Implementation of State Auditor's Recommendations

Audits Released in January 2007 Through December 2008

Special Report to
Assembly Budget Subcommittee #3—Resources

February 2009 Report 2009-406 A3

CALIFORNIA STATE AUDITOR

The first five copies of each California State Auditor report are free. Additional copies are $3 each, payable by check or money order. You can obtain reports by contacting the Bureau of State Audits at the following address:

California State Auditor
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, California 95814
916.445.0255 or TTY 916.445.0033

OR

This report is also available on the World Wide Web http://www.bsa.ca.gov

The California State Auditor is pleased to announce the availability of an on-line subscription service. For information on how to subscribe, please contact the Information Technology Unit at 916.445.0255, ext. 456, or visit our Web site at www.bsa.ca.gov.

Alternate format reports available upon request.

Permission is granted to reproduce reports.

For questions regarding the contents of this report,
please contact Margarita Fernández, Chief of Public Affairs, at 916.445.0255.

Elaine M. Howle
State Auditor
Doug Cordiner
Chief Deputy

CALIFORNIA STATE AUDITOR
Bureau of State Audits

555 Capitol Mall, Suite 300 Sacramento, CA 95814 916.445.0255 916.327.0019 fax www.bsa.ca.gov

February 24, 2009 2009-406 A3

The Governor of California
Members of the Legislature
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

The Bureau of State Audits presents its special report for the Assembly Budget Subcommittee No. 3—Resources. This report summarizes the audits and investigations we issued during the previous two years that are within this subcommittee's purview. This report includes the major findings and recommendations, along with the corrective actions auditees reportedly have taken to implement our recommendations. To facilitate the use of the report we have included a table that summarizes the status of each agency's implementation efforts based on its most recent response.

This information is also available in a special report that is organized by policy areas that generally correspond to the Assembly and Senate standing committees. This special policy area report includes an appendix that identifies monetary benefits that auditees could realize if they implemented our recommendations, and is available on our Web site at www.bsa.ca.gov. Finally, we notify auditees of the release of these special reports.

Our audit efforts bring the greatest returns when the auditee acts upon our findings and recommendations. This report is one vehicle to ensure that the State's policy makers and managers are aware of the status of corrective action agencies and departments report they have taken. Further, we believe the State's budget process is a good opportunity for the Legislature to explore these issues and, to the extent necessary, reinforce the need for corrective action.

Respectfully submitted,

Elaine M. Howle

ELAINE M. HOWLE, CPA
State Auditor

Contents

Introduction

This report summarizes the major findings and recommendations from audit and investigative reports we issued from January 2007 through December 2008, that relate to agencies and departments under the purview of the Assembly Budget Subcommittee No. 3—Resources. The purpose of this report is to identify what actions, if any, these auditees have taken in response to our findings and recommendations. We have placed this symbol ➲ in the margin of the auditee action to identify areas of concern or issues that we believe an auditee has not adequately addressed.

For this report, we have relied upon periodic written responses prepared by auditees to determine whether corrective action has been taken. The Bureau of State Audits' (bureau) policy requests that the auditee provides a written response to the audit findings and recommendations before the audit report is initially issued publicly. As a follow-up, state law requires the auditee to respond at least three times subsequently: at 60 days, six months, and one year after the public release of the audit report. However, we may request an auditee to provide a response beyond one year or we may initiate a follow-up audit if deemed necessary.

We report all instances of substantiated improper governmental activities resulting from our investigative activities to the cognizant state department for corrective action. These departments are required to report the status of their corrective actions every 30 days until all such actions are complete.

Unless otherwise noted, we have not performed any type of review or validation of the corrective actions reported by the auditees. All corrective actions noted in this report were based on responses received by our office as of January 2009. The table below summarizes the number of recommendations along with the status of each agency's implementation efforts based on its most recent response related to audit reports the office issued from January 2007 through December 2008. Because an audit report and subsequent recommendations may crossover several departments, they may be accounted for on this table more than one time. For instance, the E-Waste Report, 2008-112, is reflected under the Department of Toxic Substances Control and Waste Management Board.

