

Off-Highway Motor Vehicle Recreation Program:

*The Lack of a Shared Vision and
Questionable Use of Program Funds
Limit Its Effectiveness*



August 2005
2004-126

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2004-126

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

Dear Governor and Legislative Leaders:

As requested by the Joint Legislative Audit Committee, the Bureau of State Audits presents its audit report concerning the Department of Parks and Recreation's (department) administration and allocation of moneys in the Off-Highway Vehicle Trust Fund (OHV trust fund).

This report concludes that the Off-Highway Motor Vehicle Recreation Commission and the department's Off-Highway Motor Vehicle Recreation Division (division) have not developed the shared vision, goals, and strategies necessary to balance off-highway vehicle recreation with concerns for the environment. Recent legal requirements to spend designated portions of OHV program revenue for conservation, restoration, and law enforcement have not been met and because the division is not setting aside the cash, a growing unfunded obligation exists. In addition, the division and the department have spent or plan to spend \$38 million for three land acquisition projects—one completed and two under consideration—that offer little or no additional OHV recreation. Further, based on a questionable legal interpretation and inadequately supported cost estimates, the department is using OHV trust fund money—\$3.6 million during fiscal year 2003–04—to support state parks that do not have OHV recreation. The division has also used contracts for questionable purchases and violated state contracting rules, including 80 instances of splitting tasks into multiple contracts to avoid regulatory oversight. Finally, the division's management of the funds expended through grants and cooperative agreements needs improvement.

Respectfully submitted,

ELAINE M. HOWLE
State Auditor

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SUMMARY

Audit Highlights . . .

Our review of the Off-Highway Motor Vehicle Recreation Program (OHV program) revealed that:

- The Off-Highway Motor Vehicle Recreation Commission (commission) and the Off-Highway Motor Vehicle Recreation Division (division) have not developed a shared vision to implement an OHV program that is balanced between OHV recreation and the environment.*
- The division's recent strategic plan is incomplete and does not include some important elements such as a comprehensive evaluation of the external and internal factors that could affect the OHV program.*
- In the absence of a formally adopted strategy, the commissioners vote to approve grants and cooperative agreements based on their individual interests rather than on a strategy to achieve a balanced program.*

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RESULTS IN BRIEF

The Off-Highway Motor Vehicle Recreation Program (OHV program) was created to better manage the growing demand for off-highway vehicle (OHV) recreation while protecting California's natural and cultural resources from the damage that can occur from indiscriminate or uncontrolled OHV recreation. Under the supervision of the Department of Parks and Recreation (department), the Off-Highway Motor Vehicle Recreation Division (division) administers the OHV program. The division provides opportunities for OHV recreation at the eight state vehicular recreation areas (SVRAs) it operates and on local and federal government agency land the division supports through its grants and cooperative agreements program (grants program).

The OHV program and the division are funded by the Off-Highway Vehicle Trust Fund (OHV trust fund), primarily through collection of the fuel tax, registration fees for off-highway vehicles, and entrance fees at the SVRAs. The Off-Highway Motor Vehicle Recreation Commission (commission) provides avenues for public input, offers policy guidance to the division, and approves the division's grants and cooperative agreements with public entities that provide OHV recreation opportunity. The commission also approves the division's capital outlays. The governor and the Legislature appoint the commissioners, who represent varying interests in OHV recreation and serve staggered four-year terms.

The OHV program attempts to balance two potentially competing interests—OHV recreation and protection of California's natural and cultural resources from the negative impact of OHV recreation. Plans developed in collaboration with these interests, such as strategic plans, can be vital in ensuring that all interests are satisfactorily addressed and the appropriate compromises reached. However, the commission and the division have not formally adopted a shared vision for the OHV program, nor have they developed the goals and strategies necessary to meet that vision. In addition, because the division and the commission view the operations of the SVRAs as distinct from the grants program, they do not collaborate on the planning for each. In the absence of a shared vision and goals, the commissioners, the division, and stakeholders in the OHV program compete for the more than

- ☑ *Recent legal requirements to spend designated portions of OHV program revenue for conservation, restoration, and law enforcement have not been met and because the division has not set aside the cash, a growing unfunded obligation exists.*
 - ☑ *The division and the Department of Parks and Recreation (department) have spent or earmarked \$38 million for three land acquisition projects—one completed and two under consideration—that offer little or no additional OHV recreation.*
 - ☑ *Based on a questionable legal interpretation and inadequately supported cost estimates, the department is using Off-Highway Trust Fund money—\$3.6 million during fiscal year 2003–04—to support state parks that do not have OHV recreation.*
 - ☑ *The division made questionable purchases of goods and services using contracts paid with OHV funds and in numerous instances violated state contracting rules.*
 - ☑ *The division's management of the funds expended through grants and cooperative agreements needs improvement.*
-

\$50 million collected from OHV recreationists each year to serve their diverse interests and further individual agendas, potentially resulting in an inefficient use of funds and discord among the interested parties.

Although required by the law to do so by January 1, 2005, the division has not yet completed its strategic planning process to identify future OHV recreation needs. The division prepared a final draft of a strategic plan in March 2005, but it used an abbreviated planning process that did not include some important elements. For example, missing from the division's strategic planning process is a comprehensive evaluation of the external and internal factors that could affect its ability to successfully implement the OHV program, such as the demand for OHV recreation by vehicle type and location, and the organizational, environmental, and legal issues that might affect the program. As a result, the division's draft strategic plan does not adequately address these issues.

In addition, the commission and the division have not collected the necessary data or prepared the required reports to successfully complete its strategic planning. For example, the division has begun but has not yet completed a new fuel tax study that will provide information on the number and types of off-highway vehicles engaged in OHV recreation and the destinations and types of recreation sought by OHV enthusiasts. Moreover, the commission and division have not completed required reports that should define the principal reasons people use off-highway trails and vehicles and the appropriate level of funding for the OHV program's components.

Without a comprehensive strategic plan, the division's budgets are not guided by agreed-upon goals and strategies for achieving them. Rather, the division prepares its support, capital outlay, and local assistance budgets based more on historical spending levels and available funds than on achieving goals or meeting the needs of the OHV program.

In the absence of a formally adopted strategy, the grants program lacks direction, and commissioners vote to approve grants and cooperative agreements based on their individual interests. As a result, the applicants for the grants program are often unaware of the commission's priorities, and the funding issued by the grants program is not done to achieve a balanced OHV program. According to the recipients that receive the largest grants and cooperative agreements, the U.S. Forest Service

(Forest Service) and the federal Bureau of Land Management, unclear guidance on the commission's priorities presents challenges for them when applying for funds from the grants program.

The commission's accountability for its funding decisions could be improved. The law currently requires the commission to provide a biennial report on certain elements of the OHV program, including the status of the program and its natural and cultural resources and the results of the division's strategic planning process. However, the law does not require the commission to report its strategies and priorities, and how it awards OHV trust fund money to meet the legislative intent of the OHV program.

Some spending requirements in the law may impede the ability of the commission and the division to implement a vision for the OHV program. Based on a consensus reached by the stakeholders in 2002 that was adopted into the law, the division is required to spend the portion of fuel tax revenue attributable to unregistered off-highway vehicles and deposited in the Conservation and Enforcement Services Account (conservation account) for restoration, conservation, and enforcement. That portion was about 61 percent of the OHV program's total revenue in fiscal year 2003–04 revenues. However, there is disagreement among the commission, the division, and the stakeholders about whether this spending requirement contributes to a balanced OHV program.

Although the commission's chair, vice chair, and the division's deputy director could not point to documented evidence to show the need for the funds, about 16 percent of the OHV program's total revenues for fiscal year 2004–05 were required by law to be spent on restoring land damaged by OHV activity. However, because the division has not been able to satisfy the spending requirement, since January 2003 it has accumulated an obligation to use unspent conservation account funds totaling more than \$15.7 million. Part of this obligation is \$8.3 million in unspent funds designated for restoration. According to the department's deputy director of administration, the division has not reserved the unspent cash to pay for this obligation in the future; thus, it may present a substantial financial burden.

Further, the law is not clear on the use of restoration funds. The present practice among the commission and division is to require areas and trails to be permanently closed to OHV recreation before restoration funds can be used. However, the law does not

support this practice, especially with respect to restoration funds that are used on federal lands. Rather, it states that when soil conservation standards or wildlife habitat protection standards are not being met in any portion of an OHV recreation project area that is supported by a cooperative agreement, the area that is out of compliance must be temporarily closed until those standards are met. Thus, according to the law, if restoration funds are provided through cooperative agreements, the restored land may be reopened to OHV recreation once soil standards and wildlife habitat protection standards are met.

The division and the department have used money from the OHV trust fund for questionable purposes. Specifically, for three of its recent land acquisition projects, with planned costs totaling \$38 million, the division and the department could not provide analyses that showed the value of these purchases to the OHV program. The division has purchased Deer Creek Hills, and Onyx Ranch and Laborde Canyon are still under consideration, and based on the available documentation, these projects do not appear to be the best use of the funds in implementing the OHV program. In each case, project land will be devoted largely to protecting or preserving natural or cultural resources with a relatively small portion or no portion at all available for OHV recreation.

In fiscal year 2003–04 the department began using the OHV trust fund to pay for some of the costs to operate park districts that are not SVRAs. The department believes that charging the OHV trust fund \$3.6 million for these costs in fiscal year 2003–04 and \$2.7 million during the first three quarters of fiscal year 2004–05 is appropriate because it interprets the law to mean vehicle use on any unpaved road in the state park system is eligible for OHV program funding. However, we think the department’s interpretation is inconsistent with the Legislature’s clear intent for the OHV program and with provisions of law that limit the use of the OHV trust fund. Thus, we question the propriety of the charges. Moreover, because the department allocates its overhead costs based on direct costs to programs, the OHV trust fund was charged an additional \$437,000 in fiscal year 2003–04 alone for the questionable costs we found.

Despite the significance of these charges, the department could not provide adequate support to justify charging them to the OHV trust fund. This lack of adequate support for its costs is particularly disconcerting because, according to the

department's deputy director of administration, it plans to use a more recent review that we found was inadequately supported as a basis for its future charges to the OHV trust fund for the cost of these activities.

For various reasons the division has increased its use of contracts over the past five years, with a peak in fiscal year 2002–03. We found that the division has used contracts paid from the OHV trust fund for questionable purchases of goods and services, including the unauthorized chartering of private aircraft. The division also violated rules that govern the use of contracts, including 80 instances of splitting a series of related tasks into multiple contracts to avoid competitive bidding procedures and regulatory oversight. Further, the division has not adequately analyzed its operations to determine if either using existing staff or hiring additional employees would be less expensive than contracting for staff-related work and ongoing needs. Most of these contracting problems occurred in fiscal years 2001–02 and 2002–03, but some were more recent.

The division's management of the funds expended through the grants program needs improvement. The division does not adequately track the funds it advances to grantees; therefore, it cannot ensure that advanced funds are used only for allowable activities and that unused funds are returned to the OHV trust fund. For example, we identified \$881,000 in outstanding advances due to be repaid by several recipients for which the division had not enforced the return of unspent funds or could not obtain documentation regarding how those funds had been spent. In one of these instances the division advanced about \$566,000 to Los Angeles County more than 13 years ago but has received no documentation indicating how the grant funds were used.

In addition, the division does not ensure that all completed grants and cooperative agreements are audited, and it does not always promptly resolve audit findings or follow up on ineligible costs that an audit identifies. Our review of 12 audit reports found that the division has not collected approximately \$598,000 in ineligible costs related to three audits. Finally, the division circumvented state controls and violated state contracting rules when entering into cooperative agreements totaling \$2.2 million with a federal agency, and it extended the period during which some of the funds were available to be spent.

RECOMMENDATIONS

To ensure that the OHV program is adequately balanced between OHV recreation opportunity and environmental concerns as the Legislature intended, the division and the commission should develop a shared vision that addresses the diverse interests in the OHV program. Once developed, the division and the commission should implement their vision by adopting a strategic plan that identifies common goals for the grants program and the SVRAs, taken as a whole, and specifies the strategies and action plans to meet those goals.

The division should complete its strategic plan for the SVRA portion of the OHV program by performing a thorough assessment of external and internal factors; collect the data needed to focus its efforts; and develop the action plans, spending plans, and performance monitoring plans to implement its strategic plan.

To make efficient use of division staff's time and provide appropriate guidance to applicants for the grants program, the commission should develop and communicate priorities based on a strategy for using the grants program to promote a balanced OHV program.

To improve accountability, the Legislature should consider amending state law to require the commission to annually report the grants and cooperative agreements it awards by recipient and project category and how the awards work to achieve the shared vision that it and the division develop.

The division and commission should evaluate the current spending restrictions in the law to determine whether they allow for the allocation of funds necessary to provide a balanced OHV program and seek legislation to adjust those restrictions if necessary.

The Legislature should consider amending the Public Resources Code to clarify whether using OHV trust fund money to restore land damaged by OHV recreation requires that the land be permanently closed to off-highway vehicles.

The division should develop and implement a process of evaluating land acquisition projects to ensure that they provide a strategic benefit to the OHV program. This process should include appropriate analysis of the costs and benefits of a proposed land acquisition, including an assessment of the need for additional land for OHV recreation.

To ensure that money from the OHV trust fund is used appropriately, the Legislature should amend the law to clarify the allowable uses of the fund.

The division should take steps to ensure that its contracting practices comply with state contracting requirements, and the department should better monitor the division's contracting practices.

The division should manage the grants program more efficiently by keeping track of funds advanced to recipients, ensuring that all grants and cooperative agreements receive annual fiscal audits and performance reviews, following up on audit findings, and collecting ineligible costs, discontinuing its practice of reallocating unspent grant funds among Forest Service districts, and improving its grants database.

AGENCY COMMENTS

The Resources Agency and the department generally agree with our recommendations, but note that they do not entirely agree with our concerns with the department's land acquisition strategy and the use of OHV trust fund money to pay some of the costs of operating non-SVRA state parks. Instead of a consensus response from the commission, the seven commissioners chose to provide individual responses that contain positions that had varying levels of agreement and disagreement with our conclusions and recommendations. ■

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INTRODUCTION

BACKGROUND

The Off-Highway Motor Vehicle Recreation Program (OHV program) was created in 1971 to manage the growing public demand for off-highway vehicle (OHV) recreation while protecting California's natural and cultural resources from the damage that can occur when OHV recreation becomes indiscriminate or uncontrolled. Within the Department of Parks and Recreation (department), the Off-Highway Motor Vehicle Recreation Division (division) is the designated entity that oversees and implements the OHV program. Both the program and the division are funded through the Off-Highway Vehicle Trust Fund (OHV trust fund), which was specifically created to finance the program, primarily through collection of the fuel tax, registration fees for off-highway vehicles, and fees charged at state vehicular recreation areas (SVRAs). In addition to providing access to off-highway recreation, the program offers a variety of services and benefits to California's residents and visitors through management of its lands, wildlife habitat protection, youth development, and law enforcement.

STRUCTURE AND GOVERNANCE OF THE OHV PROGRAM

The OHV program comprises state parks operated by the division and the broad category of OHV recreation opportunity resulting from the division's partnership with cities, counties, and federal agencies through the grants and cooperative agreements program (grants program).

State Vehicular Recreation Areas

California has eight SVRAs: Prairie City, Carnegie, Hollister Hills, Hungry Valley, Oceano Dunes, Ocotillo Wells, Clay Pit, and Heber Dunes. Their locations are shown in Figure 1 on page 11. Six SVRAs are highly managed and significantly more developed than the remaining two. All the SVRAs cater to populations in their surrounding counties. OHV program funding provides for staffing, maintenance of the SVRAs, and land purchases. Public use of the SVRAs has steadily increased. Between 1994 and 2004, the division reported that attendance at the SVRAs increased by 156 percent, from 1.5 million to 3.8 million annually. Each SVRA manages its

resources to sustain OHV opportunity while protecting and enhancing wildlife habitat and providing services such as law enforcement, first aid, and search and rescue. The division is in charge of managing the SVRAs and acquiring lands for future OHV recreation.

The division's standards for resource management were revised in 1987 with the passage of legislation requiring the OHV program to establish both soil loss standards and plans to protect wildlife habitat in each SVRA. The habitat protection plans are designed to monitor the impact of OHV recreation on soil and wildlife in each SVRA. The division employs ecologists at each of the major SVRAs to assist managers in making informed decisions regarding how to best manage park resources.

Grants Program

Existing law authorizes the division to partner with cities, counties, and federal agencies to provide OHV recreation opportunities throughout California. According to the division, the grants program offers a way to develop and manage new and existing opportunities for OHV recreation and to protect the environment.

In fiscal year 2004–05 the grants program provided \$2.7 million to local and nonprofit entities, \$6.4 million to the Bureau of Land Management, and \$7.9 million to the U.S. Forest Service. Federal agencies receive a high percentage of the grant funds because they provide OHV opportunity not available from any other jurisdiction, and the division estimates that more than 90 percent of OHV recreation activities occur on federal lands. The division stated that its partnership with the federal government is therefore critical to managing OHV recreation where it actually takes place.

Off-Highway Motor Vehicle Recreation Commission

California's Off-Highway Motor Vehicle Recreation Commission (commission) was created by the Legislature in 1982 to allow public input and provide policy guidance for the OHV program. Seven commissioners are appointed to staggered four-year terms.

FIGURE 1

Locations of State Vehicular Recreation Areas



Source: Department of Parks and Recreation Web site.

The governor appoints three of the members, and the Senate Rules Committee and the speaker of the Assembly each appoint two members. By statute the commission membership consists of OHV recreation enthusiasts, nonmotorized recreationists, biological and soil scientists, rural landowners, law enforcement officials, and environmentalists.

The commission is required to meet at least four times each year. Its duties include considering alleged adverse effects from the operation of off-highway vehicles on property in the vicinity of the SVRAs and recommending measures to the division to prevent further damage and restore the affected property, reviewing and commenting on the proposed annual budget of expenditures for the OHV trust fund, and reviewing and approving the division's capital outlays and awards of OHV trust fund money for the division's grants and cooperative agreements. In compensation for their services, commissioners may receive a salary of \$50 for each day, up to a maximum of \$100 per month, and may also be reimbursed for the expenses incurred in performing their duties.

Division Headquarters

The division is headquartered in Sacramento and headed by a deputy director who is appointed by the department's director. A division chief reports directly to the deputy director and has overall responsibility for the following organizational units:

- Program compliance and support
- Resource management
- Grants and cooperative agreements
- Enforcement and technical services
- Individual SVRA districts

In fiscal year 2003–04 the division had 23.5 full-time staff positions at its headquarters office and 85 full-time positions at the SVRAs. The total payroll, including benefits, of division staff, both full-time and part-time, was \$7.4 million in fiscal year 2003–04. The payroll at the division headquarters constituted \$1.4 million of this total.

The division is responsible for implementing all aspects of the OHV program, including implementing the policies established by the commission, maintaining and operating the

SVRAs, expanding the opportunities for OHV recreation, and administering the grants program. It also operates the SNO-PARK permit program, which is separately funded to provide safe parking for people participating in winter recreation activities such as cross-country skiing and snowmobiling.

Off-Highway Vehicle Stakeholders Roundtable

Established by the division in May 2000 to serve as an advisory group to the division and the commission, the Off-Highway Vehicle Stakeholders Roundtable (stakeholders roundtable) consists of about 50 representatives. Members include OHV and nonmotorized recreation enthusiasts and representatives from environmental organizations; public land management agencies; law enforcement agencies; and local communities, businesses, and governments. The responsibilities of the stakeholders roundtable include enhancing the division's ability to provide quality off-highway recreation opportunity in a safe, environmentally responsible manner, and recommending consensus-based actions to address issues and challenges.

Legal and Regulatory Requirements

The legal requirements relating to the structure and governance of the OHV program are located in the State's Public Resources Code, Revenue and Taxation Code, Vehicle Code, and Government Code.

The Public Resources Code sections relating to the OHV program have been amended to reflect legislation passed in both 2002 and 2004. The Public Resources Code specifies that the intent of the program is to expand and manage OHV recreation areas and facilities for sustained, long-term use. Further, the code identifies the duties and responsibilities of the division and the commission; specifies the conditions under which new recreation areas, facilities, and opportunities are provided and managed; stipulates the conditions for grants and cooperative agreements; discusses the fiscal management of the program; and denotes the California SNO-PARK permit program.

Finances of the OHV Program

The primary sources of revenue for the OHV trust fund are the tax on the fuel that off-highway vehicles are estimated to consume, with some funding also provided by OHV registration fees and

SVRA entrance fees. The Public Resources Code contains specific requirements for how OHV trust fund money is to be allocated for support of the division and its SVRAs and for local assistance.

The division's support budget is designated to implement all aspects of the OHV program, such as developing, operating, and maintaining lands in the OHV system. Local assistance consists of grants to cities, counties, special districts, and qualifying nonprofit organizations, as well as cooperative agreements made with agencies of the federal government and federally recognized Native American tribes. The division uses capital outlay funds to acquire, develop, and improve OHV recreation facilities. Further, state law specifies that the estimated fuel tax revenue attributable to unregistered off-highway vehicles must be allocated to the Conservation and Enforcement Services Account in the OHV trust fund. For fiscal year 2005–06 the division budget is roughly \$36.5 million for division support, \$18 million for local assistance, and \$7.8 million for capital outlay.

SCOPE AND METHODOLOGY

The Joint Legislative Audit Committee (audit committee) requested that the Bureau of State Audits review the department's administration and allocation of moneys in the OHV trust fund. Specifically, the audit committee was concerned that the manner in which the division budgets and spends its funds will not provide enough funding for its operations and maintenance activities.

To gain an understanding of the policy and legal provisions regarding the above activities, we reviewed the sections of the law and the department's regulations that are relevant to the OHV program.

To examine the division's policies and procedures for budgeting, allocating, and accounting for money in the OHV trust fund, we performed a variety of procedures, with a focus on whether the division's and commission's actions resulted in adequate OHV recreation that is balanced with environmental concerns, as the law intends, including a review of the following:

- The commission's awards of grant and cooperative agreement funds to federal, local, and private agencies.

- The division's strategic planning process, to determine whether it adequately identifies the division's challenges and issues in implementing the OHV program, including external factors, such as the growing demand for OHV recreation and environmental concerns regarding OHV recreation, and internal factors, such as the structure of the program and whether the division is adequately organized and staffed to meet the OHV program's needs.
- The manner in which the division allocates money in the OHV trust fund for the support of the division's SVRAs and headquarters and for support of federal, local, and private agencies through the grants program.

We reviewed the amount of OHV funds the division allocated and spent for its primary activities to identify the following:

- Any unused funds and whether the division's disposition of any unused funds was consistent with the law. We reviewed the division's records regarding its compliance with the law's requirements, particularly the requirement to spend specified amounts of the fuel tax revenue attributable to unregistered off-highway vehicles for restoration, conservation, and enforcement.
- The impact of legal requirements that money from the OHV trust fund be used for specific purposes. We evaluated the relevant requirements, primarily those related to the fuel tax revenue attributable to unregistered off-highway vehicles, as they affect the other needs of the OHV program. We also inquired about the origin of and justification for the requirements.
- Any unallowable uses of the money in the OHV trust fund. We reviewed a variety of expenditures, including land acquisitions and contracts for noise and wildlife studies (no contracts for water studies were identified).

For expenditures for personal services, such as contracts for environmental services and facilitating meetings, we inquired about whether the division had explored less costly alternatives, such as performing the tasks using division staff.

We also reviewed the costs charged to the OHV trust fund for activities that occurred outside the division. These costs include department overhead costs allocated to the OHV trust fund, department activities occurring outside the division, and

a proportionate charge of costs for the State's central services agencies (pro rata), such as the State Controller's Office, the State Treasurer's Office, and the Department of Finance.

We determined that the records supporting the charges to the OHV trust fund were sufficiently reliable for the purposes of our analysis by first obtaining an understanding of how the information is compiled and then testing it as necessary. ■

CHAPTER 1

Lack of Planning for the Off-Highway Motor Vehicle Recreation Program Contributes to Inefficiencies and Discord

CHAPTER SUMMARY

The Off-Highway Motor Vehicle Recreation Division (division) and the Off-Highway Motor Vehicle Recreation Commission (commission) have not formally adopted a shared vision for the Off-Highway Motor Vehicle Recreation Program (OHV program), nor have they developed the goals and strategies necessary to meet that vision. In the absence of a shared vision and common goals, the commissioners, the division, and stakeholders compete for OHV program funds to further their individual interests, resulting in a potentially inefficient use of the funds and discord among the interested parties.

Under state law the division was to develop and implement a strategic planning process to identify future off-highway vehicle (OHV) recreation needs by January 1, 2005. That process was to include, at a minimum, environmental constraints; infrastructure requirements; demographic limitations; and local, state, and federal land use planning processes. Although the division prepared a final draft of a strategic plan in March 2005, that plan does not address OHV recreation on local or federal land; rather, it focuses on the division's operations. Further, the division used an abbreviated process for its strategic planning that did not include some important elements, such as an adequate assessment of the external and internal factors that could significantly impact the OHV program. In addition, the draft plan does not address critical environmental issues that can place severe restraints on OHV recreation. By failing to consider these key issues, the division did not raise them to the level of importance those issues warrant. Further, in the absence of a complete strategic plan, the division's budgeting practices do not reflect its long-term goals.

Likewise, the commission, despite its very important role of annually allocating funds for grants and cooperative agreements, has not formally adopted a vision for the OHV program to guide

its funding decisions. Such a vision would provide direction for the environmentally balanced OHV recreation the Legislature intended. Moreover, although the law requires the commission to provide a biennial report on certain elements of the OHV program, it does not require the commission to account for its awards from the grants and cooperative agreements program (grants program) and how those awards work to meet the legislative intent of the program. Finally, disagreement exists over whether the current mandatory level of funding for conservation, restoration, and enforcement projects contributes to a balanced program, and because the division has been unable to satisfy the spending requirements, it is accumulating an unfunded obligation for the OHV program.

THE DIVISION AND THE COMMISSION HAVE NOT DEVELOPED A COMPREHENSIVE STRATEGIC PLAN FOR IMPLEMENTING THE OHV PROGRAM

The Legislature created the OHV program to balance two potentially competing interests—off-highway recreation and protection of California’s natural and cultural resources from the negative impact of OHV recreation on the environment. An important step for achieving that balance is the adoption of a shared vision that addresses the diverse interests in the OHV program, along with jointly developed goals and strategies for achieving that vision. A strategic plan outlining goals and objectives, along with the action plans to implement them, is crucial for implementing this shared vision. In fact, legislation effective January 2003 established January 1, 2005, as the deadline for the division to prepare such a plan.

Although the division has created a stakeholders group to advise it and the commission on issues and challenges, the commission, division, and stakeholders have not collaborated to develop a strategic plan for the OHV program that the commission and the division could formally adopt and use to guide funding decisions for the division’s operations as well as for the grants program. Because the grants program and the division’s operation of the state vehicular recreation areas (SVRAs) are two parts of a single OHV program, they should be planned for under a single vision, one set of values, and similar goals to ensure the effective and balanced use of the more than \$50 million currently collected from OHV recreationists each year.

An important step for achieving a balanced OHV program is the adoption of a shared vision that addresses the diverse interests in the OHV program, along with jointly developed goals and strategies for achieving that vision.

According to the division's deputy director, the division views its strategic plan as a mechanism to provide guidance for the entire program. Although the plan includes strategies that relate to the SVRAs and the grants program, those strategies do not speak to a shared vision for the grants program but to implementing the commission's priorities. Moreover, the deputy director stated that the strategic plan is designed to be dynamic in nature, which allows maximum flexibility while retaining the structure of the plan. She added that because not every aspect of the OHV program has a goal or strategy, goals and strategies are considered to have general applicability to all aspects of the program where appropriate, including, but not limited to, the grants program. Specific targeted items will be identified within the action plan for a particular goal and strategy. Although we recognize that the strategic plan need not include every element of the OHV program, if an issue is important enough to be included in an action plan, it should be identified in the strategic plan. We do not disagree that the plan needs to be flexible, but relying on a general application of identified strategies to cover unidentified issues can lead to a lack of commitment, inability to measure performance in dealing with strategic issues, and reduced accountability.

This lack of planning can cause discord among the various parties who have an interest in OHV recreation. As shown in the text box, the law established the commission to represent these diverse interests. It is apparent from this representation that the potential exists for differences of opinion on basic issues regarding off-highway recreation on public land—issues such as the amount and location of land that should be available for off-highway recreation and the appropriate amount of consideration the OHV program should have for protecting open space, conserving wildlife habitat, and providing nonmotorized recreation. Controversies exist because the diverse interests represented by the commissioners prefer different—and sometimes mutually exclusive—uses for the same limited amount of public land. Because there is no formally adopted plan to guide the commission's funding decisions, the chair and vice chair indicated that these decisions are made based on personal knowledge and interest and information presented to them, rather than on a shared strategic vision.

Representation on the Off-Highway Motor Vehicle Recreation Commission

- OHV recreation interests
- Biological or soil scientists
- Rural landowners
- Law enforcement
- Environmental protection organizations
- Nonmotorized recreation interests

Source: Public Resources Code, Section 5090.15(b).

THE DEPARTMENT OF FINANCE PROVIDES GUIDELINES FOR THE STRATEGIC PLANNING PROCESS

Guidelines provided by the Department of Finance (Finance) define strategic planning as a long-term, future-oriented process of assessment, goal setting, and strategy building to achieve management's vision for the future.

This process relies on careful consideration of an agency's capabilities and environment and leads to a priority-based allocation of resources to help the agency fulfill its mission. Finance emphasizes that, because proper strategic planning is a team effort that builds consensus on the future direction of an agency, the planning process is more important to the agency than the resulting plan.

The text box presents Finance's description of the key components of a strategic planning process. Listed first is an assessment of key external and internal data and factors that can influence the success of an agency in achieving its mission and goals. These assessments should include a detailed evaluation of the trends, conditions, opportunities, and obstacles that direct the development of each element of a strategic plan. Finance emphasizes that this assessment should be heavily quantitative. Key internal factors include management policies, resource constraints, organizational structure, automation, personnel, and operational procedures. Key external factors include economic conditions, population shifts, technological advances, geographic changes, and statutory changes.

Moreover, Finance's guidelines include discussions of how strategic planning relates to other management and planning systems, such as budgeting, workforce development, and program monitoring and evaluation. Strategic

planning guides the budget process by setting priorities for the allocation of limited resources. For example, Finance notes that a well-conceived strategic plan, with missions and goals that emphasize accomplishing meaningful results, can provide strong justification for resource allocation, particularly in a constrained fiscal environment. Finally, Finance emphasizes that monitoring

Components of a Strategic Planning Process

- Assessment of external and internal data and factors that can influence the success in achieving the agency's mission.
- Mission statement that describes the agency's unique reason for existence.
- Principles that summarize an agency's philosophies and values.
- Vision of what management wants an agency to be in the future.
- Goals that identify the result an agency desires from planning, generally after three or more years.
- Objectives that are specific and measurable targets to achieve goals.
- Action plans that provide a detailed description of the strategies to implement each objective. Action plans include staff assignments, resource allocations, and completion dates.
- Performance measures that gauge work performed and results achieved.
- Monitoring and tracking systems to follow progress and keep the plan on track.
- Allocation of resources to carry out strategies and objectives.

Source: California Department of Finance *Strategic Planning Guidelines*.

and reporting progress in achieving strategic goals is critical for measuring performance and provides a basis for reporting progress to external policy makers and to the public.

THE DIVISION'S DRAFT STRATEGIC PLAN IS INCOMPLETE

At a minimum, the strategic planning process was supposed to consider environmental constraints; infrastructure requirements; demographic limitations; and local, state, and federal land use planning processes.

The law required the division to complete a strategic planning process by January 1, 2005, to identify future OHV recreation needs, including potential vehicle parks in urban areas. At a minimum, the strategic planning process was supposed to consider environmental constraints; infrastructure requirements; demographic limitations; and local, state, and federal land use planning processes. However, the division's draft strategic plan, which it identifies as a final draft dated March 24, 2005, focuses primarily on the division's operations and does not address some critical aspects of the OHV program and the challenges the division faces in implementing the OHV program.

Further, the division has not yet collected the data it needs to adequately plan for the OHV program, and its strategic plan does not address some issues that are critical to the successful implementation of the program. As a result of its lack of adequate planning, the division's spending plans are not driven by the objectives and strategies identified to successfully implement the program.

To Save Time, the Division Used an Abbreviated Planning Process

According to the former acting division chief,¹ who was in charge of the division's strategic planning process, the division did not follow the traditional strategic planning model because that process would have taken too long. Instead, he indicated that the division used an abbreviated model that relied heavily on the history, knowledge, and experience of staff and the Off-Highway Vehicle Stakeholders Roundtable (stakeholders roundtable)—a group made up primarily of recreationists, environmentalists, and governmental representatives who advise the division on OHV recreation issues. Thus, the division decided to forgo the portions of a traditional planning model that involve assessing external and internal factors. The deputy director indicated that the division's vision is clearly stated in its strategic plan—through sound leadership, the division will

¹ This individual was acting division chief from March 2, 2005, until he retired on May 31, 2005.

continue its proactive approach to transform the understanding and public perception of OHV recreation. The plan then describes the division's goal: to emerge as expert in showcasing best practices in the provision of OHV recreation, collaborating with land managers and stakeholders to provide responsible and sustainable OHV recreation, providing a catalyst for new OHV recreation opportunity, and developing OHV safety education and outreach for responsible OHV behavior. However, this vision narrowly addresses the public's perception of OHV recreation. In addition, the division's goal focuses on the status of the division as expert in the specified areas rather than the status of the OHV program.

The Division's Strategic Planning Model

- Division chief directs the planning process, appoints the steering committee, and approves the final plan.
- Steering committee made up of division managers defines the plan's scope and direction, develops a draft strategic plan, and identifies and collects data.
- Planning team made up of division managers, along with some commission and stakeholders roundtable members, identifies strategic issues and strategies for dealing with them, and develops goals.
- Division staff draft the plan and coordinate distribution of the plan for public comment.

Source: *Strategic Planning Process for the OHMVR Division*, dated October 30, 2003.

