

REPORT OF THE
OFFICE OF THE AUDITOR GENERAL
TO THE
JOINT LEGISLATIVE AUDIT COMMITTEE

287

REVIEW OF THE DEPARTMENT OF
PARKS AND RECREATION ADMINISTRATION
OF THE OFF-HIGHWAY VEHICLE FUND

NOVEMBER 1976



Joint Legislative Audit Committee

OFFICE OF THE AUDITOR GENERAL

California Legislature



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November 8, 1976

The Honorable Speaker of the Assembly
The Honorable President pro Tempore of
the Senate
The Honorable Members of the Senate and the
Assembly of the Legislature of California

Members of the Legislature:

Your Joint Legislative Audit Committee respectfully submits the Auditor General's report on the administration of the Off-Highway Vehicle (OHV) Fund by the Department of Parks and Recreation.

Since 1972, \$6.7 million in revenues have been received and \$5.8 million have been expended. An additional \$1.5 million earmarked from a successful 1974 Bond Act has not been forthcoming although the Director proposes to revert \$4 million not needed for other 1974 Bond Act projects.

The Auditor General reports overhead charges unrelated to the Fund but more significant is the prior preparation of employee timesheets which invariably correspond to predetermined reimbursements to the General Fund from the OHV Fund. Whether this falsification of financial records is common to other state departments has not been determined. State departments administering state-federal programs where federal reimbursement is predicated on employees actual time should pay particular heed.

By copy of this letter, the Department is requested to advise the Joint Legislative Audit Committee within sixty days of the status of implementation of the recommendations of the Auditor General that are within the statutory authority of the Department.

The auditors are Robert M. Neves, Steve Schutte and Fred Kalhammer.

Respectfully submitted

MIKE CULLEN, Chairman
Joint Legislative Audit Committee

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SUMMARY

The State Department of Parks and Recreation represented to the voters that \$1.5 million of the 1974 Bond Act funds would be spent to acquire off-highway vehicle (OHV) parks. As of August 1, 1976, all 1974 Bond Act funds for state park acquisitions have been appropriated to other projects, and no OHV parks have been acquired with these funds.

The Department's method of operating the Hollister Hills recreation area has resulted in low attendance and excessive operating costs being charged against the OHV Fund. While park attendance is significantly below projections, the Department is operating the park with staff budgeted for higher attendance.

The Department of Parks and Recreation expenditures for the OHV program are made initially from the General Fund and later reimbursed from the OHV Fund. Due to improper time reporting and incorrect cost allocation procedures, the Department has inaccurately determined the reimbursements to the General Fund.

The Off-Highway Vehicle Fund does not receive its share of gasoline tax in a timely manner and, as a consequence, interest earnings are lost. Since 1973 this has resulted in a loss of approximately \$450,000 in interest earnings.

INTRODUCTION

In accordance with a resolution of the Joint Legislative Audit Committee, we have examined the Department of Parks and Recreation's administration of the off-highway vehicle program. The examination was conducted under the authority vested in the Auditor General by Section 10527 of the Government Code.

The Chappie-Z'berg Off-Highway Motor Vehicle Law of 1971, which became effective on July 1, 1972, provides for the identification (registration) of off-highway motor vehicles intended for recreation and not otherwise registered for highway use with the Department of Motor Vehicles.

The more common types of off-highway motor vehicles used in California are motorcycles, dune buggies, four-wheel drive vehicles and snowmobiles. The basic off-highway vehicle (OHV) identification fee, which is paid for a two-year period, is \$15 per vehicle and allocable as follows: \$5 is retained by the Department of Motor Vehicles as a service fee for the issuance or renewal of OHV identification stickers, \$4 is allocated to cities and counties, and \$6 is transferred to the OHV Fund.

The OHV Fund is administered by the Department of Parks and Recreation. The sources of revenue to the OHV Fund in addition to registration fees are:

- Taxes on gasoline used by registered off-highway vehicles
- Taxes on gasoline used in street-registered motor vehicles when engaged in off-highway recreational use
- 50 percent of fines and forfeitures on OHV Code violations
- Fees charged at state-owned OHV areas.

OHV Fund monies are to be used to implement programs of planning, acquisition, development, construction, maintenance, administration and conservation of trails and areas for OHV use. OHV Fund revenues may be used for matching grants to cities and counties for local OHV projects.

For the four years ending June 30, 1976, the OHV Fund has received \$6.7 million in revenues. Appropriations from the fund total \$5.8 million. Following are the major OHV program accomplishments utilizing OHV Fund monies:

- An off-road vehicle study report dated June 1975 was published
- A 3,100-acre OHV facility located in San Benito County has been acquired

- Five local grant contracts have been signed, committing \$535,000 of OHV Fund monies
- Snowmobile trail signs and maps to be used in 13 National Forests have been purchased.

Effective July 1, 1976, the Department of Parks and Recreation was reorganized. Of significance to the OHV program was the elimination of the Off-Road Vehicle Unit. This unit was a focal point of responsibility for most OHV program activities in the Department. Under the new organization no unit has been assigned overall responsibility for this program, and some OHV program activities have been delegated throughout the Department. Other responsibilities were unassigned at the time of our review.

FINDINGS

NO OFF-HIGHWAY VEHICLE PARKS HAVE
BEEN ACQUIRED WITH 1974 BOND ACT
FUNDS INTENDED FOR THAT PURPOSE

The State Department of Parks and Recreation represented to the voters that \$1.5 million of the 1974 Bond Act funds would be spent to acquire off-highway vehicle (OHV) parks. As of August 1, 1976, all 1974 Bond Act funds for state park acquisitions have been appropriated to other projects, and no OHV parks have been acquired with these funds.

The passage of the State Beach, Park, Recreational and Historical Facilities Bond Act of 1974 (1974 Bond Act) provided \$250 million for the acquisition and development of beaches, parks, recreation facilities and historical resources. In accordance with Public Resources Code Section 5096.73(d), the Department gave notice prior to the election of the proposed disposition and allocation of the bond proceeds. In its April 1974 report, the Department identified that \$1.5 million of the 1974 Bond Act proceeds would be used for acquisition and development of OHV areas. Acquisitions proposed in the report were considered as high priority projects by the Department. One or two OHV areas would be located within easy driving distance of the San Francisco Bay and Los Angeles Metropolitan areas.

