer group bases its belief on the advice of the authority's former counsel when it explained to us why it does not comply with the Bagley-Keene Open Meeting Act. Therefore, the Authority has not implemented our recommendation.

Recommendation 1.1.d—See page 54 of the follow-up audit report for information on the related finding.

To ensure that it does not run out of funds for administrative and preconstruction tasks prematurely, the Authority should track expenditures for these activities and develop a long-term spending plan for them. It also should develop procedures and systems to ensure that it complies with American Recovery and Reinvestment Act of 2009 requirements.

Authority's Action: Fully implemented.

The Authority implemented monthly control procedures and a supporting spreadsheet that utilizes cost data from CalStars to report cumulative information for administrative and preconstruction costs. The spreadsheet provides a breakdown of administrative and preconstruction expenditures by fiscal year and the percentage these expenditures represent of the total allowable expenditures authorized in Proposition 1A. The Authority stated that the

spreadsheet will be combined with Program Manager information to project administrative and preconstruction expenditures. The Authority also asserts the spreadsheet may be used for future cost projections.

Recommendation 1.1.e—See page 55 of the follow-up audit report for information on the related finding.

In order to ensure that staff receive relevant information on the program's status, the Authority should amend the oversight consultant's work plan to include a critical review of the progress reports for accuracy and consistency. Authority staff should also request that the Program Manager revise its progress reports to include information on the status of contract products and services in relationship to what was promised.

Authority's Action: Fully implemented.

The Authority amended the oversight consultant's work plan to include a critical review of the progress reports. In addition, the Authority provided four recent copies of the Program Manager's progress reports that included information on the status of contract products and services in relationship to what was promised.

Recommendation 1.1.f—See page 55 of the follow-up audit report for information on the related finding.

To ensure that it does not misuse public funds and can hold contractors accountable, the Authority should adhere to the conditions of its contracts and work plans, and make any amendments and modifications in writing.

Authority's Action: Fully implemented.

As published in our March 2011 report titled *Implementation of State Auditor's Recommendations, Audits Released in January 2009 Through December 2010* (Report 2011-406), the Authority amended its contract with the Program Manager to require the use of an audit-adjusted field rate—a discounted overhead rate used when consultants use client facilities. Further, the Authority amended its contract with a regional contractor to include work that was not part of the original contract. Finally, the Authority implemented a change control process, which includes making any amendments and modifications to contracts and work plans in writing.

Recommendation 1.2—See page 15 of the follow-up audit report for information on the related finding.

To add clarification to the first recommendation we made in our prior report that stated, "To ensure that it can respond adequately to funding levels that may vary from its business plan, the Authority should develop and publish alternative funding scenarios that reflect the possibility of reduced or delayed funding from the planned sources. These scenarios should detail the implications of variations in the level or timing of funding on the program and its schedule," the Authority should also present viable alternative funding scenarios for phase one in its entirety that do not assume an increase in the federal funding levels already identified in the 2012 draft business plan. If the Authority does not believe that such alternatives exist, it should publicly disclose this in its 2012 final business plan.

Authority's Action: Partially implemented.

The Authority stated that it continues to work with stakeholders to define alternative delivery scenarios on blended system operations. Additionally, the Authority asserted that in the spring of 2012, the Department of Finance and the Administration identified cap-and-trade revenues as a potential funding source for the program. Further, the Authority stated that it will work with the Department of Finance to define a specific plan for the use of cap-and-trade funds, which it claims will be presented in detail in the next business plan to be issued in draft in the fall of 2013. However, although the Authority's business plan includes three alternative funding scenarios, all three assume a similar or increased level of federal funding compared to the Authority's primary plan—which the federal government has not indicated will occur.

Recommendation 1.3.a—See page 21 of the follow-up audit report for information on the related finding.

To ensure that the public and the Legislature are aware of the full cost of the program, the Authority should clearly report total costs, including projected operating and maintenance costs for the program.

Authority's Action: Fully implemented.

The Authority's 2012 revised business plan discusses total capital costs including operating and maintenance costs. The Authority believes that capital costs and operating and maintenance costs, including costs by year, have been accurately and thoroughly discussed in an open manner through a range of communication media, including through board meetings that are open to the public.

Recommendation 1.3.b—See page 21 of the follow-up audit report for information on the related finding.

To ensure that the public and the Legislature are aware of the full cost of the program, the Authority should clearly disclose that the 2012 draft business plan assumes that the State will only be receiving profits for the first two years of operation in 2022 and 2023, and potentially not again until 2060 in exchange for the almost \$11 billion the Authority assumes it will receive from the private sector over a four-year period.