The former acting division chief provided an October 2003 document that was to be the division's model for strategic planning. According to the document, the division's managers selected the strategic planning model based on the principles of speed, efficiency, and timeliness. The text box presents part of the division's strategic planning model. However, the division did not follow the model when it used headquarters and SVRA staff to perform tasks that would otherwise have been performed by the planning team and then providing the identified strategic issues, strategies, and goals to the stakeholders and the commission chair for their input.

The commission chair provided his input in a December 2004 e-mail to the deputy director. The chair stressed the need to emphasize nonmotorized recreation. According to the chair, there is a huge unmet demand for nonmotorized outdoor recreation and a minimal unmet demand for OHV recreation. He also questioned why a strategy from the plan differentiated OHV enthusiasts from general recreationists. He stated that they seemed to be one and the same, only OHV recreation is currently thought of as a narrow interest. This view from the commission chair underscores the need for the division, the commission, and stakeholders to reach a shared vision for the use of the Off-Highway Vehicle Trust Fund (OHV trust fund) in meeting the legislative intent of the OHV program—providing OHV recreation balanced with a concern for environmental issues.

The draft strategic plan does not reflect an adequate assessment of the external and internal data and factors that could significantly affect the OHV program.

The Division's Abbreviated Planning Process Omitted Steps That Are Critical to the OHV Program

In addition to being limited to the division's operations, the draft strategic plan does not reflect an adequate assessment of the external and internal data and factors that could significantly affect the OHV program. For example, the draft strategic plan does not address recent statutory changes, such as required minimum spending levels to conserve areas and trails or close and restore them. It also fails to adequately address internal factors, among them the organization of the division and the skill and capacity of the division's staff to carry out all aspects of the program, including the monitoring of soil conditions and wildlife habitat at the SVRAs. Under the law the division has an obligation to monitor the SVRAs to ensure that they comply with soil standards to prevent unacceptable soil erosion and with wildlife habitat protection plans specific to each SVRA. Failure to comply with these environmental requirements can result in expensive corrective action.

Further, the division has yet to develop the action plans—including staff assignments, resource allocations, and completion dates—needed to implement its strategies and the performance measures needed to track its progress. According to the deputy director, the division will develop annual work plans by January 2006. The work plans will include a restatement of the desired goals and the corresponding strategy, measurable objectives, tasks to be performed, time limits for achieving measurable objectives, review dates, accomplishment dates, and parties responsible.

The Division Has Not Collected the Information It Requires to Adequately Plan for the OHV Program's Success

The division cannot complete a comprehensive plan to address the current and future needs of the OHV recreation community until it can quantify the demand for recreation, including the nature and geographic location of the recreation. The division acknowledges that it does not have current data on the number of people who participate in OHV recreation, the type of recreation they participate in, and the types of vehicles they use, and it has included data collection as one of its goals in its strategic plan. As described earlier, in creating its draft strategic plan the division indicated that it relied heavily on the history, knowledge, and experience of staff and the stakeholders roundtable. However, this process did not include enough current data to assess the factors pertinent to the success of the

OHV program. For example, the division used a November 2004 stakeholders roundtable meeting to solicit input on the content of the draft strategic plan. The stakeholders observed that the draft plan lacked sufficient or current data, such as a user survey, the economic impact of OHV recreation, and the projected demand for OHV recreation.

According to the former acting division chief, the data that were available included trends in recreation, registered and unregistered vehicles, geographic areas of urbanization, and noise laws and regulations. The draft strategic plan cites the number of visitors to the SVRAs but provides no data on the number of visitors to federal OHV areas that are managed by the federal Bureau of Land Management (BLM) or the U.S. Forest Service (Forest Service). However, these data are critical because the division estimates that more than 90 percent of OHV recreation occurs on federal land.

Further, the division has no current data on the type of OHV recreation these visitors participate in. Although the division's draft strategic plan includes strategies for obtaining data that will be useful in a strategic planning process, the division does not set priorities for gathering these data. By not ranking its goals and strategies by importance, management does not use the draft plan to inform employees and stakeholders which goals, strategies, and objectives are most important to the success of the OHV program.

The division is required to conduct studies as a means of gathering data on the nature, extent, and location of OHV recreation that will be critical in strategic planning, but it has not met that requirement. The most important of these studies is a fuel tax study that is currently under contract. The fuel tax study has two primary objectives: (1) to develop a model to estimate the amount of fuel tax revenue attributable to the gasoline used in the off-highway operation of vehicles for recreation and (2) to document the destinations of OHV operators, the recreation activities at those destinations, and the types of vehicles used. The division acknowledges that the scope of the data to be obtained from the study is critical for implementing the OHV program's strategic planning process. The new fuel tax study was scheduled for completion in April 2005; however, the division now anticipates that it will be completed by January 2006.

The division's new fuel tax study will provide critical data for strategic planning, but its completion has been delayed to January 2006.

Further, the Public Resources Code requires the division to prepare two reports to the Legislature, based in part on the new fuel tax study. The first report must identify the principal reasons that people use off-highway trails and facilities, as a means of assisting it in determining how fuel taxes should be used to provide OHV recreation. The purpose of the second report is to indicate the appropriate level of funding necessary to sustain conservation and enforcement needs, areas funded by the grants program, the SVRAs, capital outlay, and division support. The content of the report will be developed from the latest five years of income and expenditure data and the findings contained in the new fuel tax study. Both reports were due to the Legislature on January 1, 2005, but have been delayed by the late completion of the fuel tax study.

The division's soil scientist and SVRA staff do not routinely prepare reports that document the division's compliance with soil and wildlife habitat protection standards.

Moreover, according to the former acting division chief, the draft strategic plan does not address the soil conditions and wildlife habitat protection at the SVRAs because the division considers these issues to be part of the ongoing maintenance programs at the SVRAs. He stated that soil management is handled at the local level for each SVRA—the division's soil engineer and SVRA staff identify soil issues, and the cost to correct them is borne through the SVRAs' annual support budgets. Similarly, he said wildlife habitat protection issues are handled through SVRA support budgets. Issues identified are corrected with actions that include rehabilitating, rerouting, or closing a trail to avoid damage to a plant or animal and installing signs for riders to avoid certain areas. However, the division's soil scientist and SVRA staff do not routinely prepare reports that document the division's compliance with soil and wildlife habitat protection standards.

Although the former acting division chief said ensuring that the SVRAs comply with soil standards and wildlife habitat protection requirements does not rise to the level of strategic planning, we disagree. Correcting noncompliance can result in costly repairs that may not be suitable for annual support budgets, and failing to detect or correct noncompliance can result in even greater costs, as evidenced by the division's expenditures to deal with wildlife habitat issues at the Oceano Dunes SVRA. In addition, the former acting division chief recognized the division's need to improve its efforts to ensure compliance with soil and wildlife habitat protection standards. Thus, these requirements have long-term implications for the OHV program's success.

The Division's Draft Strategic Plan Does Not Adequately or Accurately Address Some Critical Issues

The draft strategic plan contains some critically needed elements for the OHV program, such as a strategy to develop an OHV land acquisition plan that includes acquisition criteria. However, because it does not adequately or accurately describe the OHV program's activities or identify current or future challenges, the plan does not provide adequate context for the goals and strategies of the program. As a result, it does not adequately communicate these goals and strategies to the diverse group of people and entities with a stake in the program's future. For example, to meet its goal of providing sustainable OHV recreation opportunity, the division lists a strategy to collaborate with the commission to develop an effective, accountable grants program that implements the commission's priorities as well as meeting recreationists' needs. However, the draft plan's presentation of the division's core programs and future changes for the OHV program does not describe the challenges that prevent it from implementing that strategy. Among these challenges are the division and commission's failure to formally adopt a shared vision for the OHV program, which would serve as guidance for the grants program, and weaknesses we observed in the division's management of the grants program.

Similarly, the division's draft plan includes a strategy to provide leadership and continued support for OHV route designation in California to ensure environmentally sound, high-quality OHV recreation opportunity in the future, but the plan does not describe the value of designating those routes or the resource management and enforcement challenges the OHV program faces in implementing the trail system. Consequently, the plan does not convey to stakeholders the importance of route designation, information that could help the division gain support for the level of funding required for that activity, as described later in this chapter.

In addition, the draft strategic plan does not accurately depict some of its program activities. For example, the plan mentions that division staff conduct regular field reviews and evaluations of grants and cooperative agreements and performance reviews to evaluate and assess the results of the allocation of expenditures. However, as described in Chapter 3, the division performs these tasks for only some of the grants and cooperative agreements each year. Without an accurate portrayal of the division's strengths and weaknesses, the division cannot develop meaningful goals and strategies to meet them.

The draft strategic plan does not address the division's growing, unfunded obligation to spend funds on restoration projects.

Finally, the draft strategic plan does not recognize some critical issues that affect the division's ability to successfully implement the OHV program. For example, the draft plan does not address the law's requirement that it spend a specified portion of its annual fuel tax revenue on restoring to its original condition land that has been determined to be unable to sustain OHV recreation. The law requires that 30 percent of the fuel tax revenue attributable to unregistered OHV vehicles be used for such restoration. This level of funding, about \$8.6 million for fiscal year 2004–05, equals about 16 percent of the program's estimated revenues of \$54.6 million—making up a significant portion of the OHV program's funding. However, neither division staff nor the commissioners we talked to could provide any studies or inventories of land indicating this level of the program's funds is needed each year for restoration activities. As discussed later in this chapter, the OHV program has not found enough projects to meet the required spending levels for restoration and is accumulating an obligation—\$8.3 million as of April 2005—to meet in the future.² According to the department's deputy director of administration, the division has not set aside the funds necessary to meet this obligation; therefore, the future payment could strain the resources available for the program's other purposes. Further, the plan does not address the commission's present practice of using restoration funds only on lands that are permanently closed to OHV recreation, thereby reducing the amount of land available for OHV recreation. Given their impact, we believe these issues rise to the level of strategic planning.

The Division's Spending Plans Are Not Tied to a Strategic Planning Process

Strategic planning is intended to result in action plans and spending plans for implementing the strategic plan and meeting the needs and challenges of the OHV program. However, because the division has not performed those portions of its strategic planning process, its spending is based primarily on historical expenditure levels and current pressures, rather than on a process that evaluates ongoing needs and nonrecurring projects and allocates its limited resources based on prioritized needs.

² As noted on page 43, the division also has an accumulated obligation of \$7.4 million for conservation and enforcement.

The division's budget consists of three parts: support, capital outlay, and local assistance. The support portion of the budget covers the cost of operating the SVRAs and division headquarters. For fiscal year 2004–05 the division's support budget totaled more than \$37.8 million. According to its program review and support manager, the division estimates support expenditures each year using baseline budgeting, a process that assumes operating costs will be essentially the same as in prior years. However, the OHV program has undergone some changes in recent years, such as a shift in the program's regulations for its grants program toward environmental concerns, and as discussed in Chapter 2, the division has not analyzed its operations to determine if hiring additional staff is more cost-effective than contracting for staff-related work. In addition, despite, the division's reliance on its support budget to address issues regarding the SVRAs' compliance with soil standards and wildlife habitat protection standards, division

staff do not routinely prepare reports to document compliance with the soil and wildlife habitat protection standards in its SVRAs. Therefore, it could have issues that the support budget, at its current capacity, cannot correct.

Further, the division's capital outlay planning process is not driven by its needs to implement the OHV program as identified through a strategic planning process. The division uses its capital outlays to acquire or develop new OHV facilities or improve existing ones. According to the former acting division chief, the division follows the format of the department's multiyear capital outlay plan for long-range projects, which it updates periodically. However, this outlay plan is not based on an assessment of OHV recreation needs. As shown in the text box, the capital outlay budget represents a sizable amount of money expended each year without being tied to objectives identified and prioritized in a strategic plan. For one recent acquisition and two under consideration, we found that the division has not

clearly defined how they provide a strategic benefit to the OHV program. According to the former acting division chief, the results of the new fuel tax study will help the division develop a new capital outlay planning process.

The Division's Budgeted and Planned Capital Outlay

Budgeted capital outlay:

Fiscal year 2002–03	\$ 6,450,000
Fiscal year 2003–04	52,626,000
Fiscal year 2004–05	10,740,000
Fiscal year 2005–06	7,845,000

Planned capital outlay:

Fiscal year 2006–07	\$ 7,762,000
Fiscal year 2007–08	20,916,000
Fiscal year 2008–09	11,562,000
Fiscal year 2009–10	12,100,000
Fiscal year 2010–11	16,600,000

Source: Fiscal year 2002–03 to 2005–06 budget acts; the division's multiyear capital outlay program planning document.

As with the other elements of the budget, the funds budgeted for local assistance, in the form of the grants program, are determined primarily by historical spending. According to the program review and support manager, when determining the annual budget for the grants program, the division considers the fund balance, expected revenues, statutory spending restrictions, and the amount budgeted for division support. She stated that the division also considers the amount of funds needed for capital outlay in future years and the commissioners' concerns over the amount of funds available for the grants program. However, this budget process is not designed to meet the needs of the OHV program as identified through a strategic planning process.

THE COMMISSION HAS NO FORMALLY ADOPTED STRATEGY TO GUIDE ITS AWARDS OF GRANTS AND COOPERATIVE AGREEMENTS

In the last four years the commission has awarded more than \$65 million through the OHV program's grants program, but it has done so without formally adopting a vision for the OHV program, and it has not implemented the strategies and priorities necessary to use the grants program to achieve that vision. Grants are available to local government agencies in support of OHV recreation. Cooperative agreements are awarded to federal agencies to support OHV recreation that occurs primarily on land controlled by the Forest Service or the BLM.

As just discussed, the division's strategic planning process also does not adequately address issues concerning the grants program. Nonetheless, the portion of OHV recreation that is supported by the grants program is significant, totaling \$17 million, or 31 percent of the division's estimated revenue for fiscal year 2004–05. The division estimates that more than 90 percent of all OHV recreation occurs on federal land, which is supported, at least in part, by OHV funds through the grants program.

When establishing the OHV program, the Legislature determined that off-highway vehicles were enjoying an ever-increasing popularity in California and that indiscriminate and uncontrolled use of off-highway vehicles could have a negative impact on the environment. Thus, the Legislature declared that effectively managed areas and adequate facilities for the use of off-highway vehicles, as well as conservation and enforcement, were essential

The portion of OHV recreation that is supported by the grants program is significant, totaling \$17 million, or 31 percent of the division's estimated revenue for fiscal year 2004–05.

Legislative Intent in Establishing the OHV Program

Existing off-highway motor vehicle recreational areas, facilities, and opportunities should be expanded and managed in a manner that will sustain long-term use.

New off-highway motor vehicle recreation areas, facilities, and opportunities should be provided and managed in a manner that will sustain long-term use.

When areas or trails or portions thereof cannot be maintained at appropriate established levels, they should be closed to use and repaired, to prevent accelerated erosion. Those areas should remain closed until they can be managed within the soil loss standard or shall be closed and restored.

Off-highway motor vehicle recreation should be managed through financial assistance to local government and federal agencies.

Source: Public Resources Code, Section 5090.02(c).

for ecologically balanced recreation. The text box outlines the Legislature's intent for the program. The grants program is intended to provide financial assistance to agencies and organizations to develop, maintain, expand, and manage high-quality OHV recreation areas and trails. It also awards funds for maintaining the wildlife, soil, and habitat of OHV areas to help sustain long-term OHV recreation.

The commission's policy for the grants program, approved in April 2003, states that its vision is a balanced approach for providing restoration, conservation, and law enforcement activities designed to protect the environment and sustain OHV recreation opportunity. Its policies also include the need to provide funding for proper maintenance of roads and trails and for education about off-highway recreation. However, the commission has not formally prepared and implemented a strategy to allocate funds through the grants program to achieve a balanced OHV program.

Like the division with its strategic planning efforts, the commission lacks the data regarding OHV recreation that it needs to develop an adequate plan to implement the OHV program. For example, the commission needs to know the geographic demand for OHV recreation and information regarding the types of vehicular recreation the public wants. This information will be provided in the division's fuel tax study that is being prepared and could help the commission plan its use of grants and cooperative agreements where they are most needed.

THE LACK OF A SHARED VISION AND PLANNING CONTRIBUTES TO DISPARATE PRIORITIES AND DISCORD AMONG THE COMMISSIONERS

As discussed earlier, the commission comprises diverse interests with potentially opposing views on the use of public land for OHV recreation. In the absence of the guidance that a formally adopted strategic plan would provide, the commission's decisions on the awards of grants and cooperative agreements are based on the commissioners' priorities and interests, rather than on a strategy and shared vision that would balance the interests they represent in a manner that is consistent with the legislative intent for the OHV program.

In the absence of the guidance that a formally adopted strategic plan would provide, the commission's decisions on the awards of grants and cooperative agreements are based on the commissioners' priorities and interests, rather than on a strategy and shared vision to achieve a balanced OHV program.

For example, the commission chair told us that he makes decisions on grant and cooperative agreement awards based on personal knowledge and interest, as well as to comply with the requirements of the grants program regulations that state awards shall be based on an evaluation of established criteria. The vice chair believes that commissioners base their decisions on the applications and on division recommendations presented shortly before the hearings. He added that the short time frame leaves little opportunity to evaluate the grant applications or make site visits, although commissioners can also use public input from public meetings and insight from past meetings.

The lack of a shared vision has led to disagreement and discord among the commissioners. In his opening remarks to the commission's February 2004 public workshop on the future of the grants program, the commission chair, who was appointed to represent environmental interests, noted that from a conservation perspective, the OHV program was previously out of balance, as evidenced by legislation and gridlock. He stated that past dialogue had resulted in fundamental disagreement on how to best run the OHV program. The chair added that attitudes have changed over the past four years largely as a result of the stakeholders roundtable, and that due to recent legislation endorsed by the stakeholders, the OHV program enjoys popular support. In contrast, the commission's vice chair, who represents OHV interests, told us that if the OHV program is going to work, it needs to be balanced, as set forth in the legislation that established the program. He believes that currently the program is so out of balance that it is destined to fail.

Moreover, it is unclear how the commission takes into account the public's priorities regarding the future needs of the OHV program. The law requires the commission to conduct one public meeting annually before the start of each grant cycle to collect public input concerning the program, recommendations for program improvements, and specific project needs for OHV areas. In February 2004, the commission conducted a public workshop to identify key trends that the commission may face over the next several years. The objective of the workshop was to share different perspectives regarding the best future for the OHV program. According to the minutes of the workshop, in addition to all seven commissioners, the workshop was attended by representatives of a diverse group of interests, including OHV recreation, environmental protection, division staff, private entities, and winter recreation. The

Trends to Watch for Over the Next Three Years, Identified by Attendees at the February 2004 Commission Workshop

- Increased OHV usage
- Decreased funding
- Design, size, and location of OHV areas
- Increased conflict among competing interests
- Reduced areas for OHV recreation
- Increased needs for law enforcement
- Increased recreation of all types
- Increased regulation over the grants program

Source: February 2004 Commission Workshop notes.

attendees identified the key trends and issues most likely to affect the future of OHV recreation and funding priorities, as shown in the text box.

In its January 2005 meeting, the commission also solicited input from the public. In that meeting, however, the commission asked members of the public in attendance to help only in setting priorities within the grants program's project categories—conservation, enforcement, restoration, and all others—not in assessing which project categories were most important.

Immediately after the public presented the commission with their concerns and priorities at the January 2005 meeting, the chair announced his funding priorities for the \$18 million available for the fiscal year 2005–06 grant cycle. He suggested allocating \$7.3 million for restoration; \$4.5 million for operations and maintenance of areas, trails, and

facilities; \$2 million for route designation; \$2.6 million for law enforcement; \$1.2 million for regional wildlife studies; and \$400,000 for resource management projects. However, the transcript of the meeting does not indicate how the chair considered the public's input when creating his January priorities. Rather, the transcript indicates that he stated that he arrived at the amounts based on the commission's past funding for specific categories, legislative restrictions on the use of OHV funds, and his perception of the needs in the community as a result of his five years on the commission.

When we compared the chair's suggested funding priorities to the project categories contained in the grants program regulations, we found that the commission's discussion of funding priorities at the January 2005 meeting ignored at least four of the eight project categories listed in the grants program regulations in effect at the time,³ including projects for acquisition, development, equipment, and safety and education. In addition, when we compared the chair's suggested priorities to the attendees' issues and funding priorities identified a year earlier at the February 2004 workshop, we found differences. As shown in the text box, the trends that most concerned the attendees included increased demand for OHV recreation, reduced areas for OHV recreation, heightened conflicts over land use, and increased needs for law enforcement.

³ The number of grant categories expanded to 11 in the division's emergency regulations, which were effective on April 11, 2005.

Finally, some members of the commission have indicated that they do not want to be bound to an objective process for awarding grants and cooperative agreements but want to maintain their subjectivity. In an attempt to increase the accountability of the grants program, the division devised a rating system for grant applications involving numeric scores, and it included the scoring system in its draft regulations for the commission to review. The scoring system called for division staff to rate grant applications and to make funding recommendations to the commission based on those ratings. In its January 2005 public hearing, however, several commissioners questioned the need for this rating system because they desired subjectivity when making changes to the division's funding recommendations.

POOR COMMUNICATION LEAVES THE PUBLIC AND THE DIVISION UNSURE OF THE COMMISSION'S PRIORITIES FOR AWARDING GRANTS

The commission has not adopted specific funding priorities for awarding grants and cooperative agreements to provide clear guidance to grant applicants or the division.

The commission has not adopted specific funding priorities for awarding grants and cooperative agreements to provide clear guidance to grant applicants or the division. Further, the commission does not always follow the limited guidance it provides. The result is an ineffective use of division staff to evaluate grant applications and develop funding recommendations. In addition, applicants have difficulty assessing how to direct their efforts in preparing grant applications.

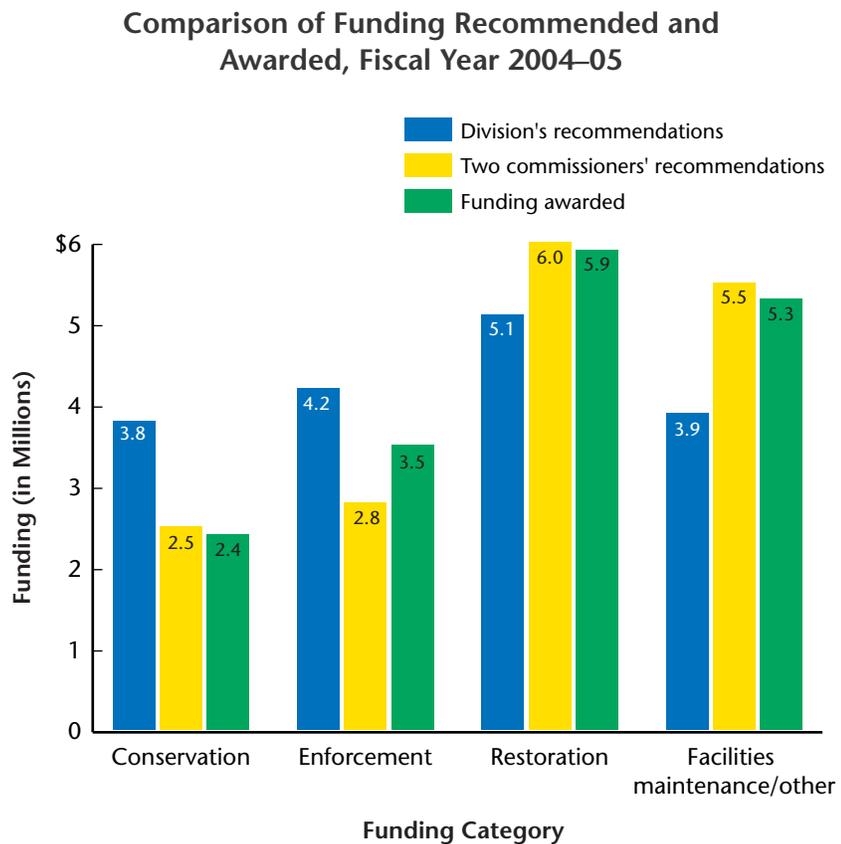
Typically, the division receives applications for the grants program, and it reviews those applications to make funding recommendations to the commission, which can choose to accept the division's recommendation or approve funding for a different amount. According to the commission chair, for fiscal years 2003–04 and 2004–05, the commission's policies, which were adopted in April 2003, served as its priorities for funding. However, we reviewed the commission's policies and found that they do not provide clear direction regarding priorities. For example, the policies list activities within project types that the commission considers priorities for the grants program, but they do not prioritize either the project types or the activities. As such, the policies are not a useful tool for communicating funding priorities to applicants and the division.

For the fiscal year 2004–05 grant cycle, the commission provided clearer direction to division staff and the public by setting general funding priorities. In December 2003 and March 2004, the division sent two letters to potential applicants

for grants and cooperative agreements, informing them that the commission’s priorities for the fiscal year 2004–05 grant cycle were applications that were entirely or significantly for restoration projects. In addition, the letters stated that restoration, conservation, and enforcement projects would be given a higher priority than operations and facilities maintenance grants.

For the fiscal year 2004–05 grant cycle, the division received and evaluated about 150 grant applications, making recommendations using the evaluation criteria set forth in the grants program regulations. As shown in Figure 2, the division’s recommendations for conservation and enforcement were close to and higher than, respectively, those for facilities maintenance. It also recommended restoration for the highest funding amount, which is consistent with the letters stating the commission’s priorities.

FIGURE 2



Sources: Fiscal year 2004–05 California Local Assistance Grants and Cooperative Agreements revised spreadsheet. Consensus recommendations of the chair of the Off-Highway Motor Vehicle Recreation Commission (commission) and another commissioner for fiscal year 2004–05. Bureau of State Audits’ review of grant allocations by the commission.

For fiscal year 2004–05, two commissioners undertook to develop a different set of recommendations for grant funding, independently of the division’s evaluation of grants and cooperative agreements.

However, the chair of the commission and another commissioner undertook to develop a different set of recommendations for grant funding, independent of the division’s evaluation. The two commissioners presented their recommendations to the other commissioners and the public at the commission’s October 2004 meeting, at the start of the discussion of grant allocations for fiscal year 2004–05. At this meeting the chair indicated that there had been past dissatisfaction with the division’s recommendations.

We asked the chair of the commission why he and the other commissioner found it necessary to develop their own recommendations. The chair explained that because of staff turnover in the division and a new deputy director, he and the other commissioner decided to use a more formal method to communicate their recommendations to the public. As Figure 2 shows, these recommendations differ from the commission’s stated priorities in that they seek a significantly higher level of funding for facilities maintenance than for either conservation or enforcement. The commission’s actual allocations align more closely with the commissioners’ alternative recommendations than with the division’s recommendations.

However, when these two commissioners made their own funding recommendations that did not follow the commission’s announced priorities, it resulted in an inefficient use of the time of the division staff that evaluated the grant applications and made funding recommendations to the commission. Further, unclear guidance on the commission’s priorities presents challenges for the applicants for grants and cooperative agreements. Depending on the type of project the applicant is proposing, the application may need to include environmental and wildlife habitat documentation, which can be complex and expensive to prepare. For example, the BLM statewide coordinator told us that the commission should communicate its priorities more consistently to grant applicants. He stated that it was very helpful when the commission discussed ceilings for each type of grant in its January 2005 annual meeting because it helped applicants determine what grants to put money and effort into developing. Applying for some grants, such as those requiring wildlife habitat protection plans and other environmental documentation, is expensive and time consuming, and these projects may not be worth applying for if funds will not be available.

WITHOUT A FORMALLY ADOPTED VISION, AWARDS OF GRANTS AND COOPERATIVE AGREEMENTS MAY NOT ACHIEVE A BALANCED OHV PROGRAM

In the absence of a formally adopted vision for the OHV program, the commission has no target for achieving a balance between OHV recreation and environmental protection. Recently, the purposes of the grants and cooperative agreements awarded by the current commission have shifted toward environmental

concerns, including restoration projects and wildlife studies. One significant effect of the shift in funding is that less money is available to acquire, develop, and maintain sites for OHV recreation than in the past. In addition, the commission awards funds to federal land managers for large-scale projects, such as route designation and wildlife studies—projects on which commissioners disagree as to their benefit to the OHV program.

Categories of Projects Eligible for the Grants Program

Facilities operations and maintenance—

Includes routine work directed toward facilities, visitor assistance, and health and safety attributable to OHV recreation.

Law enforcement—Includes law enforcement personnel support, search and rescue, training, and placement of barriers for OHV traffic control.

Conservation—Includes resource management activities intended to conserve or repair natural or cultural resources affected by off-highway vehicle activity.

Restoration—Includes resource management activities intended to restore land, plant communities, and plant covers comparable to those of surrounding areas, or at least those that existed prior to off-highway vehicle use, upon closure of an area.

Other—Includes acquisition, development and major maintenance, equipment, safety and education, and planning and studies.

Source: *OHV Grant Application Guide*; Off-Highway Vehicle Grant Program Regulations (California Code of Regulations, Title 14, Chapter 15, effective through April 10, 2005).

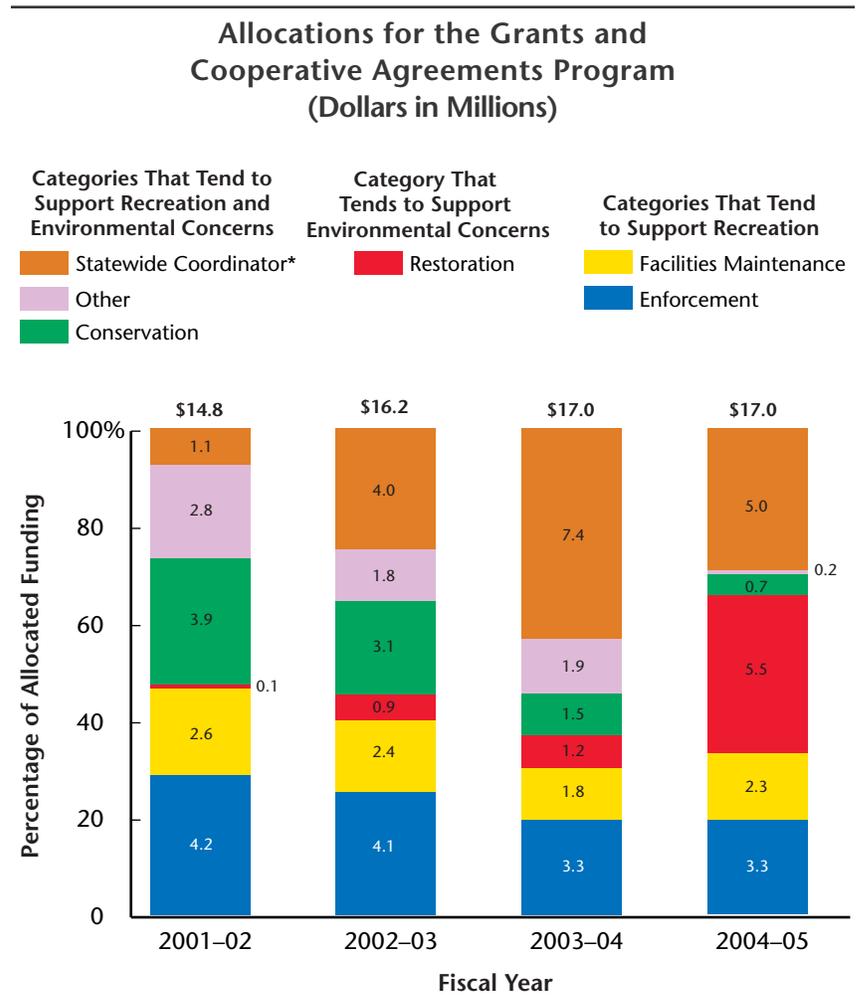
Awards for Grants Have Recently Shifted Toward Environmental Concerns

Over the last four years, the grants and cooperative agreements approved by the commission have shifted significantly toward funding for restoration projects that can only be funded after the permanent closure of OHV trails and areas, and for increased funding of wildlife studies through the statewide coordinators' offices of the Forest Service and the BLM. This shift has occurred while grants for other program components that are necessary for sustaining long-term recreational use and opportunity, such as conservation, enforcement, and facilities maintenance activities, have decreased. The categories of projects eligible for the grants program are defined in the text box.

As Figure 3 shows, allocations have increased overall for cooperative agreements with the statewide coordinators of the Forest Service and the BLM. These funds are granted primarily for route designation activities, restoration projects, and multiple-year wildlife studies and are discussed in more detail in the next section. The increase in funding for these projects decreases the funds available for program components intended to expand and sustain OHV recreation, such as acquisition and development (included in the "other" category in Figure 3). In fiscal year 2001–02 the commission awarded \$1.3 million

for acquisition and development projects, or 8.8 percent of the funds awarded that fiscal year. In contrast, between fiscal years 2002–03 and 2004–05 the commission awarded a total of \$1.9 million for acquisition and development projects, amounting to about 4 percent of the funds awarded for these three fiscal years. The largest award for acquisition or development during that period did not increase OHV recreation opportunity but was a \$1 million cooperative agreement to the BLM to build an OHV visitor center.

FIGURE 3



Source: Bureau of State Audits’ review of grant allocations by the Off-Highway Motor Vehicle Recreation Commission.

Notes: Amounts do not include funds reallocated among U.S. Forest Service districts. Totals may be slightly off due to rounding.

* As shown in Figure 4 on page 39, the projects under cooperative agreements with statewide coordinators have shifted towards environmental concerns during recent years.

As the amount of funds available for grants and cooperative agreements changed from fiscal year 2001–02 to 2004–05, the percentage of the total available funds allocated to each component also changed. For example, in fiscal year 2001–02 the commission allocated to conservation a total of \$3.9 million (not including \$359,000 for cooperative agreements to statewide coordinators, which are discussed in the next section), or 26 percent of the grants program funds available. Conservation includes activities important to preserving OHV recreation, such as repairing roads and trails and rehabilitating user-affected areas. In subsequent years the amount of grant funds the commission approved for conservation fell to a low of \$736,000 (not including \$1.6 million for cooperative agreements to statewide coordinators), or 4.3 percent of the total funds available for fiscal year 2004–05. Thus, the commission has reduced the amount of grants program funds available for local and federal agencies for conservation activities that are intended to preserve the condition of OHV recreation areas and thereby better manage and protect natural and cultural resources.