Since the 1974 Bond Act was passed, no 1974 Bond Act funds have been appropriated for OHV areas. Although \$4.1 million of other funds was appropriated to acquire two OHV areas--Hollister Hills in San Benito County and Ocotillo Wells in San Diego County--the money came from the Off-Highway Vehicle Fund and not from 1974 Bond Act money for OHV areas.

The Department's failure to acquire OHV facilities with 1974 Bond Act money represents a loss to OHV programs. This amount equals about one-third of the 1975-76 fiscal year income to the OHV Fund. The loss will delay the acquisition of OHV parks.

In an August 19, 1976, letter (Appendix A), the Director of the Department stated:

At this point it is impossible to use 1974 Bond Act funds for OHV facilities. The funds are already fully allocated for other projects of high priority and work on most of them is now underway.

The Director also explained that certain proposed OHV area acquisitions, "which had been less well researched and formulated at the time" of the April 1974 report, had to be curtailed because of general cost increases due to inflation.

The Director is correct that all 1974 Bond Act funds are appropriated at this time, and hence not available for OHV area acquisitions;

however, in an August 1, 1976, report to the State Parks and Recreation Commission, the Department reported that a \$4 million Bond Act appropriation is to be reverted. Any reverted funds then could be available for OHV area acquisition.

Inconsistent with the Director's statement concerning the cutback on "projects less well researched and formulated" at the time of 1974 Bond Act notification, is the Department action supporting an appropriation for projects not mentioned in the 1974 report.

We believe that the Department's attitude toward the OHV program is best summarized in a June 18, 1976, memorandum (Appendix B) from the Assistant Deputy Director. The memorandum states in part:

The situation in the case of off-road vehicle areas is neither as good nor as defensible; that is to say, defensible in the sense that we can plead that any lack of 1974 Bond money was made up by other or "new" money. With ORV areas, the voters were led to believe that \$1.5 million would be allocated to the acquisition of two such areas. To date, not one cent of 1974 Bond money has been spent on ORV areas, and there is none left to spend on them. The \$0.87 million which the Department has spent on ORV area acquisition since November 1974 has all come from the pre-existent (1971) Off-Highway Vehicle Fund, which would have been used for this purpose anyway, and from the 1964 Bond Fund. In short, the ORV users got none of the money promised from the 1974 Bond Act, and this deficiency was not compensated by any funding not previously available for this purpose.

This situation may have occurred for a variety of reasons, including at least, the lack of broad departmental interest in these fields, particularly in the ORV field. This whole situation will not make us look very good, so this information should be more a matter of internal use and recognition of the situation and not something to publicize.

No OHV parks were funded by the 1974 Bond Act because of a lack of support for the program within the Department. Further, the Department has not specifically assigned anyone the responsibility of selecting or recommending OHV parks for acquisition with 1974 Bond Act funds.

Additionally, the Department is reviewing potential OHV areas in the Los Angeles vicinity to be purchased with OHV funds and not with 1974 Bond Act funds. Informal estimates indicate that a Los Angeles OHV area will cost approximately \$10 million. We estimate the OHV Fund will not have sufficient funds available to make such a purchase in the next fiscal year (77-78).

CONCLUSION

The Department has not honored its commitment to the voters to acquire off-highway vehicle areas with 1974 Bond Act funds. This is due to a general lack of support by the Department for the OHV program.

RECOMMENDATION

We recommend that the Department request an appropriation of up to \$1.5 million in reverted 1974 Bond Act funds, originally intended for OHV area acquisitions, to aid in acquiring the Los Angeles OHV site.

BENEFITS

Implementing this recommendation would provide additional resources to the OHV program and assist in the acquisition of the Los Angeles OHV site, which otherwise may be delayed.

ATTENDANCE AT A STATE OPERATED
OFF-HIGHWAY VEHICLE AREA IS
75 PERCENT BELOW BUDGET PROJECTIONS

The Department's method of operating the Hollister Hills recreation area has resulted in low attendance and excessive operating costs being charged against the OHV Fund. While park attendance is significantly below projections, the Department is operating the park with staff budgeted for higher attendance. Corrective action to reduce the admission fees and to make part of the park available for organized competitive events is needed to improve attendance. Economies of scale should follow.

Chapter 542 of the 1974 Statutes appropriated \$1.9 million from the OHV Fund for acquiring, developing, and administering an OHV park in San Benito County. In June 1975, the State acquired approximately 2,500 acres of a 3,100-acre Hollister Hills ranch in Central California which was previously a private OHV park. The remaining 600 acres of the ranch, commonly known as the "upper ranch," are leased by the Department and are in the process of being purchased. The two ranch areas are physically separated by a privately owned parcel of land. The park is designated primarily for motorcycle use.

According to a Department of General Services report, during the last full year of private ownership (1973) the park operator recorded

attendance of 35,669 OHVs. This report projected 1974 attendance at 40,000 and admission revenues of \$126,000.

In contrast to the General Services report, the Department of Parks and Recreation budget request, prepared by state park ranger staff, projected first year attendance at approximately 150,000 visitor-days (which equates to approximately 105,000 off-highway vehicles) and admission revenue of \$150,000. Sixteen man-years were requested to operate the park. Approximately \$406,000 was approved for the first-year operation of the park, including staffing of 15 man-years.

The Department budget office was not given an opportunity to comment on the ranger's budget request, even though they thought the budget proposal was excessive. The budget office analysis indicated that the park staff could be reduced and that one of the four mobile homes for the park staff could be eliminated.

The State began operating the park on October 1, 1975. Nine months later, the end of fiscal year 1975-76 operation, attendance was only 19,436 OHVs--far short of that projected. Annualizing the attendance, only 25 percent of budget projections was realized. Park admission revenue for the period amounted to approximately \$50,000, or 45 percent of budget projections on an annual basis. Although attendance and revenue were significantly below budget projections, full staffing was maintained.

The same staffing level has continued into this fiscal year. State park staffing levels are justified in part by attendance levels; however, if attendance is not realized at projected levels, the staffing should be reevaluated.