Authority's Action: Pending.

The Authority stated that it would clarify in its next business plan the decision by the State to raise financing from the private sector based on the net cash flows of the project, which means the State will not be able to use those cash flows for other purposes during the term of the financing.

Recommendation 1.4—See page 23 of the follow-up audit report for information on the related finding.

To assure independence and instill public confidence in the process regarding the Authority's ridership model, the Legislature should draft legislation that establishes an independent ridership review group. For example, the Legislature could use a similar process to the one used to establish the independent peer review panel that the law requires to assess the Authority's business plans.

Legislative Action: Unknown.

The state auditor is not aware of any action taken by the Legislature as of December 18, 2012.

Recommendation 2.1.a—See page 28 of the follow-up audit report for information on the related finding.

To ensure that it has adequate staff to effectively oversee the program, the Authority should continue to fill its vacant positions.

Authority's Action: Partially implemented.

As of October 2012 the Authority filled all but one of its high-level vacant positions; the position of chief financial officer remains vacant.

Recommendation 2.1.b—See page 31 of the follow-up audit report for information on the related finding.

To ensure that it has adequate staff to effectively oversee the program, the Authority should conduct a workload analysis to determine the total number of staff it needs as well as the functions those staff should perform.

Authority's Action: Pending.

The Authority stated that it will explore available options for conducting a workload analysis once it has filled its high-level positions.

Recommendation 2.2—See page 31 of the follow-up audit report for information on the related finding.

To comply with the political reform act, the Authority should establish written policies and procedures for tracking whether all designated employees and consultants have completed and filed their statements of economic interests on time, thereby identifying any potential conflicts of interest.

Authority's Action: Fully implemented.

The Authority has written policies and procedures in place to collect, follow up, and retain statements of economic interest. Those policies and procedures include sections on annual statements, assuming office statements, leaving office statements, and retention. The procedures were approved by the chief executive officer on July 17, 2012.

Recommendation 2.3—See page 31 of the follow-up audit report for information on the related finding.

To increase transparency and to ensure that it is aware of any financial interest that a subcontractor may have in the program, the Authority should require subcontractors to file statements of economic interest.

Authority's Action: Partially implemented.

The Authority asserts that it has put a process in place for determining which contractors and subcontractors should file statements of economic interest. However, not all subcontractors will be required to file. In addition, the Authority's policies state that prime contractors, not Authority staff, are responsible for determining which subcontractors are subject to the conflict-of-interest policy.

Recommendation 2.4.a—See page 35 of the follow-up audit report for information on the related finding.

To ensure that the Program Manager's monthly progress reports are accurate, consistent, and useful, the Authority should reinstate the oversight consultant's review of the progress reports.

Authority's Action: Fully implemented.

The Authority asserted that the oversight consultant reviews the Program Manager's monthly progress reports and makes observations and recommendations to the Program Manager.

Recommendation 2.4.b—See page 35 of the follow-up audit report for information on the related finding.

To ensure that the Program Manager's monthly progress reports are accurate, consistent, and useful, the Authority should hold the Program Manager accountable for implementing the oversight consultant's recommendations. For example, the Authority could withhold partial payment of invoices to the Program Manager until it fully addresses these recommendations.

Authority's Action: Fully implemented.

The Authority stated that the Program Manager discusses, reviews, and incorporates the observations and recommendations of the oversight consultant into a written response to the Authority. The Authority also asserted that its contract managers have the ability to withhold payments in order to deal with nonperformance issues. Additionally, the Authority stated that it continues to add resources to its team to augment its oversight responsibility.

Recommendation 2.4.c—See page 34 of the follow-up audit report for information on the related finding.

To ensure that the Program Manager's monthly progress reports are accurate, consistent, and useful, the Authority should conduct monthly comparisons of the Program Manager's and the regional contractors' progress reports to verify that they are consistent with one another and to ensure that the reports include an accurate status of promised deliverables.

Authority's Action: Fully implemented.

The Authority stated that the oversight consultant, acting as an extension of the Authority, reviews the Program Manager's monthly progress reports and makes observations and recommendations. Those observations and recommendations are reviewed by the program director and are discussed, reviewed, and incorporated into a written response to the Authority. In addition, the Authority indicated that its audit office's work plan includes scheduled audits of the regional contractors' progress reports and invoices, as well as comparisons on a sample of the Program Manager's and the regional contractors' progress reports. It also stated that the audit office will review the Program Manager's and oversight consultant's activities.