Since Fiscal Year 2002–03 the Commission Has Been Funding Large-Scale Projects Through Statewide Coordinators

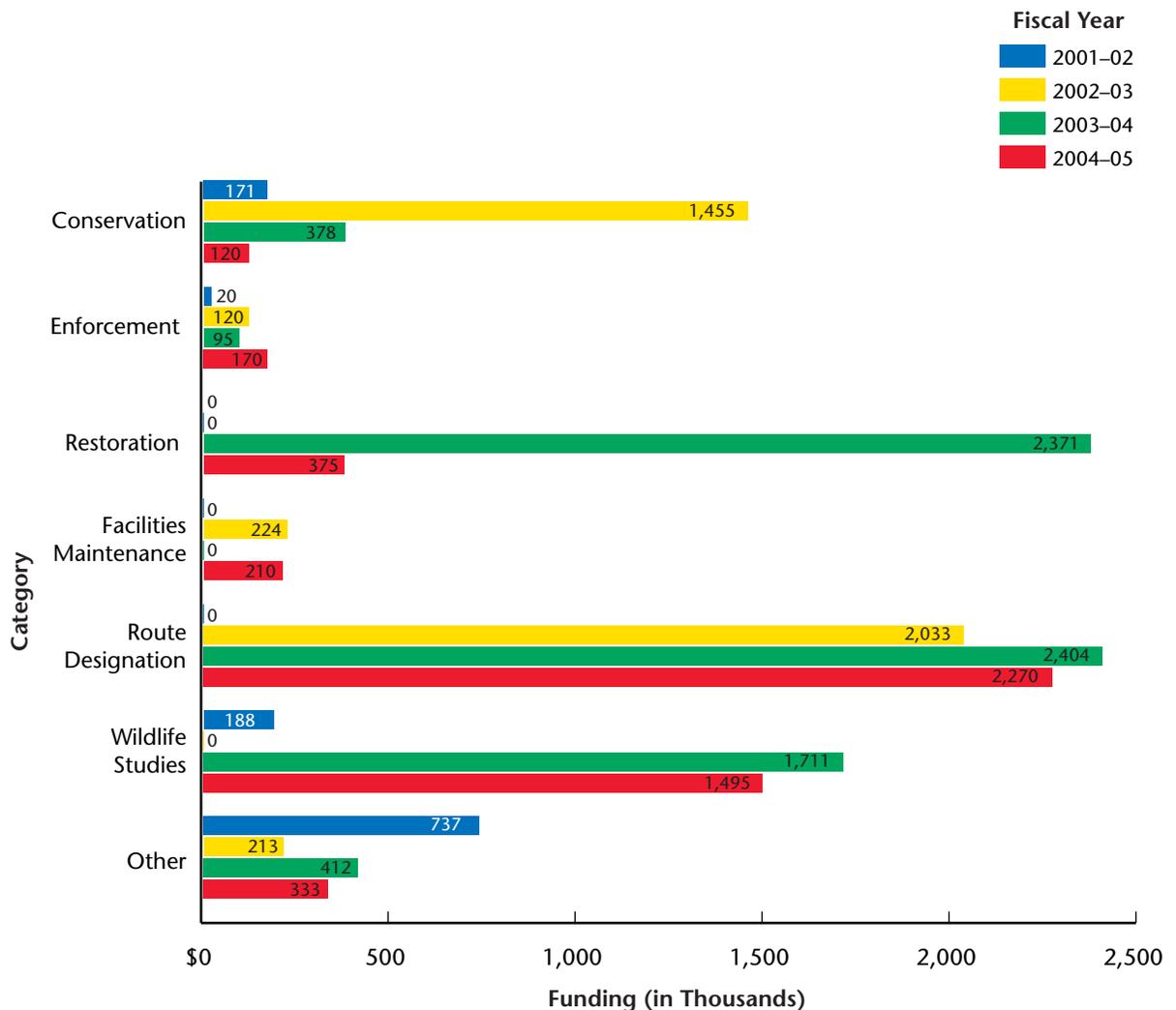
As shown in Figure 4, in fiscal year 2002–03 the commission increased its funding for statewide projects by the Forest Service and the BLM, beginning with route designation and subsequently including wildlife studies on federal land. Although these large-scale projects are an allowable OHV program expense, the commission has not established whether these cooperative agreements warrant their current priority for funds or how they fit into a strategy to provide OHV recreation while protecting the environment as the Legislature intended.

We asked the commission chair and vice chair how the commission determined that awarding cooperative agreements to statewide coordinators for route designation and wildlife studies was a priority for the grants program. The commission chair responded that the funds awarded to statewide coordinators are not part of a predetermined commission strategy; rather, they are based on the result of seven commissioners voting on grant applications. He also stated that funding decisions are made at each allocation meeting, and commissioners are under no obligation to fund projects, including route designation and multiple-year wildlife studies. For example, he stated that even though there is a memorandum of intent in place with the Forest Service to provide multiple-year funding for route designation

in the national forests in California, commissioners are not obligated to vote for this cooperative agreement each year, because they always have the option to vote against funding the project. The vice chair indicated that the commission does not use a strategy to ensure a balanced use of OHV funds and added that route designation appears important to the environmental community because it is a means of limiting OHV activity in forest areas by closing roads and trails.

FIGURE 4

Funding for Cooperative Agreements to Statewide Coordinators



Source: Bureau of State Audits' review of grant allocations by the Off-Highway Motor Vehicle Recreation Commission (commission).

Notes: In fiscal year 2003-04 the commission awarded \$2.2 million to the Bureau of Land Management to administer a restoration grant in its desert district. Wildlife studies are a conservation activity but are shown separately to show the amount of funding.

The commission's policy indicates that it supports federal land goals intended to improve off-highway recreation and management on federal lands.

Route designation is one of the projects that the commission has prioritized for funding. The commission's policy indicates that it supports federal land goals intended to improve off-highway recreation and management on federal lands. The designation of legal OHV roads, trails, and areas is required under federal regulations. As shown previously in Figure 4, the commission has allocated at least \$2 million per year for route designation projects since fiscal year 2002–03 and, according to its memorandum of intent with the Forest Service, intends to allocate an additional \$4 million over fiscal years 2005–06 and 2006–07.

The Forest Service's statewide coordinator indicated that designating legal OHV roads, trails, and areas is part of the Forest Service's strategy to balance OHV opportunity with environmental responsibility. He also stated that the project is an investment in the future because it ensures that OHV opportunity will continue to exist and that trails will be environmentally sound and well maintained. However, he said OHV enthusiasts are not always aware of the requirements of federal laws, while the environmental community is concerned about the thousands of miles of unauthorized trails cataloged by the Forest Service that may be designated as open for OHV recreational use.

The BLM's statewide coordinator indicated that route inventory is important because the BLM land management plans that include route designation must be based on inventoried data. However, the BLM is limited in the amount of route inventory work it can accomplish each year, and completing the inventory and route designation process on BLM land will take several more years.

In fiscal year 2003–04 the commission began funding several wildlife studies and monitoring projects through the statewide coordinators. Beginning in fiscal year 2003–04 the commission provided \$1.7 million for those projects, of which \$625,000 was awarded to the BLM, primarily to monitor wildlife in its desert district, and \$966,000 was awarded to the Forest Service to determine whether OHV use, including noise, has negative effects on wildlife and, if so, the actions to take. The funds awarded in fiscal year 2004–05 decreased slightly: \$995,000 was awarded to the Forest Service to continue the previously mentioned study and to study another species, and \$500,000 was awarded to the BLM for natural resources studies and monitoring in its desert district.

Required Contents of the Biennial Program Reports

- Status of the program and OHV recreation.
- Results of the division's strategic planning process.
- Condition of natural and cultural resources in areas and trails funded by the OHV program.
- Resolution of conflicts of use in the areas and trails of the OHV program.
- Accomplishments produced through the expenditures from the Conservation and Enforcement Services Account.
- Summary of resource monitoring data compiled.
- Restoration work completed.
- Other environmental issues relevant to the OHV program.

Source: Public Resources Code, Section 5090.24(g).

THE COMMISSION'S ACCOUNTABILITY OVER AWARDS OF GRANTS AND COOPERATIVE AGREEMENTS COULD BE IMPROVED

Although the commission is required to report its activities to the Legislature, this requirement could be strengthened to improve accountability over the commission's actions. Currently, the law set a deadline of July 1, 2005, for the first commission report and requires a report every two years thereafter on the elements of the OHV program listed in the text box. The commission is to provide its program reports to the governor; the Assembly Water, Parks, and Wildlife Committee; the Senate Committee on Natural Resources and Wildlife; and the appropriations committees of both houses. However, the law does not require the commission to report its goals for the grants program and its awards of grants and cooperative agreements to meet those goals. Specific information from the commission and the division on their vision for the grants program and the short- and long-term goals for the OHV program as justification for the commission's use of grants and cooperative

agreements would be useful in allowing the oversight bodies to assess whether the commission and the division are using the OHV program's resources to provide a program that is balanced between OHV recreation and environmental concerns.

In addition, the commission will not have the program report prepared by the deadline of July 1, 2005. According to the division's associate park and recreation specialist, who is responsible for coordinating the reporting efforts, the commission and the division had not yet begun preparing the report as of June 2005 because the program report is dependent on the division's 2005 fuel tax study, which is not expected until sometime in January 2006.

MANDATORY TRANSFERS TO THE CONSERVATION AND ENFORCEMENT SERVICES ACCOUNT HAVE INCREASED THE FUNDS AVAILABLE FOR CONSERVATION, RESTORATION, AND ENFORCEMENT BUT DECREASED THE FUNDS AVAILABLE FOR OTHER PURPOSES

Assembly Bill 2274 (AB 2274), which became effective January 1, 2003, increased the amount of fuel tax revenue transferred to the Conservation and Enforcement Services

Account (conservation account) in the OHV trust fund, resulting in a significant change in how the OHV program is funded. The primary source of revenue for the OHV program is taxes imposed on the distribution of motor vehicle fuel used for OHV recreation. Further, the California Revenue and Taxation Code requires that the fuel tax revenue attributable to unregistered off-highway vehicles be transferred to the conservation account. The funds in the conservation account must be spent on conservation and enforcement activities and, with the passage of AB 2274, on restoration activities.

Before the enactment of AB 2274, the law stated that 33 percent of all fuel tax revenue attributable to vehicles engaged in off-highway recreation and to registered and unregistered off-highway vehicles was transferred to the conservation account. The remaining 67 percent of revenues was transferred to the OHV trust fund. However, AB 2274 changed the transfer percentages and required that 100 percent of taxes attributable to unregistered off-highway vehicles be transferred to the conservation account, and 100 percent of the taxes attributable to registered off-highway vehicles be transferred to the OHV trust fund. Table 1 shows the amounts transferred to the conservation account in fiscal years 2001–02 through 2003–04, comparing the amounts that would have been transferred if AB 2274 had not been enacted with the amounts actually transferred after it was enacted.

TABLE 1

**Transfers to the Conservation and Enforcement Services Account
Before and After the Enactment of Assembly Bill 2274
(Dollars in Millions)**

Fiscal Year	Amounts That Would Have Been Transferred Under Prior Legislation		Amounts Actually Transferred After Passage of AB 2274			Percentage of Tax Revenue Actually Transferred	
	Conservation Account	OHV Trust Fund	Conservation Account	OHV Trust Fund	Total Tax Revenue	Conservation Account	OHV Trust Fund
2001–02	\$12.2	\$24.8	N/A	N/A	\$37.0	33%	67%
2002–03	13.7	27.8	\$19.9	\$21.6	41.5	48	52
2003–04	15.5	31.5	28.4	18.5	46.9	61	39

Source: Department of Transportation OHV transfer summaries and Bureau of State Audits' calculations.

Notes: Amounts do not include interest earned in the OHV trust fund and the conservation account. Totals may be slightly off due to rounding.

OHV = Off-Highway Vehicle

As the table indicates, the amounts transferred to the conservation account would have risen moderately over the three-year period, from \$12.2 million to \$15.5 million. However, with the passage of AB 2274, the actual amount transferred to the conservation account more than doubled, from \$12.2 million to \$28.4 million. This change has decreased funding for activities such as property acquisition and development, facilities maintenance, and equipment, while greatly increasing the funds available for conservation, enforcement, and restoration.

Neither the commission chair nor the division could provide us with studies or analyses the stakeholders may have used to reach the determination to annually dedicate 30 percent of the funds in the conservation account to the restoration of land and 70 percent for conservation and enforcement activities.

The law now requires that 30 percent of the conservation account funds be used for restoration activities and the remaining 70 percent be used for conservation and enforcement activities. The legislative analysis that accompanied AB 2274 indicated that the change in the law reflected the stakeholders' position that all fuel tax revenue attributable to unregistered off-highway vehicles should be dedicated to conservation and enforcement purposes. The stakeholders also agreed to the designated percentages for restoration, conservation, and enforcement spending. The legislative analysis indicated that the stakeholders group comprised more than 50 organizations, including recreational user groups, environmental organizations, law enforcement, and OHV manufacturers, and their consensus for policy changes was included in AB 2274. However, neither the commission chair nor the division could provide us with studies or analyses the stakeholders may have used to reach the determination to annually dedicate 30 percent of the funds in the conservation account to the restoration of land and 70 percent for conservation and enforcement activities.

Unspent Conservation Account Funds Are Creating Future Obligations for the OHV Trust Fund

The OHV program has not been able to satisfy the new spending requirements for the conservation account. Division records indicate that the obligation to use unspent funds has risen from \$3.9 million in fiscal year 2002–03 to an estimate of more than \$15.7 million as of April 2005. According to the department's deputy director of administration, the division does not reserve the cash to meet the obligation; thus, the OHV program could very likely face hardship in the future. This obligation includes \$8.3 million for restoration and \$7.4 million for conservation and enforcement. Although conservation and enforcement have been ongoing program activities, AB 2274 imposed restoration as a new activity.

According to the division's deputy director, the division tracks the unspent conservation account obligation within the fund balance, but the division has serious concerns about its ability to fund these obligations.

According to the division's deputy director, the division tracks the unspent conservation account obligation. However, the division has serious concerns about its ability to fund these obligations because each year the amount of money budgeted solely for the conservation account is greater than the amount that can be spent within the grants program or the SVRAs. The division has serious concerns that in future years the outstanding obligation will affect its ability to implement the program as originally intended, which she indicates are balancing OHV recreation opportunity, conservation, enforcement, and restoration.

The primary method used to fund the restoration requirement is through grants and cooperative agreements. Although the new spending requirements became effective in January 2003, the commission did not allocate all the funds for restoration projects in fiscal year 2002–03 because the submission period for applying for grants for that year expired before the requirement became effective. Thus, grant applicants did not have time to react to the available funds. For fiscal year 2003–04, the division indicated that it received a small number of applications that met the definition of restoration, and thus not all of the required restoration funds were allocated.

In an attempt to meet the required funding levels for fiscal year 2004–05, the commission placed restoration projects as the highest priority for the year. The division sent letters to grant applicants informing them that the commission's priority was to allocate \$7 million that year for projects consisting entirely of restoration or including a significant restoration component. Subsequently, grant applicants submitted restoration requests totaling \$10.7 million, but only projects totaling \$5.9 million, or 35 percent, of the available grant funds of \$17 million met the requirements of the grants program and were ultimately funded.

Disagreement Exists Over Whether the Current Funding Level for Restoration Projects Contributes to a Balanced Program

According to the division's deputy director, the division has not located any substantive study or in-depth analysis that justifies the current level of funding for restoration activities. Anecdotal evidence leads her to believe that the funding level discussion was political in nature and was a compromise between the previous deputy director and the stakeholders roundtable as a temporary measure to address concerns associated with the lack of a defined restoration program. The current deputy director said she supports the concept of restoration and will strive to

support an efficient, effective, and cohesive restoration program that ensures a connection between restoration activities and sustainable long-term OHV recreation.

We asked the commission chair if he was aware of any documentation that supports the current level of OHV trust fund money dedicated to restoration activities. He offered no analysis or study but responded that the current spending requirements are based on consensus recommendations to the Legislature that the stakeholders roundtable developed. He further stated that each year the commission receives requests for much more in funding for enforcement, conservation, and restoration than is available for any of these categories, which suggests a need for funding. He suggested that we contact the Forest Service and the BLM regarding their anticipated restoration needs—which, he indicated, are substantial. We present the views of the statewide coordinators for the Forest Service and the BLM later in this section.

The Forest Service's statewide coordinator told us that although he believes restoration funding is useful and the Forest Service has projects to take advantage of these funds, the current level of funding for restoration strains other program elements.

In response to the same question, the vice chair said he was not aware of any documentation that supports the current level of restoration funding. Another commissioner representing OHV recreation believes that current funding is weighted toward restoration, conservation, and enforcement activities and leaves little funding available for the basic needs of the OHV program. He added that if environmental concerns continue to be a higher priority for the commission than funding to acquire, operate, and maintain adequate land and facilities for OHV recreation, unmanaged OHV recreation activity could return to the levels that created the need for the program more than 20 years ago.

The Forest Service's statewide coordinator told us that although he believes restoration funding is useful and the Forest Service has projects to take advantage of these funds, the current level of funding for restoration (as shown in Figure 3 on page 37) strains other elements of the Forest Service's OHV program, which results in a skewed and unbalanced program. He stated that he believes the key to managing OHV activity is to provide a balanced program that includes conservation, enforcement, restoration, facilities maintenance, planning, and educational components.

The BLM statewide coordinator told us that the recent shift to restoration spending has affected his program by leaving out two important elements: law enforcement and facilities maintenance. He stated that it is difficult to prioritize the OHV program elements because they are intertwined, and that the best program comes from balanced funding for all elements.

He added that too high a level of restoration funds is not an efficient use of funds and that while restoration is a useful tool for lowering the number of trails to a manageable level, it constitutes a less effective tool on its own than a combination of all the necessary program elements would provide.

The Law Is Not Clear on the Use of Restoration Funds

The law does not state clearly whether using restoration funds to repair damage to soil and wildlife habitat requires that the restored land be permanently closed to OHV recreation. This issue is of great importance to the OHV program because if restored land must be permanently closed to OHV recreation, the current requirement to use 30 percent of the conservation account funds, or about 16 percent of the OHV program's total fiscal year 2004–05 fuel tax revenue, will result in the systematic reduction of land available for OHV recreation.

The section of the Public Resources Code that governs the division's management of its SVRAs states that if soil conservation standards or wildlife habitat protection standards cannot be met in any portion of an SVRA, the division must close the area and restore it. The law defines *restoration* as the restoration of land to the contours, plant communities, and plant covers comparable to those on surrounding lands or at least those that existed before off-highway vehicle use. The law does not expressly state whether the land must be permanently closed before restoration occurs, nor does it indicate when the restored area can be later reopened. According to the deputy director, the division has spent considerable time reviewing and analyzing the definition of *restoration* and the restoration program in general, and it has come to recognize the existence of gaps in the statute and ambiguities in the OHV program's regulations. The deputy director also stated that she intends to move forward to rectify the situation by seeking changes in the law.

Although it is the present practice of the commission and division, the law does not expressly state whether the land must be permanently closed before restoration occurs nor does it indicate when the restored area can be later reopened.

The present practice among the commission and the division is to require OHV recreation areas and trails to be permanently closed to OHV recreation before restoration funds can be used to repair damage from OHV recreation. According to the commission chair, this same requirement applies to the federal land that is supported by OHV funds through cooperative agreements. However, the law that governs cooperative agreements does not require that federal land be permanently closed before it can be restored. Rather, it states that when soil conservation standards or wildlife habitat protection

standards are not being met in any portion of an OHV recreation project area that is supported by a cooperative agreement, the area that is out of compliance must be temporarily closed until those standards are met. Thus, according to the law, if restoration funds are provided through cooperative agreements, the restored land may be reopened to OHV recreation once soil standards and wildlife habitat protection standards are met.

RECOMMENDATIONS

To ensure that money from the OHV trust fund is allocated to balance the OHV program between OHV recreation opportunity and environmental concerns, as the Legislature intended, the division and the commission should develop a shared vision that addresses the diverse interests in the OHV program. Once developed, the division and the commission should implement their vision by adopting a strategic plan that identifies common goals for the grants program and the SVRAs, taken as a whole, and specifies the strategies and action plans to meet those goals.

To provide adequate guidance for implementing the SVRA portion of the OHV program and the expenditures of the OHV trust fund, the division should take the following steps to complete its strategic planning process:

- Perform a thorough assessment of external factors that affect the OHV program. These factors may include available facilities, statutory changes, and environmental requirements.
- Perform a comprehensive evaluation of the internal factors that may prevent it from implementing its strategic plan. These factors would include the division's organization, the adequacy of its staffing, and the improvements in its operations that we identified.
- Collect the data necessary to report on the appropriate level of funding needed to sustain conservation and enforcement needs, areas supported by the grants program, the SVRAs, capital outlay, and division support, as required by law.
- Develop and implement the action plans, spending plans, and performance monitoring plans needed to implement its strategies and achieve its goals.

To make efficient use of division staff's time for developing recommendations, and to provide appropriate guidance to applicants for the grants program, the commission should develop a strategy for using the grants and cooperative agreements program to promote an OHV program that is balanced between recreation and environmental concerns. The commission should communicate its strategy and its priorities to potential grant applicants and should follow those priorities when awarding funds.

To improve accountability for the awards of OHV trust fund money for the grants program, the Legislature should consider amending the Public Resources Code to require the commission to annually report the grants and cooperative agreements it awards by recipient and project category, and how the awards work to achieve the shared vision that the commission and the division develop.

To ensure that it obtains information critical to the performance and planning for the OHV program, the commission should prepare and submit the required biennial program reports on the status and performance of the OHV program when they are due.

The division and commission should evaluate the current spending restrictions in the law to determine whether they allow for the allocation of funds necessary to implement a strategy to provide an OHV program that is balanced between the need for recreation and protection of the environment. If necessary, the division should seek changes in the law to include minimum spending guidelines that not only ensure that elements of the OHV program are addressed but also allow the commission and the division the flexibility to implement a balanced program as the law intended.

The Legislature should consider amending the Public Resources Code to clarify whether using OHV trust fund money to restore land damaged by OHV recreation requires that the land be permanently closed to off-highway vehicles. ■

CHAPTER 2

Some Uses of the Off-Highway Motor Vehicle Recreation Trust Fund Are Questionable

CHAPTER SUMMARY

The Off-Highway Motor Vehicle Recreation Division (division) and the Department of Parks and Recreation (department) have used money from the Off-Highway Motor Vehicle Trust Fund (OHV trust fund) for questionable purposes. For example, for three of its recent land acquisition projects—one completed and two under consideration—totaling almost \$38 million, the division could not provide analysis that showed the benefit of these land acquisition projects to the Off-Highway Motor Vehicle Recreation Program (OHV program). Our review of the available documentation for these land acquisition projects shows that a relatively small portion or no portion at all of the acquired land will be available for off-highway motor vehicle (OHV) recreation, with the balance going for the protection or preservation of natural or cultural resources. Based on their minimal addition to OHV opportunity, these land acquisition projects do not appear to be the best use of the OHV trust fund.

In fiscal year 2003–04 the department began using the OHV trust fund to pay for some of the costs to operate park districts that are not state vehicle recreation areas (SVRAs). The department believes that charging the OHV trust fund \$3.6 million for these costs in fiscal year 2003–04 is appropriate because it interprets the law to mean that vehicle use on any unpaved road in the state park system is eligible for OHV program funding. However, we believe the department’s interpretation is inconsistent with the Legislature’s clear intent for the program. Thus, we question the propriety of these charges. The department also could not provide adequate support to justify these charges. Moreover, because the department allocates its overhead costs based on direct costs to programs, the OHV trust fund was charged an additional \$437,000 in fiscal year 2003–04 alone related to the questionable costs we found.

For various reasons, the division has significantly increased its use of contracts over the past five years, with a peak in fiscal year 2002–03. We found that the division has used contracts paid from the OHV trust fund for questionable purposes, including the unauthorized chartering of private aircraft. Our review also revealed that the division has violated state rules governing the use of contracts, such as the prohibition against splitting a series of related tasks into multiple contracts to avoid competitive bidding procedures and regulatory oversight. Further, the division has not adequately analyzed its operations to determine if either using existing staff or hiring additional staff presents a less expensive alternative to contracting for staff-related work and ongoing needs. Most of the contracting problems we found occurred during fiscal years 2001–02 and 2002–03, but a few have occurred more recently.

THE DEPARTMENT COULD NOT DEMONSTRATE THE BENEFIT TO THE OHV PROGRAM OF RECENT AND PROPOSED LAND ACQUISITIONS TOTALING \$38 MILLION

With money from the OHV trust fund, the OHV program has spent \$1.9 million and is considering spending another \$36.1 million to acquire land. However, no criteria exist against which to judge such acquisitions to ensure that they meet the mission of the OHV program or represent the best use of the OHV trust fund. Neither the division’s deputy director nor the department’s director could provide key elements of a land acquisition program, such as policies, procedures, and criteria for evaluating potential land acquisition projects and guidelines to determine the extent of the need for lands to buffer existing OHV areas from incompatible development or mitigate the damaging effects of OHV recreation on the environment.

Our review of three recent land acquisition projects—Deer Creek Hills in Sacramento County, which was acquired in 2003, and Laborde Canyon in Riverside County and Onyx Ranch in Kern County, which are both under consideration—showed that they provide little or no new OHV opportunity. Rather, according to the department, two of these acquisition projects, Deer Creek Hills and Onyx Ranch, preserve existing OHV recreation opportunity and wildlife habitat and mitigate the damaging effects of OHV recreation on the environment. The Laborde Canyon project provides up to 1,200 additional acres

Our review of three recent land acquisition projects—one completed and two under consideration—showed that they provide little or no new OHV opportunity.

In the absence of established evaluation processes and guidelines to steer the division's land acquisition decisions, no clear justification exists for these three land acquisitions to show how they provide a strategic benefit to the OHV program.

of OHV recreation area at an effective cost of between \$19,000 and \$38,000 per acre. In the absence of established evaluation processes and guidelines to steer the division's land acquisition decisions, no clear justification exists for these three land acquisitions to show how they provide a strategic benefit to the OHV program.

Neither the Division nor the Department Has Developed Basic Processes to Determine the Benefit of Land Acquisition Projects to the OHV Program

The division and the department could not provide established criteria for evaluating land acquisition options or analysis that show these acquisition projects are the best use of the OHV trust fund to meet the legislative intent for the OHV program. Such an acquisition plan would show how the department evaluates potential purchases for OHV recreation against the demand for OHV recreation. The director confirmed that the department does not have specific criteria nor policy for evaluating potential land acquisitions funded from the OHV trust fund. She noted that this deficiency was recognized in the division's 2002 publication, *Taking the High Road: The Future of California's Off-Highway Vehicle Recreation Program*. In this publication, the division discusses its inability to acquire new lands to alleviate the pressure for more OHV opportunity and states that in 2002 it had launched a strategic planning process to help guide the division in making decisions that would lead to providing appropriate places for OHV recreation in the future. However, as discussed in Chapter 1 of this report, the division has yet to implement a comprehensive strategic planning process. In her response to our inquiries, the department's director acknowledges that much of the division's strategic planning framework is still being developed but states that the department has implemented long-term acquisition efforts in Sacramento and in Riverside counties.

The department's director further stated that the division recognizes the need to develop formal criteria and policies related to future land purchases from the OHV trust fund. In an effort to achieve this goal, stated the director, the division has hired a senior land agent to help develop an acquisition plan. Although the director did not specify exactly what the acquisition plan would entail, it seems unlikely that the division can develop an effective acquisition plan until it has determined the quantity and location of the land it needs to satisfy the demand for new OHV recreation.

Because much of the land contained in the three acquisition projects we reviewed will not be available for OHV recreation, we asked the director to provide a copy of the department's goals and objectives when acquiring property, and to include the department's philosophy for acquiring land to buffer OHV recreation areas from encroaching development or land to

mitigate the negative impact of OHV recreation. She provided the general goals for OHV acquisition as shown in the text box. In addition, the director referred us to a vision for the OHV program included in the division's 2002 publication previously mentioned, which was unrelated to land acquisition issues. None of the documents provided showed how the three land acquisitions helped accomplish the goals she had identified.

The Department's Goals for OHV Trust Fund Land Acquisition Projects

- Preserve and protect existing OHV recreational opportunities in currently owned vehicular recreation areas and other designated OHV trails.
- Provide expanded OHV recreational opportunities through the purchase of new units and/or additions to existing units.

In addition, the director stated that she fully anticipates that continued use of the OHV trust fund to acquire mitigation land and buffer lands

will be an essential strategy in achieving future OHV acquisition goals and objectives, stating that "it is simply the cost of doing business given the level of organized public opposition to OHV activities." We do not disagree that providing an OHV program that is balanced with concerns for the State's natural and cultural resources will involve acquiring land that is not directly used for OHV recreation. However, this "cost of doing business" highlights the need for adequate planning to identify the OHV program's requirements and an adequate process to evaluate potential land acquisitions. The evaluation process would ensure that when the department uses revenue from the fuel tax and fees paid by OHV recreationists to buy land, the land will serve a strategy to meet the program's mission and that the benefits received, through OHV recreation opportunity, are not exceeded by the acquisition costs. Such a strategy would assess the need for OHV recreation against the available OHV areas to determine where additional OHV areas are needed. In addition, this vision would assess the need for buffer lands around the existing SVRAs to protect them against potential threats. Lacking such a vision, there is not a clear sense for how the three land acquisitions we reviewed provide a strategic benefit to the OHV program. Table 2 provides details on each of the projects we reviewed.

TABLE 2

Acquisition Projects Reviewed for This Audit

Acquisition Name (Location)	Property Description	Total Acreage	New Acreage for OHV Opportunity	Status	Cost
Deer Creek Hills (Sacramento County)	Agriculturally zoned parcels with small hills, intermittent drainage, areas of blue oak woodlands, and level to steep topography. Located approximately 4 miles south of the Prairie City SVRA.	669	None. Land purchased in conjunction with the Sacramento Valley Conservancy. OHV portion purchased with funds originally appropriated to buffer Prairie City SVRA from incompatible land uses. However, none of the parcels are contiguous to the Prairie City SVRA.	Purchased in September 2003.	\$1.9 million
Onyx Ranch (Kern County)	Private parcels of wide-ranging terrain and climate interspersed checkerboard fashion with BLM holdings including the Jawbone Canyon and Dove Springs OHV open riding areas.	27,094 (proposed)	None. Almost 2,000 acres are currently open to OHV use; almost 23,000 acres limit OHV use to 20 miles of designated roads and also to designated trails in that area; and the remainder is closed to OHV activity.	Under consideration. BLM applied for a cooperative agreement of OHV funds in fiscal year 2005–06 for the purchase. It also applied for funding in fiscal years 2003–04 and 2004–05.	\$9.1 million per most recent BLM application for funding.
Laborde Canyon (Riverside County)	Mountainous badlands composed of steep terrains and canyons containing several habitat and environmentally sensitive areas.	3,600–7,200* (proposed)	600–1,200 Remaining acreage will be used to mitigate OHV activity at an agreed-upon ratio of 5 mitigation acres to each OHV acre.	Under consideration.	\$23 million for land and \$4 million to develop a new SVRA.

Source: Off-Highway Motor Vehicle Recreation Division project files and the Department of Parks and Recreation.

OHV = Off-Highway Vehicle

SVRA = State Vehicular Recreation Area

BLM = Bureau of Land Management

* Does not include land for access and expanded use areas.

The Onyx Ranch Acquisition Proposal Provides No New OHV Recreation Opportunity

Despite an estimated cost of about \$9.1 million, the division, the department, and the chair of the Off-Highway Motor Vehicle Recreation Commission (commission) have not demonstrated the benefit the proposed Onyx Ranch purchase provides the OHV program. Nonetheless, in 2003 the commission passed a resolution approving the expenditure, and from at least February 2003 the division and the current chair of the commission were involved in discussions with the federal Bureau of Land Management (BLM), the Army Corps of Engineers, the California Wildlife Conservation

Board, the California Department of Fish and Game, and the Riverside Land Conservancy to consider the purchase of the Onyx Ranch property.

The BLM has for years unsuccessfully attempted to purchase some parcels of the Onyx Ranch that interface with the BLM's Jawbone Canyon and Dove Springs OHV open riding areas.

Under the most recent BLM application for this project, the division would provide funding to purchase roughly 27,000 acres of Onyx Ranch by providing funding to the BLM through a cooperative agreement. Portions of the property are interspersed checkerboard fashion with BLM land that the public currently uses for OHV recreation, a condition that has historically presented the BLM with problems in controlling OHV recreation. Consequently, the BLM has for years unsuccessfully attempted to purchase some parcels of the Onyx Ranch that interface with the BLM's Jawbone Canyon and Dove Springs OHV open riding areas.

The BLM has applied for these funds in each of the last three fiscal years, with the terms of its applications changing to reflect changing conditions with the proposed purchase. At the time of the first of the two applications, the property had not been appraised; thus, its value was unclear. The BLM's first application for fiscal year 2003–04 funds requested \$10.5 million to purchase 52,500 acres of the total 67,000 acres for sale. The former acting division chief stated that the group of interested purchasers has used a range of \$20 million to \$21 million as the approximate value of the land for sale. In fiscal year 2004–05 the BLM requested \$10 million but stipulated the parcels it would buy depended on negotiations with the seller and the appraisal. In June 2005 the BLM applied for approximately \$9.1 million to purchase slightly more than 27,000 acres of the Onyx Ranch—about a 10 percent decrease in funds requested but a 49 percent decrease in land to be purchased. Of the 27,000 acres, the BLM stated that almost 2,000 acres are currently open to OHV use, almost 23,000 acres limit OHV use to 20 miles of designated roads and also to designated trails, and the remaining property is closed to OHV activity. The June 2005 application did not explain why the acreage decreased but the cost remained approximately the same. The fiscal year 2003–04 and 2004–05 BLM applications were not approved because of ongoing negotiations with the owners of the Onyx Ranch, and the June 2005 application has not yet been through the grant review process of the division and the commission.

