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San Francisco Bay Conservation and Development Commission

Its Failure to Perform Key Responsibilities Has Allowed Ongoing Harm to the San Francisco Bay

Background

In addition to issuing and denying permits for certain actions, including placing material in the San Francisco Bay (Bay) or removing material from it, the 27-member San Francisco Bay Conservation and Development Commission (commission) enforces laws related to its mandate and permits it grants. The commission can enforce compliance through a system of fines and penalties. Our audit focused primarily on the enforcement process.

Key Recommendations

The Legislature should require the commission to do the following:

- Create and use timelines for resolving cases.
- Provide a report of its comprehensive review of the Suisun Marsh program every five years beginning in fiscal year 2020–21.

The commission should do the following:

- To ensure maximum efficiency and effectiveness of its enforcement and permitting programs and to create consistency, it should implement regulations and define significant harm, establish clear criteria for imposing fees, and set milestones and time frames for enforcement cases.
- Simplify its system for prioritizing enforcement cases to focus on cases that may pose the greatest harm to the Bay.
- Conduct the required comprehensive review of the Suisun Marsh program to ensure the required protections are in place.

Key Findings

- Its staff spend years attempting to resolve violations before initiating enforcement action and the commission now has a backlog of more than 230 enforcement cases with the majority of the cases—nearly 75 percent—being at least 10 months old.
 - » Seven recent cases staff forwarded to the commissioners for formal enforcement had been open for between one and 17 years.
 - » Its failure to resolve cases promptly has resulted in ongoing harm to the Bay—it has not taken action on one case it began in 2010 related to harmful activity.
- The commissioners' leadership and guidance in the enforcement process has been insufficient—they lack clear guidelines to support their mission and have not resolved the backlog issues.
- The commissioners improperly delegated their enforcement authority and enforcement practices have led to inconsistent and inappropriate responses to violations.
 - » For nearly five years, the enforcement committee did not hold hearings and staff handled all enforcement cases, including some that involved violations that could cause significant harm.
 - » Although commission regulations generally require cases causing significant harm go before the commissioners, the regulations do not define "significant harm."
- It does not proactively identify violations of state law and permit conditions—staff do not conduct site visits, patrols, or other measures and instead, waits for the public to report issues.
- Commission staff do not always follow the commission's regulations when taking enforcement actions, such as imposing fees—in five of the seven cases we reviewed, staff did not follow requirements and inconsistently imposed fees.
- Its new system that prioritizes enforcement cases and new database have not increased the effectiveness or efficiency of the enforcement program—the prioritization system is unnecessarily complex and the database is incomplete.
- It has not conducted a periodic, comprehensive review of the implementation of a plan to safeguard the Suisun Marsh as required.