

OFF-HIGHWAY MOTOR VEHICLE RECREATION PROGRAM

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

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 voted 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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REPORT NUMBER 2004-126, AUGUST 2005

Department of Parks and Recreation, Off-Highway Motor Vehicle Division, and Off-Highway Motor Vehicle Commission combined response as of August 2006

The Joint Legislative Audit Committee requested that we review the Department of Parks and Recreation's (department) administration and allocation of moneys in the Off-Highway Vehicle Trust Fund (OHV trust fund).

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. The department's Off-Highway Motor Vehicle Recreation Division (division) administers the OHV program. The division operates eight state vehicular recreation areas (SVRAs) and administers the grants and cooperative agreements program (grants program), which provides funding to local and federal government agencies for OHV recreation.

The OHV program is funded primarily through collection of the fuel tax, registration fees for off-highway vehicles, and SVRA entrance fees. The Off-Highway Motor Vehicle Recreation Commission (commission) provides for public input, offers policy guidance to the division, and approves grants and cooperative agreements. 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.

- ☑ *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.*

Finding #1: 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.

The commission and the division have not formally adopted a shared vision for the OHV program to balance OHV recreation and protection of California's natural and cultural resources, nor have they developed the goals and strategies necessary to meet that vision. In addition, the division and the commission do not collaborate on the planning for the SVRAs and grants program. In the absence of a shared vision and goals, the commissioners, the division, and stakeholders in the OHV program compete for the more than \$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.

To ensure that the OHV program is adequately balanced between OHV recreation opportunities and environmental concerns as the Legislature intended, we recommended that the division and the commission 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.

Department's and Commission's Action: Partial corrective action taken.

The department states that the commission discussed and approved a draft shared vision statement for the OHV program in its September 2006 meeting. However, the department indicates that additional information is needed to finalize the shared vision statement, including public comment on it and completion of the fuel tax study, which occurred in December 2006. The department anticipates that the final version of the shared vision statement will be ready for the commission's review at its January 2007 meeting.

Finding #2: Although required by 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 such as a comprehensive evaluation of the external and internal factors that could affect its ability to successfully implement the OHV program. 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. Without a comprehensive strategic plan, the division's budgets are not guided by agreed-upon goals and strategies for achieving them but rather on historical spending levels and available funds.

We recommended the division complete its strategic plan for the SVRA portion of the OHV program by performing a thorough assessment of external and internal factors; collecting the necessary data; completing the required reports; and developing the action, spending, and performance monitoring plans to implement its strategic plan.

Department's and Commission's Action: Partial corrective action taken.

The department reports that the division has been taking steps to develop the final strategic plan. These steps include hiring additional staff to work on it, surveying other states about issues their OHV programs face, and obtaining public input. However, the department states that several activities still need to occur, including developing a formal land acquisition process, assessing best management practices for the SVRA, finalizing new grant procedures and regulations, and completing the fuel tax study, which occurred in December 2006. Therefore, the department anticipates completing the strategic plan for the OHV program by March 2007.

Finding #3: The commission has not formally adopted a strategy for grants program funding.

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, unclear guidance on the commission's priorities presents challenges for them when applying for funds from the grants program.

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

Commission's Action: Partial corrective action taken.

The department indicates that for the fiscal year 2005–06 grant application cycle, the commission identified, voted, and set priorities for funding that were subsequently communicated to grant applicants. In addition, the division is working with the Office of Administrative Law to obtain approval for the temporary regulations it and the commission used during the fiscal year 2005–06 grant application cycle.

Finding #4: 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. In addition, the commission has not yet prepared the biennial report that was due to the Legislature on July 1, 2005.

To improve accountability, we recommended the Legislature 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. We also recommended that the commission prepare and submit the required biennial program reports when they are due.

Commission's Action: Pending.

➔ The department states the commission's biennial program report has not been completed as of December 2006, but it expects to complete a draft for the commission's review in spring 2007.

Legislative Action: None.

Finding #5: 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 stakeholders' consensus reached 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 activities. That portion was \$28.4 million, or 61 percent, of the OHV program's 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. Further, 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 of \$15.7 million, including \$8.3 million designated for restoration activities. The department indicates the unspent cash to pay for this future obligation is not reserved; thus, it may present a substantial financial burden.

We recommended 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 provide a balanced OHV program and, if necessary, seek legislation to adjust those restrictions.

Department's and Commission's Action: Pending.

The department states that the division is working with consultants to better assess the OHV program's funding needs. However, to complete this assessment, the division is waiting for the completion of the fuel tax study, which was released in December 2006, and the OHV program strategic plan, which it believes will be completed in March 2007.

Finding #6: The law is not clear on the use of restoration funds.

The present practice of the commission and division is to require areas and trails to be permanently closed to OHV recreation before restoration funds are used to repair damage from OHV recreation. 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.

We recommended that the Legislature 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.

Legislative Action: None.

Finding #7: The division and the department have used money from the OHV trust fund for questionable purposes with respect to land acquisition.

For three recent land acquisition projects, with planned costs totaling \$38 million, the division and the department could not provide analyses that showed the benefit of these purchases to the OHV program. The division has purchased Deer Creek Hills, and Onyx Ranch and Laborde Canyon are still under consideration. However, 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.

We recommended the division 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.

Department's Action: Pending.