The BLM's fiscal year 2003–04 grant application characterizes the Onyx Ranch as home to unique and unequaled natural resources in the State and describes the property as a key link in conserving biological resources. According to a 2004 public draft of environmental documentation for the purchase, acquiring

the Onyx Ranch would not provide additional land for OHV recreation but might serve to preserve OHV recreation on land that is currently privately held and might improve the BLM's ability to manage OHV recreation in the area. Further, the document stated that the purchase would cause the BLM to update its management plan for the area to identify existing OHV usage to determine which areas to keep open and which areas to close and rehabilitate.

Although the BLM applications indicate that a purchase of Onyx Ranch appears to have considerable value in conserving important biological resources and wildlife habitat, the division, the department, and the commission chair did not substantiate the benefit to the OHV program.

Although the BLM applications indicate that a purchase of Onyx Ranch appears to have considerable value in conserving important biological resources and wildlife habitat, the division, the department, and the commission chair did not substantiate the benefit to the OHV program. Specifically, we asked the division's deputy director and the department's director for feasibility studies or analyses that would demonstrate the benefit of the Onyx Ranch acquisition to the OHV program. The deputy director could not provide any analysis, but the director pointed us to the budget change proposal the department submitted to fund the purchase and to the BLM applications. She added that to date no funds have been awarded for the Onyx Ranch acquisition and the division is conducting additional project review. However, neither the budget change proposal nor the BLM applications contained the department's analysis of the strategic benefit for the purchase of Onyx Ranch.

Finally, because documents from the department indicated that the commission chair has been involved in this potential purchase, we asked him what he considered the benefit of purchasing the Onyx Ranch. In fact, in May 2005 he expressed to the deputy director that the Onyx Ranch acquisition was a top priority of his for the past two years, that the successful acquisition would be a huge gain for OHV interests, and the opportunity to purchase Onyx Ranch would not happen without OHV program funds. The chair replied to us that he supports the Onyx Ranch acquisition because it will help to ensure that OHV opportunity is sustained over the long term in the popular riding areas of the Jawbone Canyon region. He further stated that he supports using funds from the OHV trust fund to eliminate the current management conflicts created by the private land holdings in the area and thus ensure that OHV use would continue in such an important riding area. Although some portions of the property do accomplish the objectives that the chair describes—as shown in Table 2 on page 53—the chair did not demonstrate the benefit to the OHV program of the entire purchase that BLM proposes in its latest application for funds.

The Deer Creek Hills Buffer Land Is Not Adjacent to the Prairie City SVRA Park

The department did not provide us any feasibility studies or analyses that demonstrated how the Deer Creek Hills purchase would benefit the OHV program and represent the best use of OHV trust fund money.

The division's purchase of Deer Creek Hills in September 2003 raises many questions that neither the division's deputy director nor the department's director could adequately answer. Because this property is located roughly 4 miles from the Prairie City SVRA, according to the map we reviewed, and the benefit to the program is not readily apparent, we asked for any feasibility studies or analyses that would demonstrate how the Deer Creek Hills purchase would benefit the OHV program and represents the best use of OHV trust fund money. However, the files provided did not include a feasibility study or analysis, but instead included a chronology for the acquisition and other documents regarding the Prairie City SVRA and the Deer Creek Hills property.

From our review of the documents, we question whether this purchase furthers the goals of the OHV program. According to the budget change proposal requesting funding for the purchase, the project was to fulfill part of a 4,082-acre open space land acquisition plan in eastern Sacramento County in which the department, the Sacramento Valley Conservancy (conservancy), and other agencies are participating. In addition, the budget change proposal states that the conservancy's plan would ensure the future operation of Prairie City SVRA, although it did not stipulate how. The budget change proposal also notes that even though the land is not contiguous to the SVRA, the project does fall within the conservancy's plan area. However, the department did not provide a copy of the plan for our review and offered no evidence showing the importance of the conservancy's project for preserving the future operation of the Prairie City SVRA. In addition, according to an e-mail from division staff, the department had a long-range regional goal of securing open space and a corridor for nonmotorized recreation and linking it with the Prairie City SVRA. However, none of the documents the division or the department provided showed the benefit of using a nonmotorized corridor to link a nonmotorized open space to the OHV recreation that occurs at the Prairie City SVRA.

According to the department's director, OHV trust fund dollars provided the final "gap" funding to enable the purchase of what the director described as a key strategic parcel. However, the director did not specify to which strategy the Deer Creek Hills acquisition was a key parcel—the conservancy's strategy to preserve open space or the division's strategy to buffer the Prairie City SVRA. In addition, the director stated that without OHV funding the Deer Creek Hills property would have been

Although the department's director stated that without OHV funding the Deer Creek Hills property would have been lost, potentially creating a domino effect of development in the vicinity of the Prairie City SVRA, the appraisal report for the Deer Creek Hills property indicates that the property is not currently suitable for development.

lost, potentially creating a domino effect of development in the vicinity of the Prairie City SVRA. However, the appraisal report for the Deer Creek Hills property that the director provided indicates that the property is not currently suitable for development, mostly because of water supply problems. In addition, the appraisal report states that the owners had proposed to develop a residential community on a 1,892-acre portion of the property in the late 1990s but that the county and the voters rejected the proposal.

According to an e-mail from the former division chief to the Off-Highway Vehicle Stakeholders Roundtable (stakeholders roundtable), partnership with the conservancy on the Deer Creek Hills project was an important step to block development in the area, establish a reasonable threshold for area property values, and let neighboring landowners know that the division was serious about acquiring lands around the Prairie City SVRA. In addition, the director told us that the department needed an aggressive strategy to prevent potential land use conflicts with anticipated development in the Deer Creek Hills area. That strategy involved purchasing Deer Creek Hills to prevent residential infrastructure from approaching the park.

The director also said the department's acquisitions of two ranches using money from the OHV trust fund from previously unwilling sellers subsequent to the Deer Creek Hills purchase suggest that the department's strategy is working. However, it is unclear from the documents provided that the department's acquisition of the Deer Creek Hills property motivated the ranch owners to sell their properties. Both the Yost and Barton ranches border the Prairie City SVRA. Although the minutes from a February 2004 meeting show that the owner of Yost ranch had offered his property for sale to the department after the department's September 2003 acquisition of Deer Creek Hills, the minutes also state that the ranch owner had a backup offer from a local real estate developer for immediate purchase. Also, a department memo indicates that the owner of Yost Ranch was selling his property because he was retiring and moving to Kentucky, and wished to offer the property as a logical addition to the Prairie City SVRA.

Likewise, the documents provided do not demonstrate that the Deer Creek Hills acquisition motivated the Barton Ranch owners to sell an easement of 1,069 acres that are contiguous to the Prairie City SVRA. These documents indicate that in January 2003 the Barton Ranch owners and the division had reached a tentative verbal agreement to sell a 300-foot strip (totaling 55 acres) that borders the Prairie City SVRA, which the department estimated would be purchased for \$400,000, and that the owner was willing

to lease another 600 acres to the division. At the same time, according to the documents, the Barton Ranch owners were not satisfied with the appraised value of the property, and were likely to have the land reappraised as soon as a pending 80-acre subdivision became official. Ultimately, the department did not purchase the 55-acre section but rather in February 2005 was able to purchase a 50-year easement on 1,069 acres for \$3.4 million. Among other limitations, the easement restricts the Barton Ranch owners from any activity or development on the property that prevents, significantly impairs, or interferes with the operation of the Prairie City SVRA.

In contrast to the Deer Creek Hills acquisition, the 211-acre Yost Ranch purchase near the Prairie City SVRA has a more apparent benefit.

In contrast to the Deer Creek Hills acquisition, the 211-acre Yost Ranch purchase near the Prairie City SVRA has a more apparent benefit. Bought by the division in November 2004 at an appraised value of \$2.72 million, the Yost Ranch is contiguous on three sides to the Prairie City SVRA, and the land has no restrictions on its use. Further, the department indicates that the Yost Ranch will provide additional land for OHV recreation opportunity, several modular units for office space, and revenue to the division from mining and other leasehold agreements. These characteristics would seem to make the Yost Ranch purchase a good value to the OHV program.

The Proposed Laborde Canyon Project Comes at a Large Cost

The department is involved in a multiple-agency plan in Riverside County to acquire a new SVRA, the Laborde Canyon project, consisting of up to 1,200 acres for OHV recreation that Riverside County will purchase and hand over to the division. However, the project will cost the division an estimated \$27 million—\$23 million to purchase land for mitigation, access, and expanded use, and \$4 million to develop the SVRA. Neither the division’s deputy director nor the department’s director adequately answered our questions about how this project represents the best use of the OHV trust fund to provide OHV recreation opportunity. The proposed Laborde Canyon SVRA is part of a comprehensive planning effort by Riverside County agencies to maintain biological and ecological diversity within a rapidly urbanizing region. Riverside County initiated its Western Riverside County Multiple Species Habitat Conservation Plan (conservation plan), as part of an integrated project, to conserve species and their habitats. According to the plan, as urbanization has increased in the county, a growing number of public and private developers have been required to obtain

permits from wildlife agencies for impacts to threatened, endangered, or rare species and their habitat. The conservation plan covers an area totaling 1.26 million acres, of which 500,000 will be conserved for open space and wildlife habitat.

The conservation plan requires the division to purchase and conserve 3,000 additional acres to mitigate the negative impacts of OHV recreation on the 600 acres to be used for a new SVRA.

According to division staff and department documents, the county plans to buy the 2,640-acre Laborde Canyon property and hand it over to the division. Of the 2,640 acres, only 600 acres can be initially used for recreation. Moreover, the conservation plan requires the division to purchase and conserve 3,000 additional acres to mitigate the negative impacts of OHV recreation on the 600 acres. The proposed SVRA can be expanded to a total of 1,200 acres under the conservation plan, but the division will have to purchase and conserve 5 acres for each additional acre it adds to the park for OHV recreation. The conservation plan states that the remaining 1,440 acres of the Laborde Canyon property that the division receives may not be used for OHV recreation or count toward mitigation requirements.

We asked the director for any analysis that would demonstrate that the Laborde Canyon project is the best use of the OHV trust fund to provide OHV recreation opportunity. However, none of the documents provided answered our question. We were directed to a chronology prepared by the department, which describes the history of its efforts to place an SVRA in the county; to a feasibility study prepared in November 2002 by a consultant to Riverside County, which does not address the benefit of the proposed SVRA to the OHV program; and to minutes of a March 2003 commission meeting, which indicate that the commission approved the use of the OHV trust fund for the acquisition. In the minutes the commission stated that their approval was based on the staff report presented by the division; however, the department did not provide a copy of the staff report for us to review.

Although it is apparent from the documents we reviewed that unmanaged OHV recreation takes place in the vicinity of the Laborde Canyon property, we question the benefit of this project to the OHV program given its cost. The budget change proposal is not clear on the number of mitigation, access, and expanded use acres the division will purchase, but given that the proposed SVRA's size could range from 600 to 1,200 acres, it would have an effective cost per acre of between \$19,000 and \$38,000. In addition, the division estimates it will cost about \$250,000 annually to manage the 3,000 acres of mitigation land associated with the new SVRA. The department has recently requested an appraisal of the properties involved.

Under the conservation plan's requirements, the OHV trust fund is paying significantly more to mitigate the environmental effects of the proposed SVRA than developers of residential, commercial, or industrial projects will pay.

Further, we question whether the division could obtain a location for an SVRA at a lower cost outside the conservation plan area. A review of the funding plan for implementing the conservation plan shows that the OHV trust fund is paying significantly more to mitigate environmental effects than other developers will pay. For example, the funding plan estimates that private developers of residential units will pay mitigation fees of \$1,500 per unit, and developers of commercial or industrial projects will pay mitigation fees of \$4,800 per acre. Local public capital construction projects will replace disturbed habitat using a one-to-one ratio or pay a mitigation fee similar to that for private, commercial, or industrial development. Under the conservation plan, as previously noted, the division will pay between \$19,000 and \$38,000 per acre to mitigate OHV activities and pay for access and expanded use areas. If the plan allowed the division to pay a mitigation fee equal to those fees required for commercial or industrial development—\$4,800 per acre—the division's costs to mitigate environmental impacts would decrease significantly.

The director stated that the Laborde Canyon project is a pilot program that results from a multiple-agency planning process to establish a viable SVRA in a high-demand area with sensitive habitat issues. She stated that the high level of mitigation required for the Laborde Canyon project is not inconsistent with mitigation constraints imposed on other state agencies in Riverside County and pointed out that the California Department of Transportation (Caltrans) is required to conserve 3,000 acres at an estimated cost of \$36 million to mitigate the environmental impacts of required freeway improvements in the plan area. However, there are differences between the two activities. For example, Caltrans has an obligation to improve existing roadways in fast-growing areas and has little flexibility in site selection. Second, the mitigation ratio for Caltrans' freeway improvements in the plan area is almost three-to-one as opposed to the division's five-to-one mitigation ratio. The total cost to Caltrans is higher than the cost to the division; estimates in the conservation plan show Caltrans paying as much as \$40,000 per acre for some parcels.

A comparison of alternate sites to show that Laborde Canyon is the most desirable location for a new SVRA was performed by a consultant for Riverside County. However, the analysis was dated August 2004, after the conservation plan had already

identified Laborde Canyon as the new SVRA site, and the three alternate sites were within the conservation plan area. Thus, it is reasonable to conclude that any of the alternate sites would have carried restrictions and costs similar to those imposed on the Laborde Canyon property.

Still to be settled is the disposition of \$4.1 million that the division's records indicate the OHV trust fund provided to Riverside County 25 years ago to acquire an OHV park that was never developed.

In addition, still to be settled is the disposition of the \$4.1 million that the division's records indicate the OHV trust fund provided to Riverside County 25 years ago to acquire an OHV park in western Riverside County. According to division staff, in the early 1980s the county used OHV trust fund grants to acquire about 3,000 acres known as the De Anza Badlands property, but the OHV park was never developed because of environmental concerns. The department stated that by the late 1990s the county had determined that the OHV park site contained valuable wildlife habitat. Thus, according to the department, the county was looking for an alternate OHV site. However, the county has not returned the \$4.1 million, and the conservation plan does not resolve how the county will compensate the division for the De Anza Badlands property. In July 2005 the department began the process of appraising the De Anza Badlands and Laborde Canyon properties to compare their values.

THE DEPARTMENT'S QUESTIONABLE AND INADEQUATELY SUPPORTED CHARGES TO THE OHV TRUST FUND REDUCE THE FUNDS AVAILABLE FOR THE OHV PROGRAM

Since fiscal year 2003–04 the OHV trust fund has been paying for some of the costs to operate park districts that may not be eligible for funding from the OHV trust fund. These costs amounted to approximately \$3.6 million in fiscal year 2003–04 and \$2.7 million for the first three quarters of fiscal year 2004–05. However, the department could not show adequate support to justify these charges, attributing the decision to a retired deputy director and later providing us with an inadequately supported cost justification. Moreover, because the department allocates its overhead costs based on direct costs to programs, the OHV trust fund was charged an additional \$437,000 in fiscal year 2003–04 alone related to the \$3.6 million in questionable costs we found. Because the department has incorporated those charges into its budget, the charges continued into fiscal year 2004–05.

The Department Made Questionable and Inadequately Supported Charges to the OHV Trust Fund to Help Pay for State Park Operations

The department charged the OHV trust fund about \$3.6 million in fiscal year 2003–04 and \$2.7 million in the first three quarters of fiscal year 2004–05 to provide support in areas of the state parks that we believe may not have been eligible for funding from the OHV trust fund.

The department charged the OHV trust fund about \$3.6 million in fiscal year 2003–04 and \$2.7 million in the first three quarters of fiscal year 2004–05 to provide support in areas of the state parks that we believe may not have been eligible for funding from the OHV trust fund. The department earmarked \$3 million from the OHV trust fund for these costs in its budget for fiscal year 2003–04. As costs were incurred, they were recorded to specific accounts initially used to record the costs of operating state parks, but a percentage of those accounts were ultimately charged to the OHV trust fund. Because the accounts are separate from the accounts used to compile the division’s operating costs, a review of the division’s accounts would not directly reveal the charges to the OHV trust fund. Table 3 shows the amounts the department budgeted and actually charged the OHV trust fund for each park district. The department also budgeted a similar amount from the OHV trust fund for the park districts for fiscal year 2004–05. As a result, for the first three quarters of fiscal year 2004–05, the OHV trust fund absorbed a total of \$2.7 million in additional charges that may not be eligible for funding.

However, the department’s charges to the OHV trust fund are both legally questionable and inadequately supported. According to the department’s legal counsel, the department believes motor vehicle use on any unpaved road in the state park system is eligible for OHV program funding because that use falls within the definition of *off-highway*. This interpretation of the department’s authority is based primarily on provisions in the Vehicle Code that prescribe the registration requirements for off-highway vehicles and define *off-highway* to include, in part, roughly graded roads or trails on which vehicular travel is permitted. In addition, because those provisions provide that motor vehicles that are registered for ordinary street use can also be driven off-highway, the department considers the off-highway use of those motor vehicles also eligible for funding from the OHV trust fund. Therefore, in the Anza-Borrego State Park, where only street-licensed vehicles may be operated, the department uses OHV trust fund money to support motor vehicle travel on unpaved roads in that park. However, the department’s position is contradictory to the instructions on its map for the Anza-Borrego State Park, which states, “Vehicles: All vehicles operated in the park must be street legal. OHVs are encouraged to visit nearby Ocotillo Wells State Vehicular Recreation Area.”

TABLE 3

**Amounts From the OHV Trust Fund Budgeted and
Charged to Operate Non-SVRA Park Districts
Fiscal Year 2003–04**

Park District	Budgeted	Charged
Colorado Desert	\$ 300,000	\$ 361,000
Central Valley	270,000	327,000
Northern Buttes	240,000	301,000
Santa Cruz	240,000	275,000
Gold Fields	240,000	311,000
Inland Empire	210,000	245,000
Mendocino	210,000	251,000
Monterey	210,000	235,000
North Coast Redwoods	210,000	262,000
Angeles	210,000	229,000
Sierra	180,000	226,000
North Bay	150,000	197,000
Diablo Vista	150,000	195,000
San Luis Obispo Coast	120,000	164,000
Channel Coast	60,000	62,000
Orange Coast*	—	—
San Diego*	—	—
Capital*	—	—
Totals	\$3,000,000	\$3,641,000

Source: Department of Parks and Recreation’s (department) fiscal year 2003–04 budget plan and its accounting records.

* The department’s budget manager indicated that not charging support of these park districts is intentional. However, she could not provide documentation to substantiate why this occurred.

SVRA = State Vehicular Recreation Area

Although we acknowledge that the department has broad discretion when interpreting the statutes it is charged with carrying out, we question whether its view of the department’s spending authority is consistent with the intent of the Off-Highway Motor Vehicle Recreation Act (act). The provisions of the Vehicle Code must be read together with the provisions of the act and must be given a commonsense interpretation in light of the Legislature’s intent in enacting those laws. In particular, we think that the phrase “designated areas within the state park system,” as used in the

definition of *system*, is intended to limit the use of OHV trust fund money to areas that have been designated for use by off-highway vehicles. Moreover, relevant provisions of the Revenue and Taxation Code that define the intent of the Legislature with respect to spending OHV trust fund money state that those funds should be used to support recreation areas on surfaces where both street-licensed and off-highway motor vehicles can engage in recreation. Because the statutory definition of *off-highway motor vehicles* includes both street-licensed motor vehicles and traditional off-highway vehicles, such as dune buggies and all-terrain vehicles, we believe that these provisions plainly restrict the use of OHV trust fund money to surfaces where both street-licensed and non-street-licensed vehicles, or traditional off-highway vehicles, can be used.

The department's interpretation does not take this limitation into account and allows OHV trust fund money to be used on any unpaved road within the state park system because street-licensed vehicles, which can also be used for traditional off-highway uses, travel those roads. We believe that this broad interpretation is inconsistent with the Legislature's clear intent that OHV trust fund money be used to support the off-highway use of street-licensed vehicles only in areas where traditional off-highway vehicles are used and to take various actions to mitigate the impacts of that use. By using OHV trust fund money for purposes that are not associated with off-highway vehicle use, as that term is commonly understood, but that relate more generally to support of the state park system in general, we question whether the department has exceeded its authority and used OHV trust fund money inappropriately.

In addition, despite the significance of these costs, the department was unable to provide adequate documentation or formal assessments to support the charges to the OHV trust fund. According to the department, it relied on a management review to justify the charges. In 2003 park operations management reviewed the department's workloads for law enforcement, damage repair and restoration, and other activities that occur in parks outside the division and that it believes are eligible for money from the OHV trust fund. The department said the assessment was done by a former deputy director for park operations (former deputy director), based on his personal experience and management responsibilities during his 34-year career as a state park ranger.

The budget manager stated that the department was unable to find paperwork documenting the former deputy director's review but that she was able to contact the former deputy director at home.

Despite the significance of these costs, the department was unable to provide adequate documentation or formal assessments to support the charges to the OHV trust fund.

Although unable to provide documentation for the review, the former deputy director stated that, based on his experience, illegal OHV activity was occurring at virtually every park with dirt roads within the state park system. Further, the budget manager stated that the former deputy director felt confident that the total cost to respond to such activities exceeded \$3 million annually and that he recalled translating the activities and effects into funding levels to arrive at the \$3 million amount.

After we finished our fieldwork the budget officer coordinated with state parks operations staff to develop justification for the \$3 million of OHV trust fund money that was budgeted for non-SVRA state parks. He indicated that in May and June 2005 park operations staff undertook a review on a park-by-park, position-by-position basis and identified \$4.3 million annually in direct costs at non-SVRA state parks for legal and illegal OHV-related activities. The budget officer claimed that even under the narrowest interpretation of the statute, under which funding would be appropriate only at non-SVRA state parks that offer legal OHV opportunities, the department found more than \$3.5 million in direct costs.

The park operations managers informed us that support for the cost schedules was at the park district offices and that they did not know how the park superintendents made their calculations.

The budget officer provided us with cost schedules that show the \$3.5 million estimate consists primarily of personnel costs related to OHV activity at 12 of the 18 state park districts. The schedules list various positions at non-SVRA state parks, their budgeted costs, and the percentage of time that park operations staff believed that the positions spend on OHV-related activities. The budget officer and park operations staff indicated that the percentage of time spent was not based on data gathered through a formal time study but on an e-mail survey of park superintendents. However, the budget officer and parks operations staff could not provide adequate supporting documentation for the cost schedules. The park operations managers informed us that support for these schedules was at the park district offices and that they did not know how the park superintendents made their calculations.

Besides the inadequate support for the cost estimate, other anomalies exist with the budget officer's cost schedules. For example, the amounts estimated at each park district on the cost schedules neither match nor closely approximate the amount budgeted for each park district. In one instance, the Colorado Desert Park District is budgeted at \$300,000, but the budget officer's cost schedules show that this park district estimates costs of \$1.4 million. Conversely, the Orange Coast Park

District, one of the park districts not budgeted money from the OHV trust fund, was included in the cost schedules as having expenses related to OHV recreation. Also, the budget manager provided us with revised cost schedules that lowered the department's "narrow" interpretation of the costs related to OHV activities at non-SVRA parks to \$3.3 million. She indicated that the revised cost schedules were necessary because the original ones used inconsistent amounts for budgeted salaries.

The lack of adequate support for its charges to the OHV trust fund is disconcerting because the department plans to use its more recent review as a basis for future charges to the OHV trust fund for these activities.

Under the Financial Integrity and State Manager's Accountability Act, the department must maintain effective systems of internal accounting and administrative control as an integral part of its management practices. Further, these controls are the methods through which the department can provide reasonable assurance that the accuracy and reliability of its accounting data can be checked. However, the department could not provide adequate support for either of the methodologies that it offered as fiscal justification for the costs. The inadequate support for its costs is disconcerting because, according to its deputy director of administration, the department plans to use its more recent review as a basis for its future charges to the OHV trust fund for the cost of the activities.

Departmental Overhead Charged to the OHV Trust Fund, Including Some Questionable Charges, Has Increased Substantially in Recent Years

Two types of overhead expenditures are charged to the OHV trust fund: departmental administrative overhead and overhead related to the statewide cost recovery plan by the Department of Finance (Finance), commonly referred to as pro rata. Both these overhead types have increased substantially in amount and scope within recent years.

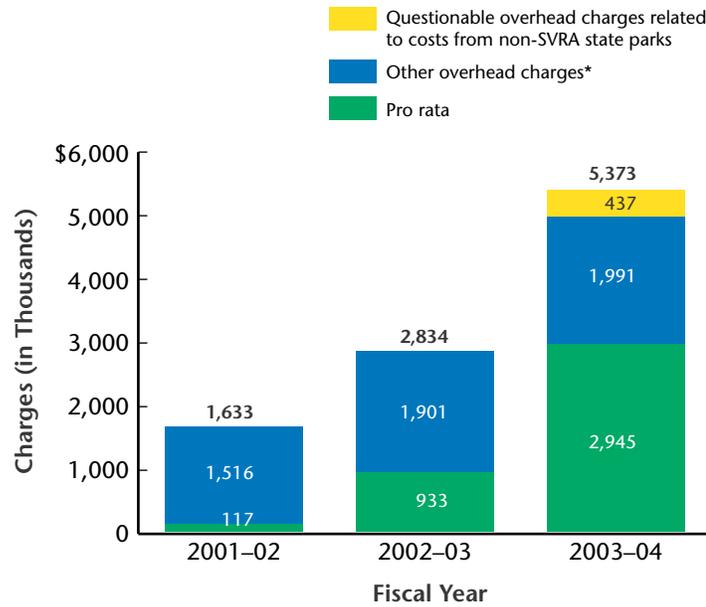
Some Overhead Charges to the OHV Trust Fund Are Questionable

To allocate its overhead costs, the department uses a cost allocation process established within its accounting system. At the end of each month the costs incurred by the administrative units, such as personnel services, accounting, and the director's office, are distributed proportionally among the support accounts of all the department's programs. The amount of department overhead charged to the OHV trust fund increased by 26 percent between fiscal years 2002–03 and 2003–04, from \$1.9 million to \$2.4 million. This increase was attributable mainly to departmental

overhead that was allocated based on the \$3.6 million in questionable costs that park districts charged to the OHV trust fund, as discussed earlier in the chapter. As shown in Figure 5, the portion of departmental overhead charged to the OHV trust fund for those charges was about \$437,000 in fiscal year 2003–04.

FIGURE 5

Total Overhead Charged to the Off-Highway Vehicle Trust Fund



Source: Bureau of State Audits’ review of department expenditure reports and Department of Finance Web site.

Note: Figures represent expenditures that occurred within the fiscal year.

* We considered these charges appropriate except for the director’s office charges, which we estimate to be \$72,000 in fiscal year 2003–04.

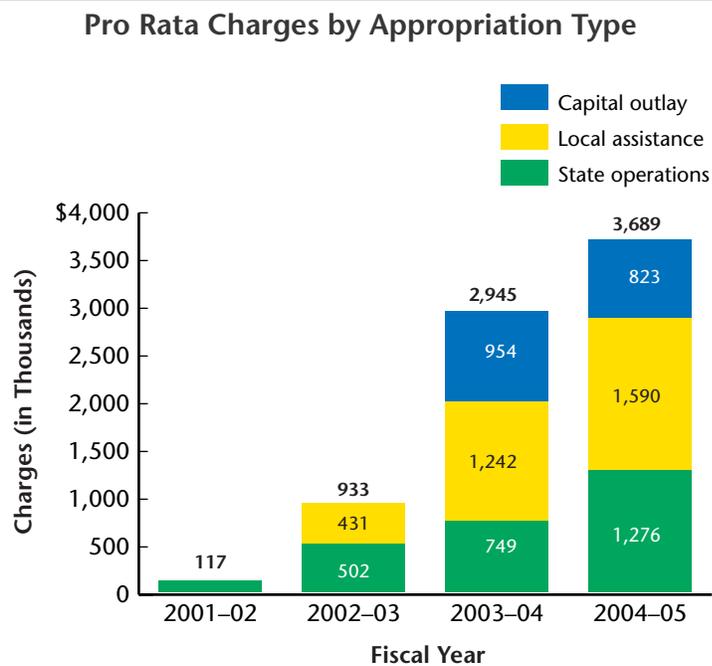
Further, the department charged the OHV trust fund for the overhead costs of the director’s office, a charge that the law does not allow. For example, using the costs that the department’s accounting system charged to the director’s account, we calculated that for April 2004 the director’s office charged approximately \$6,900 to the OHV trust fund. We estimate that during fiscal year 2003–04 the director’s office charged \$72,000 to the OHV trust fund. However, the Public Resources Code plainly states that the OHV trust fund is to be spent for the “support of the division” and that “‘support of the division’ does not include any costs incurred by, or attributable to, the director or the director’s immediate staff or their salaries.”

In response to our inquiries, the budget officer said he was unaware of the Public Resources Code restrictions. He believes that the costs related to the division’s director and her immediate staff that was charged to the OHV trust fund was approximately \$21,000, but his calculation did not use all the costs that the department’s accounting system recorded to the director’s office. However, the budget officer indicated that the department’s cost allocation system will be modified so that future charges related to the director’s office are not allocated to the OHV trust fund.

The OHV Trust Fund’s Share of Costs to Operate Central Service Agencies Has Been Rapidly Increasing

In addition to helping support the state parks and the department’s support units, the OHV trust fund pays a proportion of the State’s General Fund’s cost to provide centralized statewide services (pro rata), such as Finance, the State Controller’s Office, and the State Personnel Board. The department has no control over the pro rata charges Finance levies, and these charges have increased substantially over the past four fiscal years. Figure 6 presents a summary of pro rata charges for the OHV trust fund for fiscal years 2001–02 through 2004–05.

FIGURE 6



Source: Department of Finance Web site.

Beginning in fiscal year 2002–03 Finance changed its cost recovery methodology for the types of pro rata charges it levied to include local assistance and capital outlay expenditures, in addition to state operations appropriations. The new methodology also includes any special funds that were not assessed for pro rata in the past. Since fiscal year 2002–03 the new pro rata methodology has resulted in more than \$5 million in charges to the OHV trust fund.

THE DIVISION’S CONTRACTING PRACTICES OFTEN VIOLATE STATE CONTRACTING RULES, AND IT HAS NOT EXPLORED LESS COSTLY ALTERNATIVES

The division has contracted for questionable purposes, including the unauthorized chartering of private aircraft, and has violated state contracting rules, such as the prohibition against splitting contracts.

For various reasons the division has significantly increased its use of contracts over the past five years, with a peak in fiscal year 2002–03. In our review of 42 contracts totaling more than \$8 million, each with a value of at least \$5,000, we found that the division has contracted for questionable purposes, including the unauthorized chartering of private aircraft. Our review also revealed that the division has violated state contracting rules that govern the use of contracts, such as the prohibition against splitting a series of related tasks into multiple contracts to avoid competitive bidding procedures and regulatory oversight. Further, the division has not adequately analyzed its operations to determine if using existing staff or hiring additional staff presents the least expensive alternative to contracting for staff-related work and ongoing needs. Most of the contracting problems we found occurred during fiscal years 2001–02 and 2002–03, but a few have occurred more recently.

The Division Has Increased Its Contracting Activity in Recent Years

Since July 2000 the division’s contracting activity has increased significantly with a peak in fiscal year 2002–03. From July 2000 through March 2005, the division’s headquarters office entered into 408 contracts with a total value of more than \$18 million. As Table 4 on the following page shows, the annual total of the division’s contracts ranged from about \$1.6 million in fiscal year 2000–01 to a peak of \$5.5 million in fiscal year 2002–03. Contracts for wildlife studies, monitoring, and planning made up the highest percentage of the division’s contracts at about 20 percent, followed by snow removal and grooming contracts at approximately 15 percent; advertising, public relations, and conference and facilitation services at about 14 percent; computer systems support at approximately 9 percent; and park maintenance and a fuel tax study, each at around 8 percent.

TABLE 4

**Types of Contracts Issued by the Off-Highway Motor Vehicle Recreation Division
(Dollars in Thousands)**

Contract Type	Fiscal Year*					Totals	Percentage of Total
	2000-01	2001-02	2002-03	2003-04	2004-05†		
Wildlife and soil studies, monitoring, and planning	\$ 82	\$ 905	\$1,066	\$1,547	\$ 0	\$ 3,600	19.8%
Snow removal and grooming	114	114	421	136	2,001‡	2,786	15.4
Advertising, public relations, and conference and facilitation services	884	397	808	125	389	2,603	14.3
Computer system support	127	318	394	531	208	1,578	8.7
Park maintenance	170	97	139	150	889	1,445	8.0
Fuel tax study	0	0	1,416	0	0	1,416	7.8
Acquisition	0	0	351	981	0	1,332	7.3
Grant regulations and review	0	783	77	76	50	986	5.4
Safety and law enforcement services	0	120	127	156	430	833	4.6
Noise standards development and training	1	5	372	22	0	400	2.2
Other	187	397	358	172	60	1,174	6.5
Totals	\$1,565	\$3,136	\$5,529	\$3,896	\$4,027	\$18,153	100.0%

Source: Bureau of State Audits' review of contract files of the Off-Highway Motor Vehicle Recreation Division.

Note: Does not include contracts of state vehicular recreation areas.

* Denotes the fiscal year the contracts were initiated. Contract expenditures may extend into subsequent fiscal years.

† As of March 31, 2005.

‡ The increase is largely due to a shift resulting in funding these activities from grants and cooperative agreements to contracts.

The division has expanded its use of contracts for several reasons. Increased contracting for wildlife and soil studies, monitoring, and planning was mostly related to the need for environmental services at the Oceano Dunes SVRA, in response to regulatory changes and a lawsuit, and for soil studies conducted by the California Department of Conservation. Increased contracting for snow removal and grooming services occurred because the division shifted funding for these services from grants to contracts. The division's deputy director, who was appointed in June 2004, indicated that contracts for advertising, public relations, and

conference and facilitation services were needed because greater value is gained and efficiencies are achieved by having contractors provide these services, and the division does not have staff with the expertise to perform many of these functions. Similarly, the division's program review and support manager cited a lack of staff and the need to address deficiencies in its computer equipment and programs as reasons for increased contracting for computer-related services. Also, the division has one contract for an updated fuel tax study.

The Division Sometimes Contracted for Questionable Services

Two of the 42 contracts we reviewed, approved in January 2001 and June 2004, included activities associated with the California SNO-PARK permit program. However, the law established the Winter Recreation Fund to support these activities. According to the deputy director, the division sometimes absorbs incidental costs associated with the Winter Recreation Program because it is unable to fully support itself.