		FOLLOW-UP RESPONSE			STATUS OF RECOMMENDATION				
	INITIAL RESPONSE	60-DAY	SIX-MONTH	ONE-YEAR	FULLY IMPLEMENTED	PARTIALLY IMPLEMENTED	PENDING	NO ACTION TAKEN	PAGE NUMBERS
Resources									
Air Resources Board									
Carl Moyer Program Report 2006-115				●	3	1	0	0	3
California Environmental Protection Agency									
Investigations Report I2008-2 [I2008-0678]	●				0	2	0	0	11
Department of Conservation									
Investigations Report I2007-1 [I2006-0908]				●	1	1	0	0	13
Department of Fish and Game									
Cosco Busan Report 2008-102		●			0	2	4	0	17
Bay-Delta Stamp Report 2008-115		●			0	3	0	0	23
Department of Toxic Substances Control									
E-Waste Report 2008-112	●				0	0	1	0	27
Waste Management Board									
E-Waste Report 2008-112	●				0	0	1	0	27
Department of Water Resources									
Flood Protection Corridor Report 2007-108				●	3	0	2	0	33

To obtain copies of the complete audit and investigative reports, access the bureau's Web site at www.bsa.ca.gov or contact the bureau at 916.445.0255 or TTY 916.445.0033.

The Carl Moyer Memorial Air Quality Standards Attainment Program

Improved Practices in Applicant Selection, Contracting, and Marketing Could Lead to More Cost-Effective Emission Reductions and Enhanced Operations

REPORT NUMBER 2006-115, JUNE 2007

State Air Resources Board and local air districts' responses as of June 2008

The Carl Moyer Memorial Air Quality Standards Attainment Program (Moyer Program) is an incentive program offered by the State Air Resources Board (state board) in conjunction with participating air pollution control districts and air quality management districts (collectively, local air districts). The Moyer Program provides funds to help private companies, public agencies, and individuals undertake projects to retrofit, repower, or replace existing engines to reduce pollution emissions beyond what is required by law or regulations. A local air district can fund a project that provides cost-effective emission reductions. Emission reductions are considered cost-effective when the cost to reduce one ton of emissions is at or below the cost ceiling imposed by the state board.

The Joint Legislative Audit Committee asked the Bureau of State Audits to review how the state board and key local air districts manage the Moyer Program. We limited our review to the four largest districts in terms of the Moyer Program funds they received—the Bay Area Air Quality Management District (Bay Area air district), Sacramento Metropolitan Air Quality Management District (Sacramento Metropolitan air district), San Joaquin Valley Unified Air Pollution Control District (San Joaquin Valley air district), and South Coast Air Quality Management District (South Coast air district). In addition to the findings and recommendations discussed below, we also examined the policies and procedures of the state board and the local air districts; the state board's use of liaisons to the local air districts and desk audits of reports from the local air districts to monitor their Moyer Programs; the high cancellation rate at one entity relative to others; the availability of Moyer Program funds to projects operating in multiple air districts; the project inspections local air districts conduct; monitoring of projects after they have been implemented; and the length of time it takes local air districts to move projects through the Moyer Program process. We found the following:

Finding #1: State law impedes maximum emission reductions.

California law impedes emission reductions by allowing the state board to set aside only 10 percent of Moyer Program funds for projects that operate in more than one local air district. A higher cap could lead to emission reductions with lower costs per ton. For example, if the cap for multidistrict projects were increased to 15 percent for funds appropriated in fiscal year 2004–05, the state board could have selected three additional projects with intended emission reductions costing an average of $2,600 per ton. Shifting this funding would have reduced

Audit Highlights . . .

Our review of the Carl Moyer Memorial Air Quality Standards Attainment Program (Moyer Program) revealed the following:

- *California law impedes emission reductions by allowing the State Air Resources Board (state board) to set aside only 10 percent of Moyer Program funds for projects that operate in more than one local air district.*
- *The methodology the state board used to select projects for the multidistrict component undervalues the cost per ton of intended emission reductions.*
- *For fiscal year 2003–04, 14 of the 16 projects the Bay Area Air Quality Management District designated as matching projects exceeded the Moyer Program's ceiling for cost per ton of intended emission reductions.*
- *The South Coast Air Quality Management District did not spend $24.1 million in Moyer Program funds within the required two years and the state board is monitoring the district to ensure these funds are spent by July 1, 2007.*
- *We identified several best practices that, among other things, can help local air districts select projects with lower costs per ton of intended emission reductions.*

the money available to districts, thus preventing the four districts we visited from selecting 13 projects. However, the average cost of the intended emission reductions from those projects was nearly $11,000 per ton, clearly not as good a value as the multidistrict projects.