Recommendation 2.5—See page 37 of the follow-up audit report for information on the related finding.

To ensure that the regional contractors' monthly progress reports provide sufficient detail to support the monthly invoices, the Authority should perform a monthly comparison of the regional contractors' invoices with the corresponding progress reports. Specifically, the Authority should ensure that the regional contractors' monthly progress reports describe the work they performed in those areas for which they claimed costs in the corresponding invoices. The Authority should discuss with the Program Manager any areas that lack sufficient detail in the progress reports to make such determinations.

Authority's Action: Fully implemented.

According to the Authority, to ensure that sufficient detail is provided in the regional contractors' monthly progress reports and that the program director adequately documents any reporting deficiencies noted in the review of the progress reports and invoices, the audit office's work plan includes scheduled audits of the regional contractors' monthly progress reports and invoices and the Program Manager's and oversight consultant's activities. The audit office reports directly to the Audit and Finance Committee of the Authority's board and administratively to the chief executive officer.

Recommendation 2.6.a—See page 38 of the follow-up audit report for information on the related finding.

To be aware of and respond effectively to circumstances that could significantly delay or halt the program, the Authority should hire a risk manager as soon as possible. Until then, it should designate and require Authority staff to attend risk-management meetings and workshops.

Authority's Action: Fully implemented.

The Authority hired a risk manager in August 2012. According to the Authority, the risk manager will attend the risk management meetings related to updating the risk register, identifying new risks, performing qualitative risk analyses, and coordinating and tracking risk responses.

Recommendation 2.6.b—See page 38 of the follow-up audit report for information on the related finding.

To be aware of and respond effectively to circumstances that could significantly delay or halt the program, the Authority needs to be involved in the development and implementation of the Program Manager's risk-management plan and ensure that Authority staff have roles and responsibilities defined in the plan, such as identifying and mitigating risks in the risk register.

Authority's Action: Fully implemented.

The Authority stated that the new risk management program includes four general types of risk management workshops and meetings that involve Authority staff. The first type of risk management meeting serves to regularly update the risk register, identify new risks, perform qualitative risk analysis, and coordinate and track risk responses—this includes a review of all program and project risks. In addition, the Authority stated that its risk manager is assessing the current risk meeting process and will be making recommendations for enhancements that will be implemented under the Authority's updated risk management plan.

Recommendation 2.6.c—See page 38 of the follow-up audit report for information on the related finding.

To be aware of and respond effectively to circumstances that could significantly delay or halt the program, the Authority should monitor the Program Manager's risk management practices to ensure that either it or the Program Manager identifies and promptly and appropriately addresses risks.

Authority's Action: Fully implemented.

The Authority indicated that its risk manager plans to regularly meet with risk management staff, including the Program Manager, to provide necessary Authority control, direction, oversight, and information sharing.

Recommendation 2.7.a—See page 40 of the follow-up audit report for information on the related finding.

To effectively manage its contracts, the Authority should develop procedures to detect and prevent contract splitting.

Authority's Action: Fully implemented.

According to the Authority, all staff with responsibility for preparing contracts have completed the General Services' training on proper state contracting procedures, including the prohibition against contract splitting. The Authority's contract manual has been updated and provided to Authority employees who have responsibility for preparing contracts. To detect contract splitting, all non-state agency contracts are reviewed prior to execution by the contract specialist within the Authority's contracts and procurement department.

Recommendation 2.7.b—See page 40 of the follow-up audit report for information on the related finding.

To effectively manage its contracts, the Authority should begin awarding contracts with a sufficient amount of lead time.

Authority's Action: Fully implemented.

The Authority provided a schedule of contract expiration dates to ensure that contract managers receive timely notifications from the contract unit of contract expiration dates. Additionally, the Authority asserted that its contract manual contains language ensuring adequate lead time in the contract award process.

Recommendation 2.7.c—See page 40 of the follow-up audit report for information on the related finding.

To effectively manage its contracts, the Authority should immediately begin the process of soliciting competitive bids for its IT services.

Authority's Action: Partially implemented.

The Authority asserted that it is moving toward in-house IT support rather than contractors. Specifically, the Authority stated that it hired a DPM II on March 5, 2012. According to the Authority's response, the new DPM II has moved the Authority's network connection from the cloud to the California Technology Agency (CTA) and has implemented the movement of the exchange services from its previous contractor—PK Inc.—to CTA-California Email Service (CES) mail. The Authority claims the process of migrating the electronic mail system to CES will be approximately six to 13 months. Additionally, the Authority stated that desktop support has been transitioned in-house with the support of one full-time associate information systems analyst and a student intern. The Authority further indicated that two retired annuitants have been hired to support the server and network administration, and application development.