In addition, the division used one of the two contracts—with the California State University, Sacramento Foundation (foundation)—to pay travel, food, and lodging expenses for members of the stakeholders roundtable, who are not state employees, to attend meetings. For example, one monthly invoice dated October 2003 included more than \$8,000 in travel and food costs, and another monthly invoice dated July 2004 included more than \$3,600 in travel and food costs, among them almost \$1,600 for a continental breakfast, lunch, and refreshments. Under this same contract, the division received an invoice dated May 2005 that included more than \$10,600 in lodging costs for grant applicants to attend a workshop that occurred in March 2005.

Explaining these costs, the deputy director pointed out that members of the stakeholders roundtable serve as volunteers, and that department policy allows reimbursement for the expenses that volunteers incur. Further, she justified paying the lodging of grant applicants because the complexity of new grant applications necessitated the workshop. However, the foundation charged the division a 20 percent administrative fee for these services. If the division believed that this practice was appropriate, it should have paid the expenses directly to avoid the administrative fee.

The Division Did Not Always Adhere to the State's Contracting Rules

The division entered into three contracts with a single vendor, splitting a total of about \$165,000 among the three contracts written back to back over a 25-month period.

We found procurement problems for six of the 42 contracts we reviewed. For example, between May 2003 and June 2005, the division entered into three contracts with a single vendor, splitting a total of about \$165,000 among the three contracts by writing the contracts back to back over the 25-month period. In other words, as one contract ended, the next one began. All three contracts were related to developing the division's grant regulations and a grant procedure guide. Each contract was written as an interagency agreement valued at less than \$75,000. Contracts valued at more than that amount require review by the Department of General Services (General Services). If the division had followed the appropriate procedure, it would have combined the contracts into one for the total amount of about \$165,000. The deputy director stated that although the contracts have similar scopes of work, at the time they were not related in the eyes of division staff. However, we found the contract scopes of work to be essentially the same and thus believe the services should have been in one contract.

We also found that the division intentionally split another contract to avoid General Services' review. In January 2002 the division entered into a contract with a Master Services Agreement contractor for \$249,892 to assist in developing a strategic plan for the Oceano Dunes SVRA. Master Services Agreement contractors are preapproved by General Services for contracting with the State, but each contract is limited to \$250,000. An e-mail in the contract file between two division managers showed that in February 2002 the division realized that it needed to add money to the contract but also realized that adding the amount that was needed would cause the contract to exceed the \$250,000 limit. Specifically, a facilitator on the contract had to be replaced, and the division estimated that an additional \$37,000 was needed to hire a new facilitator. Adding this amount to the contract would have brought its total value to more than \$286,000. The e-mail showed that the division decided to avoid General Services' review by entering into a new contract with the vendor for more than \$41,000, which was an amount the department could approve without General Services' review. According to General Services' Web site, when a department determines the need to exceed the \$250,000 limit on a Master Services Agreement, it should contact General Services for alternate solutions for contract approval.

Under a sixth contract, a division superintendent acknowledged that in October 2002 the division used more than \$26,000 from the contract to pay for strategic planning activities in Riverside

County, which the contract did not cover. The state contracting manual clearly states that contract managers are not allowed to direct a contractor to do work that is not specifically described in the contract. When we asked what the division received for this money, the division superintendent IV had to contact the contractor to obtain the deliverables, and he could not identify how the division used those deliverables.

The Division Has Not Explored Whether Less Costly Alternatives to Its Contracts Exist

The division has not conducted a comprehensive analysis of its operations to determine whether using existing staff or hiring additional staff is less expensive than contracting for staff-related work and ongoing needs. In response to our questions about why division staff could not perform environmental reviews of grant applications, public relations activities, computer system support, and conference and facilitation services, division managers stated that the division lacked staff with the expertise to meet its needs. In fact, in our review of 42 division contracts, the justification for 22 contracts included staffing limitations, and six of those 22 contracts were for services the division needs on an ongoing basis.

In response to our questions about why division staff could not perform environmental reviews of grant applications, public relations activities, computer system support, and conference and facilitation services, division managers stated that the division lacked staff with the expertise to meet its needs.

We also found that the division paid contractors for many nonspecialized tasks. For example, five contracts valued at more than \$1.9 million with two state universities and a state university foundation included planning meetings and workshops, facilitating meetings, and identifying OHV affiliates and audiences. Using one of the most recent contracts, which expired in June 2005, the division arranged commission meetings—an activity that is part of its staffing obligations under the law. When we asked the deputy director why division staff could not perform these types of services, she stated that contracting eliminates the staff time, travel, and problems encountered with deposits or contract arrangements with facilities, and that the division’s contractor may be able to negotiate a better price due to the volume of meetings it schedules. However, in our view, arranging these meetings does not necessarily require expertise that is not available from state employees. Also, the deputy director could not provide examples of facilities that require deposits or special contracts and acknowledged that the department’s revolving fund could be used for this purpose.

The deputy director stated that she is analyzing and examining all aspects of the division’s program, staff, and workload to make more informed decisions on these services in the future. However, the division currently has two positions it is not using that could

help alleviate the need for outsourcing. One position is a marketing analyst and the other is an editor. Instead of using these positions to reduce the need for contracting, the division has allowed other units within the department to use them. By contracting for staff-related work and its ongoing needs without analyzing the potential for using existing staff or hiring additional staff, the division cannot ensure that it is using OHV funds efficiently.

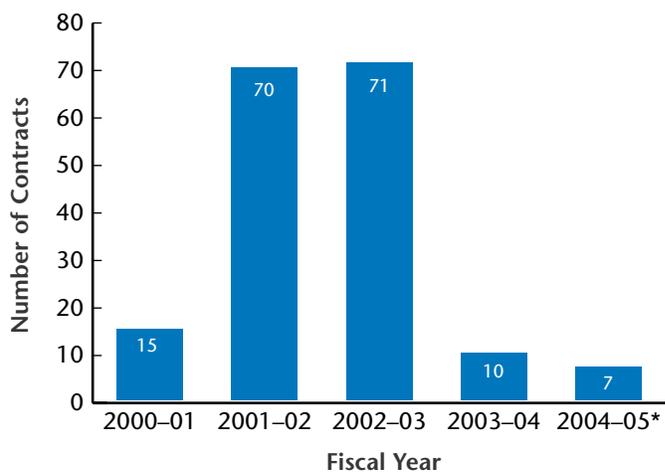
The Division Violated Many Contracting Regulations and Rules With Its Small-Dollar Contracts, Which It Can Approve Internally

The division’s use of small-dollar contracts—valued at \$5,000 or less—resulted in numerous violations of state contracting regulations and rules. Under department policy, the division does not need department approval for contracts that are valued at \$5,000 or less. However, the division has misused this authority by contracting for unallowable services and splitting contracts to avoid the approvals needed for larger contracts.

As shown in Figure 7, the majority of the division’s small-dollar contracts occurred in fiscal years 2001–02 and 2002–03. Between July 2000 and March 2005, the division entered into 173 contracts with a value of less than or equal to \$5,000, for a total of more than \$600,000.

FIGURE 7

Number of Small-Dollar Contracts Issued by the Off-Highway Motor Vehicle Recreation Division



Source: Bureau of State Audits’ review of contracts.

Note: Does not include contracts that the State Vehicular Recreation Areas issue.

* Contracts issued through March 31, 2005.

The division has misused its authority to approve small-dollar contracts by contracting for unallowable services and splitting contracts to avoid the approvals needed for larger contracts.

We reviewed 88 small-dollar contracts, 80 from fiscal years 2001–02 and 2002–03 and eight from fiscal years 2003–04 and 2004–05, and identified contracting problems with 74 of them. Of the 74 contracts, six began in fiscal year 2003–04 and one began in fiscal year 2004–05.

The Division Contracted for Unauthorized Services and Questionable Benefits

Eight of the small-dollar contracts we reviewed were for unauthorized private aircraft chartered between July 2001 and October 2003. The flights included travel by division staff to Oceano Dunes, Mammoth Lakes, Watsonville, Fortuna, Merced, Palo Alto, and San Luis Obispo, at a total cost of around \$11,500. Chartering a private aircraft requires advance approval by the agency secretary and the Governor’s Office. Additionally, a clear explanation of the nature, cost, and necessity of renting an aircraft is required. The deputy director stated that no documentation exists showing that these trips were approved at the appropriate level. Further, in the contracts, the division provided only a generic description to justify seven flights that occurred in 2001, and the deputy director acknowledged that no specific justification existed for the seven flights.

In addition to finding that the division contracted for unauthorized services, we question the benefit that the division received for seven other contracts. For example, the division paid \$5,000 for a musical band to play at the Hollister Hills Expansion Celebration in October 2002. In another contract approved in May 2002, the division paid a contractor \$5,000 to write articles; according to the deputy director, the contractor produced interview material that was used for one published article, but other products the contractor developed were never published. For two other contracts, the deputy director acknowledged that no formal work products were developed. Although these activities could be construed to be an allowable use of the OHV trust fund, the benefit the division received was questionable, and it is likely that the funds could have been used more effectively. In addition, the division entered into three other contracts totaling \$13,798 between May 2002 and August 2003 for nonmotorized recreation activities. These contracts were for constructing a bicycle track and a bicycle racing starting gate at the Prairie City SVRA. Because the contracts included providing nonmotorized off-highway vehicle activities, they were questionable uses of the OHV trust fund.

The Division Used Small-Dollar Contracts to Split Services Into Multiple Contracts, Thus Avoiding Department Approval

In 46 instances we found that the division used small-dollar contracts to circumvent the State's competitive bidding requirements by splitting a series of related tasks that would normally be considered one job into two or more contracts—a practice commonly referred to as contract splitting. The state contracting manual clearly states that agencies cannot split a series of related services into separate tasks, steps, phases, locations, or delivery times to avoid adhering to a state law, policy, or department procedure. Splitting the 46 contracts allowed the division to obtain contracted goods and services through an informal bidding process, in which the division could solicit bids from potential contractors. Properly combining the contracts would have required the division to adhere to state rules applicable to contracts valued at more than \$5,000, which include formal advertising and competitive bidding procedures, and the department would have needed to review and approve the contracts.

In the most egregious example, e-mails among division staff dated April 2002 discussed how they would split an advertising and media services job into four contracts, each valued at \$5,000, with the same contractor.

For example, in June 2002 the division entered into two contracts, one for \$5,000 and the other for \$3,792, for a contractor to install fencing at an SVRA over a two-month period. In another instance, the division paid a contractor \$10,000 in two separate contracts, each for \$5,000, to write about the history of one SVRA. The contracts were approved on the same day—December 2, 2002—for the same four-month period. In the most egregious example, e-mails among division staff dated April 2002 discussed how they would split an advertising and media services job into four contracts, each valued at \$5,000, with the same contractor. The division approved all four contracts in May 2002.

In addition to the split contracts initiated by division headquarters staff, we reviewed 55 contracts created by SVRA staff between January 2002 and November 2004 and found 29 split contracts involving eight contractors. Primarily written for services such as restroom cleaning and heavy equipment operation, the contracts would have required an advertisement for bids and department approval if they had been properly combined into single contracts. The deputy director acknowledged that using small-dollar contracts in this manner was inappropriate and stated that it is currently working to train its employees to ensure proper contracting in the future. Regarding quality assurance, the staff services manager of the department's contracts and asset management section stated

that the department reviews both the division's and the SVRAs' contracts written for \$5,000 or less after the work is performed, when the contracts are sent in for payment. However, the department's post-review of small-dollar contracts is not effective because it detected only three of the contract splits we found, all with the same contractor.

The Division Violated Other Contracting Regulations and Rules With the Small-Dollar Contracts

In addition to not following the State's contract approval requirements, the division entered into some contracts without obtaining written bids, and it approved other contracts after the contractors had already finished the work. In our review of 40 contracts written for exactly \$5,000, we found that the division did not obtain written bids as required by department policy for 33 contracts valued at a total of \$160,425. Entering into a contract without obtaining a written bid could result in the division not receiving the goods and services it needs at agreed-upon prices.

The division's deputy director stated that the division is planning to train all employees who are involved in procuring services.

The deputy director stated that at the time it entered into the 33 contracts, the division misunderstood their appropriate use. She stated that the division was trying to allow for maximum flexibility, given contingencies that could arise within various projects, but that the division will no longer award contracts in this manner. Further, the deputy director stated that the division is planning to train all employees who are involved in procuring services and that part of that training process will be ensuring that staff properly document all small dollar contracts.

For 16 of the contracts we reviewed, the division approved the contracts after the work had already started, and in 10 of those cases, the division approved the contracts after the work was already done. Although the division eventually obtained an approved contract for those items, by starting work without an approved contract, the division had less assurance that it would receive the goods or services it desired at agreed-upon prices.

RECOMMENDATIONS

The division should develop and implement a process of evaluating land acquisition projects to ensure that its investments of OHV funds provide a strategic benefit in accomplishing the division's mission and that the level of OHV recreation that results from its land acquisitions provides the best use of the OHV trust fund.

This process should include appropriate analysis of the costs and benefits of a proposed land acquisition, including an assessment of the need for additional land for OHV recreation in the area.

To ensure that money from the OHV trust fund is used appropriately, the Legislature should amend the law to clarify the allowable uses of the OHV trust fund. Specifically, the Legislature should specify whether the department's broad interpretation that any road that is not defined as a highway but is open for public use in a state park qualifies for funding by the OHV trust fund, or whether state law restricts the use of OHV trust fund money to areas where non-street-licensed vehicles can engage in traditional OHV activity.

The department should discontinue charging the director's office costs to the OHV trust fund, as the law requires. However, if the department believes that this statutory restriction is inappropriate, it should seek a statutory change to remove the requirement.

To improve its contracting practices and comply with state laws, regulations, and rules, the division should implement the following changes:

- Ensure that it complies with the State's contracting rules, particularly those that prohibit contract splitting.
- Contract only for services that are an allowable use of the OHV trust fund and that provide a clear value to the OHV program.
- Analyze its operations to determine if using existing staff or hiring additional staff would be a less expensive alternative to contracting for staff-related work and ongoing needs. This analysis should consider utilizing two staff positions that the division has loaned to other department units, because those positions could help alleviate the need for contracting.

The department should increase its oversight of the division's contracting practices, particularly of the small-dollar contracts that the division and the SVRAs can approve, to ensure that they comply with state laws, regulations, and rules. ■

CHAPTER 3

Administration of the Grants and Cooperative Agreements Program Lacks Accountability

CHAPTER SUMMARY

The Off-Highway Motor Vehicle Recreation Division (division) does not maintain adequate control over funds expended through its grants and cooperative agreements program (grants program). Under the law, the division is responsible for implementing all aspects of the Off-Highway Motor Vehicle Recreation Program (OHV program), including the grants program. However, the division does not adequately track the funds it advances to grantees, and as a result it cannot ensure that the funds are used only for allowable activities and that unused funds are returned to the Off-Highway Motor Vehicle Trust Fund (OHV trust fund). For example, we found that the division had \$881,000 in outstanding advances that were due from several recipients, but the division either had not required the recipients to return their unspent funds or could not obtain documentation to justify the expenditure of those funds.

In addition, the division does not ensure that all completed grants and cooperative agreements receive performance reviews or fiscal audits. For audited grants and cooperative agreements, the division does not always promptly resolve audit findings or collect ineligible costs that the audit identifies. Our review of 12 audit reports revealed that the division has not collected approximately \$598,000 in ineligible costs related to three audits. Finally, the division circumvented state budget controls and its regulations when it reallocated unspent grant funds totaling \$2.2 million among various U.S. Forest Service (Forest Service) districts.

THE DIVISION DOES NOT ADEQUATELY TRACK FUNDS IT ADVANCES FOR GRANTS AND COOPERATIVE AGREEMENTS

The division does not adequately track funds it advances to grantees. As a result, it cannot ensure that unused funds are returned to the OHV trust fund. The regulations in effect during the period we reviewed allowed the division to advance up to

100 percent of the funds for a grant or cooperative agreement to its recipient. This practice may be necessary in some instances; for example, the federal Bureau of Land Management (BLM) told us that it does not have authorization to provide services to nonfederal entities on a reimbursement basis. However, division management does not maintain a central record of all advances and their status.

We requested a list of all currently outstanding advances for projects that had not yet been audited, but the division was unable to provide a list from its database. As detailed in the following subsection, we found several examples of grants and cooperative agreements containing outstanding advances that the division was not actively tracking. However, because of the division's incomplete records, the examples we found may not constitute the universe of outstanding and unaccounted-for advances.

The Division Did Not Track the Status of Advances to the BLM

The division did not track the status of advances for about 300 completed cooperative agreements with the BLM. Division regulations in effect during the period of our review made the recipient of a grant or cooperative agreement responsible for refunding unspent advances within 60 days after it completed the project or the agreement ended, whichever was earlier. The division did not always enforce this regulation and has, in fact, instructed the BLM not to refund advance balances that exceed \$5,000 but to hold the unspent funds for potential rescope, which is a division process to amend the project scope to use unspent funds for other activities or projects. Although the division provided us a letter identifying the balances owed by the BLM, the letter did not contain the detail necessary to support the amount.

According to the BLM, its records indicate that the division has not yet audited more than 300 completed cooperative agreements. The BLM did not respond to our inquiry about the values and dates of these cooperative agreements, although it did state that it has overspent some of these completed projects and underspent others. Further, the BLM told us it anticipates that the division will allow the BLM to use the balances remaining in underspent projects to pay off the balances of overspent projects. Because the State is not responsible for projects on which the BLM has overspent, we think the amount paid back to the OHV trust fund should not be the net of overspent and underspent projects but rather the total unspent amount.

The division's deputy director indicated that the outstanding advances are a serious issue for both agencies and that it will be a hardship for the BLM to repay the amount owed in one lump sum.

The division's deputy director told us the division considers these outstanding advances a serious issue for both agencies. She indicated that division staff have been meeting with BLM representatives in an effort to improve the division's procedures for tracking, billing, preparing audit reports, and seeking repayment of funds owed to the division. The division recognizes that the amount owed is sizable and will be a hardship for the BLM to repay in one lump sum. It is currently reconciling its documentation with BLM records and will work to identify a negotiated payment plan to resolve the issue without negatively affecting off-highway vehicle (OHV) recreation activity. According to the division's grants manager, as of June 2005 the division is waiting for resolution of this issue before it advances funds to the BLM for the cooperative agreements for fiscal year 2004–05.

The Division Has Allowed Los Angeles County to Hold Advanced Funds for More Than 13 Years

The division has amended the scope and extended the performance period of two grants totaling \$566,000 awarded to Los Angeles County in 1986 and 1988. The grants were required by legislation to help create a statewide OHV trails system (\$66,000), to plan and conduct an environmental review of a proposed Whitney Canyon OHV park and its connection to the Angeles National Forest trails system (\$201,000 reappropriated in 1992 to a project in Hume Canyon), and to conduct local OHV planning for Los Angeles County (\$299,000 added to the \$201,000 grant).

Although Los Angeles County has held funds, totaling \$566,000, for more than 13 years, the division had no knowledge of the current status when we inquired about them in April 2005.

Although Los Angeles County has held the funds for more than 13 years—since the division advanced them in 1991 and 1992—the division's special projects coordinator, who had formerly administered the grants, told us he had no knowledge of the current status when we inquired about them in April 2005. According to the special projects coordinator, he contacted Los Angeles County and learned that its efforts on the projects have stalled; the employee working on these projects had left county service, and Los Angeles County is looking to fill that position.

The division has managed these grants poorly. It could not provide evidence of the amount of grant money Los Angeles County has spent, if any, or how the county might have spent the money. Moreover, the division provided no evidence that it attempted to obtain Los Angeles County's expenditure documentation for the advance of \$566,000. Additionally, two of the three appropriations, providing \$365,000 of funding from the two grants, authorized

the expenditure of funds only through 1991 and 1993, but the division did not try to recoup the \$365,000 so it could be returned to the OHV trust fund. The division sent two notices to Los Angeles County, one in 1992 and the other in 1998, stating that the grants would be audited and closed. However, the special projects coordinator told us that the division never closed the grants because it or Los Angeles County determined a new use for the funds. Thus, the division extended the performance period of both grants through June 30, 2005. Finally, the division amended the scopes of the project agreements in 2000 to “establish a vision for a multi-use OHV park that includes other forms of recreation and beneficial community uses.” According to the special projects coordinator, the division amended the project scopes to allow funds to be used for OHV site planning work in Los Angeles County. To the extent that Los Angeles County did not spend the funds for purposes authorized by legislation and the grant agreements, the division did not ensure that the funds were made available and used for program purposes. The deputy director told us the division is now working with Los Angeles County to negotiate repayment.

The Federal Bureau of Reclamation and the Department of Parks and Recreation Have Not Provided Support to Show the Appropriate Use of Cooperative Agreement Funds

The division has been unsuccessful in obtaining documentation showing the federal Bureau of Reclamation (Reclamation) appropriately used a total of almost \$711,000 in funds provided through four expired cooperative agreements. Reclamation passed the funds from these cooperative agreements to the Department of Parks and Recreation (department) to pay some of the operating costs of the Mammoth Bar OHV area, which is located within the Auburn State Recreation Area (Auburn SRA). Because Reclamation has jurisdiction over the land and has contracted with the department to run the Auburn SRA, Reclamation passes the funds from the cooperative agreement to the Auburn SRA.

For three cooperative agreements the department’s audits office was unable to obtain documentation from Reclamation to demonstrate that certain funds were spent according to the project agreements. As a result, the audits office determined that Reclamation should refund approximately \$315,000, including the entire amount of one cooperative agreement. To follow up on those audits, the division requested documentation from the department’s district superintendent responsible for the

The division has been unsuccessful in obtaining documentation showing the federal Bureau of Reclamation appropriately used a total of almost \$711,000 in funds provided through four expired cooperative agreements.

Auburn SRA in May 2004, but the division had not received any documentation as of May 2005. Further, the division's grants manager could not provide a date by which the division expects to receive the requested expenditure information, nor has the division set a deadline.

In April 2004 the division also requested documentation of expenditures for a fourth cooperative agreement in the amount of \$396,000, which expired in March 2003, before sending the file to the audits office to be audited. However, the division's grants manager indicated that she could not determine whether Reclamation had provided the requested information because that cooperative agreement was entered into before she and the grant administrator who currently handles cooperative agreements for the Mammoth Bar OHV area began working at the division, and because she could not locate the project file. According to the grants manager, part of the reason that the division has been unable to obtain expenditure information for these cooperative agreements is that Reclamation passes the funds to the Auburn SRA and does not maintain adequate records of the expenditure of the funds.

Despite being unable to obtain documentation showing how advanced funds had been spent and despite its knowledge that this issue is recurring, the division stated that in April 2005 it advanced an additional \$120,000 to Reclamation under an existing cooperative agreement for the Mammoth Bar OHV area. In this instance the deputy director stated that the division first received a full accounting of the funds previously advanced under the cooperative agreement before advancing the \$120,000 to Reclamation. Further, she noted that the division requested a full accounting of how all outstanding grant funds were used and is attempting to retrieve archived records to validate how Reclamation spent previous grants.

The division's decision to use a federal agency to pass funds to another unit within the department is questionable because its reason for using this method is to avoid having a state agency apply directly for the funding. According to the grants manager, the statute authorizing the OHV program permits only local and federal agencies to apply for and receive OHV trust fund money. The grants manager said she was told by the former grants manager that state agencies could not apply directly for grant funds but could solicit a federal agency to act as the "lead agency" on its behalf. Our legal counsel has advised us that it

is a well-accepted principle of law that an agency cannot do something indirectly that it cannot do directly. Thus, the division's actions seem aimed at circumventing a statutory provision.

The deputy director has determined that providing a cooperative agreement to Reclamation is not the most appropriate way to fund the Mammoth Bar OHV area. Instead, she believes that the state parks staff at the Auburn SRA should directly charge the OHV trust fund for their activities. For fiscal year 2004–05 the department set up an account for \$240,000 to provide funding directly to the Auburn SRA to operate the Mammoth Bar OHV area.

THE DIVISION DOES NOT ENSURE THAT ALL GRANTS AND COOPERATIVE AGREEMENTS RECEIVE PERFORMANCE REVIEWS AND FISCAL AUDITS

The Public Resources Code requires the division to “conduct, or cause to be conducted, an annual audit of grants and cooperative agreements, and the performance of any recipient in expending a grant or cooperative agreement.” However, the

division did not always conduct performance reviews or require the department's audit unit to perform fiscal audits. Additionally, the division does not send all files of completed projects to the department's audits office for review and does not always pursue costs that audits have determined to be ineligible and that the auditees thus owe the State. As a result, the division has not ensured that recipients paid back \$598,000 in ineligible costs identified through the audits.

Types of Division Performance Reviews

Law enforcement—Procedures for law enforcement site visits include a meeting to document how the recipient's enforcement program is working. The fieldwork includes inspecting vehicles; reviewing campgrounds, staging areas, and problem areas for signs, barriers, and educational kiosks; and contacting users.

Resources—There are no documented procedures for resources site visits. According to the grants manager, the division's ecologist and botanist use the recipient's wildlife habitat protection plan and the grant proposal to develop a review plan for each project individually.

General focus—The division maintains a list of areas to review in general-focus site visits but has no procedural guide or review procedures. Grant administrators conduct these site visits, which include a review of 16 areas, including project status of active grants and overall program management.

Source: Division files and interviews with its grants manager.

The Division Does Not Conduct Annual Performance Reviews of All Grants and Cooperative Agreements

Under its regulations effective until April 10, 2005, the division was to conduct annual performance reviews of all grants and cooperative agreements. Performance reviews are intended to determine whether recipients of funds from grants and cooperative agreements accomplish the approved projects. In practice, however, the division did not follow its regulations. According to the grants manager, the division aimed to review each recipient each year through at least one of three

Division records show that staff conducted performance reviews for only 31 out of 113 grants and cooperative agreements awarded in the fiscal year 2003–04 grant cycle.

types of performance reviews—law enforcement, resources, or general focus—as defined in the text box. However, the division’s practice of using one of three types of performance reviews for each recipient does not take into account the multipurpose nature of some grants and cooperative agreements. For example, many of the grants and cooperative agreements we reviewed contained funds for multiple purposes, including law enforcement, conservation or restoration, and facilities maintenance. Further, division records show that staff conducted performance reviews for only 31 out of 113 grants and cooperative agreements awarded in the fiscal year 2003–04 grant cycle. The grants manager explained that the low number of performance reviews was due to limited staff resources.

In April 2005 the division implemented emergency regulations. The emergency regulations do not mandate that division staff conduct annual performance reviews of all recipients of grants and cooperative agreements. Instead, the division believes that it meets the law’s requirement through the audits that the department’s audits office performs of completed projects. However, some grants and cooperative agreements last more than one year, and the audits office reviews only a sample of completed grants and cooperative agreements (as we discuss in the next subsection). Although not required under its emergency regulations, the division’s grants manager states that the division plans to use its grant administrators to conduct field reviews now called site visits of some grant and cooperative agreement recipients because the deputy director and members of the Off-Highway Motor Vehicle Recreation Commission (commission) request that they be conducted.

Not All Grants and Cooperative Agreements Receive Fiscal Audits

State statute requires the division to conduct annual audits of grants and cooperative agreements. These fiscal audits are intended to determine whether the recipients of grants and agreements use the funds for allowable OHV program purposes. However, rather than auditing all completed projects that the division sends to it, the audits office selects a sample of completed projects to audit, based on the size and past performance of the auditees. In fiscal year 2003–04, for example, the audits office reported completing audits of 28 projects. According to the staff management auditor in charge of these audits, the audits office tries to audit as many projects as possible because it has found that auditees—especially federal recipients—generally are not able to support all claimed expenditures. However, the staff

The audits office temporarily stopped performing audits of the division's grants and cooperative agreements because they were given a lower priority than other work.

management auditor stated that in April 2004 the audits office temporarily stopped performing audits of the division's grants and cooperative agreements because they were given lower priority than other work. The audits office had completed only seven audits in fiscal year 2004–05 as of June 1, 2005, 11 months into the fiscal year. According to the staff management auditor, as of June 2005 the audits office had 259 grants and cooperative agreements that had not yet received annual audits.

Other problems exist that may prevent the audits office from auditing all recipients. For example, the division has not sent approximately 300 completed BLM cooperative agreements to the audits office because it is working with the BLM to resolve payment of unspent balances. In addition, the division may hold completed Forest Service grant files so it can reallocate unspent funds. Further, the staff management auditor stated that the audits office typically does not audit OHV grants and cooperative agreements with project completion dates more than three years old; thus, projects can become too old to audit if they are held at the division too long. However, because the division's regulations for the grants program require a recipient to retain all fiscal information related to the grant or cooperative agreement until it is audited or notified that an audit will be waived, the age of the grant or cooperative agreement does not appear to be a valid reason not to perform an audit.

The Division Does Not Always Pursue Collection of Ineligible Costs Found During Audits

The division does not always pursue ineligible costs identified through audits to ensure that recipients pay back the funds owed and the funds become available for other projects. We reviewed 12 audits, 11 of which had ineligible costs greater than \$25,000, from the audits office's list of audit reports. All 12 audits were completed between one and six years before our review, which should have allowed the division sufficient time to decide to pursue or waive the ineligible costs. In total, the 12 audits reported that recipients owed almost \$2.2 million to the division. Of this amount we found that the division had not collected about \$598,000 in ineligible costs related to three audits. In the case of one audit with ineligible costs totaling \$160,000, the division had not yet determined whether to require the recipient to repay the ineligible amount. In another instance the division indicated that ineligible costs of \$125,000 were not collectible, although it could not provide

The 12 audits we reviewed reported that recipients owed almost \$2.2 million; however, we found that the division had not collected about \$598,000 in ineligible costs related to three of these audits.

documentation to demonstrate why. In the remaining case, totaling \$313,000, the audit found a lack of supporting documentation, and the division has not yet resolved the issue.

An additional weakness in the division's process for collecting ineligible costs identified by audits is its weak enforcement mechanism. The division sends a letter to each auditee requesting payment, followed by a second letter if necessary, but as with the Mammoth Bar cooperative agreements, the division does not always ensure that the auditee responds to its requests. Although the division's regulations state that it may suspend payments to grantees that have not repaid ineligible costs, the grants manager could not recall a specific instance in which the division applied this option since she assumed her position in September 2004.

Finally, the division's database query of audit findings and the audits office's list of completed audits with findings did not agree. Although we did not attempt to completely reconcile the two lists, we did observe that inaccuracies existed in both. For example, according to the staff management auditor, the audits office's list does not track amounts owed to the division for older audits. We also observed that the audits office's list did not indicate the resolution of all audits. Conversely, the division's database did not include 38 audits with more than \$1.7 million in findings—some resolved, some unresolved—that were included on the audits office's list.

THE DIVISION VIOLATED STATE BUDGET CONTROLS AND GRANTS PROGRAM REGULATIONS WHEN IT REALLOCATED UNSPENT GRANT FUNDS TO OTHER RECIPIENTS

Through its efforts to retain unused grant awards and make the funds available for other purposes, the division violated state budget controls and regulations that pertain to its grants program. For the grants program, state budget controls require that the division encumber grant funds within three years of the date they are appropriated by the Legislature; unencumbered grant funds must revert to the OHV trust fund and become available for reappropriation. After the three-year encumbrance period, the funds must be spent within two years. However, for fiscal years 2001–02 and 2003–04, the division circumvented state budget controls by not reverting unspent funds to the OHV trust fund but simply reallocating unspent cooperative agreement funds totaling \$2.2 million among Forest Service districts.

Of that amount \$479,000 would not have been available to spend if the division had reverted the unspent funds from the cooperative agreements.

The division reallocated unspent funds among Forest Service districts even though the period of availability had expired by applying the invoices it received from the new projects to the unexpended portion of the old projects.

According to a division grant administrator, in fiscal years 2001–02 and 2003–04 division staff asked the Forest Service to report the amount of funds remaining on active cooperative agreements that would not be necessary to complete the projects. Through this process the division identified almost \$1.9 million in unspent funds in fiscal year 2001–02 and \$351,000 in fiscal year 2003–04, for a total of approximately \$2.2 million. In both fiscal years, the commission reallocated those funds for new projects in the same or different Forest Service districts.

The division reallocated the funds for other projects even though the period of availability had expired by applying the invoices it received from the new projects to the unexpended portion of the old projects. To facilitate the transfer of funds from one Forest Service district to another, the division sent a letter to the Forest Service district that was originally awarded the funds, requesting that it sign an amended project agreement indicating that the unspent funds would be used by another Forest Service district or for another activity within that same Forest Service district. However, the amended project agreement did not detail the activities to be performed or their costs; consequently, there was no signed agreement defining how the funds were to be spent. As the Forest Service district receiving the transferred funds incurred project costs, it submitted payment requests to the division for reimbursement under the name, project title, and agreement number of the Forest Service district that was originally awarded the funds, instead of under its own name. Thus, both the department’s accounting records and the claim schedule that the department submitted to the State Controller’s Office to pay the Forest Service showed the name of the original Forest Service district.

The department’s accounting office said the reason it did not require the Forest Service districts receiving transferred funds to sign new project agreements was that it did not consider a fund transfer between Forest Service districts to be a vendor change because the payments are issued to the Forest Service rather than a specific district. However, often the new projects were for activities not included in the original project agreements and the funds were being spent at different locations; therefore, the new projects had little or no relevance to the original agreements. Without a signed project agreement, the division does not have an enforceable tool to control how the funds are used.

Further, this practice was contrary to the regulations of the grants program, which required that the division and the grantee enter into a project agreement that sets forth the terms and conditions of the grant award. Another requirement of the grants program regulations is that grant funds be awarded on a competitive basis. Thus, to adhere to the regulations, the division should have required the Forest Service districts to return the unspent grant funds and made the portion that was still eligible to be encumbered—all but \$479,000 of the \$2.2 million—available for all potential grantees to apply for on a competitive basis. If the division had disencumbered the \$479,000, these funds would have reverted back to the OHV trust fund and been available for the Legislature to reappropriate in subsequent fiscal years.