The Department's objective is to recover fifty percent of operating costs from park fees and revenues; however, for fiscal year 1976-77 the Department budgeted \$260,000 for Hollister Hills operating cost. Our analysis shows that without a change in attendance, revenue will be only \$75,000 or 29 percent of the anticipated operating cost. If an increase in attendance and revenue is not experienced, the Hollister Hills operating cost will exceed by \$110,000 the Department's objective of recovering 50 percent of operating costs.

Even though 94 percent of park use occurs on Friday, Saturday, Sunday and Monday, Hollister Hills is open to the public seven days a week. Closing the park Tuesdays through Thursdays would eliminate some staff costs.

Some Department personnel believe that poor attendance at Hollister Hills is due primarily to the high admission fees. The fees per day are \$1.50 for day use or \$2.00 for camping plus \$3.00 per day for each motorcycle with an engine size over 80 cubic centimeters and \$1.50 for each motorcycle under 80 cubic centimeters. At the time of our audit, the Department began a review of the admission fee structure

at Hollister Hills, and they expect that the motorcycle fee will be lowered to \$1.00 regardless of engine size. Ranger staff at Hollister Hills stated that a reduction in admission fees would not result in a revenue loss to the park because there would probably be an increase in park attendance.

The former owner of Hollister Hills stated that when he operated the park, one-third to one-half of the park attendance was due to organized competitive motorcycle events on the "upper ranch." Under the Department's jurisdiction, the "upper ranch" is no longer open to the general public. In contrast, Sacramento County allows organized competitive events which provide approximately 60 percent of the revenue to its OHV park. Such events have a promotional value, and they tend to increase regular attendance.

Other conditions may also be contributing to low attendance at Hollister Hills; for example, signs to direct the public to the area have not been installed. Brochures describing and promoting the park have not been printed nor have area maps been made available to the public.

CONCLUSION

Due to lower-than-anticipated attendance levels, current staffing is excessive. If park attendance does not improve, staffing should be reevaluated to reduce operating costs to no more than twice park revenues, which is the Department's original objective.

RECOMMENDATIONS

We recommend that the Department of Parks and Recreation:

- Consider reducing the motorcycle admission charge to \$1.00, regardless of engine size
- Allow organized competitive events on the upper ranch
- Establish budgetary review procedures for operating budget proposals to ensure review and approval by the Department's budget section and by the staff unit responsible for off-highway vehicle budget planning
- Reduce staffing and other operating costs to a maximum of twice park revenues, and close the facilities on low usage days until demand requires reopening
- Arrange to install directional signs on nearby major routes of travel
- Prepare and make readily available promotional park brochures and maps.

BENEFITS

Implementing these recommendations should enable Hollister Hills to be operated within the Department's financial objective. Moreover, park attendance should increase.

CHARGES TO THE OFF-HIGHWAY
VEHICLE FUND ARE INACCURATE

The Department of Parks and Recreation expenditures for the OHV program are made initially from the General Fund and later reimbursed from the OHV Fund. Due to improper time reporting and incorrect cost allocation procedures, the Department has inaccurately determined the reimbursements to the General Fund.

The Department requests transfers to reimburse the General Fund for expenditures chargeable to the OHV Fund. The amounts to be transferred are based on cost data maintained by the Department and in accordance with a system of cost allocation. The system accumulates both direct costs (identified by program) and indirect costs, which are allocated to programs as a percentage of direct costs.

Improper Time Reporting

Direct salary costs attributable to the OHV Fund are based upon time reported by Department employees on OHV program activities. Time sheets of employees of the Department's (former) Grants and Statewide Studies Division do not reflect actual time on programs but are predetermined and prepared to match budgeted reimbursements.

The need for employee timesheets to reflect actual time spent on projects is essential to charging the OHV Fund for proper cost. The U.S.

Department of the Interior is also questioning the Division's timekeeping records. Future federal audits could disallow all costs claimed for federal reimbursement if they are based on budgeted amounts rather than actual effort.

The improper timekeeping practices exist, in part, because no one in the Department is responsible for ascertaining the propriety of the charges to the OHV program.

Incorrect Cost Allocation Procedures

By using a system of cost allocation, the Department determines the amount of reimbursement to be transferred to the General Fund from the OHV Fund. The following conditions have resulted in an incorrect allocation of costs during fiscal year 1975-76:

- Salary costs of certain employees of the Department's executive and administrative divisions were allocated twice to the OHV Fund, as direct costs and as indirect costs.
- Certain operating expenditures, such as travel, were also allocated twice, as direct costs and as indirect costs.

- The costs of the Department's executive and administrative divisions were omitted from one transfer.

- The costs of the State's general administrative agencies have been allocated to the OHV Fund even though the Department of Parks and Recreation is not billed for such costs. The Department of Finance has determined that the OHV Fund should not share in such costs.

- The costs of the Department's Historical Landmarks Advisory Committee and the Advisory Board on Underwater Parks and Reserves, which appear to be unrelated to the OHV program, are allocated to the OHV Fund.

These practices have caused undercharges and overcharges to have been made to the OHV Fund. The explanation given for the errors and inconsistencies in the cost allocation process is that the staff misunderstood instructions and supervisory personnel did not have time for proper review. Written instructions for proper cost allocation to the OHV program have not been provided. Moreover, no one in the Department's management is responsible for assuring that costs are allocated to the OHV Fund in accord with expenditure plans. The reason given for erroneously allocating the cost of the State's general administrative agencies to the OHV Fund was to increase the reimbursements to the General Fund.

CONCLUSION

Both improper time reporting and incorrect cost allocation procedures have resulted in inaccurate reimbursement to the General Fund from the OHV Fund. The extent of these inaccuracies cannot be determined because of the absence of both accurate timekeeping records and written cost allocation instructions.

RECOMMENDATIONS

We recommend that the Department of Parks and Recreation:

- Instruct employees to prepare timesheets in accord with actual work activities.
- Establish responsibility for the accuracy of charges to the OHV Fund.
- Cease allocating costs of (1) the State's general administrative agencies to the OHV Fund, and (2) organizational units providing no identifiable services to the OHV program.

BENEFITS

Implementation of these recommendations will improve the accuracy of reimbursements to the General Fund and will improve control over OHV program expenditures.