Recommendation 2.8—See page 40 of the follow-up audit report for information on the related finding.

To ensure that the Authority is complying with state contracting rules and is following the guidelines of the *State Contracting Manual*, General Services should conduct a procurement audit of the Authority by January 1, 2013.

General Services' Action: Fully implemented.

Effective May 1, 2012, General Services indicated that the Authority lacks sufficiently trained staff to conduct procurements and subsequently decreased the Authority's purchasing authority to the minimum level of \$4,999.99. Thus, General Services now conducts all of the Authority's purchases above \$4,999.99. As a result of decreasing the Authority's purchasing authority, it is not necessary for General Services to conduct a procurement audit.

Natural Resources Agency

Improper Travel Expenses (Case I2009-1321)

REPORT NUMBER I2012-1, CHAPTER 6, ISSUED DECEMBER 2012

This report concludes that from January 2009 through June 2011, an executive with the Natural Resources Agency (Resources) circumvented state travel regulations by improperly reimbursing an official and an employee \$47,944 in state funds for commutes between their homes and headquarters. In addition, Resources improperly reimbursed the official \$209 for lodging and meal expenses incurred near the Resources' headquarters. The official left employment with the State in September 2011.

In the report, the California State Auditor (state auditor) made the following recommendations to Resources. The state auditor's determination regarding the current status of recommendations is based on Resources' response to the state auditor as of October 2012.

Recommendation 1—See pages 37—40 of the investigative report for information on the related finding.

Resources should designate the employee's headquarters as Resources headquarters in Sacramento.

Resources' Action: Fully implemented.

Resources reported that previously it had designated the employee's headquarters in Sacramento.

Recommendation 2—See pages 37—40 of the investigative report for information on the related finding.

Resources should discontinue reimbursing employees improperly for their commute-related expenses and lodging and for meal expenses incurred within 50 miles of their headquarters.

Resources' Action: Fully implemented.

Resources reported that it had stopped all commute-related expense reimbursements to the employee and it stated that it has directed that no employees will be headquartered at a location other than Sacramento.

State Lands Commission

Because It Has Not Managed Public Lands Effectively, the State Has Lost Millions in Revenue for the General Fund

REPORT NUMBER 2010-125, ISSUED AUGUST 2011

This report concludes the State Lands Commission (commission) has not always managed its more than 4,000 leases in the State's best interest with the result that it has missed opportunities to generate millions of dollars in revenues for the State's General Fund. For example, the commission has allowed lessees whose rent is past due to remain on state land for years without paying rent. In fact, we estimated losses totaling \$1.6 million for a sample of 10 delinquent leases we reviewed. Additionally, about 140 of the commission's 1,000 revenue-generating leases are currently expired. We estimate the commission has lost \$269,000 for 10 expired leases because lessees continue to pay the rent established by an old appraisal that may not be indicative of the property's current value. Further, although the commission has a mechanism in place to periodically review—and potentially increase—rental amounts, we found that it generally failed to promptly conduct rent reviews, causing it to lose \$6.3 million in increased rent it may have been able to collect. Moreover, the commission does not appraise its leased properties as frequently as the lease agreements allow, and when it does conduct appraisals, it sometimes undervalues its properties because it uses outdated methods, some of which were established more than 18 years ago.

We also found that the commission does not adequately monitor its leases. Specifically, the database used by the commission to store lease information is both inaccurate and incomplete, and is not used by staff to monitor the status of its leases. As a result, the commission is not appropriately tracking the status of some of its leases. For example, the commission apparently lost track of one of its leases, and as a result failed to bill the lessee for 12 years while the lessee remained on state property. Additionally, the commission does not regularly audit its revenue-generating leases, nor does it adequately oversee granted lands.

Finally, although the commission has undergone a series of staff reductions since 1990 and has made attempts to replace these lost positions, it has not taken sufficient steps to quantify its need for additional staff. Specifically, the commission has not developed any analyses to determine an appropriate workload and the number of staff needed to address such a workload.

In the report, the California State Auditor (state auditor) made the following recommendations to the commission. The state auditor's determination regarding the current status of recommendations is based on the commission's response to the state auditor as of August 2012.

Recommendation 1.1.a—See pages 16 and 17 of the audit report for information on the related finding.