THE COMMISSION AND THE DIVISION SOMETIMES USE THE OHV GRANTS PROGRAM TO FUND QUESTIONABLE ACTIVITIES

The commission sometimes approves grants for activities that are questionable. During the period we reviewed, the commission approved funding for almost \$68,000 in questionable activities that we could quantify.

For example, although the division’s regulations specify that grants and cooperative agreements are to be awarded on a competitive basis, the commission allocated funds to the Forest Service and the BLM that would give them an advantage in obtaining cooperative agreements, such as a grant-writing workshop and salaries for individuals whose job descriptions include assisting forest districts or field offices to apply for grants. Additionally, some deliverables were too unclear to allow division staff to ensure that the cooperative agreements would fund activities within the intent of the grants program. Among the deliverables were funds to “provide specialists as needed on one time problems” and a portion of the BLM state ecologist’s job description that includes “assisting, as needed, all 501(c)(3) nonprofit organizations and universities with science grants for inventorying, monitoring and management studies on BLM lands.” Within these cooperative agreements, we were able to quantify \$47,500 related to questionable activities.

Legal and Regulatory Restrictions on Grant and Cooperative Agreement Funding

Grants and cooperative agreements may be awarded for the planning, acquisition, development, maintenance, administration, operation, enforcement, restoration, and conservation of trails, trailheads, areas, and other facilities associated with the use of off-highway motor vehicles, and programs involving off-highway motor vehicle safety or education.

Source: Public Resources Code, Section 5090.50(c).

OHV grants and cooperative agreements shall be awarded on a competitive basis.

Source: California Code of Regulations, Title 14, Section 4970.19(a).

In addition, the commission allocated part of a \$120,000 cooperative agreement to Stanislaus National Forest for the development of nonmotorized trails in an area within the forest known as the Interface, a popular area for both motorized and nonmotorized recreation. The purpose of the project was to help implement a plan to reduce conflicts among motorized and nonmotorized recreationists and homeowners in that area. Although the commission chair told us that he did not recall whether this grant included nonmotorized trail construction, he said he believes that the legislative intent of the OHV program is to maintain and sustain OHV opportunity. He stated that this grant would sustain as well as expand OHV opportunity.

After consulting with legal counsel in the department, the deputy director stated she believes that using OHV trust fund money for nonmotorized recreation activities is not expressly authorized by the Off-Highway Motor Vehicle Recreation Act but may be sufficiently implied from the express authority to provide sustained, safe OHV recreation. Further, she stated that nonmotorized trails developed for the purpose of resolving conflicts among multiple recreational users, such as those in the Interface, appear to be an appropriate exercise of the commission's discretion to allocate money in the OHV trust fund in a manner that will provide sustainable long-term OHV recreation. She added that such facilities appear to be associated with OHV use, because without the conflicts and dangers arising from motorized vehicle uses, the segregation of nonmotorized use would not have been necessary.

We also found that two cooperative agreements were used to pay for a Forest Service employee to work in the division's offices, an activity that is inconsistent with the regulations of the grants program.

We also found that two cooperative agreements were used to pay for a Forest Service employee to work in the division's offices, an activity that is inconsistent with the regulations of the grants program. The commission allocated funds for the position of a statewide assistant OHV coordinator for the Forest Service through a cooperative agreement that specifically identifies the individual who is to fill that position. The named individual has worked on site at the division's headquarters, reporting directly to the division's deputy director, since September 2004, although program regulations plainly state, "The grantee and its employees, in the performance of an OHV project, shall act in an independent capacity and not as officers or employees of the department." Monthly expense reports submitted by the Forest Service to the division for two cooperative agreements show that from October through December 2004 the division reimbursed

the Forest Service for more than \$20,000 in salary, benefits, and travel. However, we did not find that the Forest Service charged the employee's costs to the cooperative agreement after December 2004. According to the deputy director, the division and the Forest Service signed an interagency personnel agreement for the employee's costs, which after the Department of General Services (General Services) approves it, the division will use to reimburse the Forest Service. However, the division and the Forest Service signed the agreement in November 2004 and as of July 19, 2005, General Services had not approved it.

THE DIVISION'S DATABASE DOES NOT MEET ITS NEEDS FOR THE GRANTS AND COOPERATIVE AGREEMENTS PROGRAM

The division's grants database is the primary tool it uses to manage grants and cooperative agreements. However, the database does not meet the division's needs and contains numerous errors and inaccuracies that limit its value as an effective management tool.

The division's grants database was programmed to capture data for four of the eight project types the OHV grants program funds: conservation, enforcement, restoration, and facilities maintenance projects. The remaining four project types, including acquisition, planning, and safety projects, are classified as other projects. According to the division, the database is programmed to track the four grant types because it believed those were the most important ones. However, programming the database to track the other four project types would provide the division with information it could use to identify program needs and better understand how funds are spent. The division's April 2005 emergency regulations expanded the number of project types from eight to 11, which further highlights the need for the database to be modified to capture additional project information.

Not only is the information in the database limited to tracking data for four project types, but also it contains numerous data entry errors and omissions for the four fiscal years we reviewed. As a result of these errors, the data is of questionable use to the division for analyzing and planning its operations.

RECOMMENDATIONS

To ensure that advanced funds are adequately accounted for and spent on allowable activities, the division should develop processes for tracking advanced funds to recipients of grants and cooperative agreements, determining the status of those funds, and promptly recovering any unspent amount. Further, the division should promptly follow up with the BLM, Los Angeles County, and Reclamation on the outstanding advances we identified.

To provide accountability for the OHV program funds awarded through the grants program, the division should ensure that all grants and cooperative agreements receive annual fiscal audits and performance reviews. Further, it should ensure that audit findings are promptly resolved and ineligible costs collected.

The division and the commission should ensure that they do not reallocate funds among Forest Service districts without regard for the period of availability for grant funds and state contracting rules. Instead, if Forest Service districts have unspent funds on their cooperative agreements, the division should require that they promptly return those funds.

To ensure that recipients of funds from the grants program spend the money only on projects that meet the intent of the OHV program, the commission should ensure that it allocates funds only for purposes that clearly meet the intent of the OHV program.

To make its grants database a more effective tool for managing the grants program, the division should expand the capabilities of the database to record more detailed information regarding the types of grants and cooperative agreements awarded and develop procedures to ensure that staff accurately enter information into the database.

We conducted this review under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted government auditing standards. We limited our review to those areas specified in the audit scope section of this report.

Respectfully submitted,

A handwritten signature in black ink that reads "Elaine M. Howle". The signature is written in a cursive, flowing style.

ELAINE M. HOWLE
State Auditor

Date: August 17, 2005

Staff: John Baier, CPA, Audit Principal
Norm Calloway, CPA
Paul E. Alberga
Ana Clark
David J. Edwards
Jessica Oliva

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Agency's comments provided as text only.

California Resources Agency
Mike Chrisman, Secretary
1416 Ninth Street, Suite 1311
Sacramento, CA 95814

July 28, 2005

Elaine M. Howle, State Auditor*
555 Capitol Mall, Suite 300
Sacramento, CA 95814

Dear Ms. Howle,

We are in receipt of the Bureau of State Audits (BSA) draft audit report on the Off-Highway Vehicle Recreation Program (OHV) #2004-126. The audit focuses on three OHV program components; Planning for the Off-Highway Vehicle Motor Vehicle Recreation Program (OHMVR), uses of the Off-Highway Vehicle Recreation Trust Fund, and OHMVR Division administration of grants and cooperative agreements. Although we agree with many of the conclusions and recommendations we don't agree with all. We have taken proactive steps to appropriately respond to those recommendations with which we agree.

The audit report is generally critical of the lack of strategic planning by the OHV Commission and OHMVR Division. Much of the criticism results from conflicting opinions between Commission and division but is also due to the lack of data needed to define long-term program direction. Data from the fuel tax study is needed for strategic planning purposes and will be received in December 2005. Strategic planning is dynamic in nature and as such, in order for these plans to be effective information must be incorporated as it is obtained. The audit report also identified the independent authority and actions of the OHV Commission that often place Division staff in less than optimum situations with both state policy and the Off-Highway community, on this point we agree.

One area where Department of Parks and Recreation (DPR) and auditors differ is the interpretation of the legislative intent set out in Section 5090.02 of the Public Resources Code, that refers to providing off-highway motor vehicle recreational areas, facilities, and opportunities and management of those areas in a broad sense. Although the auditors "acknowledge that DPR has broad discretion when interpreting the statute it is charged to carry out", they create conflict in their own statements questioning whether or not the Department's spending authority is consistent with the intent of the Off-Highway Motor Vehicle Recreation Act. DPR believes it is using Off-Highway Motor Vehicle Recreation Trust funds appropriately.

The audit report also questions the OHMVR Division's management of grants and cooperative agreements. We concur that this area can be improved and the division staff have implemented corrective changes to this program element.

* California State Auditor's comment appears on page 107.

Ms. Howle
July 28, 2005
Page 2

While the audit calls into question land acquisition strategy, the fact that property continues to be used for OHV recreation validates the department's practice. Strategies differ dependent upon needs and circumstances. Success ultimately is measured by outcome. The audit casts doubt on strategies currently in play, yet no outcomes have been realized. Conversely, history and past success suggest the opposite is true. It is an accepted and often used practice to acquire property through both easements and purchase. Amid the intense competition for open space to suggest that not using all accepted methods for public benefit is unreasonably restrictive.

In closing know that we are committed to correcting and improving activities in those areas where we agree in a timely manner.

Sincerely,

(Signed by: Mike Chrisman)

Mike Chrisman
Secretary for Resources

Attachments

CHAPTER 1

RECOMMENDATION #1:

To ensure that money from the OHV trust fund is allocated in a manner to ensure that the OHV program is adequately balanced between OHV recreation opportunity and environmental concerns, as the Legislature intended, the OHMVR Commission and the OHMVR Division should develop a shared vision that addresses the diverse interests in the OHV program. To implement this shared vision they should develop a Strategic Plan that identifies common goals for the grants and cooperative agreements program and the SVRAs, taken as a whole, and the strategies and action plans to meet those goals.

AGENCY RESPONSE #1:

The Department recognizes a shared vision between the Off-Highway Motor Vehicle Recreation (OHMVR) Division and the OHMVR Commission is optimal. However, the implementation of a shared vision implies that a willingness exist between the parties. As noted in the February 2005 Commission meeting and the actions of the Division, which led to that meeting, the OHMVR Division not only has the willingness and desire, but the responsibility to administer the State OHV Program (where the authority rests with the division and not the commission) to ensure adequate program balance and fiduciary responsibility.

To the extent possible the OHMVR Division is continuing to balance the concerns of all communities sharing a vested interest in the program as well as to collaborate with the OHMVR Commission for the continued improvement of the program. Further, the OHMVR Division respects the strategic plan goal and its relationship to the legislative intent of the program.

RECOMMENDATION #2:

To provide adequate guidance for implementing the SVRA portion of the OHV program and the expenditures of the OHV trust fund, the division should take the following steps to complete its strategic planning process:

- *Perform a thorough assessment of external factors that affect the OHV program. These factors may include available facilities, statutory changes, and environmental requirements.*
- *Perform a comprehensive evaluation of the internal factors that may prevent it from implementing its strategic plan. These factors would include its organization, the adequacy of its staffing, and the improvements in its operations that we identified.*
- *Collect the data necessary to report on the appropriate level of funding needed to sustain conservation and enforcement needs, areas supported by the grants program, SVRAs, capital outlay, and division support, as required by law.*

AGENCY RESPONSE #2:

The Department agrees that the completion of the strategic plan continues to be a high priority. The OHMVR Division has in fact developed a strategic plan that it will continue to refine and expand. Strategic plans are dynamic in nature and never constant. This plan cannot be completed until the data from the new fuel tax study becomes available and is adequately analyzed and incorporated. Ultimately, the strategic plan will include a much-needed assessment of internal and external factors, environmental conditions and constraints, and the appropriate levels of goals, objectives, and strategies needed to guide its acquisition and development programs, its grants and cooperative agreement programs, and its various action plans. Strategic planning is an ongoing process and the audit should reflect this fact and afford State Parks appropriate recognition.

RECOMMENDATION #3:

To make efficient use of division staff time for developing recommendations, and to provide applicants for the grants program with information on how best to direct their efforts when applying for these funds, the commission should develop a strategy for using the grants and cooperative agreements program to promote an OHV program that is balanced between recreation and environmental concerns. The OHMVR Commission should communicate its strategy and its priorities to potential grant applicants and should follow these priorities when awarding funds.

AGENCY RESPONSE #3:

The Department agrees with the finding that the lack of efficiency that currently exists within the grants and cooperative agreements program results from the lack of clear priorities communicated to applicants by the OHMVR Commission. As noted in the January and February 2005 OHMVR Commission meetings, and the actions of the OHMVR Division that led up to those meetings, the Division attempted to collaborate with the OHMVR Commission on a vision, strategy and process for an objective, transparent, efficient, and effective process for applicants to follow that would remove ambiguities existing in the program and replace them with clear direction and priorities for funding. Unfortunately, the OHMVR Commission ultimately voted the process down in favor of, as some members of the Commission characterized it, their current “subjective” practices.¹ Nevertheless, the OHMVR Division has moved forward with providing applicants with as much clarity as possible by seeking emergency regulations for the grants program, creating a new competitive process for grants, a new evaluation scoring and ranking system, evaluation criteria, and criteria for OHMVR Division funding determinations and by persuading the OHMVR Commission, to vote on dollar amounts for broad funding categories.

RECOMMENDATION #4:

To provide accountability for the awards of OHV trust fund money for the grants program, the Legislature should consider amending the Public Resources Code to require the OHMVR Commission to annually report the grants and cooperative agreements it awards by recipient and project category, and how the awards work to achieve the shared vision that it and the division develop.

¹ Minutes from Commission meeting held on February 4, 2005 in Sacramento, California.

AGENCY RESPONSE #4:

The Department agrees with the BSA auditors' recommendation on the need to create increased accountability and efficient use of OHV Trust funds. However, the BSA approach may not be sufficient to accomplish those ends. In that light, the Department will continue to investigate options.

RECOMMENDATION #5:

To ensure that it obtains information critical to the performance and planning for the OHV program, the commission should prepare and submit the required biennial program reports on the status and performance of the OHV program when they are due.

AGENCY RESPONSE #5:

The Department concurs with the BSA auditors' recommendation to require the OHMVR Commission to prepare and submit the required biennial program reports on the status and performance of the OHV program when they are due. The OHMVR Division will work with the OHMVR Commission to ensure the reports are completed in a timely manner.

RECOMMENDATION #6:

The OHMVR Division and OHMVR Commission should evaluate the current spending restrictions in the law to determine whether they allow for the allocation of funds necessary to implement a strategy to provide an OHV program that is properly balanced between the need for recreation and protection of the environment. If not, the division should seek changes in the law to include minimum spending guidelines that ensure that elements of the OHV program are addressed, but that allow the commission and the division the flexibility to implement a balanced program as the law intended.

AGENCY RESPONSE #6:

The Department agrees with the BSA auditor's recommendations. To implement the recommendations there are many issues that must be addressed. Some of the changes to be explored could include:

- Remove the sunset to the OHV program thus providing permanency to a more than thirty-year-old program and recreation activity.
- Establish clarity of the roles and responsibilities of the OHMVR Commission. The current ambiguity in the statute precludes the OHMVR Division from implementing a long-range plan and administering the program with clarity.
- Examine funding mechanisms that could provide allocations to the program categories of Conservation, Enforcement, Restoration and other. Any future allocations should retain flexibility to address needs as trends change.
- Include the Division, California Highway Patrol and California Department of Transportation in a collaborative effort with local and federal agencies to determine appropriate use of non-highway licensed vehicles on roads within the state by clearly defining the deference between a "highway", a "road", and a "trail" within CVC 38001.

RECOMMENDATION #7:

The legislature should consider amending the Public Resources Code to clarify whether the use of money from the OHV trust fund to restore land damaged by OHV usage requires that those lands be permanently closed to OHV recreation.

AGENCY RESPONSE #7:

The Department agrees with the BSA auditors' characterization of the issue. In order to implement this particular recommendation, the Department will consider the following:

- Seeking clarification of the definition of restoration to ensure restoration activities occur on lands that have been damaged by illegal OHV activity, or for sustained long-term OHV recreation and have sustained damage to the extent they cannot be repaired and remain open, or that will not meet the provisions set forth in PRC § 5090.35.
- Require a direct nexus between restoration and legal or illegal OHV activity, or the inability to meet soil or wildlife standards before funds can be used to restore lands. This will ensure that the OHMVR Division is accountable for OHV trust fund monies being spent or awarded are for activities associated with OHV use and not the failure of timber companies or federal agencies to properly decommission logging roads and/or skid trails.

CHAPTER 2

RECOMMENDATION #1:

The OHMVR Division should develop and implement a process of evaluating land acquisition projects to ensure that its investments of OHV funds provide strategic value in accomplishing the OHMVR Division's mission and that the level of OHV recreation that results from its land acquisitions provides the best use of the OHV trust fund. This process should include appropriate analysis of the costs and benefits of a proposed land acquisition, including an assessment of the need for additional land for OHV recreation in the area.

AGENCY RESPONSE #1:

The Department recognizes the need for cost benefit analysis for acquisitions as well as a need for an acquisition plan. The OHMVR Division illustrated this need in its 2002 document "Taking the High Road: The Future of California's Off-Highway Vehicle Recreation Program." As indicated on page 91 the OHMVR Division, in its new approach to land acquisition strategic planning, would collaborate with a variety of communities and organizations to acquire land. Further, under the current administration, the OHMVR Division is implementing the intent of the Legislature in § 5090.32 (n) by developing a strategic plan that addresses acquisitions (Goal 1, Strategy 1.4) as well as other major components of the OHV program. This should include how land acquisition benefits the OHV program.

RECOMMENDATION #2:

To ensure that money from the OHV trust fund is used appropriately, the Legislature should amend the law to make clear the allowable uses of the OHV trust fund. Specifically, the Legislature should clarify whether the department's broad interpretation that any road that is not defined as a highway, but is open for public use in a state park, qualifies for funding by the OHV trust fund or whether state law restricts the use of OHV trust fund money to those areas where non-street licensed vehicles can engage in traditional OHV activity.

AGENCY RESPONSE #2:

As noted by the auditors, the department "has broad discretion when interpreting the statutes it is charged to carry out." The Department believes it has interpreted the language in a manner that is reasonable and consistent with the language provided in the Act.

In addition, the Department believes the utilization of OHV trust funds for the partial support of State Park System units outside of the traditional State Vehicular Recreation Areas is appropriate when one considers the level of OHV trust funds eligible activities occurring in park units outside the OHMVR Division.

RECOMMENDATION #3:

The department should discontinue charging the director's office costs to the OHV trust fund, as the law requires. However, if the department believes that this statutory restriction is inappropriate, it should seek a statutory change to remove this requirement.

AGENCY RESPONSE #3:

While the Department believes it is reasonable for the Director of the Department of Parks and Recreation to charge a portion of time spent on OHMVR Division related activities to the OHV trust fund, we acknowledge to do so would require a change in the statute. This inadvertent system-generated error, as identified by the auditors, dates back to the implementation of CalSTARS, the Department's automated accounting system. In the immediate future, the Department will adjust its cost allocation process to ensure overhead costs for the Division will not include any costs incurred by, or attributable to, the Director's office per the auditor's recommendation.

RECOMMENDATION #4:

To improve its contracting practices and comply with state laws, regulations, and rules, the OHMVR Division should implement the following changes:

- a) *Ensure that it complies with the State's contracting rules, particularly those that prohibit contract splitting.*
- b) *Contract only for services that are an allowable use of the OHV trust fund and that provide a clear value to the OHV program.*
- c) *Analyze its operations to determine if using existing staff or hiring additional staff would be a less expensive alternative to contracting for staff-related work and ongoing needs. This analysis should consider utilizing two positions that the division has loaned to other department units, as these could help alleviate the need for contracting."*

AGENCY RESPONSE #4 (a & b):

The Department agrees with the auditor's comments regarding problems associated with Division compliance with the State's contracting rules. Under the current administration, the Division has made a concerted effort to reduce the number of outside contracts it enters into, as was acknowledged in the BSA audit report. The OHMVR Division has instituted a new procedure to address contracting compliance, has increased training, in coordination with the Department's contracts staff, and has initiated new signature requirements to assure review of all contracts including small dollar contracts.

In addition, the Department's Contract Services Unit (CSU) will conduct comprehensive training seminars for Division personnel who process bids and contracts, as well as managers and staff who work with outside contractors. This two-part approach of additional training for staff that work with bids and contracts, and the subsequent review of contracts at a high level, will ensure all contracts comply with state law.

AGENCY RESPONSE #4(c):

The Department will review its use of staff-related contracts to ensure such arrangements are only used when unique skills and/or expertise are required or the volume of work exceeds what is possible to accomplish with existing OHMVR Division staff. The two specific referenced positions have been returned to the OHMVR Division.

RECOMMENDATION #5:

The department should increase its oversight of the OHMVR Division's contracting practices, particularly of the small dollar contracts that the OHMVR Division and the SVRAs can approve, to ensure that they comply with state laws, regulations, and rules.

AGENCY RESPONSE #5:

The Department's Contracts Service Unit (CSU) reviews all departmental small dollar contracts to ensure compliance. CSU will institute a new procedure that includes tracking small dollar contract activities of each Division and District individually rather than globally as is currently practiced. This will allow CSU staff to easily identify contract splitting and follow-on contracts.

GENERAL COMMENTS:

While the audit calls into question land acquisition strategy, the fact that property continues to be used for OHV recreation validates the department's practice.

Strategies differ dependent upon needs and circumstances. Success ultimately is measured by outcome. The audit casts doubt on strategies currently in play, yet no outcomes have been realized. Conversely, history and past success suggest the opposite is true.

It is an accepted and often used practice to acquire property through both easements and purchase. Amid the intense competition for open space to suggest that not using all accepted methods for public benefit is unreasonably restrictive.

CHAPTER 3

RECOMMENDATION #1:

To ensure that advanced funds are adequately accounted for and spent on allowable activities, the division should develop processes for tracking advanced funds to recipients of grants and cooperative agreements, determining the status of these funds, and promptly recovering any unspent amount. Further, the division should promptly follow-up with the BLM, Reclamation, and other recipients on the outstanding advances that we identified.

AGENCY RESPONSE #1:

The Department agrees with the BSA Audits' recommendations associated with the advancement of funds to grants and cooperative agreements recipients. The new Deputy Director (and new Grants Program Manager) noted this as a priority before the audit began and are currently rectifying the poor tracking and past business practices.

Under this new leadership, the OHMVR Division is exploring their ability to eliminate advance payments within the grants and cooperative agreements program. Should other options not be available, the OHMVR Division will develop policies and guidelines for more stringent tracking and accountability in addition to phased performance accountability measures. The OHMVR Division, where possible, has already initiated actions and payment plans for recovering unspent balances owed to the OHV trust fund by various agencies. The OHMVR Division has already followed up with the BLM, Reclamation, and other grantees and has requested a full accounting of how funds that were advanced were expended and has undertaken an effort to retrieve records from the BLM, Reclamation, and other grantees that validate those expenditures. In addition, the OHMVR Division is currently developing a process using its modified grants database as a tool for tracking advanced funds to recipients of grants and cooperative agreements to determine the status of these funds and promptly recovering any unspent amount.

RECOMMENDATION #2:

To provide accountability for the OHV program funds awarded through the grants and cooperative agreements program, the division should ensure that all grants and cooperative agreements receive an annual fiscal audit and performance review. Further, it should ensure that audit findings are promptly resolved and ineligible costs collected.

AGENCY RESPONSE #2:

Prior to the adoption of emergency regulations in April 2005, the OHMVR Division conducted performance reviews of grant recipients as part of its controls over recipient's expenditures of OHV funds.

While the emergency regulations effective April 11, 2005 still require site visits, the mechanism for site visits and follow-up procedures is in the development phase and will be refined for the adoption of permanent regulations.

During the adoption of emergency regulations, the OHMVR Division made a one-year modification of the performance review (now termed site visits) requirement. Site visits are an extremely valuable tool. The OHMVR Division is committed to the performance of site visits and will formulate a comprehensive accountable program in the adoption of permanent regulations.

In addition, the OHMVR Division recognizes the weaknesses with the past grants regulations. The OHMVR Division is working to make sure grants are audited and audit findings are promptly resolved.

RECOMMENDATION #3:

The division and the commission should ensure that they do not reallocate funds among Forest Services districts without regard for the period of availability for grant funds and state contracting rules. Instead, if Forest Service districts have unspent funds on their cooperative agreements, the division should require that they promptly return those funds.

AGENCY RESPONSE #3:

The Department agrees with the BSA Audits' recommendations associated with reallocation of funds. The reallocation of funds, known as rescopes, was a mutually agreed upon practice by the previous Deputy Director and the OHMVR Commission and did not occur without approval from the OHMVR Commission. This administration ceased this practice during the 2004/2005 grant cycle. In addition, the OHMVR Division has implemented policies and procedures to promptly close completed project files.

RECOMMENDATION #4:

To ensure that grants program funds are expended only on projects that meet the intent of the OHV program, the commission should ensure that it allocates funds only for purposes that clearly meet the intent of the OHV program.

AGENCY RESPONSE #4:

The Department agrees with the BSA Audits' recommendations relating to grants and cooperative agreements fund expenditures. Under the OHMVR Division's emergency regulations effective April 11, 2005, the OHMVR Division is actively reviewing more than 200 requests for the 2005/2006 year and are evaluating, scoring, ranking and providing funding determinations to the OHMVR Commission for each completed single or multiple project application. The OHMVR Division is strictly following the competitive process detailed in these regulations to ensure grant program funds are expended only on projects that meet the criteria established and intent of the OHV program. Those grants and cooperative agreements, which do not meet the intent of the OHV program, will not move forward for OHMVR Commission consideration.

RECOMMENDATION #5:

To make its grants database a more effective tool for managing the grants program, the division should expand the capabilities of the database to record more detailed information regarding the types of grants and cooperative agreements awarded and also develop procedures to ensure that staff accurately enter information into the database.

AGENCY RESPONSE #5:

The Department agrees with this recommendation and is actively seeking to improve accuracy in all aspects of database management.

General Comments:

The Department disagrees with portions of the audit characterization of The Mammoth Bar Off-Highway Vehicle Recreation Area, which is on federally owned land under the jurisdiction of the Bureau of Reclamation (BOR). California State Parks operates the area, as part of Auburn State Recreation Area (SRA), under an operating agreement with BOR. The BOR retains the responsibility for funding operations under this agreement. As such, the BOR has requested and received grant funding from the Off-Highway Motor Vehicle Recreation OHMVR Division in an effort to augment federal appropriations to support the OHV recreation occurring at the site. As a federal agency, the BOR legally qualifies to receive funding for its OHV recreation activities and facilities under the OHMVR Division's grants and cooperative agreements program.

Due to the unique management of the operations in the area with the Federal to State operating agreement, the OHMVR Division in an effort to keep the recreation opportunity viable on-the-ground for the public, has funded the SRA through the OHMVR Division support budget for the last year.

The OHMVR Division acknowledges there has been poor tracking by all parties involved and realizes advancing funds, while there are funds, with outstanding funds still owed to the OHMVR Division, has created a perception of poor oversight. However, the current Deputy Director has committed to finding a resolution for the funding of this area without interrupting or impacting the services to the recreation communities while the agencies involved work through the issues.

COMMENT

California State Auditor's Comment on the Response From the Resources Agency and the Department of Parks and Recreation

To provide clarity and perspective, we are commenting on the response to our audit report from the Resources Agency and the Department of Parks and Recreation (department). The number below corresponds to the number we have placed in their response.

- While we recognize the department's broad discretion to interpret the statutes it is charged with carrying out, we believe that in this case the department's interpretation is so broad that it may be inconsistent with the goals of the statutes governing the Off-Highway Motor Vehicle Recreation Program. The legality of the department's interpretation can only be made by a court of a law. Our recommendation is that the Legislature should amend the law to clarify the allowable uses of the Off-Highway Vehicle Trust Fund.

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Agency's comments provided as text only.

Department of Justice
P.O. BOX 944255
1300 I Street
Sacramento, CA 94244-2550

July 27, 2005

John Baier*
Principal Auditor
California State Auditor
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, California 95814

**RE: Off-Highway Motor Vehicle Recreation Program - Commissioner Comments to
Draft Audit Report**

Dear Mr. Baier:

By way of this letter, the individual members of the California Off-Highway Motor Vehicle Recreation Commission provide their comments to the Draft Audit Report prepared by your office. These comments are provided by author in alphabetical order and represent the individual view points of each Commission member, and not the OHV Commission as a single entity.

Judith Anderson - Montrose, California

1. The audit report makes much of the need for a shared vision of a "balanced" OHV program. Within the report the word is used in many different contexts. This is the crux of many disagreements among commissioners. Who decides what is balanced? The balance point in fact shifts with the appointments of commissioners, and thus indirectly by the changing desires of the public expressed via their elected legislators and governor. The disagreement on the balance exists within the public, so it is difficult to see how this program could avoid reflecting the external context in which it operates. Surely we are not to ignore the wishes of the public. So, the question is, which public?

Developing this vision requires time and many face to face, telephone and email meetings; finding the language for a strategic plan in line with the vision is not efficiently done in a room with 50 people.

* California State Auditor's comments begin on page 145.

Perhaps the auditors could suggest a mechanism which would allow commissioners to communicate with each other serially on such a topic in order to reach consensus or achieve a majority of support without violating open meeting laws.

Nearly all planning processes I have been involved in have established priorities in an ideal situation, where all the possible funds needed are available. Almost none of them reflected the reality -- that funds would be limited, and thus the agency doing the planning, after adoption of the plan, exercises the freedom to choose from among its priorities those which it felt needed the most help or those which they preferred would be favored over others, regardless of the adopted plan.

There is no point in developing a vision if the commissioners are free to undermine it by:

- * failing to fund activities which are aligned with the vision
- * expressing widely divergent views not aligned with the vision
- * asserting free speech rights to speak against the vision and strategic plan if they don't like it.

2. It would not be responsible to require commissioners or the division to approve or recommend funding for a grant simply because it seemed to fit the criteria. That would be dismissive of the public hearing aspects of the decision, and be prejudicial, and ignore the responsibilities of the commissioners to take these comments into account.

3. The audit report seems dismissive of the interests and experience of the commission and the division. It is well to question judgement, and commissioners and staff should be able to defend their decisions. But, experience and personal perspectives are normally valued -- a decision by a doctor, lawyer, judge, CPA, planner or therapist is not seen as serving their own interests simply because they have experience. I think the varied experiences of the commission are a great asset.

4. In commenting on the failure to fund all the restoration grants which were applied for, the audit does not profile the reasons why the applications were denied. Were the applications complete? Was there public dissent expressed at the hearing? Was there a good track record by the applicant on spending, accounting, etc.

5. The one centralized and identified strategy that the commission adopted received no commendations-- to help the USFS get moving on its route designation process -- a multi-year project which will stop the USFS from having to face litigation and close areas to OHV use. I believe the centralized planning has been invaluable, and allows the commission to track their moving into compliance with Federal regulations.

John Baier
July 27, 2005
Page 3

Multi layer logic preceded decision, and some of the steps may have since been lost on some of the commissioners, or they may have missed the original logic. The public is clamoring for enforcement including litigating, and lack of enforcement is driving down acceptability of OHV use in many areas. The USFS is constrained in its enforcement by lack of adoption of its open/closed routes. To get the record of decision made on routes, the agency needs planning funds, and time. The commission is trying to help. To avoid duplication, the state coordinator was tasked with the job of tracking progress, providing assistance and guidance.

John Brissenden - Hope Valley, California

The draft audit report fails to recognize that the Off-Highway Motor Vehicle Recreation Commission is composed of volunteer commissioners, with limited time and no dedicated staff to assist them.

Additionally, the draft audit is premised on the claim that OHV users generate approximately \$50,000,000.00 in taxes. However, the formulas used to generate this figure are suspect, and the upcoming fuel tax study will be needed to determine the accurate tax income generated from OHV users.

Five days is insufficient time in which to provide written responses to the draft audit. As a result, I now request an additional two weeks in which to review and comment on the draft audit report.

Robert Chavez - Encino, California – Commission Vice-Chair

The audit should begin with the discussion of Legislative Intent which commences on page 21 and be clearly tied into the AB 2274 discussion commencing on page 39*. These issues are too important to separate and leave at the end of the audit. They should be highlighted at the beginning.

The initial sections appear to pick-on Division a bit more than may be justified. Our current Deputy Director seems to have inherited quiet a mess and has been doing a fair job cleaning it up. I am certain, however, that she and her staff will be commencing a Strategic Plan and Shared Vision very soon.

I presume the footnote #1 on page 9 is former director Dave Widell, but I could not find a reference.

* Text refers to page numbers in earlier draft version of the report.

The audit states several times that the Stakeholders approved and supported AB 2274. This is a bit misleading as the OHV members of the Stakeholders were told by Dave Widell that the OHV program would be abolished if AB 2274 was not adopted. I have percipient knowledge of this as Mr. Widell told me exactly the same thing. I was new to the commission and was also intimidated by the gravity of his statements. The OHV community clearly feels lied to by the former Director and the environmental community regarding AB 2274 and its consequences.

I would like to see a clear breakdown and summary, from the auditors, of how the \$54.6 million discussed on page 17 is allocated. I would like a clear depiction that illustrates the percentage of monies that are spent on environmental protection verses OHV opportunity. Let's see on one page where the money is being spent and what the comparative allocations are over the past few years. This is important when determining if the legislative intent of Program is being fostered or frustrated.

I would like to see the Auditors opinion regarding the FPPC decision to clear Commissioner Brissenden of his alleged conflicts of interest. The Auditors should be made aware that Commissioner Brissenden owns and operates a for-profit bed and breakfast. Moreover, that Brissenden has publicly stated that snowmobile activity has a direct and negative economic impact on his business. I would like to see if the Auditors agree with the determination made by the FPPC.