DELAY IN TRANSFERRING OFF-HIGHWAY VEHICLES
REVENUES CAUSES LOSS OF OTHER INCOME

The Off-Highway Vehicle Fund does not receive its share of gasoline tax in a timely manner and, as a consequence, interest earnings are lost. Since 1972 this has resulted in a loss of approximately \$450,000 in interest earnings which could have helped attain program objectives.

Gasoline tax revenues for all motor vehicles are generally deposited monthly in the Motor Vehicle Fuel Account. At the close of each fiscal year, the Department of Transportation (Caltrans) computes the amount owed the OHV Fund as required by the Revenue and Taxation Code. The computation is based on estimates of the gallons of gasoline consumed by (1) registered off-highway vehicles, and (2) licensed highway vehicles while operating off the highways for recreational purposes.

Based on the Caltrans computation, the State Controller makes a single annual transfer to the OHV Fund. In contrast, cities, counties, and other gasoline tax recipients receive their shares of gasoline tax revenue monthly. Since the OHV gasoline tax revenues are not transferred monthly, the interest that is earned between collection and transfer is not available to the OHV Fund.

The Legislative Counsel (Opinion No. 12776 and Opinion No. 15304--Appendix C) states that interest earned by gasoline tax revenues derived from fuel used in specified OHVs "should be included in the

computation to determine the amount of money to be transferred from the Motor Vehicle Account to the Off-Highway Vehicle Fund." If the transfer of gasoline tax revenues required by Sections 8352.6 and 8352.7 of the Revenue and Taxation Code were made monthly, as other distributions are made, no interest payment would be necessary.

CONCLUSION

The OHV Fund does not receive gasoline tax revenues monthly as other funds do, resulting in a loss of interest income.

RECOMMENDATION

We recommend that the Legislature amend the Revenue and Taxation Code to require the State Controller to make monthly transfers of gasoline tax revenues to the OHV Fund.

BENEFIT

Monthly transfers of gasoline tax revenues will allow the OHV Fund to earn interest estimated at \$190,000 annually.

OTHER PERTINENT INFORMATION

ONLY 40 PERCENT OF THE OFF-HIGHWAY
VEHICLES IN THE STATE ARE REGISTERED

The Department of Parks and Recreation's special programs section estimates that there are approximately 700,000 OHVs subject to registration under the Chappie-Z'berg Off-Highway Vehicle Law. As of June 1976, the Department of Motor Vehicles reports that approximately 278,000 (40 percent) OHVs were registered. The 422,000 unregistered OHVs represent an annual loss of registration fees approximated as follows:

OHV Fund	\$1.3 million
Department of Motor Vehicles	1.1 million
Cities and Counties	<u>.8 million</u>
Total	\$3.2 million

During the current OHV registration renewal period, the Department of Motor Vehicles mailed 143,645 renewal notices. Of these, 52,115 (36%) registrations were renewed.

Neither the Department of Motor Vehicles nor the Department of Parks and Recreation has conducted research in an attempt to determine the cause for low registration. There is, however, general agreement among staff interviewed in both departments that the low registration is primarily due to two reasons:

1. Lack of enforcement of the law by the Department of the California Highway Patrol, local law enforcement agencies, and federal agencies, such as the U.S. Forest Service and the Bureau of Land Management, upon whose property a major portion of OHV recreation takes place.
2. Resistance on the part of many OHV users who feel that few benefits, if any, have been realized from past registration fee payments.

OFF-HIGHWAY VEHICLE GRANT
FUNDS USED TO PAVE A RACE TRACK

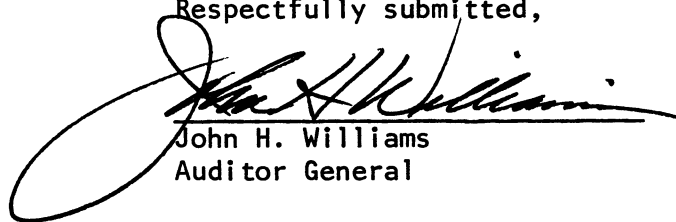
The Department of Parks and Recreation approved a \$20,000 grant agreement with the City of Davis to pave a flat asphalt race track and construct a timing tower. Some of the vehicles using the track are not registered as OHVs. The grant contract does not require that the facilities be used only by vehicles registered by the Department of Motor Vehicles. As a consequence, revenues have been used to build a facility for vehicles which are not within the general definition of an OHV. This is a questionable use of OHV Fund grant monies. Also, the facility is being used by vehicles which do not contribute to the OHV Fund through registration.

HOUSE RESOLUTION NO. 87

On September 14, 1973, the California State Assembly adopted House Resolution No. 87 which directed the Department of Parks and Recreation to provide the Legislature with updated monthly status reports regarding the progress of the Off-Highway Vehicle Program.

The Director of Parks and Recreation has stated that status reports are issued only after major program changes, usually about four to five times a year. As of September 1976, three years after adoption of this resolution, the Department had issued seven status reports.

Respectfully submitted,



John H. Williams
Auditor General

November 5, 1976

Staff: Robert M. Neves
Steve Schutte
Fred Kalhammer

DEPARTMENT OF PARKS AND RECREATION

P.O. BOX 2390
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(916) 445-3170

November 4, 1976

Mr. Robert Neves, Audit Manager
Office of the Auditor General
925 L Street, Suite 750
Sacramento, CA 95814

Dear Mr. Neves:

The Department has reviewed the report on the Off-Highway Vehicle Fund prepared by your staff. The departmental response follows the format of the report with the four major points summarized first, followed by more detailed information.

1. The Department has not utilized the over-committed 1974 Bond Act funds for a proposed Off-Highway Vehicle Project; rather, other funding for ORV projects has been obtained from other fund sources.
2. The Department has had some minor operational problems at the Hollister Hills project in the initial year of operating a "new" type of State Park System Unit, and efforts are being made towards their analysis and correction.
3. The Department has used some accounting procedures which have not been fully responsive to the needs of this program. These systems are being refined to resolve the problem.
4. The Department was not aware of the legal interpretation requiring the inclusion of interest on transfers in compliance with the Chappie-Gregorio Gas Tax Act. Correction is being sought by the Department at this time.