We recommended the state board seek legislation to revise state law to increase the 10 percent maximum proportion it can allocate for multidistrict projects. If the state board opts not to seek this revision, the Legislature may wish to consider it.

Legislative Action: Legislation proposed.

Senate Bill 895 and Assembly Bill 2865 were both introduced to increase to 20 percent the maximum proportion the state board can allocate for multidistrict projects. Neither bill passed the Legislature during the 2007–08 session.

Finding #2: The methodology the state board uses to select projects has undervalued the cost-effectiveness of emission reductions.

Three of the six categories the state board uses to assign points when scoring applications for multidistrict projects are neither required nor encouraged by state law. Of the 100 possible points, these three categories accounted for 35 and 55 points, respectively, in the two fiscal years we reviewed. An applicant who received no points for any one of the three categories likely had limited ability to compete with other applicants under consideration. As a result, the state board selected some projects with higher costs per ton of intended emission reductions than it would have if the point values for the three optional categories were lower.

We recommended the state board, when evaluating applications for multidistrict projects, assign more points to scoring categories that help the state board achieve the lowest cost per ton of emission reductions.

State Board's Action: Corrective action taken.

According to the state board, it increased the weight of the cost per ton of emission reductions for its 2008 projects from 45 percent to 70 percent.

Finding #3: Some projects the Bay Area air district funded for matching purposes do not meet the Moyer Program requirements for cost-effective emission reductions.

State law requires local air districts to provide their own funds to match Moyer Program funds provided by the state board. Further, projects funded with these matching funds must meet all Moyer Program criteria. Our review revealed that projects funded by one local air district did not meet the Moyer Program requirements for cost per ton of intended emission reductions. As allowed by state law, the Bay Area air district designated 16 projects funded by other programs it administered as matching projects for the Moyer Program for fiscal year 2003–04. However, 14 of the 16 projects it identified exceeded the state board's cost ceiling of $13,600 per ton. The Bay Area air district knew the costs per ton for the projects it selected for matching exceeded the cost ceiling. Instead of selecting other eligible projects, the district attempted to make the 14 projects qualify as match under the Moyer Program by counting only a portion of the projects' total costs when it calculated the projects' costs per ton. Specifically, the district counted as the matching fund portion for the Moyer Program only $740,000 of the $2.5 million it awarded to these 14 projects. This approach is contrary to state law and Moyer Program guidelines because the district did not include all funds under its budgetary control when it calculated the costs per ton of intended emission reductions.

We recommended that local air districts include all funds under their budgetary authority as part of the calculations when determining the cost per ton of a project's intended emission reductions. Further, districts should develop and implement policies and procedures that enable them to meet the requirements in the Moyer Program guidelines regarding matching funds.

Bay Area Air District's Action: Partial corrective action taken.

The Bay Area air district stated that most work to recalculate the cost per ton of emission reductions for Moyer projects has been completed. It also stated that the rest of this work will be completed in 2008 and that these recalculations will allow the district to reallocate matching funds if necessary. The air district also has updated its policies and procedures manual for the Moyer Program, which includes a discussion of sources of matching funds.

Finding #4: Unspent Moyer Program funds remained at local air districts after availability had expired.

State law requires that local air districts expend Moyer Program funds allocated by the state board by June 30 of the second year following the allocation; otherwise, the unexpended funds revert to the state board. As of December 2006 the South Coast air district had $24.1 million in Moyer Program funds it had not spent within the two-year time frame established by law. Unspent Moyer Program allocations are a strong indicator that intended emission reductions likely are not occurring. When allocating its fiscal year 2004–05 Moyer Program funds, the South Coast air district selected projects intended to reduce 1 ton of emissions for every $4,256 it spent, on average. Had the South Coast air district spent the $24.1 million on similarly cost-effective projects by the statutory deadline of June 30, 2006, 5,600 tons of pollutants would have been removed.