The audit, while it does give some mention to it on page 31, should more clearly illustrate how the increased use of funds for Conservation, Restoration, Wildlife Studies, etc..., and the resulting lack of funding for trail maintenance results in the accelerated degradation of trails. The trail degradation is then used as an issue by the environmentalist groups to threaten, or file, lawsuits to close OHV areas. Wanting to avoid litigation the BLM and Forests then close the areas to OHV use. My biggest concerns are these types of situations where the environmental groups use their money, power and largess to create negative situations, and then exploit these situations to their advantage. This creates tremendous hostility among the OHV community and makes it nearly impossible to come up with any type of shared vision.

The auditors should secure additional information from the Forrest Service regarding the "...thousands of miles of unauthorized trails that the Forest Service has catalogued thus far..." discussed on page 37. More due diligence is required to determine if this is yet another scheme by the environmental groups to simply close more OHV opportunity.

Michael Prizmich - Ione, California

For a number of years now I have served on the OHV Commission and I agree with the assertion in the draft report that the Division and Commission haven't effectively joined together to offer the community of interest nor the public at large a clear and united vision on management and philosophy of the program. I, on the other hand, disagree with somewhat soft conclusion that the Division is at fault in this matter. We have sometimes wildly divergent views on the commission, with the various user groups, and the governmental agencies and often the task of settling the varying view points rests with the Division. Often the conflicts aren't articulated well, or at all, or in the case of conflict arising out of the Federal Government decision, are made at times by some bureaucrat somewhere and the front people simply don't get a meaningful explanation whatsoever.

Additionally my sense in reading this report is that somehow the authors felt that some equitable numeric balance between the various interest must be achieved. I also don't agree with that view point. In my view point our overriding goal as Commissioners is to offer opportunities to off-road enthusiast venues to enjoy their recreational choice. We do so as the primary goal of the Commission and while achieving that, we make reasonable efforts to insure that environmental, safety, and maintenance concerns are addressed. For example, I represent the Law Enforcement community yet I have never proposed that Law Enforcement receive more resources than it would reasonably take to achieve the goal of providing a safe environment for off-road enthusiast. I see Law Enforcement role as supportive to the primary purpose which is providing opportunities for off-road use. I don't participate in any of the recreational outlets that utilize the services provided by the Division. I do in fact engage on a very regular basis in non-motorized recreation. I will say without qualification and without exception, I have the ability to enjoy non motorized recreation far more readily then I would if I were a motorized recreational enthusiast. In the area I usually recreate each and every week, I can enjoy anywhere from 30 to 50 different locations to enjoy my chosen recreational activities. Yet if I were a motorized enthusiast, I would only have 2 locations to chose from in that same area. This is in fact the reality for a motorized enthusiast. They pay for their venues for the most part and it should be the Commission's primary objective to secure adequate, appropriate, and appealing sites for their enjoyment. Secondary to this goal is law enforcement and the other interest should be to augment the primary goal. If there is a vision for the Commission and Division to have in my view that should be it.

Paul Spitler, Stanford, California – Commission Chair

I have reviewed the sections of the draft audit of the State of California Off-Highway Motor Vehicle Recreation Division (Division) and Commission (Commission). I have the following comments on the draft audit.

I. THE COMMISSION IS ALREADY MAKING PROGRESS TOWARDS PROVIDING ADDITIONAL DIRECTION TO GRANT APPLICANTS

The draft audit recommends that the Commission develop a strategy for the grants program to promote a balanced OHV program, and should communicate its strategy and priorities to potential grant applicants.

In January, 2005, for the first time ever, the Commission pre-determined funding levels for the grants program. Through this process, the Commission established its funding priorities for the upcoming grant cycle. The funding levels approved by the Commission are:

- \$3.0 million for law enforcement
- \$7.3 million for restoration
- \$1.4 million for conservation, which includes:
 - \$1.0 million for regional wildlife studies, and
 - \$0.4 million for resource management
- \$6.3 million for other, which includes:
 - \$2.0 million for route designation.

Thus, for the first time ever, the Commission provided to grant applicants and the general public its funding priorities in advance of the grant cycle. This allowed applicants to tailor their applications accordingly, knowing exactly how much funding is available for each activity.

The Commission policies, adopted in April, 2003, provide additional guidance to grantees about the priorities of the Commission grant-making program. When combined with the 2003 policies, the recently approved funding levels provide important direction to grantees about Commission priorities.

As the audit notes, adopting these funding levels was “very helpful” in communicating Commission priorities to potential grant applicants. (p. 30.)

Further, in February 2005, the Commission considered a revised grant approval process that would have ranked grants based on pre-determined scoring criteria. While the process was narrowly defeated, as Chair, I intend to bring up a similar process in advance of the next grant cycle, in order to provide additional guidance to grant applicants and the general public.

By approving funding levels for upcoming grant cycles, and providing additional direction to grant applicants about Commission priorities for the coming grant cycle, the Commission is providing important guidance to potential grant applicants.

II. CURRENT FUNDING ALLOCATIONS ARE A RESULT OF CONSENSUS AMONG PROGRAM STAKEHOLDERS, AND ARE SUPPORTED BY THE STATE LEGISLATURE

The audit recommends that the Division and Commission “evaluate the current spending restrictions in the law to determine whether they allow for the allocation of funds necessary to implement a strategy to provide an OHV program that is properly balanced between the need for recreation and protection of the environment.” (p. 48-49.) In fact, such an evaluation has already been made by program stakeholders, and the results are currently being implemented.

In 2000, the Division convened the Off-Highway Vehicle Stakeholders Roundtable (Stakeholders) to provide input into the state’s OHV program. From 2000-2002, the Stakeholders negotiated, and ultimately agreed upon, numerous changes to the state OHV program. Among those changes were the revised funding allocations highlighted in the draft audit, which include increased funding for conservation and law enforcement, and dedicated funding for restoration. (pp. 39-42.) These recommendations were ultimately incorporated into AB 2274, discussed below.

Among the organizations that evaluated, negotiated, and ultimately agreed to the spending allocations incorporated into AB 2274 were:

- Blue Ribbon Coalition
- Sierra Club
- California Off-Road Vehicle Association
- Planning and Conservation League
- San Diego Off-Road Vehicle Coalition
- National OHV Conservation Council
- California Wilderness Coalition
- International Mountain Biking Association
- American Motorcyclist Association
- California Nevada Snowmobile Association
- California Trail Users Coalition
- Desert Protective Council
- California Association of Four Wheel Drive Clubs
- Center for Sierra Nevada Conservation
- Independent Motorcycle Retail Industry Association
- Motorcycle Industry Council
- Snowlands Network
- United States Forest Service
- Bureau of Land Management

In addition, the funding allocations were agreed to by several local law enforcement agencies, as well as the current Chair of the Commission and Deputy Director of the Division.

The California State Assembly passed AB 2274 unanimously, 72-0. The California State Senate also unanimously passed AB 2274, 39-0. Senator Morrow, who requested the audit, voted in favor of AB 2274. In September 2002, the governor signed the legislation into law.

With the widespread support among program stakeholders and unanimous support from the legislature for the funding allocations in AB 2274, which are still in effect today, it is not clear why, after only three years, the Division, Commission, or legislature should revisit those allocations. This is particularly true while a new fuel tax study is being prepared that could dramatically change the income categories and spending requirements.

That an all-volunteer Commission could not provide formal documentation to identify required funding needs for conservation or other activities does not suggest that there is any less need for those activities. It simply means that that level of planning has not yet been completed.¹

III. CURRENT FUNDING ALLOCATIONS REFLECT PROPER PROGRAM BALANCE

According to the Governor's budget for 2005/2006, of the \$54.7 million in program income, \$28.7 million is dedicated to conservation and law enforcement, and 30% of this amount, or \$8.6 million, is dedicated to restoration. This means that 52% of program income in 2005/2006 is dedicated to conservation and law enforcement and 48% is available for opportunity enhancement. Only 16% of program income is dedicated to restoration.

Of the Division's proposed budget in 2005/2006, only \$28.7 million of \$66.0 million are dedicated to conservation and law enforcement. Thus, for 2005/2006 expenditures, only 43% of the program budget must be dedicated to conservation and law enforcement, and only 13% must be dedicated to restoration.

¹ The BLM recently estimated its restoration needs at \$3.4-\$4.7 million per year from 2006-2013. The Forest Service has not completed such an estimate, but its restoration needs are likely to be much greater based on the number of miles of routes to be restored, and the cost per mile of restoration of forest roads.

For historical context, from 1972 to 2005, only 24% of program income has been dedicated to conservation and law enforcement, and only 24% of program expenditures have been used on conservation and law enforcement. Restoration expenditures, over the entire life of the program, amount to only \$10.4 million. This accounts for only 1.5% of total program expenditures.

That the program currently exhibits a nearly even income split between activities that protect the environment and those that further OHV opportunities reflects the program's balance. The current balance also highlights the need to focus on proper implementation of AB 2274, rather than revisiting funding allocations that were widely agreed to in 2002.

IV. UNDERSPENDING CONSERVATION AND RESTORATION DOLLARS HIGHLIGHTS A LACK OF PLANNING AND IMPROPER IMPLEMENTATION OF AB 2274

The audit suggests that because some conservation and restoration funds are not being spent, current funding allocations should be revisited. Further, the audit states that "the OHV program has not been able to satisfy the new conservation account spending requirements." (p. 42.)

However, that conservation and restoration funds are not being spent merely suggests that the OHV program is not being properly implemented as the legislature intended. There are a number of strategies that the Division could implement to fulfill its obligations under AB 2274. These include:

- Requesting special appropriations for restoration or conservation projects.
- Increasing the budget of the grants program to make available additional funds for restoration, conservation, and enforcement projects.
- Acquiring non-motorized buffer lands, which sustain existing ORV opportunities, while conserving critical resources.
- Additional budget planning with the Commission on proper expenditure levels for restricted and unrestricted categories.

In 2003/2004 and 2004/2005, the legislature appropriated over \$50 million in capitol outlay funds, which included significant funding for the acquisition of non-motorized buffer lands at Jawbone, Bakersfield, Riverside, Prairie City, and Hollister Hills. As of June 2005, little, if any, of this money has been spent. Were these funds to be spent for their intended purposes, the OHV program would easily comply with the funding requirements of AB 2274. If the money is unspent, it will be reverted to the OHV program budget, and can be applied to other strategies, as described above, that will ensure that the Division is properly implementing AB 2274.

As discussed above, current funding allocations reflect a carefully crafted agreement, are almost perfectly balanced, and received unanimous approval by the legislature. With the program still in its infancy, the proper focus should be on undertaking the long-term planning necessary to properly implement AB 2274.

That the Division has not conducted the planning necessary to properly implement AB 2274 should not be provided as evidence that current funding allocations require revision. It simply means that, as the audit notes, the Division should undertake the long-term planning necessary to implement the program as the legislature intended.

V. ADDITIONAL BUDGET PLANNING BETWEEN THE DIVISION AND COMMISSION WOULD HELP IMPLEMENT AB 2274

As the audit notes, the Division has not undertaken comprehensive strategic planning with the Commission to determine how best to comply with AB 2274. In particular, the Division has not engaged in short- or long-term budget planning with the Commission. Such planning would greatly benefit efforts to properly implement AB 2274 as the legislature intended.

In particular, there has been little to no discussion of the proper breakdown of spending on restoration, conservation, and law enforcement between the Division and Commission. The Division has not worked with the Commission to develop a short- or long-term plan for how to meet program funding obligations under AB 2274. Developing such a plan is a critical component to properly implementing AB 2274.

VI. THE AUDIT IS INTERNALLY INCONSISTENT AND FAILS TO CONSIDER THE OHV PROGRAM AS A WHOLE

As described above and highlighted throughout the audit, the purpose of the OHV program is to balance sustainable OHV opportunity with environmental protection. The audit suggests that the Division and Commission develop a coordinated strategic plan that addresses how to best meet this goal.

However, the audit later parses out and analyzes the Commission grants program separately from Division activities. By separately analyzing these two elements of the OHV program, the audit fails to accurately describe the program as a whole and entirely misses how the two program elements fit together to fulfill the program intent.

For example, the audit highlights increased grant funding for certain activities, such as restoration, and decreased emphasis on other activities, including acquisition and development. However, the audit fails to note that these shifts in emphases have been accompanied by a corresponding increased focus by the Division on acquiring and developing new OHV recreation areas such as Riverside and Bakersfield.

In fact, the legislature has appropriated tens of millions of dollars for the acquisition and development of these facilities in recent years and these facilities are an important component of the overall program.

By failing to consider these program elements together, the audit creates the false impression that the “conservation” and “opportunity” program elements are somehow out of balance, simply because the Commission prioritizes spending on conservation-related activities while the Division prioritizes spending for opportunity. As described above, nothing could be further from the truth. In fact, the program income reflects an almost perfect split between conservation and non-conservation related activities.

VII. THE DRAFT AUDIT MISCHARACTERIZES RESTORATION

Further, the audit states that “the present practice of the commission is that restoration funds are only used on lands that *will be* permanently closed, which reduces the lands available for OHV recreation.” (p. 18, emphasis added). The audit further states that restoration projects “result in the permanent closure of OHV areas and trails.” (p. 32.)

In fact, the practice of the Commission is to use restoration funds on lands that are *already* closed. The restoration activity is merely restoring an area that is already off-limits to off-highway vehicles. There is no net loss of OHV opportunity from restoring closed areas back to a natural condition.

The audit later more correctly characterizes restoration spending, when it notes that “The present practice among the commission and the division is to require OHV recreation areas and trails to be permanently closed to OHV recreation *before* restoration funds can be used to repair damage from OHV recreation.” (p. 47, emphasis added.) Thus, as noted above, areas which receive restoration funds are already closed to OHV use, and thus restoration does not reduce OHV opportunity.

VIII. FUNDING NON-MOTORIZED TRAILS AS A PART OF A PLAN TO SUSTAIN OHV RECREATION OPPORTUNITIES FITS WITHIN THE PROGRAM PURPOSE

Under the “questionable activities” section, the audit highlights, but does not specifically dispute, a grant to the Stanislaus National Forest that includes funding for the construction of non-motorized trails.

The development of these trails is a part of a carefully crafted agreement to sustain OHV opportunities in a small portion of the Stanislaus National Forest by developing separate areas for motorized and non-motorized recreation. Based on the agreement, instead of closing the entire area to OHVs, the plan will allow continued OHV use. Thus, funding the implementation of the plan is entirely consistent with the program intent to sustain OHV opportunities.

Further, where statutes are silent or ambiguous as to the permissibility of a particular activity, courts will generally defer to an agency’s interpretation of the statute’s meaning, so long as that interpretation is not arbitrary or capricious or contrary to the plain meaning of the statute.

Thus, it is perfectly appropriate for the Commission to support activities that it believes fall within the purpose of the Off-Highway Motor Vehicle Recreation Act. As described above, the development of motorized trails in the Stanislaus National Forest furthers the program purpose to sustain OHV opportunities. It is not clear under what authority, if any, the audit has determined that these activities are “questionable,” when both the Division and Commission have determined that they are allowable.

IX. THE AUDIT PRESENTS UNSUPPORTED CONCLUSIONS AND UNWARRANTED INNUENDOS

The draft audit contains several contains several unsupported conclusions, as well as unwarranted innuendos. These are described below.

- The draft audit draws the wholly unwarranted conclusion that “the commission has reduced the amount of grants [sic] program funds available for local and federal agencies to preserve the condition of OHV recreation areas and thereby better manage and protect natural and cultural resources.” (p. 34). This conclusion apparently rests on the audit’s faulty assessment of the level of grants given for conservation. The assessment is flawed in that:
 - It is based on the unsupportable assumption shifting grant funding priorities from one category to another will somehow result is less management and protection. There is no analysis whatsoever to support such a conclusion, nor could there be because such a conclusion is unsupportable.

- It states, incorrectly, that trail maintenance is only funded out of the “conservation” category. In fact, it is more often funded from the “operations and maintenance” category. Thus, there is far more trail maintenance funding being allocated than the audit describes.
- It ignores, for no reason whatsoever, the funding for statewide coordinator grants. These grants contain important conservation activities.
- It ignores the millions of dollars spent on restoration, which is a subaccount of conservation, that supports important conservation activities.
- The funding priorities adopted by the Commission in January 2005 provides for each of the eight project categories listed in the grant program regulations. (see p. 26). Safety and education is covered under the law enforcement category. Equipment purchases are covered under the law enforcement or “other” category. Acquisition and development are covered under the “other” category.
- The Commission provides ample opportunity for public input and involvement in the grants program, and this input provides important information that helps the Commission set priorities within the framework required by the legislation and regulations that govern the grants program.

Harold Thomas - Sacramento, California

The Commission and Division sometimes use OHV grant program to fund questionable activities-

The Draft report identifies two areas the author thinks “questionable”. These appear to be Federal Grants were not awarded on a “competitive basis” and grants used for nonmotorized trails. Lesser complaints were “deliverables too unclear” and “Deputy director talked to legal counsel and thinks nonmotorized funding is not expressly provided for”.

1) The report cites no procedure or prohibition or regulation that prohibits spending grant funds to assist grantees with managing the grant application. On what theory does the auditor rest his view that grants for planning and administering the federal off highway grant applications is prohibited or questionable under PRC 5090.50 c. The words of the PRC allow for grants for administration of facilities and programs involving off highway uses. Is not applying for grants part of the administration of OHV uses on federal lands?

2) The issue with deliverables should be addressed to the Division as they draft contracts to implement the grant program. The Commission does not establish deliverables on individual grants

3) Non-motorized uses- Was the Deputy director asked if she provided the Commission with the legal opinion which supports her belief that OHV trust fund money for non-motorized recreation is a questionable use. I have no recollection of this subject being brought to the Commission in open or closed session. The funding of a plan to reduce OHV conflicts that involves some expenditure of OHV funds on non-motorized uses is not questionable merely because the auditor doesn't like it. The auditor is required by their own professional standards to cite some authority before characterizing the expenditure as "questionable." I ask the auditor to identify in the report who thinks the interface funding was questionable and then support the allegation with authority. An unsupported allegation without authority is not necessarily a valid policy "question" as it may merely be unsupported criticism.

To criticize the commission for an act (funding the interface) which was perhaps questioned solely in the mind of the Deputy Director and not raised by the Division in open hearings is unreasonable. The "question" of the use of on OHV funds for nonmotorized uses is and was considered as a policy and legal question within the policy authority of the Commission. The auditor should be required to rewrite this section or provide legal authority for their conclusion. The report should properly indicate that there is a policy debate on the subject which I might add is the reason for the Commission's existence.

Edward Waldheim - Glendale, California

I want to thank you for giving me a chance to review this 54 page document, but must express my frustration that I received this document on Friday at 2 p.m. and you expect this back by Tuesday 5 p.m. Take away Saturday and Sunday, which normal families use for family time, that leaves me only 1 ½ day to get this in the mail to you. For the life of me, I do not understand how an audit can take almost a year, consume the entire staff of the OHV Division, especially the Deputy Director, and get to a point where nothing else in the Division gets done, and I am expected to return comments in 1½ days.

Now having said that, I have gone through this document, and am more than disappointed in that after all this time, using expenditures of over \$250,000 dollars, and using an exorbitant amount of staff time, there is no smoking gun in this report. What this report really is, is a simple "Management Review Document." It talks about policies, visions, management practices, goals, and budgeting practices. To take a year and all that money for this is incredible! This document uses a lot of personal interpretation of what the auditor thinks should be a vision, or policy, etc. It completely forgets that those of us who have been at this for over 30 years know exactly what we are doing. No credit or acceptance for what we do and how we do it is given. It portrays the auditor's opinions, and they are opinions, that management should have been different. That is the beauty of management -- there is no right or wrong. Every person, entity, department has a different style, and to say that is wrong, goes against all management principles.

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There could be another explanation and that is that this document is not the entire document from the Auditor, if that is the case I have to apologize, but if this is it, my statement stands. If not, please explain why we are not provided the entire report. There has to be more than this for money and time spent on the audit.

This audit completely fails to address the main problem: We are not properly funding Operation & Maintenance. If the Auditor had come in the field with me, their report would be completely different. That is our main problem; everyone concentrates and thinks they are managing OHV from a desk in Sacramento. Unless they come out in the field and see what the real issues are, it is nothing but another report and will be placed on a shelf and business will continue as usual. In the meantime, those of us who work in the field are desperately trying to keep things together.

This report also is missing a very important element, and that is the inadequate process of getting grant money to the applying agencies. For example, 2004/2005 grants we approved in December of 2004, grants that the Governor put in his budget July 1, 2004, when the budget was signed. Yet today, July 24, 2005, BLM has yet to see the money. In other words, BLM and other agencies do not have the money and will have to stop their work. The audit did not even mention this key element.

What should happen? Governor puts in his budget, we now know 18 million is available for 2005/2006. This money is available July 1, 2005. But when do agencies get it? More than a year later. This is not acceptable. I have asked the Division to move things up so we can get caught up, but they are getting further and further behind. We used to vote on grants in September, and agencies would get their money one month later, in other words, had they done what I want, Governor signs budget July, we vote on grants September and folks should have their money in October. The way they have it now is totally wrong and hurting the OHV program. Auditors should really get into this.

I was totally against this audit, but some felt it needed to be done. But now I am really sure it was a waste of time.

I have numbered the sections on your document where I make my comments. This document should have had line numbers on the margin for quick reference.

I am very upset at the fact that this document does not use names of persons interviewed, It should have the name of each person interviewed. I personally take great offense to be called "The other commissioner." I have a name, and I believe that the auditor should have more respect for the Commissioners it names. After all, we are appointed by government elected officers.

Page 1

"Lake of Shared Vision." We all have vision. We have worked on it, but have we had follow up? No. The Division is the paid staff, the Commission has no staff. Could we have had more follow up? Of course.

Page 2

Item 1: See minutes of the Commission Retreat we had in the 1980's in Ridgecrest. The report only talks about one, but we have held many meetings since 1983 on what our goals and visions are. But management has had a poor record of follow up.

Page 3

Item 2: We need to separate the Support from Grants and Cooperative Agreement. Goals for each of these are completely different. Support is controlled by Division, Grants and Cooperative agreements are just that, Cooperative Agreement, in which we provide funding, but have absolutely no control or right to tell agencies how to run their business. We either buy into what they are doing or not.

Item 3: Under the law, the Commission can make comments to the Support Budget, but this has been done on very few occasions since 1983. It is a very sore issue for Division.

Item 4: We have adopted funding categories. As to environmental balance of OHV recreation. This is not the purpose of our program. Our purpose is OHV opportunities, and we have to make sure we protect resources. The emphasis has been from day one in 1971 when we, the user community, created this program. That fact has been missed by many and we are suffering because of it.

Item 5: Any report should note that Division Staff is responsible to get these documents out. It is a Division issue. Commission does not have staff.

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Item 6: The new Gas tax study that is two years late will solve these issues. The 1986 re-authorization had a new stipulation that states that for every one motorcycle registered, five are not. It was the negotiations by Sierra Club and Deputy Director that this occurred, and we got all caught by surprise at this event. Basically, it drained thousands of dollars into non-OHV related issues, much to the detriment of maintaining a good quality OHV program.

Item 7: In implementing the OHV program, you have to have two elements of this: Support, and Grants & Cooperative Agreement. The Division has total control of Support, but has no control or right to control Grants and Cooperative Agreements.

Page 4

Item 8: Lots of deadlines come and go. Division has done a poor job at this since 1983.

Item 9: Stakeholders serve at the pleasure of the Deputy Director. Period. It does not advise the Commission and has never been set up as such. Fact is that the Commission has no relationship with the Stakeholders, except myself and sometimes Mr. Spitler. Commissioners are invited, but they do not come. Nothing the Stakeholder do is binding to the Commission, and the Commission has never sought advice from the Stakeholders. Again, it is here at the pleasure of the Deputy Director, who calls the meetings and sets the agenda. Even Stakeholders have very little, if any, input to what will be discussed next. I have tried for years for Stakeholders to have an Action Log to keep track of all our issues, but that has fallen on deaf ears. (See enclosed log dated 5/26/05 that I made in frustration (attached to this letter as Exhibit A).)[♦]

Item 10: This has never been formally done or requested.

Item 11: Single vision is not possible; it has to have two elements as stated before. Commission is responsible for Policies, Grants and Cooperative Agreements, Major and Minor Capital Expenditures and review of Support Budget which never happens. If you want a single vision, our bill written in 1971 states it, "To enhance OHV opportunity."

Page 5

Item 12: This only applies to SVRA; we have no jurisdiction on any city, county or federal lands.

[♦] The exhibits to which Commissioner Waldheim refers to throughout his response are available for review at the Bureau of State Audits.

Page 6

Item 13: This is an incorrect statement that the Chair and Vice Chair guide the funding decisions. I, Ed Waldheim, have been reviewing grants since 1983. I, Ed Waldheim, review the grants, and based on the over all program of each agency, make the determination of what amount of funds we can afford to provide the agencies, all within the funding levels per category established by the Division. It is during Committee meetings or Commission meetings, that I, Ed Waldheim, present my first cut of grants and the Commission then either accepts them or makes changes after taking input from the public and taking Division's recommendations under consideration.

There is no way to have a shared strategy Vision for each grant. The applying agency has to have OHV opportunity. It has to have visitors and customer satisfaction and needs some help in funding. It is a very simple process. We either buy into their plan of what they are doing and help, or not. It is not rocket science. We have made way too much out of this entire Grants and Cooperative Agreement process, to the point of insanity for all who work on this. It has become a job creator rather than a streamlined operation.

Item 14: These Finance Guidelines I have never seen. However, I wonder how can the Finance Dept. provide management oversight of the OHMVR Division all of a sudden. They tell us how much money we can spend on the Governor's Budget. I never heard about them wanting to get into managing the program.

Item 15: Again, this is nothing but a lesson in management. Division has its style and if the Finance Department wants to influence Division, then perhaps they should have a management retreat.

Page 7

Item 16: This has to be very specific to SVRA's where we, the Commission and the public, have zero input.

Page 8

Item 17: Again deadlines come and go. Division has responsibility to do this.

Item 18: Again, Division only has responsibility to the Support Budget. It, however, has no right or obligation to manage Grants and Cooperative Agreements with agencies. We are nothing but a bank giving out money to the agencies. If we feel they are not doing the job by providing OHV opportunity, known as Customer Satisfaction, then we don't fund the agency on the next round of grants. Each agency has its own rules and regulations to follow. We have not been invited to the table to manage their areas of jurisdiction, nor do we want to. Too many environmental folks want to use the OHV funds as a leverage to force federal agencies to do things. This should be illegal.

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We are not Congress. That is why they are in Washington, DC. We have overstepped our demands on agencies receiving Grants and Cooperative Agreement funds to the point of absurdity. It has come to the point that we are just creating jobs for our Division and the applying agencies with very little benefit to the wheel that hits the ground.

Page 9

Item 19: Again, there are two parts to our program, very different in each its own way -- Support and Grants & Cooperative Agreement.

Page 10

Item 20: Here Mr. Spitler is taking liberties to state opinions that are not the full Commission's opinion. Though Mr. Spitler has a majority of the Commission's support, the minority does not share his emphasis of non-motorized opportunity. This is an **OHV Program**, not a Non-Motorized program. The Sierra Club was told in 1971 when the program was created with their help, that they should create a program like ours for non-motorized users. They said, "Thank you, but no thank you. We do not want that."

Fact is that the U.S. Forest Services instituted a fee for using the forest, and guess who the number one user group opposing the fee is? It is the Sierra Club and the environmental community. So that tells me they want it all, but do not want to pay.

Our program has been hijacked way too long, in that it is hurting the management of the OHV opportunity. We spend more money to close or deny opportunity than provide opportunity. We should change the name of our program from the OHV program to the "Non-OHV program."

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Item 22: OHV off course, that's a joke! We, the few OHV-minded Commissioners, are on course; it is the environmental community that has done everything in their power to hijack our OHV funds for non-OHV issues.

Item 21: Missing the entire point of the program. Our program is here to "Provide and enhance OHV opportunity while having concern for the environment." That means, don't denude the natural open space landscape like a housing tract will do. We currently only get \$4.2 million out of \$56 million for O & M. That is criminal! It is like having a car and only putting one quart of oil in it and one gallon of gas. How far do you think you are going to go? Or feeding you only one banana a day and one glass of water. How long do you think you will survive? That is where we are today. We are losing it – we have NO opportunity, NO management of OHV. Then it becomes tyranny, where riders do whatever they want out of frustration, which is what we said we did not want to happen in 1971 when we created the program in the first place. The program was created to provide OHV opportunity and reduce the illegal riding. Currently, if we could provide more opportunity we might have a chance in reducing illegal riding and reducing user conflicts.

Item 23: Entire paragraph is a Division issue.

Item 24: SVRA's have been studied to death. All our Conservation and Enforcement funding had been spent in the SVRA's in the early years. To say SVRA's are not doing their job, is appalling. If that is true and they use 70% of our fund for 20% of opportunity, we are being ripped off. That is only if report statement is true. I cannot verify this.

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Item 25: Current Data. I agree with the Auditor. The Auditor is stating we need this report. CORVA asked our Lobbyist Pete Conaty to introduce a bill to do a current OHV Economic Study. Division objected to this study at first, but now we are told by Ms. Greene that the Division can do this report. The last time we did a similar study was under the Wilson Administration, at which point, we had a \$3 billion dollar economic base in California. Now, it is over \$9 billion dollars and we need the report to prove it.

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Item 27: Same as above. Last report was done during the Wilson Administration.

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Item 28: We put in a bill for this. I hope the Division will get it done. It is way overdue, but as everything else, this audit has consumed the entire Division for a year and very little other work has been done on anything else.

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Item 29: Gas Tax Study was promised 2 years ago. It has hurt us tremendously with the inequities of the 70% of C & E funding going to Restoration. As stated before, formula is flawed. I personally felt the Gas Tax Study was coming out soon. I believed that, at the most, we would be stuck with this inequity for only one year. I never dreamed of having been stuck with it for three more years. It is killing our management of OHV opportunities.

Item 30: This document completely ignores Operations & Maintenance (O & M), which is the key to our OHV Program. Instead the OHV program is concentrating on sustaining Conservation and Enforcement needs. First you must maintain the trail and that, in itself, is conservation. Maintenance will prevent three key problems: erosion, widening of the trail, and illegal riding (where riders are looking for better non-whooped-out trails to ride). If you have a good system, everything falls into place. We have completely turned this concept upside down and are paying the price for it.

Page 15

Item 31: Soil and Wildlife was all done in SVRA's early years. In just the last 10 years, we started asking agencies to come up with a report. We are very close, if not already, to over-stepping our boundary of authority. Congress tells the Federal Government what to do. Yet, the Division forces the Federal Government agency to do things that are really not in their authority to dictate. They are crossing a fine line.

Item 32: Incredible that the Auditor is telling us what the problem is when a trail is not fixed. They are completely missing the point. You have to maintain a trail. That is Operation & Maintenance (O & M). If not, you will have soil, wildlife, vegetation problems. When will the folks get it? No O & M, and you have problems; you have been starving us to death, and the program will die if this is not corrected. I would have preferred the Auditor go to the field with me and let me show them what the real issues are.

Page 16

Item 33: I cannot argue that we need to sit down and work together. However, both sides have to want to work together and decide on the main problem that is: lack of OHV opportunity and maintenance.

Item 34: It is not the responsibility of the Division or Commission to implement a trail program. I agree that they are needed in an SVRA, as it is under the Division's authority. However, with Grants and Cooperative Agreement, it is the agencies' responsibility. We have to get off this band wagon of thinking we manage them. We don't. We can help them, but we do not manage them.

Page 17

Item 35: I cannot agree more on this. They should close the Sacramento office 2 days a week and send everyone in the field. The majority has no clue what is out there, but it is not their fault. The OHV Program, especially Grants and Cooperative Agreement, has been turned into a job justification program, rather than a help to getting the more opportunities – as I call it, “Getting the wheel on the ground.” I personally can administer this program part time and direct what amount of time to give folks in the field just by using my “Waldheim Budget” recap (attached as Exhibit B). To support each, I have a complete one page budget for every Forest and BLM office. No one else is doing that.

Item 36: Restoring to natural condition is nothings but a cover up for environmental folks to bleed our program of funds. We all know that if a trail cannot be repaired, we will close it, but it does not take \$7 million dollars a year to do that. This is why funding is completely upside down.

Item 37: There is no study. It was Mr. Spittler going to the BLM staff and asking them to compile a list of areas that they “could” restore (and the word “could” is important here). Mr. Spittler knows my feeling on this -- that it is way out of balance. What really hurts is that you are closing a trail while spending \$7 million dollars a year, with no need established. While this closure is for OHV only, anyone else other than OHV can still use the trail. So you tell me what the difference is? It still will be a trail, look like a trail, be used like a non-motorized trail and even cows will use the trail you just closed to OHV's. It is a trail. We have gained absolutely nothing except a total ban of OHV at the cost of \$7 million a year, paid for by the OHV communities tax dollars! This is insanity in the worse way!

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Item 38: Mr. Spittler came up with this new definition of "Restoration." We always thought of "Restoration" as a way to narrow a trail, or fix a trail. Thus, it would be put back into circulation once the erosion or whoops were restored to a usable, or maintained, condition. Mr. Spittler made it very clear HIS definition is to "Close the trail", and no one has been able to rebuff him on this, in person, legally or by legislation. "Restoration" clearly has to be defined better.

Item 39: Again, do not mix up Support with Grants & Cooperative Agreement. We do not need strategic planning for Grants & Cooperative Agreement. The "Waldheim Budget" will show you that Opportunity = Visitors = Dollars. If an area has no opportunity, and very low visitors, that area will not be funded with many dollars, if any. It is very simple. Just look at the "Waldheim Budget."

Page 19

Item 40: This is all related to SVRA and Division Headquarters. They have to come up with their own management practices. This is not the public or Commission's job or authority. Again, this report has emphasized "management style", which is completely subject to interpretation!

Item 41: Major Capital and Minor Outlays has been a sore subject for me for years. For Minor Outlays, we are presented at a Commission meeting with a list to approve, but there is no input from Commission or public. It is just a Wish List by Staff of what they want to do in the SVRA's. An example is this year it was pulled because it had so many line items, that we, the Commissioners, would not buy into it. I personally asked our OHV public for comment and no one even heard of a single line item issue. I asked Deputy Director Greene to set up meeting to see where are going with this, but word to this date. This has been a process problem for the Division since 1972. The Division acts like the SVRA's are their personal domain and feel threatened if anyone even questions them on any issue there, especially the Commission.