To ensure that it manages delinquent leases in an effective and timely manner and collects all the amounts owed to it, the commission should determine the amount of past due rent that should be included in its accounts receivable account.

Commission's Action: Fully implemented.

The commission asserted that it identified the amount of past-due rent that should be included in its accounts receivable account and it provided us the list of accounts receivable that included those receivables identified as contingent receivables.

Recommendation 1.1.b—See page 18 of the audit report for information on the related finding.

To ensure that it manages delinquent leases in an effective and timely manner and collects all the amounts owed to it, the commission should develop and adhere to policies and procedures that incorporate the administrative manual's guidance, including the steps staff should take when a lessee is delinquent, time standards for performing those steps, and a process for consistently tracking the status of delinquent leases between divisions.

Commission's Action: Fully implemented.

The commission provided draft policies and procedures that specified the steps staff should take when a lessee is delinquent, including time standards and a process for tracking the status of delinquent leases between divisions. The commission also plans to convene a team of senior management that will meet at least quarterly to discuss delinquent leases. According to the commission, the new process will be in place by November 1, 2011.

Recommendation 1.1.c—See page 19 of the audit report for information on the related finding.

To ensure that it manages delinquent leases in an effective and timely manner and collects all the amounts owed to it, the commission should conduct and document cost-benefit analyses when it contemplates either referring a delinquent lessee to the attorney general or pursuing the delinquent lessee through other means.

Commission's Action: Fully implemented.

The commission's draft procedures regarding delinquent lessees specify that a management team will make a determination regarding pursuing a delinquent lessee after weighing available resources. According to the commission's chief counsel, while its draft procedures did not use the phrase "cost-benefit analysis," the analysis of whether to pursue a trespass or lease compliance issue includes the elements of a cost-benefit analysis in addition to policy and legal considerations.

Recommendation 1.2—See pages 19 and 20 of the audit report for information on the related finding.

When the commission determines that it will pursue delinquent lessees itself, it should use a collection agency or a program such as the Franchise Tax Board's Interagency Intercept Collections Program.

Commission's Action: Partially implemented.

The commission determined that it would need special legislation to obtain individual lessee social security numbers in order to participate in the Franchise Tax Board Interagency Intercept Collections program. It also stated that it determined that the liability risks, legal requirements, and obligations to keep such private information safe from disclosure outweigh the potential benefits of obtaining such authority to request that kind of information. However, the commission indicated that it has intensified the collection efforts currently available and it has reduced outstanding past due account receivable significantly. According to the commission, the June 2012 total is \$868,000 compared to the \$1.2 million identified in the state auditor's report and recent actions will reduce the total by another \$225,000. The commission stated that it is confident this trend will continue and that the addition of the lease compliance positions in the fiscal year 2012–13 budget will further enhance these efforts.

Recommendation 1.3.a—See page 22 of the audit report for information on the related finding.

To ensure that as few leases as possible go into holdover, the commission should continue to implement its newly established holdover reduction procedures and periodically evaluate whether its new procedures are having their intended effect of reducing the number of leases in holdover.

Commission's Action: Fully implemented.

The commission believes that its new holdover reduction procedures are effective with the result that the number of leases in holdover has decreased by 75 percent. As of August 2012 the commission indicated that 27 of the 32 holdover leases identified in the state auditor's report have been eliminated from holdover status.

Recommendation 1.3.b—See pages 21 and 22 of the audit report for information on the related finding.

To ensure that as few leases as possible go into holdover, the commission should consistently assess the 25 percent penalty on expired leases.

Commission's Action: Fully implemented.

The commission stated that its new holdover reduction policies include a provision to assess the 25 percent penalty.

Recommendation 1.4.a—See pages 22 and 23 of the audit report for information on the related finding.

To complete its rent reviews promptly and obtain a fair rental amount for its leases, the commission should consistently notify lessees of impending rent reviews or rental increases within established timelines.

Commission's Action: Fully implemented.

The commission stated that it updated a rent review checklist and now requires staff to pull lease files one year in advance of the rent review date rather than nine months. It also indicated that it has a process in place that prioritizes rent reviews for high value or otherwise significant issues. Further, the commission requested and received five additional staff for lease compliance purposes and to accommodate the rent review workload.

Recommendation 1.4.b—See page 25 of the audit report for information on the related finding.

To complete its rent reviews promptly and obtain a fair rental amount for its leases, the commission should establish time standards for each step of the rent review process and ensure that all staff adhere to those time standards.

Commission's Action: Fully implemented.

The commission provided its rent review policies and procedures that include time standards for each step in the rent review process, including appraisals.