With regard to other matters covered in the introduction to the report, the accomplishments do include the Ocotillo Wells State Vehicular Recreation Area, which is a \$2.2 million dollar, 14,000 acre off-highway vehicle project acquisition from the OHV Fund. On another point, it would seem more accurate to note that there are ten local grant projects with funds appropriated for a total of \$1,367,497.

Lastly, in the comment relating to reorganization, there was a Trails and Off-Road Vehicle Section in the Grants and Statewide Studies Division. Under the July 1 reorganization, the Department is more functionally oriented, and provides a continued staff focal point for the program in the new Planning Division.

At this point, we would like to provide more specific responses to your findings.

No Off-Highway Vehicle Parks Have Been Acquired With 1974 Bond Act Funds Intended For That Purpose. Considered in the narrow context, it is true that no 1974 Bond Act monies have gone toward an off-highway vehicle project. However, there are many other projects which were listed in the 1974 State Park

Bond program which have not been funded from the 1974 Bond Act. The problem is that there is not enough money available to fund all of the projects. This is due to escalating costs since the passage of the Act and also to some prior underestimation of costs.

The Department was prepared to budget funds from the Bond Act or from a source other than OHV Fund in the 1977/78 F.Y. budget in order to acquire lands to expand the Pismo State Vehicular Recreation Area. However, in lieu of this, the 1976 session, (Chapter 1440 Statutes of 1976) the Legislature provided \$4.0 million dollars from the Bagley Conservation Fund for the acquisition of additional land at Pismo State Recreation Area. The Department supported this portion of the bill due to our commitment to provide for the OHV users. Thus, in the larger picture, the Department is working to fulfill its responsibility to provide lands and facilities for OHV users.

It is suggested in the Audit Report that a \$4 million Bond Act appropriation reported to the State Park and Recreation Commission on August 1, 1976 as being reverted could be made available for an OHV project. This suggestion overlooks the many other projects that are on the 1974 Bond Act priority lists. The Commission review list showed \$11,372,000 in proposed projects competing for this limited amount of uncommitted bond act money.

Attendance at a State Operated Off-Highway Vehicle Area is 75% Below Budget Projections. As of November 1, 1976 the motorcycle admission charge at Hollister Hills project was set at \$1 per motorcycle regardless of engine size. The Department took this action in response to complaints from the users and in recognition that a lower fee would be more equitable and would probably boost attendance.

Agreements necessary to allow public entry to the upper ranch were not developed with the mineral rights holders until recently and this has delayed the public being allowed access. Since that time, the Department has been allowing some so-called "club" events which are competitive but not advertised to spectators on the upper ranch. As of November 1, 1976, 12 such events have been held. There has been little publicity and there have been few spectators for these events. The Department has been watching this carefully since this is a new type of activity for the Department. It is anticipated that more of these types of events with greater spectator participation will be held in the future.

In the future, the Department will give normal budgetary review for the operation of off-highway vehicle units. At Hollister Hills, the initial year operational funding was provided by special legislation (Ch.542/74).

The Department does not intend to reduce staffing at this project at the present time. The Department expects to consider modification so as to achieve the greatest possible efficiency in the operation. The criteria of recovering one-half of the operating costs through admission fees is a generalized criteria for the entire State Park System and is not intended to be used as a test for each and every individual unit. Consideration will be given to reduced operation or eliminating operations on low-usage days. No action is expected on this until the Department has had greater experience in operating and has gone through a full year of normal conditions. With respect to visitor use at

Hollister Hills, it should be recognized that this past year has been one of least rainfall of record in Central California. Because of the reduced rainfall, the Hollister Hills Project has not been nearly as attractive to users because it has not had the trail conditions most suitable for usage.

Directional signs have been erected by the Department of Transportation along the State Highways in the area. Two signs were also located at appropriate locations in the City of Hollister. The City has removed the State signs, contending that they are not legal signs. It is understood that this is being negotiated between CALTRANS and the City at the present time. The county of San Benito has indicated that they will be locating several signs to indicate the location of the Hollister Hills Project. These signs have not yet been installed.

The Department will be preparing and making available promotional park brochures and maps for the Hollister Hills project. This was not done in the initial days of the State's operation of the project due to other publication priorities. The Department will more aggressively promote the project to users in the future.

Charges to the Off-Highway Vehicle Fund are Inaccurate

Improper Time Reporting. The Department of Parks and Recreation agrees that there have been some inaccuracies in time reporting. This was due to the need to recover various reimbursable costs from a number of different funds by a limited number of persons. It is believed that the dollars involved were balanced out over a larger period of time. The time reporting is now being done on an actual basis.

Incorrect Cost Allocation Procedures. The report indicates that the salary costs of certain employees of the Department's executive and administrative divisions and certain operating costs, such as travel, were allocated twice to the OHV Fund, as direct costs and as indirect costs. When computing reimbursement costs for the OHV Fund the direct costs should have been deleted from the overhead computations. The procedures have been revised to insure that future costs will not be included in the base and the overhead.

The report indicates that the costs of the Department's executive and administrative divisions were omitted from one transfer. This was done to offset the previous charges that had been duplicated.

The report indicates that the costs of the State's general administrative agencies, the Department's Historical Landmarks Advisory Committee, and the Advisory Board on Underwater Parks and Reserves, have been allocated to the OHV Fund. Portions of these costs were included as administrative when computing the overhead rate. These practices will be discontinued and Future overhead rate computations for the OHV Fund will not include the questioned costs.

Delay in Transferring Off-Highway Vehicle Revenues Causes Loss of Other Income. The Department is sympathetic to the criticism in the audit report with respect to the transfer of interest. It is an area where the Department lacked expertise on the interpretation of the law. In working with the representatives of the Department of Transportation, its staff advised the Department that transfer

of interest was not appropriate. In light of the opinions provided by the Legislative Counsel with respect to these transfers, this position is being reevaluated and correspondence is being initiated to the Department of Transportation to rectify the problem.