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Item 42: This has wrong information. The Support Budget and Grants and Cooperative Agreement are set by the Governor and the Department of Finance. The division does its own budget. Division also tells us how much money will be allocated to Grants and Cooperative Agreement. In the 1980's I had a personal gentleman's agreement with Division Chief Jerry Johnson that the Support Budget would not go over 60% of the fund. In other words, this would leave at least 40% of funds for Grants and Cooperative Agreement. By law we can spend up to 50% of the total fund on Grants and Cooperative Agreement. However since he has left, the Support Budget has crept up to 70% of the fund, leaving us only 30% or \$18 million dollars to provide assistance to agencies that provide 80 to 90% of the OHV opportunity in California. Something is very wrong with this picture.

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No one has been able to get Division to share why this is happening. Commission has no input on this. Stakeholders do not even cover this. Remember, they serve at the pleasure of the Deputy Director, and that is the agenda that is brought forward, not our agenda. Nor has it ever been solicited from those of us who are on Stakeholders.

Page 21

Item 43: So what? Why do I need a "Vision" for Grants and Cooperative Agreement? We provide money to agencies to help them do their job. We don't manage or control them. They have their own laws and regulations governing that. Our main goal is to have OHV opportunity for the folks that visit those areas. We will put dollars into areas that have the most visitors and the most needs for trail maintenance and visitor services.

Page 22

Item 44: Again, why does the Auditor feel we are not formally prepared to implement a strategy to allocate funds, etc.? A balanced program is mentioned. They seem to be hung up on "Balance." Balance in whose eyes? I want my trail maintained, I want restrooms cleaned, I want to have Visitor Services for maps, information, education and health and safety of visitors. What more do I need? This again, is a case that government is in Sacramento and has no clue what is going on in the field. We have to remember this is not a classroom. We are not in school teaching folks management. This is about OHV opportunity. Now if the Auditor does not agree with Division management that is an internal issue that the public and the Commission or Stakeholders have absolutely no stake in. This is a government employee issue that needs to be handled internally, not in the public view.

The Commission's main concern should be OHV opportunity while maintaining the integrity of the trails facilities, health and welfare of the public, and respecting environmental concerns such as plants, animals, and soil. A good trail system automatically does this. A bad trail system, not maintained, triggers all the other alarms.

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Item 45: Commission needs to know the geographic demand, etc. We tried to get our Economic Study done; now we hope it will be done. But the Commission really just needs to look at the "Waldheim Budget" and it will give them everything they need: miles of trails, cost of doing business by category, and where the sources of funds will come from. (Exhibit B.)

Item 46: Legislative intent is to "enhance OHV recreation." All we have is \$4.2 million dollars for Grants and Cooperative Agreement O & M. This is pretty dismal if you ask me.

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Item 46: The Commission grants program is done as follows:

Grants come in and the Division sends their recommendation to the Commission. Last year they did those 2 weeks before the Grants hearing. The Division refused to provide their recommendation before that and refused to even talk with the Commission subcommittee members on what they are doing.

I, Ed Waldheim, went through all the 13,000 pages; I did my homework investing over 100 hours in the review without any staff input, period. When the Grants Hearing came up, Mr. Spittler refused to let us vote. It was just a hearing of grants and we listed them to the public. It was a waste of time from the Commission and public's point of view because the subcommittee did not let the public know what they were thinking.

This year, I proposed to Chairman Spittler that the Commission Grants Subcommittee have a hearing on 9/9 and 9/30 respectively in the South and the North on grants. We would hear the public comments, hear Staff recommendation, then discuss it among Committee members, and vote on the amount as a recommendation to the full Commission. This will give the public opportunity to express their opinion, Staff to present their findings or ranking of grants in order of importance, and the Subcommittee will make recommendation to the full Commission. I am in hope that Mr. Spittler will let us do this.

I will do my homework as usual, (see "Waldheim Budget") and will be prepared at the 9/9 meeting with or without Staff help.

In the past, it was always nice to spend many hours with Staff as a Commissioner to find common ground and discuss issues and solve problems. However, that is something we have been denied from having.

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Item 48: We do take into account public comments; the public does not have priority as such. Each public member pushes their own area of interest and it is the Commissioners' job to come to a sound recommendation based on OHV opportunity = visitors = dollars invested.

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Item, No number: It is insanity the 11 categories the Division came up with. I was at the meeting trying to get sense into the folks, but it was a lost cause. They are trying in typical government style to overkill the program and create such a bureaucracy that the applying agencies are so overburdened with requirements, that it is to a point not worth it for them to even apply. If that was the objective, then the Division has done a good job at that. It is insane what is required to get \$30 or \$40 thousand dollars. It is totally out of control.

If a banker would require a business all the stuff the Division asks for from agencies, and remember, Division has no control of an agency, that business would have been out of business a long time ago. It takes more time to get money than what it takes to use the money on the ground.

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Item 49: I think I have covered this more than enough. Poor communication leaves public and the Division unsure of the Commissioners' priorities regarding grants. We are making a mountain out of nothing. Grant is very simple, agency provides OHV opportunities -- or not. It has visitors -- or not. And it has a budget and how do they meet that. Very simple. No rocket science. See "Waldheim Budget."

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Item 50: Letters or statement by Chair Spitler that Restoration and Conservation & Enforcement will be given high priority over O & M (I have not seen, Mr. Spitler may have said that, but he is only one Commissioner). The full Commission never came up with that policy. The fact that the Commission had a legal mandate on C & E that goes without saying. Since that much money was required to be spent on C & E, we did just that. Did I agree with formula, no. Am I waiting for the Gas Tax Study to remedy this, yes.

Item 51: The other Commissioner has a name. My name is Ed Waldheim. Everyone mentioned in this document should have the courtesy of having their name printed. That needs to be corrected in this document, if they don't do anything else.

John Baier
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Page 27

Again as stated before, Division refused to share their ideas on grants with us. They gave them to the public at the same time as they did to the Commission which was just two weeks before the meeting. No one in their right mind would expect me, Ed Waldheim, to wait for the Division to get their recommendation to me only two weeks before a meeting and think I would not do my homework. For years, as a Commissioner or even when I was not on the Commission, I have always given out my recommendation in public before anyone ever thought about doing it. They all reacted to my recommendation. In other words, we used my numbers to start negotiating what grants would get what amounts. Always with the guidelines of \$17 million dollars of total funding and broken down by categories.

This report somehow makes it sound that Ed Waldheim and Mr. Spitler did something wrong. If so, charge me with a code violation. I did nothing wrong. I did my job as I have been doing since 1983 and I share my recommendations with anyone that will listen to me. What is wrong with that?

If the Division wants to work with me on the Grants after they did their rating system, that is always welcomed, but I would not hold my breath that it will happen. It did not happen last year, so I don't expect any change there. I must note that is the first time since 1983, that the Division has taken such a strong position in not working on preliminary discussions on Grants. We are treated just like the public – as outsiders.

This year, I will be prepared as always before the Grants meeting scheduled for 9/9. I will, however, not share my recommendations with anyone. I will listen to Staff. I will listen to the public. I will listen to applying agencies, and based on those findings, I will make my recommendations. However, to think that I will not be prepared is crazy. I will do everything in my power to inform Commissioners at the public meetings on why I came up with the dollars for each agency's grant. That is my job.

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Item 52: I believe I have answered the above, we had no choice. Division would not work with us.

Item 53: Again, Division refused to share anything with us, using the explanation that "We are under an audit and we cannot do that." Whatever that means. I personally feel it is the wrong decision, but then Division has a right to manage their Division any way they want. It is not the Commission's or public's job to tell them how to run the Division.

Page 30

Item 54: We did use priorities, we did use categories. What a joke: “inefficient use of time for Division Staff that evaluated the grant.” What makes the Auditor think that Staff knows it all? They have no clue in most of the cases, because they are not out on the ground. You go ask those that are making decisions when the last time they were on a good field trip? You cannot make decisions from behind a desk. I, on the other hand, spend all my time in the field, and am very qualified to tell you what is needed and not needed. In this case, the user public knows more than Staff. It is Staff’s own fault that they did not want to meet with us to discuss Grants. If you come up with recommendations without outside help, what do you expect. Don’t blame that on Commissioner Spittler or me. We tried, but were locked out. So we did our job. Period.

Item 55: This is wrong statement by Mr. Jim Keeler. Mr. Keeler should have a clear accounting of the cost of managing OHV in the BLM and others in their agency. To think that the applying agency is going to cater to the Commission’s priorities is nuts. That is why we are spending some much wasted time on Grants by all concerned.

You either have a program or your don’t. If you have a good program, lots of OHV opportunities, lots of visitors, and you need funding help, we are here to help. What on earth is so difficult with that concept! Again, look at the “Waldheim Budget.”

Item 56: I can’t agree more. It may not be worth asking for funds that are not available. That is why I am disappointed in all applying agencies that they ask for the moon and we will just have to cut them down, to \$18 million dollars. I would have rather seen a request of \$18 million and see that they are really doing a good job in providing OHV opportunity. The problem is that the Grant and Cooperative Agreement emergency regulations has been so cumbersome that it is beyond reason. It was done to become a “Control” program rather and an “Assist” program. We have lost our way in developing these regulations and it needs to be changed, simplified, and common horse sense brought back into the picture before it kills us all.

Item 57: Balance OHV program. Again, this keeps being an issue with the Auditor. I disagree with their classroom definition of “Balanced.” It is an OHV Program. Period. If you want an environmental program, count me out. I just want to make sure we have trails, riding areas, OHV opportunities, and to protect our natural resources while doing it. I am not here to set up botanical gardens or zoos. If they happen to exist on my trail fine, but that is not the priority of this program!

Page 31

Item 58: Agree, we have lost all our money to other things than what we were set up for, which is to acquire, develop and maintain OHV sites. This, I totally agree with the Auditor. Good job!

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Item 59: Route inventory was OK at start, but now it is a rip off of \$7.9 million dollars and more coming. We should cut them off, but it was my understanding that an agreement was signed, and we are committed to that. But I think \$7.9 is enough. As to route designation, that is a federal mandate, not state mandate. As to us wanting a true inventory, that was the key reason we even accepted this agreement. But now that the designations will start, that is where the battle lines will be drawn. If we accept inventory, in some places it is faulty, because the person doing the inventory did not have the expertise to go on the trail, so they just took it off the inventory. There are many examples of that. But again, on national basis we are the only state that is doing actual inventory, so that is credit to us. Other states will do their designations without any inventory and the average public will be shocked when they find their favorite trails are lost.

Item 60: Mr. Spitler has done this, but he has had the law on his side and no one has been able to challenge him on his definition of "Restoration."

Page 32

Item 61: It was never our intention to have wholesale closure of logging roads, or areas we never recreated in. That is not what our OHV Program is about. Again, it is only OHV closure, everyone else can use the "restored" area and establish a trail. If an area is restored, and we assume the definition stands, then 100% of the public should be banned from that trail. What good does it do to restore an area and it continues to be used, just not by OHV. Just put up a gate, and save millions.

Item 62: State Visitor Center is El Mirage, why hide it? This is for OHV opportunity: Education, Visitor Services, Medical Aid. These are all part of opportunity. I used to think, and still do, just get us the land and leave us alone. But there are exceptions. An example is a highly concentrated area like El Mirage. There are 25,000 acres. Now you compare what you spend in each SVRA to what we spend in El Mirage. It is a 5th of what it would cost to run an SVRA – the land is already purchased, some rangers are already funded, employees are already trained by the agency, some facilities/restrooms are already built – all this costs money. Again, the Auditor did not know what they were talking about when they said it does not increase recreation opportunity. What price do you put on being able to go to the bathroom? Is that OHV opportunity or not? If you don't have the bathroom, you now are environmentally insensitive by leaving human waste in the bushes. Let's be reasonable when we make statements like this.

Page 36

Item 63: The designation of routes is not a local issue. It comes from Washington, D.C. Mr. Widell, the former Deputy Director, felt that before that could be done, an inventory needed to be completed. He was right on the mark here. All other forest in the US are not getting an inventory. The fight will now start with the Designation Process. We all need to be engaged in that process.

Page 37

Item 64: The Commission cannot be accountable for Grants given. That is the job of the Division. We award the Grants, but have no responsibility for follow up. Now user communities have the ability to monitor their area and I, Ed Waldheim, keep close eye on agencies to make sure that we are getting our monies worth by getting O & M done. But that is not the job of the Commission, to think otherwise is wrong.

Page 38

Item 65: If you want Commission to be more accountable, you will have to have the law changed to add that. You also would need to include a Staff for the Commission so we are not held at the mercy of the Division.

Item 66: There is no staff for the Commission to do all these reports. If we had Staff, things would be very different. This report omits this very important fact, and thus give the reader the impression that the Commission is not following the rules! Again, Division should be doing that for the Commission. After all, the Director of Parks and Recreation is the Secretary for the Commission, something folks forget.

Item 67: Oversight bodies, who are you talking to? The last thing we need is more chiefs, we have more than we need now and still the job is not getting done. What we need is workers in the field.

Item 68: The report keeps stating that the Commission should do these items. This is incorrect. The Division keeps track of the reports. For the most part, Division Deputy Director sets up the agenda, so it should have been put on the agenda to deal with this issue. Don't continue to blame the Commission.

Item 69: We were promised the Gas Tax Study one year after the bill AB 2274 was passed, but here we are three years later and still no Gas Tax Study.

Item 70: This report should explain why this unregistered number is so out of control. The 1 to 5 ratio registered to unregistered is strictly a mathematical number with no basis of reality at this time of our program. It is insane.

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Page 40

Item 71: This statement is wrong. Before AB 2274, we had to put 33% of the fund into C & E, not just Conservation.

Page 41

Item 72: Stakeholders did embrace AB 2274, but half of the Stakeholders especially the motorized folks, including myself, did not realize the 1 to 5 formula existed. Had I realized that, I would never have agreed to the 30% of the funds going to "Restoration" out of the C & E. After I found out, I figured, we will deal with it for one year, get the Gas Tax Study completed. Here we are three years later and still no report. So it is killing us.

Page 42

Item 73: The reason you cannot find any studies on the change of % to Restoration on the C & E account is because there are none. This was presented in Committee, at the Division office, and I personally never realized the 1 to 5 issue. Had I been hit over the head and explained it then, trust me, this bill would never have had that included. The environmental members of the group were very clever not to point out this one basic flaw -- the formula from 1986 with the 1 to 5 ratio.

Item 74: This is a correct statement, our program is bankrupt. If all money is spent on Restoration, we may as well close the door and let the OHV public go wherever they want, and let the federal agencies fend for themselves. In other words, a total breakdown of order for the OHV recreational community.

Page 43

Item 75: The Division was part of the discussions and they never once told us of the pitfall with the changes on % to Restoration at our meetings. For them to now express concern has me wondering if even they knew about the implications of the change of % of funds into Restoration would have had on our OHV program.

Page 44

Item 76: This is the understatement of the day: "Disagreement exists over whether the current funding level for restoration project contributes to a balanced program." Of course it does not, it kills the program.

Item 77: This is a completely wrong statement, Former Deputy Director Widell was never in the meeting room where the decisions to go with the new formula originated. It was the group with the wrong information that came up with this. Mostly pushed by the environmental members present. Stakeholders discussed it, but the work was done in committee at the Division office. Mr. Widell never was there.

Item 78: Mr. Spitler is correct -- the Stakeholders did move forward with the recommendations, but again as I said before, ½ of the Stakeholders did not understand the 1 to 5 ratio issue. Even the facilitator, Lisa Beutler, from Cal State University Sacramento did not know that. (Ask her.)

Page 45

Item 79: This was my statement. Why not put my name in there?

Item 80: Dr. Rich Farrington should be mentioned here. He is correct in his statement.

Item 81: Mr. Jim Keeler, made a correct statement. His name should be given here. If this audit keeps omitting names, how on earth will anyone ever be able to follow up in the future or even accept the credibility of the speaker. If you are going to quote folks, give them a name. This is crazy how the report uses folks without giving them the proper respect with a name.

Page 46

Item 82: Jim Keeler states, "While restoration is a useful tool for lowering the number of trails..." This is a typical government statement. They would just as well close everything to us. Then, they would not have much work to do, would they? This is a cop out to getting on the ground and being a manager. Federal Government is no different than Division -- they sit in offices and rarely get out in the field. This is not something new. I have advocated to all Field Managers that they close their offices one day a week and send folks out in the field so they know what on earth life is about.

Item 83: This is the reason that Mr. Spitler is pushing Restoration, because the law is not clear. It has to be clarified so it is reasonable, and is not an OHV opportunity killer.

Item 84: We agree, the law does not specifically say you have to close for Restoration. However, nobody is willing to challenge Mr. Spitler on that.

Page 47

Item 85: It is refreshing that the Deputy Director now wants to get some statute to change the ambiguities that exist in the OHV Program regulations about restoration. This should have been done in 2003, but at least it is now being thought about. I can assure you if it comes to the Stakeholder Group, it will be a battle. But a battle that has to be fought.

Item 86: Correct statement. Federal Government does not have to close trails before it can be restored, so why is Mr. Spittler getting away with this? Because he has 4 votes versus 3?

Item 87: Again correct statement. We always thought after you "Restore" an area it can be opened again. However the Auditor fails to state that even if land is "Restored", anyone except OHV can use the trail, so what is the reason for spending the money? It is nothing but a capricious way of denying OHV users their right to be on a trail.

Item 88: No problem to have Commission and Division come up with a vision, strategic plan, etc. But who will put it on the agenda? Who will follow up with it and not just let it fall by the wayside? We have had so many Strategic Meetings since 1983, that we should be experts on that. Actually all we need to do is pull the old files out, dust the cover and there is your plan.

Page 48

Item 89: Interesting. The Commission should do this and Commission should do that. It is very evident that the Auditor has no feeling for the complexity of a commission that has its votes split 4 to 3, and politically motivated by their appointing elected officials. Who will be the leader? Who will set the time to do this? Will Staff even support this? This is a case of who controls the agenda and the Program. We can agree that we need to sit down and have a working group. However, because of laws, working groups have to be publicly announced so not much work gets done. It is a dilemma.

Item 90: If the public resources code is amended to require the Commission to annually report grants, etc., we should have a staff that is accountable to the Commission, not to the Division. The Division has made it very clear that they do not have the time to do anything for the Commission. They actually frown if we dare give them an assignment. How do we solve this? Give us a staff member responsible to the Commission, just as the Coastal Commission has.

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Item 91: Again this is the Division's job to get a report. Even if the Commission asked for this to be done, the Division has to do it. As you clearly stated, the Staff of the Division does not have the time, or does it? Now that would be an interesting subject for Audit. I am a past System Analyst (Time and Motion Study) and evaluated the production of staff and managers for a large title company. I can tell you there is a lot we could find with such an audit, but did the audit do that of the division?

Item 92: That's a joke. Division will not work with us on "Evaluate the current spending." They tell us what we can give away, which is \$18 million dollars. That is the limit of our involvement with the Division.

Page 49

Item 93: Agreed. We need to change the Public Resources Code to fix the unbalanced use of funds for Restoration.

Page 51

Item 94: Questionable activities. It seems rather strange that out of \$17 million dollars, the Audit would come up with \$68,000 on questionable Grants to OHV. The BLM ecologist Jim Weigand, is an incredible asset to the OHV Program and to the environmental community. He makes it possible for all the field offices to get their job done properly and document the findings. He is working to get all these reports verified and put in one location so we do not lose them. If he helps someone, give me a break. Is going to the bathroom a questionable OHV grant? We encourage all managers to assist the public, if they in turn, can help the agencies manage the OHV Program. If it is getting grants from other sources for OHV activities, what is wrong with that?

Page 52

Item 95: The interface was a very complicated issue. Folks during the negotiations were displaced from one area and given another one to reduce or eliminate the conflicts. It may seem strange on the paper to give \$120,000 for this project, but it did solve the basic OHV conflict issues. Again you need to talk to Lisa Beutler, facilitator for this project

Page 54

Item 96: Commission should ensure that it allocates funds only for purposes that clearly meet the intent of the OHV Program. This is impossible. Very few Commissioners go in the field. I personally have been to all of them, but from 1983 to present. I have not been to the North in some time, so to expect me to know if they did their job on the ground is unrealistic. That is why we depend on Staff to do their annual inspections. We also depend on the user community to report back to us what they see. This is done most of the time at the next Grant cycle when users are upset and the lack of maintenance of facilities and trails. It is then, and only then, that the Commission can put some pressure on the applying agencies.

For Staff that do go out in the field, if you ask them for their report, it will shock you how few have been written. What is also shocking is the follow-up with their suggestions. There is none. I kept track of them for a while when staff was to send me all their inspections, but they stopped doing that a long time ago. Why? It made them look bad. One, there are too few inspections, and two, there never was a follow-up on their inspections.

My solution is for them to close their office one day a week and send every single employee -- all 110 of them to the field, and that includes the auditors and the Commission's legal council. Then, perhaps, we would get some information.

Should you have any questions or comments about the comments from individual commissioners provided above, I can be reached at (916) 445-4864.

Sincerely,

(Signed by: Kenneth J. Pogue)

KENNETH J. POGUE
Deputy Attorney General

For BILL LOCKYER
Attorney General

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COMMENTS

California State Auditor's Comments on the Response From the Off-Highway Motor Vehicle Recreation Commission

We requested that the Off-Highway Motor Vehicle Recreation Commission (commission) provide us a response to our audit report that represents the view of the commission. Under recent changes in state open meeting act law—which we pointed out to the commission's chair, vice chair, and legal counsel—the commission could have met in closed session to prepare its response to our audit report.

Instead, the commissioners chose to submit individual responses to our audit report, representing their own viewpoints, which its legal counsel compiled into one document and provided to us. The commissioners' varying opinions on the Off-Highway Motor Vehicle Recreation Program (OHV program) underscore the importance of our recommendation to develop a shared vision and common goals to achieve a balanced OHV program as the Legislature intended.

Prior to sending the commission our audit report for review, we informed the commission's chair, vice chair, and legal counsel that we were available to discuss with them or any commissioner concerns or issues that they had when reading over our audit report. However, only the commission chair contacted us. As noted below, we agreed to make several minor changes to text to address his and other commissioners' concerns.

To provide clarity and perspective, we are commenting on the commissioners' responses to our audit report. However, we are not commenting on issues that the commissioners raised that were not within the scope of our audit report. The numbers below correspond to the numbers we have placed in its response.

- We added language on page 12 of the audit report indicating that the commissioners receive a limited salary for their services. However, the limited salary that commissioners receive does not relieve them of the due diligence necessary to perform the responsibilities entrusted to them under the Public Resources Code.

- It is the long-standing practice of the state auditor to provide auditees five working days to review and respond to a draft audit report. In our discussions with the commission's chair, vice chair, and legal counsel, we provided advance notice to them of this five-day review period. Additionally, before this five-day period we brief staff of an auditee about our findings, giving them an opportunity to consider the findings and to start formulating their response. In this case we briefed the commission's chair and vice chair. Finally, we informed the commission's chair, vice chair, and legal counsel that we were available to discuss with them or any commissioner concerns or issues that they had when reading over our audit report.
- It is the long-standing practice of the state auditor to use the job titles rather than the names of individuals in our audit reports.
- We do not recommend an "equitable numeric balance" as Commissioner Prizmich infers, but rather we recommend the adoption of a shared vision and common goals to achieve a balanced OHV program as the Legislature intended.
- We disagree. As we state on page 33 of our audit report, we reviewed the commission's policies and found that they do not provide clear direction regarding priorities.
- Although Commissioner Spitler asserts that an evaluation supporting the current spending restrictions for conservation, restoration, and enforcement has already been made, he did not share that evaluation with us when he had an opportunity to do so. As we state on page 45 of our audit report, we asked Commissioner Spitler if he was aware of any documentation that supports the current level of Off-Highway Motor Vehicle Trust Fund (OHV trust fund) money dedicated to restoration activities. He offered no analysis or study, but responded that the current spending requirements are based on consensus recommendations to the Legislature that the stakeholders developed. Moreover, neither the commission's vice chair nor the division were able to provide us such an analysis or study.
- Although we agree that the fuel tax study is an important step in planning for the OHV program, there are three important reasons why we recommend that the funding allocations for the conservation and enforcement services account should be revisited. First, as we note on pages 44 and 45 of our audit report, the commission's chair and vice chair, and the division could not provide an analysis or study that the stakeholders used to determine these allocations. Secondly, as we note on page 43 of our audit

report, the allocation change occurred in January 2003, yet there is a growing, unfunded obligation—\$15.7 million as of April 2005—to fulfill this statutory requirement. Finally, although originally slated to be completed by April 2005 as we note on page 24, the completion of the fuel tax study has been delayed and the division now believes it will be completed in January 2006. In the meantime, this \$15.7 million obligation is a growing problem that we believe needs to be addressed.

- Although spending the appropriated money for the projects Commissioner Spitler identifies may serve to meet the spending requirements of Assembly Bill 2274, these projects do not appear to further the primary purpose of the OHV program. As we discuss in Chapter 2, for two of the land acquisition projects to be funded by the fiscal year 2003–04 budget appropriation, Onyx Ranch and Laborde Canyon representing almost \$36.1 million of the \$50 million Commissioner Spitler mentions, neither the division nor the Department of Parks and Recreation (department) could demonstrate the strategic value to the OHV program or how these projects represented the best use of OHV program funds. Further, as we note on page 55 of our audit report, although Commissioner Spitler described to us the benefit to the OHV program of purchasing parts of the Onyx Ranch, he did not demonstrate the benefit to the OHV program of the entire purchase that the federal Bureau of Land Management (BLM) proposes in its latest application for funds.
- As we recommend, there should be a shared vision for the OHV program, taken as a whole. Commissioner Spitler’s view, while important, needs to be woven into the shared vision for the entire OHV program.
- We agree with Commissioner Spitler that the OHV program should be considered as a whole. However, as we note on pages 18 to 19 of our audit report, the division and commission have not worked together to develop a shared vision for the OHV program. Further, as Commissioner Spitler notes on page 118 of our audit report, “. . . the Division has not engaged in short- or long-term budget planning with the Commission.” Thus, it is unclear to us the basis for Commissioner Spitler’s assertion that “. . . an almost perfect split between conservation and non-conservation related activities” exists since even he recognizes that budget planning activities between the division and the commission have not occurred.
- Commissioner Spitler’s comment does not reflect the fact that he brought this issue to our attention during the five-day review period and that we informed him we already changed the

report text to address his concern. In response to his concern we modified the text on page 27 to state, "Further, the plan does not address the commission's present practice of using restoration funds only on lands that are permanently closed to OHV recreation, thereby reducing the amount of land available for OHV recreation."

- We disagree with Commissioner Spitler's assertion that "There is no net loss of OHV opportunity from restoring closed areas back to a natural condition." As we state on page 46 of our audit report, the law is not clear as to whether restored land must remain permanently closed to OHV recreation. In fact, the law does not require permanent closure when restoration occurs on federal land. Moreover, on page 27 of our audit report, we state that under the commission's present practice, using restoration funds only on lands that must be permanently closed to OHV recreation, reduces the lands available for OHV recreation.
- Two commissioners question under what authority we reached the conclusion that the expenditure from the OHV trust fund to support nonmotorized recreational activities was questionable. We think it may be helpful to clarify that there is an important distinction between an *auditor* conclusion and a *legal* conclusion. The commissioners suggest that the state auditor has reached a *legal* conclusion that the commission did not have the legal authority to make this expenditure, when in fact we made no such conclusion. Rather, we have reached an *auditor* conclusion, based on the generally accepted government auditing standards that we are legally required to apply in our work. As such, we question whether this use of the OHV trust fund, even though it may have been within the legal authority of the commission, is the best way to achieve the goals of the OHV program.

Further, we question whether awarding this cooperative agreement to the U. S. Forest Service (Forest Service) to develop nonmotorized trails in the Interface area of the Stanislaus National Forest was a prudent use of the OHV trust fund. After receiving the response to our draft audit report, we re-examined the documents we gathered regarding this cooperative agreement, including the transcripts of the commission's January 22, 2005, hearing in which the commission approved the funding for this cooperative agreement. Those transcripts show that a representative of the Forest Service told the commission that the Forest Service was no longer requesting OHV program funds for the nonmotorized portion of the Interface project. He stated that the Forest Service was moving ahead with implementing the

project using Forest Service funds and a substantial contribution of volunteer labor and equipment from community groups, and that the Forest Service had applied for funding from other sources for the nonmotorized portion of the project.

- Commissioner Spitler's comment does not reflect the fact that he brought this issue to our attention during the five-day review period and that we informed him we already changed the report text to address his concern. In response to his concern we modified the text on page 38 to state, "Conservation includes activities important to preserving OHV recreation, such as repairing roads and trails and rehabilitating user-affected areas Thus, the commission has reduced the amount of grants program funds available for local and federal agencies for conservation activities that are intended to preserve the condition of OHV recreation areas and thereby better manage and protect natural and cultural resources."

Further, Commissioner Spitler clearly overreaches when he asserts we have made a faulty assumption that shifting funding priorities from one category to another will somehow result in less management and protection (of natural and cultural resources). Commissioner Spitler is well aware that project categories eligible for the grants program range from developing new OHV recreation facilities to protecting natural and cultural resources by preventing OHV recreation in certain areas. As a result, given the limited funding for the grants program, a shift in funding priorities can most certainly affect the amount of funds available to manage and protect natural and cultural resources.

- As indicated in note 14, we do not state that trail maintenance is funded only through the conservation category of the grants program.
- Contrary to Commissioner Spitler's assertion, we have a section devoted to the discussion of the statewide coordinator cooperative agreements on pages 38 to 40, which includes Figure 4 on page 39 that details the funding to statewide coordinators for fiscal years 2001-02 to 2004-05.
- Again, contrary to Commissioner Spitler's assertion, on pages 41 to 47 we have a section devoted to the discussion of the conservation and enforcement services account, which includes

our concerns with restoration funding. Further, Figures 3 and 4, on pages 37 and 39, respectively, show the allocations of restoration funding for fiscal years 2001–02 to 2004–05.

- Commissioner Spitler has mischaracterized the project categories. The program regulations define safety and education projects as projects intended to teach safe and environmentally responsible operation of off-highway vehicles. Law enforcement projects are defined as projects intended to assist local and federal agencies with enforcement of OHV laws, personnel support, and training. The regulations do not specifically authorize equipment purchases under law enforcement projects. Further, the “other” category to which he refers includes project categories for acquisition, development and major maintenance, safety and education, and equipment purchases, but the commission provided no direction to the public as to its funding priorities within these categories in its January 2005 meeting.
- Although the commission provides opportunity for public input, as we state on pages 31 and 32, it is unclear to us how the commission uses that input in making funding decisions for the grants program.
- Commissioner Thomas asserts that we do not cite a procedure, prohibition, or regulation that prohibits spending grant funds to assist grantees with managing the grant application. To clarify the issue in our report to which Commissioner Thomas refers is that the commission allocated grant funds for activities that would give the Forest Service and the BLM an advantage in obtaining cooperative agreements. As the criterion for our conclusion, on page 89 of our audit report we cite the regulations for grants program, which state that grants and cooperative agreements are awarded on a competitive basis.
- The transmittal letter accompanying the draft audit report informed the commission that we were providing it a redacted version of the report. Thus, we only provided the commission the sections of the draft audit report that were relevant to its responsibilities: Chapter 1 and a section in Chapter 3.
- Contrary to Commissioner Waldheim’s assertion, we discuss the shifting priorities of funding allocations and their effect on the grants program on pages 36 to 40 of our audit report.

- We discuss our concerns with the advances to the BLM on pages 80 and 81 of our audit report. Because this section related to the division's failure to track advances to BLM, rather than a problem with the commission's role over the BLM cooperative agreements, we did not provide the section to the commission for review and comment.
- Commissioner Waldheim has misread our report. We do not state that the commission chair and vice chair guide the funding decisions, but rather we provide their points of view as examples of the commissioners' decision making for the awards of grants and cooperative agreements. However, we note that Commissioner Waldheim's comments are consistent with those of the commission chair and vice chair: Commissioners make funding decisions based on their individual interests rather than on a shared vision.
- Commissioner Waldheim misunderstands our point. We are not advocating for a shared vision for each grant, but a shared vision for the entire program from which goals and strategies can be adopted and used to evaluate individual grant applications.
- The comments to which Commission Waldheim refers are those of the former acting division chief, not ours, as noted on page 25 of our audit report.
- Commission Waldheim does not indicate what he believes is wrong in our text. We reviewed the audit evidence supporting the paragraph to which he refers and made a minor change to clarify the text. However, this change does not affect our conclusions and recommendations. Also, we note that Commissioner Waldheim's concerns about the OHV program's budget in his "Item 42" underscore the need for the commission and the division to develop a shared vision and common goals for the OHV program, which will drive the development of spending plans to implement them.
- Commissioner Waldheim's description of the Legislature's intent for the OHV program contained in the Public Resources Code is incomplete and misleading. Refer to the text box and the surrounding text on page 30 of our audit report for the Legislative intent for the OHV program.

- Under the Public Resources Code, the commission is given the important responsibility of making funding decisions for the grants program. Because of the concerns we raise on pages 29 to 40 of our audit report, we believe that more accountability is needed for the commission's funding decisions.
- Our text is correct as written. To improve the readability of our reports, we often use acronyms or shorten formal names that are lengthy. In this case, we shortened the title of the "Conservation and Enforcement Services Account" to "conservation account" on page 42, the paragraph preceding the one that includes the text related to Commissioner Waldheim's comment.
- To clarify, the text on pages 44 and 45 with which Commissioner Waldheim takes issue is the current deputy director's perspective on the current level of restoration funding.
- Commissioner Waldheim misses our point, namely that the tasks as described in the cooperative agreements are too unclear to provide accountability for the use of the funds. Also, the \$68,000 figure is the amount that we could quantify; there were other activities that we took issue with, such as the job descriptions of certain federal employees, that we could not quantify.

cc: Members of the Legislature
Office of the Lieutenant Governor
Milton Marks Commission on California State
Government Organization and Economy
Department of Finance
Attorney General
State Controller
State Treasurer
Legislative Analyst
Senate Office of Research
California Research Bureau
Capitol Press