Recommendation 1.4.c—See pages 25 and 26 of the audit report for information on the related finding.

To complete its rent reviews promptly and obtain a fair rental amount for its leases, the commission should develop a methodology for prioritizing its workload that focuses its staff on managing the higher revenue generating leases until such time as it addresses its workload needs.

Commission's Action: Fully implemented.

The commission provided policies and procedures that instructed staff to focus on managing the higher revenue-generating leases.

Recommendation 1.4.d—See page 26 of the audit report for information on the related finding.

To complete its rent reviews promptly and obtain a fair rental amount for its leases, the commission should conduct rent reviews on each fifth anniversary as specified in the lease agreements or consider including provisions in its leases that allow for the use of other strategies, such as adjusting rents annually using an inflation indicator.

Commission's Action: Fully implemented.

The commission stated that it is moving forward with a more expanded use of the Consumer Price Index (CPI) in calculating annual rent revisions. In November 2011, according to the commission, it consolidated and simplified the CPI process by using the California CPI as the sole index where feasible on a going-forward basis. Additionally, as indicated for recommendation 1.4.a, the commission received additional staffing that will ensure the five-year rent reviews and appraisals are completed on schedule.

Recommendation 1.5—See pages 26 and 27 of the audit report for information on the related finding.

To ensure that it receives rent from the lessee that reflects the approximate value for the State's property at those times when a lessee disputes a modification to the rental amount after the commission exercises its right to perform a rent review or because the lease expired, the commission should include in its lease agreements a provision that requires lessees to pay the commission's proposed increased rental amount, which would be deposited into an account within the Special Deposit Fund. The increased rental amounts deposited, plus the corresponding interest accrued in the account, should then be liquidated in accordance with the amount agreed to in the final lease agreement.

Commission's Action: No action taken.

The commission indicated that the aggressive strategies it has implemented should preclude the need for the use of a special deposit fund. Additionally, the commission stated that implementing this recommendation would undermine the leverage achieved by the 25 percent rental increase for holdover leases.

Recommendation 1.6.a—See page 28 of the audit report for information on the related finding.

To ensure that it is charging rent based on the most current value of its properties, the commission should appraise its properties as frequently as the lease provisions allow—generally every five years.

Commission's Action: Fully implemented.

The commission stated that it reorganized its structure to provide for more direct management of appraisal staff. As part of this, the commission updated its appraisal request form and it was released with a memo from management on how to complete the form. The memo also instructed staff to submit an appraisal request, even in areas where a benchmark is available, if there is reason to believe that a land value appraisal would result in a higher rent than the benchmark. The commission believes that these steps have and will continue to improve the coordination and communication between leasing staff and appraisal staff and ensure that appraisals are completed as frequently as the lease provisions allow (generally every five years). However, according to the commission, implementation of these measures will be temporarily affected by the current lack of appraisal staff, although it hopes to fill two appraisal positions by late summer or early fall of 2012.

Recommendation 1.6.b—See pages 28—31 of the audit report for information on the related finding.

To ensure that it is charging rent based on the most current value of its properties, the commission should use the sales comparison method when it establishes values for leases having the greatest revenue potential, and develop policies that specify when and how often it is appropriate to use the other methods of appraising properties. These policies should address the coordination of leasing staff with appraisal staff as part of the process for determining which appraisal method should be used.

Commission's Action: Fully implemented.

The commission indicated that the Land Management Division (land management) has directed staff to request sales comparison appraisals for all high value leases. Additionally, it indicated that to improve the coordination of leasing and appraisal staff, land management has reorganized its structure to provide for more direct supervision and management of appraisal staff. In December 2011, the commission issued a memo revising the appraisal process.

Recommendation 1.7.a—See pages 31 and 32 of the audit report for information on the related finding.

To ensure that it does not undervalue certain types of leases, the commission should amend its regulations for establishing pipeline rents on state land as staff recommended in the 2010 survey of methods used by agencies in other states to establish pipeline rents.

Commission's Action: Partially implemented.

The commission stated that it is moving forward with the regulatory process to revise and update the regulations regarding rents, including those for pipelines. The commission plans to submit its regulatory package to the Office of Administrative Law in September 2012. As part of these regulations, the commission is recommending an increase in pipeline rent from 2 cents per diameter inch per linear foot of pipeline to 5 cents.

Recommendation 1.7.b—See pages 33 and 34 of the audit report for information on the related finding.

To ensure that it does not undervalue certain types of leases, the commission should implement and follow its plan to regularly update its benchmarks for determining rental amounts.