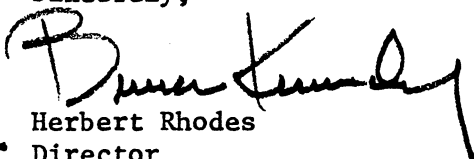
Only Forty Percent of the Off-Highway Vehicles in the State are Registered. This situation is due to the lack of enforcement and to the resistance on the part of users who as yet see few benefits from the program. The lack of enforcement is being dealt with through Chapter 1093/76 which will become effective January 1, 1977. In this new legislation the California Highway Patrol is charged with the responsibility of enforcing the Off-Highway Vehicle Code. This is also enhanced by other recent legislation such as the Chapter 1050 of 1975 which eliminated loopholes in the Registration Act and defined the Off-Highway Motor Vehicle. Hopefully, the Highway Patrol will be much more effective in enforcing the Off-Highway Vehicle law in the future. The resistance on the part of users to register because of the few benefits they could see from this program will be resolved through future projects to be accomplished by this Department. It is felt that specific research into the registration problem will be of limited value.

Off-Highway Vehicle Grant Funds Used to Pave a Race Track. The Off-Highway Vehicle Fund was used for the provision of the go-cart and mini-bike track at the City of Davis which utilized \$20,000 of Off-Highway Vehicle monies. This was a Grant sought in the first year of the Grant Program. Until recently it was thought that the go-cart was an off-highway recreational vehicle of sorts. A number of go-carts have been identified by the Department of Motor Vehicles as Off-Highway Vehicles. The Department of Parks and Recreation will not provide paving at any future grant projects nor will go-carts be considered as an off-highway vehicle for the purposes of this program. In usage, most go-carts are more clearly racing vehicles used in closed course competitions. There are exceptions to this. Mini-bikes are potential users of the Davis project; however, no mini-bike use is presently occurring pending the City obtaining suitable insurance.

Compliance With HR 87. HR directed the Department of Parks and Recreation to provide monthly reports on the Off-Highway Vehicle Program to the Legislature. No funding was provided for this extremely frequent level of reporting monthly. It had earlier been hoped by the Department that there would be reports issued 3 to 5 times a year, or as major events occurred. A lesser schedule is appropriate because major changes in the program do not occur frequently enough to warrant more frequent status reporting. In the future the Department plans to report once or twice a year, or when major changes occur in the program.

My staff and I appreciate the careful examination you have given to the off-highway vehicle program and to the use of the Off-Highway Vehicle Fund. Where problems and shortcomings have been found, prompt efforts will be made to evaluate them and seek appropriate solutions.

Sincerely,


Herbert Rhodes
Director

For

DEPARTMENT OF PARKS AND RECREATION

P.O. BOX 2390
SACRAMENTO 95811

(916) 445-2358

AUG 19 1976

Mr. Robert M. Neves, Audit Manager
Office of the Auditor General
925 L Street, Suite 750
Sacramento, California 95814

Dear Mr. Neves:

Thank you for your letter of July 23, in which you asked why the Department did not intend to acquire any off-highway areas with 1974 Bond Act monies, although such were indicated in a departmental publication outlining that Bond Act to the voters.

Due to post-1974 adjustments in project cost estimates and a general project cost increase due to inflation, we found it impossible to fund all projects specifically named in the 1974 document. Of necessity, certain named projects--preservation, historic, and recreation in purpose--were dropped or reduced in size. This cutback was focused more on those project proposals which had been less well researched and formulated at the time of the publication of the aforementioned document. Less effort had been invested in their preparation, and their postponement would be less of a sacrifice in this respect. Also, since the Off-Highway Vehicle Fund provides at least a modest degree of support for OHV projects, we felt that projects which do not have the benefit of such a special fund should be given higher priorities.

Since neither of the proposed off-highway vehicle areas had been examined or defined in any detail, both were dropped. At this point it is impossible to use 1974 Bond Act funds for OHV facilities. The funds are already fully allocated for other projects of high priority and work on most of them is now underway. This is not to imply that neither project will be undertaken nor that the Department will not fulfill its obligations to vehicular recreationists. I expect that our increased use of the Off-Highway Vehicle Fund will begin to provide more visible results in this area. We have already used such funds to purchase Hollister Hills and Ocotillo Wells State Vehicular Recreation Areas. At this time, the Department is making a special study of Planning District 8, the Los Angeles Basin, to determine the best site for our next purchase. We hope to use the Off-Highway Vehicle Fund as expeditiously as possible, giving the recreationists the best areas for the least money.

Sincerely,


Herbert Rhodes
Director

memorandum

APPENDIX B

To : Honorable Herbert Rhodes, Director

Date : June 18, 1976

Subject : Trails/ORV - 1974
Bond Act

From : Department of Parks and Recreation

The attached spread sheet indicates the degree to which the Department has honored its implied commitment to spend \$5 million of the 1974 Bond Act monies on acquisition and development for trails and off-road vehicle areas. The figures show we will have spent far less of the actual Bond Act money on these objectives than we indicated we would; however, in the case of trails, we have more than made up for it by spending from a new, but unrelated source.

In the case of trails (riding, hiking, biking, boating), we indicated we would spend \$2 million for acquisition and \$1.5 for development, a total of \$3.5 million. To date, we have spent none of the Bond Act money, and we have proposed \$1.18 million from that fund be spent in the 1976-77 budget. Since the Bond Act money appears to be over allocated, this \$1.18 million may be the maximum we can ever get from it for trails. At best, we may spend a third of what we promised from the 1974 Bond Act for recreational trails.

If shortchanged here, trail users may consider it some sort of compensation that, since 1974, \$4.05 million have been appropriated and allocated (over allocated, actually) for trail and hostel development through the Collier-Keene Bill (SB-420). While this funding might have been made available regardless of the existence, or non-existence, of the 1974 Bond Act, it is still new money for trails. The result today is that \$5.23 million have been made available for recreational trails since the passage of the 1974 Bond Act, a sum greater than the \$3.5 million indicated in the Act alone.