The department states it believes that a comprehensive land acquisition strategy should be linked to the development of the strategic plan; findings from the fuel tax study; and input and collaboration from interested communities, organizations, and stakeholders. Because the fuel tax study was only recently released and the OHV program strategic plan will not be completed until March 2007, the department estimated the earliest date that a comprehensive land acquisition strategy would be completed is March 2007.



Finding #8: The department made questionable and inadequately supported charges to the OHV trust fund to help pay for state park operations and departmental overhead costs.

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 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 believe 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. These costs, which we found were inadequately supported, totaled \$3.6 million for fiscal year 2003–04 and \$2.7 million during the first three quarters of fiscal year 2004–05. The lack of adequate support for these costs is disconcerting because the department plans to use these costs as a basis for its future charges to the OHV trust fund for these activities. 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.

In addition, the department charged approximately \$72,000 of the director’s office costs in fiscal year 2003–04 to the OHV trust fund, even though the law expressly forbids those charges.

To ensure that money from the OHV trust fund is used appropriately, we recommended the Legislature amend the law to clarify the allowable uses of the OHV trust fund. Such clarification 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 is correct, 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.

We also recommended that the department either discontinue charging the director’s office costs to the OHV trust fund or seek a statutory change to remove this restriction.

Department’s Action: Partial corrective action taken.

Although the department has discontinued charging the director’s office costs to the OHV program, it continues to budget costs of \$3 million annually to the OHV trust fund for the operation of non-SVRA parks. The department states that it holds firm to the position that it has broad discretion when interpreting the law, and thus it believes that using OHV trust funds for the partial support of parks outside of the traditional SVRAs is appropriate given the level of OHV activities occurring in those parks. The department took the same position in its initial response to our audit report, which we disagree with because, while recognizing 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 OHV program.

Legislative Action: None.

Finding #9: The division’s contracting practices often violate state contracting rules, and it has not explored less costly alternatives to these contracts.

For various reasons the division has increased its use of contracts over the past five years, with a peak in contracting occurring in fiscal year 2002–03. However, the division has used contracts paid from the OHV trust fund for questionable purchases and it 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 and 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.

We recommended the division take the following steps:

- Comply with state contracting requirements.
- Contract only for services that are an allowable use of the OHV trust fund and 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 for ongoing needs.

We also recommended that the department increase its oversight of the division’s contracting practices.

Department’s Action: Implemented.

The department reports that the division now requires the division chief review and approve all headquarters contracts and district superintendents have been counseled and trained on the review and approval of contracts.

The department also states that some work previously performed by contractors has been permanently transferred to state employees. In particular, division staff are now taking an active role in organizing and setting up commission meetings.

The department states that its Contracts Service Unit reviews all small dollar contracts to ensure compliance with state contracting requirements and alerts the appropriate managers should it identify multiple small contracts to the same vendor.

Finding #10: Administration of the grants program lacks accountability.

The division needs to better track funds it advances to grantees to ensure that advanced funds are used only for allowable activities and that unused funds are returned. Specifically, we identified \$881,000 in outstanding advances, including \$566,000 advanced to Los Angeles County, which were either not returned or that the division had been unable to determine how the funds were spent. In addition, the division does not ensure that all completed grants and cooperative agreements are audited, and in our review of 12 audit reports the division had not collected ineligible costs of \$598,000 related to three audits. The division also circumvented state budget controls and its regulations when it reallocated unspent grant funds totaling \$2.2 million among U.S. Forest

Service districts. Further, the commission and the division sometimes use the OHV grants program to fund questionable activities. Finally, the division's grants database does not meet its information needs and contains numerous errors and inaccuracies that limit its value.

We recommended that the division keep track of funds advanced to recipients, ensure that all grants and cooperative agreements receive annual fiscal audits and performance reviews, follow-up on audit findings and collect ineligible costs, discontinue its practice of reallocating unspent grant funds among Forest Service districts, and improve its grants database. Additionally, we recommended that the commission allocate funds only for purposes that clearly meet the intent of the OHV program.

Department's and Commission's Action: Partial corrective action taken.

The department reports the division is working to implement policies that provide tracking, monitoring, and recovery of OHV program funds. Further, the division is working to recover portions of the grants and cooperative agreements owed to it by the grantees that we identified in our audit. Of the \$566,000 we identified as outstanding from Los Angeles County, the division reports receiving a \$226,000 refund and determining that the remaining \$340,000 was used in accordance with grant guidelines. Of the \$711,000 outstanding from the Bureau of Reclamation, the division reports receiving appropriate supporting documentation for \$611,000, and although it did not receive documentation to support the remaining \$100,000, its research indicates that these funds were used for their intended purposes. In regards to the \$598,000 of ineligible costs that the department's auditors identified on three grants, the division's research indicates that two grants to Sacramento County were used for the intended purposes, and for the third grant, it is verifying that the advances to the Bureau of Land Management were refunded.

The department states that the division is committed to performing site visits and it is developing site review guidelines to include in the OHV program regulations. In addition, the department indicates that the division is working to ensure grants are audited, audit findings promptly scheduled and resolved, and ineligible costs recovered. The department indicates it has halted all reallocations of unspent grant funds among U.S. Forest districts or among other grantees. Also, the department reports the division is working with the department's Information Technology Division to improve the grants database, including development of an online grant application. Finally, the department indicates that the division will follow a competitive process to ensure that funds allocated through grants and cooperative agreements are spent only on projects that meet the intent of the OHV program.