Commission's Action: Partially implemented.

The commission asserted that it updated all benchmarks other than the Black Point and the Lake Tahoe residential benchmarks. The commission indicated that it plans to complete these benchmarks when the appraisal unit is fully staffed.

Recommendation 1.7.c—See page 34 of the audit report for information on the related finding.

To ensure that it does not undervalue certain types of leases, the commission should periodically analyze whether collecting oil royalties in cash or in kind would maximize revenues to the State, and use that method to collect its oil royalties.

Commission's Action: Fully implemented.

The commission requested the city of Long Beach to perform an analysis of the sale of oil from the Long Beach leases. The city of Long Beach determined that it will not collect royalties in kind as such sales would be detrimental to the State. Commission staff conducted an analysis of its non-Long Beach leases and made a similar determination.

Recommendation 2.1.a—See pages 38—40 of the audit report for information on the related finding.

To improve its monitoring of leases, the commission should create and implement a policy, including provisions for supervisory review, to ensure that the information in the Application Lease Information Database (ALID) is complete, accurate, and consistently entered to allow for the retrieval of reliable lease information. To do so, the commission should consult another public lands leasing entity, such as the Department of General Services, to obtain best practices for a lease tracking database.

Commission's Action: Fully implemented.

The commission indicated that the accuracy of the information included in its database continues to improve. According to the commission, as part of its quality control process, the two staff entering data into ALID verify and validate the other's data entry. In addition, the commission stated that other staff have been assigned to audit and validate the information in ALID and management within land management review all input and routinely access the database. The commission also indicated that it participated in a round table discussion with numerous other state agencies that manage significant land holdings and that part of the discussion was devoted to best practices for tracking state properties. Finally, the commission stated that it is currently upgrading the database from MS Access to a net web interface to improve accessibility by all staff.

Recommendation 2.1.b—See page 39 of the audit report for information on the related finding.

To improve its monitoring of leases, the commission should require all of its divisions to use ALID as its one centralized lease-tracking database.

Commission's Action: Fully implemented.

The commission created five new management reports from information contained in ALID, including four specific reports related to rent reviews, expiring leases, holdover leases, and bond/insurance status, in addition to one master report containing general lease information. It believes that these types of reports should preclude the need for multiple lists and data sources that were kept by staff in the past. The commission asserted that these reports will better assist management in tracking leases and prioritizing lease compliance issues. The commission believes that such a reporting capability should preclude the need for multiple lists and data sources.

Recommendation 2.2.a—See page 42 of the audit report for information on the related finding.

To adequately monitor its revenue generating oil and gas leases, the commission should track the recoveries and findings identified in its audits and use this information to develop an audit plan that would focus on leases that have historically generated the most revenue and recoveries for the State, as well as those that historically have had the most problems.

Commission's Action: Fully implemented.

The commission developed an audit plan for all mineral leases that considers a combination of factors, including risk. In addition, the commission tracks and submits quarterly reports to the executive officer on the status of findings for the completed audits. It believes that this process will help staff track its findings identified in audits and any associated recoveries. Finally, the commission indicated that it is in the process of hiring auditors and training them in oil and gas operations and the audit process.

Recommendation 2.2.b—See page 43 of the audit report for information on the related finding.

To adequately monitor its revenue generating oil and gas leases, the commission should work with lessees that entered into a lease with the commission before 1977 to put in place a reasonable time period within which lessees must resolve other types of deduction claims similar to the regulations already in place for dehydration costs.

Commission's Action: Fully implemented.

The commission stated that staff will continue to work with lessees when the opportunity arises to implement the recommendation where appropriate and when it is in the best interests of the State.

Recommendation 2.2.c—See pages 43 and 44 of the audit report for information on the related finding.

To adequately monitor its revenue generating oil and gas leases, the commission should explore and take advantage of other approaches to fulfill its auditing responsibilities, such as contracting with an outside consulting firm that could conduct some of its audits on a contingency basis.

Commission's Action: Fully implemented.

The commission is currently contracting with an outside consulting firm to audit one of its oil and gas leases. The commission believes that because this approach has proven to be successful, it will continue to be an option.

Recommendation 2.3—See pages 44 and 45 of the audit report for information on the related finding.

The commission should establish a monitoring program to ensure that the funds generated from granted lands are expended in accordance with the public trust.

Commission's Action: Partially implemented.