The situation in the case of off-road vehicle areas is neither as good nor as defensible; that is to say, defensible in the sense that we can plead that any lack of 1974 Bond money was made up by other or "new" money. With ORV areas, the voters were led to believe that \$1.5 million would be allocated to the acquisition of two such areas. To date, not one cent of 1974 Bond money has been spent on ORV areas, and there is none left to spend on them. The \$0.87 million which the Department has spent on ORV area acquisition since November 1974 has all come from the pre-existent (1971) Off-Highway Vehicle Fund, which would have been used for this purpose anyway, and from the 1964 Bond Fund. In short, the ORV users got none of the money promised from the 1974 Bond Act, and this deficiency was not compensated by any funding not previously available for this purpose.

able Herbert Rhodes
e 2
June 18, 1976

This situation may have occurred for a variety of reasons, including at least, the lack of broad departmental interest in these fields, particularly in the ORV field. This whole situation will not make us look very good, so this information should be more a matter of internal use and recognition of the situation and not something to publicize.

The soon-to-be-launched work of the Dunlop trail planning should give us a better perspective on the department's role in providing 1) trails not directly related to the State Park System, 2) river trails, and 3) ORV areas. I think that departmental policy on this latter item requires some serious thinking on our part, and that the entire ORV Program should be discussed by your staff in the near future.

Original signed by

Bruce Kennedy
Assistant Deputy Director

cc: Alice Wright-Cottingim
Russell Porter
Norman Hongola
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Legislative Counsel of California

GEORGE H. MURPHY

Sacramento, California

July 22, 1976

Honorable Mike Cullen
Assembly Chamber

Gas Tax Revenues - #12776

Dear Mr. Cullen:

FACTS

Section 1 of Article XIX* of the California Constitution requires that gas tax revenues derived from fuel used in vehicles upon the public streets and highways be used for certain highway and related purposes. Such revenues are placed in the Motor Vehicle Fuel Account in the Transportation Tax Fund (Sec. 8351, R. & T.C.).

However, certain gas tax revenues derived from fuel used off the public highways are appropriated for uses other than highway and related purposes (see Sec. 8352.3, et seq., R. & T.C.). One such other use is the acquisition and maintenance of trails and areas for off-highway vehicles subject to identification under Division 16.5 (commencing with Section 38000) of the Vehicle Code (Sec. 38300, Veh. C.).

Commencing in 1973, Section 8352.6 of the Revenue and Taxation Code required biennial reports on the amount of gas tax revenues in the Motor Vehicle Fuel Account

* Formerly Article XXVI; renumbered Article XIX by Proposition 14, approved by the voters at the June 1976 Primary Election.

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attributable to fuel used in such identified off-highway vehicles (see Ch. 1405, Stats. 1972). Based on the most recent of such reports, such revenues are annually transferred to the Off-Highway Vehicle Fund, where they are continuously appropriated for the acquisition and maintenance of the above-mentioned trails and areas (Secs. 38225, 38300, Veh. C.).

Chapter 1050 of the Statutes of 1975, among other things, amended Section 8352.6 of the Revenue and Taxation Code to provide that such reports and transfers of funds be based on fuel used in vehicles "subject to identification," rather than actually "identified," under Division 16.5. For example, subdivision (d) of such section was amended, in pertinent part, in the following manner:

"(d) On or before August 15, 1973, and every two years thereafter, the Department of Public Works shall prepare ... a report setting forth the current estimate of the amount of money credited to the Motor Vehicle Fuel Account attributable to taxes imposed on distributions of motor vehicle fuel used in the off-highway operation of vehicles ~~iden-~~ subject to identification under Division 16.5 (commencing with Section 38000) of the Vehicle Code. . . ."

You state that the above, as well as other, changes in the law brought about by Chapter 1050 of the Statutes of 1975 will substantially increase the amount of gas tax revenues transferred to the Off-Highway Vehicle Fund to be used for the acquisition and maintenance of trails and areas for off-highway vehicles.

Based on this situation, you have asked the following two questions, which are separately stated and discussed below.

QUESTION NO. 1

Will the changes in the formula providing for transfers to the Off-Highway Vehicle Fund from the Motor Vehicle Account brought about by Chapter 1050 of the Statutes of 1975 be applied retroactively to the required transfers commencing in 1973?

OPINION NO. 1

The changes in such formula will not be applied retroactively to 1973, but will apply prospectively to transfers made in 1977 and annually thereafter.

ANALYSIS NO. 1

It is the general rule that specific language is not necessary to the validity of an appropriation, "if the Legislature has clearly designated the amount and the fund out of which it is to be paid" (Humbert v. Dunn, 84 Cal. 57, 59, with emphasis added; see also Riley v. Johnson, 219 Cal. 513, 519; Meyer v. Riley, 2 Cal. 2d 39, 43).

In Chapter 1050, the Legislature did not clearly indicate that an appropriation of funds for prior years is intended. On the contrary, the Legislature amended Section 8352.6 of the Revenue and Taxation Code in a manner which would indicate that it is to have prospective application only.

Subdivision (a) of such section specifies that the transfer for 1973 from the Motor Vehicle Fuel Account to the Off-Highway Vehicle Fund is to be made prior to October 1, 1973. Subdivision (b) then provides for such transfers in subsequent years in the following manner:

"(b) Prior to October 1, 1974, and prior to the first day of October of each year thereafter, an amount equal to the estimate contained in the most recent report prepared pursuant to this section."

Thus, it is clear that the transfer in each year must be made prior to the first day of October based on the last estimate made in August of odd-numbered years (subd. (d), Sec. 8352.6, R. & T.C., supra). Chapter 1050 of the Statutes of 1975 became effective on January 1, 1976 (subd. (c), Sec. 8, Art. IV, Cal. Const.), and the next estimate following such effective date will be due in August of 1977.

Therefore, until 1977, Section 8352.6 requires that the transfers to the Off-Highway Vehicle Fund be based on the estimate made in 1975 and requires that they be made prior to the first day of October of each year. It is evident that such transfers could not be timely made for years from 1973 through 1976, if they were to be based on an estimate to be made in 1977.

On this basis, it is our opinion that changes in the formula for transferring gas tax revenues from the Motor Vehicle Account to the Off-Highway Vehicle Fund will not be given retroactive application, but will apply prospectively to transfers made in 1977 and annually thereafter.

QUESTION NO. 2

Should the interest earned by gas tax revenues derived from fuel used in such identified off-highway vehicles be included in the computations to determine the amount of money to be transferred from the Motor Vehicle Fuel Account to the Off-Highway Vehicle Fund?