State law approved in August 2012 requires the commission to prepare a workload analysis to ensure that it is fulfilling its oversight responsibilities over public trust lands. In addition, according to the commission, it is exploring potential funding sources for its granted lands program pursuant to a request by the Senate and Assembly Budget committees. The commission also indicated that the executive officer has directed a reorganization of those currently working on granted lands issues within a new External Affairs Division. This reorganization is intended to focus attention to this area and result in closer coordination between all divisions on granted lands issues. Finally, the commission asserted that on a limited basis given its constrained resources, it is improving outreach to local trustees and to assist them with their waterfront revitalization programs.

Recommendation 2.4—See pages 46 and 47 of the audit report for information on the related finding.

To ensure that all of its oil and gas leases have current surety bonds and liability insurance, as required by law and certain lease agreements, the commission should require lessees to provide documentation of their surety bonds and liability insurance. If the commission believes that assessing a monetary penalty will be effective in encouraging lessees to obtain surety bonds or liability insurance, it should seek legislation to provide this authority. Finally, if it obtains this authority, the commission should enforce it.

Commission's Action: Partially implemented.

The commission indicated that, in accordance with the specific language of the recommendation, it has already implemented the recommendation as it relates to the commission's offshore oil and gas leases and that bondsmen are required to give at least a 90-day notice (some are longer) before they

can terminate a bond. According to the commission, it also requires that the offshore lessees show evidence of current bonding and insurance or a replacement bond for any expiring or terminating bond at the annual meetings with all lessees. For its surface leases, the commission stated that it has contacted federal, state, and local agencies with leasing responsibilities, both in California and in other states, and found that many agencies do not require insurance of any kind when leasing to private individuals. The commission also indicated that those that do require insurance communicated significant difficulty in obtaining insurance compliance. In addition, according to the commission, its communications with the insurance industry indicate there is no stand-alone product available that covers recreational piers.

The commission indicated that it has researched the availability of insurance in the California market and found that insurance companies are reluctant to name the State as an additional insured and to provide notice of cancellation to the State. According to the commission, in some instances lessees can obtain insurance, but this appears to be an exception that the companies make to retain clients with large insurance portfolios. However, the commission stated it is exploring other options including strengthening the indemnity provisions in the lease language, contacting the insurance industry and educating them on the market for an insurance product that covers recreational piers, and contacting various insurance companies and attempting to create a pilot program providing insurance coverage.

Legislative Action: Unknown.

The state auditor is not aware of any action taken by the Legislature as of December 18, 2012.

Recommendation 3.1.a—See pages 52 and 53 of the audit report for information on the related finding.

To better demonstrate its need for additional staff, the commission should conduct a workload analysis to identify a reasonable workload for its staff and use this analysis to quantify the need for additional staff.

Commission's Action: Fully implemented.

The commission conducted workload analyses that it included as part of its request for additional staff. Moreover, Chapter 206, Statutes of 2012 (Assembly Bill 2620), among other things, requires the commission, on or before September 1, 2013, to prepare a workload analysis that summarizes the resources necessary for the commission to fulfill its oversight responsibilities related to legislatively granted public trust lands.

Recommendation 3.1.b—See pages 53—55 of the audit report for information on the related finding.

To better demonstrate its need for additional staff, the commission should quantify the monetary benefits of its staff's duties other than processing lease applications, and consider billing lessees for those activities.

Commission's Action: Fully implemented.

The commission asserted that it has been able to secure a management fee in certain oil, gas, and geothermal producers as well as larger industrial leases to recoup actual costs. It also stated that it is conducting a workload analysis to quantify staff duties as part of its foundational research to establish new minimum rent levels. The commission indicated that the goal in establishing minimum rents based on this methodology is to ensure that most of the lease maintenance costs not currently captured would at least be offset by annual rents and make administration of these leases cost neutral to the State's General Fund.

Recommendation 3.1.c—See page 55 of the audit report for information on the related finding.

To better demonstrate its need for additional staff, the commission should ensure that the workload analysis takes into consideration the additional responsibilities and staffing needs that the commission will receive if the section of the state law that provides for rent free leases is repealed.

Commission's Action: Fully implemented.

The section of the state law that provided for rent-free leases was repealed during this past legislative session. The commission stated that it identified additional staffing needs in its enrolled bill report.

Recommendation 3.2—See pages 55—57 of the audit report for information on the related finding.

To better address current and potential future staffing shortages, as well as the impending loss of institutional knowledge, the commission should create a succession plan.

Commission's Action: Fully implemented.

The commission has developed a draft succession plan and it stated that the succession plan will be updated upon completion of its strategic plan by the end of the year.