OPINION NO. 2

The interest earned by gas tax revenues derived from fuel used in the specified off-highway vehicles should be included in the computations to determine the amount of money to be transferred from the Motor Vehicle Fuel Account to the Off-Highway Vehicle Fund.

ANALYSIS NO. 2

As noted in Analysis No. 1, the annual transfer of money from the Motor Vehicle Fuel Account to the Off-Highway Vehicle Fund is required to be based on the estimate contained in the most recent report prepared pursuant to Section 8352.6 of the Revenue and Taxation Code. Such a report is required to set forth "the current estimate of the amount of money credited to the Motor Vehicle Account attributable to taxes imposed on distributions of motor vehicle fuel used in the off-highway operation of vehicles subject to identification** under Division 16.5" (subd. (d), Sec. 8352.6, R. & T.C., with emphasis added).

In the sense in which it is here used, we think "attributable to" should be construed as including any gain generated by the tax revenues in question, as well as to the tax revenues themselves (see Braunstein v. Commissioner, 10 L. Ed. 2d 757, 761). If the Legislature had intended that

** As indicated in our answer to your first question, until 1977 this estimate will continue to be based on use of motor vehicle fuel in the off-highway operation of vehicles "identified," rather than "subject to identification," under Division 16.5.

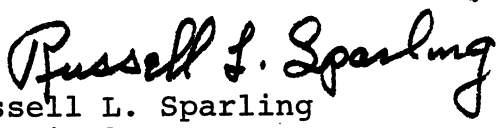
Honorable Mike Cullen - p. 5 - #12776

such estimates be limited to the taxes only, it would have been a simple matter to so state in the statute, rather than including all money "attributable to" such taxes.

On this basis, it is our opinion that interest earned by gas tax revenues derived from fuel used in the specified off-highway vehicles should be included in the computations to determine the amount of money to be transferred from the Motor Vehicle Fuel Account to the Off-Highway Vehicle Fund.

Very truly yours,

George H. Murphy
Legislative Counsel

By 
Russell L. Sparling
Principal Deputy

RLS:ns

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GEORGE H. MURPHY

Sacramento, California

October 7, 1976

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Honorable Mike Cullen
5144 State Capitol

Fuel Tax Revenues - #15304

Dear Mr. Cullen:

QUESTION

Should the interest earned by fuel tax revenues derived from fuel used off the highways, as described in Section 8352.5 and 8352.7 of the Revenue and Taxation Code, be included in the computations to determine the amounts to be transferred from the Motor Vehicle Fuel Account pursuant to such sections?

OPINION

The interest earned by fuel tax revenues derived from fuel used off the highways, as described in Sections 8352.5 and 8352.7 of the Revenue and Taxation Code, should be included in the computations to determine the amounts to be transferred from the Motor Vehicle Fuel Account pursuant to such sections.

ANALYSIS

Section 1 of Article XIX of the California Constitution requires that revenues derived from taxes on fuel used in vehicles upon the public streets and highways be used for certain highway and related purposes. Such revenues are placed in the Motor Vehicle Fuel Account in the Transportation Tax Fund (Secs. 8351, 9301, R. & T.C.).

However, certain fuel tax revenues derived from fuel used off the public highways are appropriated for uses other than highway and related purposes (see Sec. 8352.3 et seq., R. & T.C.). Section 8352.5 of the Revenue and Taxation Code relates to such other uses and provides for transfers of various amounts from the Motor Vehicle Fuel Account to the Department of Agriculture Fund. Subdivision (c) of such section provides for the following transfer:

"(c) During the second quarter of the 1971-72 fiscal year, and the second quarter of each fiscal year thereafter, an amount equal to the estimate contained in the most recent report prepared pursuant to this section."

The report mentioned in the above provision is described in the last paragraph of Section 8352.5 in the following manner:

"On or before May 31, 1971, and on or before September 30, 1973, and every two years thereafter, the Secretary of the Business and Transportation Agency, and the Secretary of the Agriculture and Services Agency, shall jointly prepare, or cause to be prepared, a report setting forth the current estimate of the amount of money in the Motor Vehicle Fuel Account attributable to agricultural off-highway use of motor vehicle fuel, which is subject to refund pursuant to Section 8101 less gross refunds allowed by the Controller to persons entitled to such refunds for agricultural off-highway use pursuant to Section 8101; and they shall submit a copy of such report to the Legislature." (Emphasis added.)

In a similar manner, Section 8352.7 of the Revenue and Taxation Code provides for transfers of funds from the Motor Vehicle Fuel Account based on reports, but, in this instance, the reports are prepared by the Department of Transportation, in cooperation with the Department of Parks and Recreation, and the transfers are made to the Off-Highway Vehicle Fund. However, here again, the amount of the transfer are based on moneys in such account 'attributable to' taxes on fuel used in specified vehicles off the highway.

Thus, as may be seen, the transfers from the Motor Vehicle Fuel Account in the Transportation Tax Fund to the Department of Agriculture Fund and the Off-Highway Vehicle Fuel Fund pursuant to Section 8352.5 and 8352.7 of the Revenue and Taxation Code are required to be based on the amount of moneys in such account "attributable to" taxes on fuel used in specified situations off the highways.

In the sense in which it is here used, we think "attributable to" should be construed as including any gain generated by the tax revenues in question, as well as to the tax revenues themselves (see Braunstein v. Commissioner, 10 L. Ed. 2d 757, 761). If the Legislature had intended that such estimates be limited to the taxes only, it would have been a simple matter to so state in the two statutes, rather than including all money in both cases "attributable to" such taxes.

On this basis, it is our opinion that the interest earned by fuel tax revenues derived from fuel used off the highways, as described in Sections 8352.5 and 8352.7 of the Revenue and Taxation Code, should be included in the computations to determine the amounts to be transferred from the Motor Vehicle Fuel Account pursuant to such sections.

Very truly yours,

George H. Murphy
Legislative Counsel

By 
Russell L. Sparring
Principal Deputy

RLS:djb

Office of the Auditor General

cc: Members of the Legislature
Office of the Governor
Office of the Lieutenant Governor
Secretary of State
State Controller
State Treasurer
Legislative Analyst
Director of Finance
Assembly Office of Research
Senate Office of Research
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