The South Coast air district interprets the word "expended," as it appears in state law, to mean obligated. Under that interpretation, as long as a local air district had obligated a specific amount of Moyer Program funds to pay for a project that will be completed in the future, unspent funds would not revert to the state board. However, both the state board and the Department of Finance (Finance) have criticized the South Coast air district for its lack of spending in audit reports issued in October 2006 and April 2007, respectively. It is clear that, within the context of their reports, both the state board and Finance expected the district to spend Moyer Program funds within the two-year availability period, not merely obligate them for projects.

The state board is withholding future Moyer Program allocations to the South Coast air district until it spends its expired funds. The state board noted that it has the district's assurance that it will fully expend all applicable Moyer Program funds by July 1, 2007. The state board is monitoring the district to ensure that this happens.

We recommended that the South Coast air district ensure that it spends by July 1, 2007, all remaining Moyer Program funds that are beyond the two-year availability period.

Also, to help ensure that the South Coast air district spends the allocations, the state board should continue monitoring the district's efforts and take appropriate action should its efforts falter. If the South Coast air district does not spend the funds by July 1, 2007, the state board should initiate appropriate administrative action, up to or including recovering all remaining unspent funds.

State Board's and South Coast Air District's Actions: Corrective action taken.

The state board determined that the South Coast air district had met its expenditure requirements for the unspent funds. Further, the state board reported that it continues to monitor the South Coast air district's expenditures through quarterly progress reports; the April 2008 progress report shows that the district is on track with the timely expenditure of funds. In addition, the state board stated that it updated the Moyer Program guidelines regarding consequences for local air districts

should they fail to meet the two-year expenditure requirement. The guidelines explicitly require air districts that fail to meet the expenditure deadline to either return unspent funds within 60 days or have the funds deducted from their next allocation.

Finding #5: Infrequent on-site audits are a concern.

The state board may not be performing on-site audits of local air districts with sufficient frequency. It conducted four on-site audits in 2006 and plans to complete four more in 2007. If it maintains the rate of four audits per year, the state board will audit districts participating in the Moyer Program, on average, once every seven years. Audits released in 2006 demonstrate that some local air districts improperly administer the Moyer Program. More frequent audits would address identified problems earlier.

The state board is updating the procedures it uses to conduct on-site audits of local air districts, according to a program manager. These changes are based on findings from a 2006 review by Finance of the Moyer Program guidelines as well as feedback from the audited districts and from the state board's audit staff about the on-site audits it had already completed. In its report in December 2006, Finance made eight observations with recommendations for ways the state board could improve the Moyer Program guidelines and procedures, including a recommendation that the state board adopt a systematic, risk-based approach to selecting local air districts to audit. Finance also recommended 12 revisions to the guidelines to make the language clearer, define terms, and provide more detail.

We recommended that, to ensure that it monitors local air districts' implementation of the Moyer Program effectively, the state board continue to implement its planned changes to audit procedures and address the recommendations in Finance's 2006 audit report, including the development of a risk-based approach to selecting districts to audit. As part of this effort, the state board should consider how frequently it will audit districts.

State Board's Action: Corrective action taken.

According to the state board, it has taken several steps to improve its evaluation and audit procedures for local air districts. It has created and fully staffed a new oversight section; updated its procedures for auditing the Moyer Program, in part to incorporate Finance's recommendations; and released plans to audit seven air districts in 2008. To select the air districts to be audited, the state board stated that it used a risk-based methodology developed in cooperation with Finance. The state board plans to audit at least 10 percent of the annual program funds each year, and audit large air districts at least once every four years, medium air districts at least once every six years, and small air districts at least once every eight years.

Finding #6: Although local air districts market the Moyer Program in various ways, they could do more to evaluate the results of their efforts.

Local air districts use various methods to market the Moyer Program, such as brochures, mailing lists, Web pages, and workshops, but they do not adequately evaluate their efforts to determine whether they are reaching the business sectors that might be able to provide more cost-effective emission reductions. The districts rely primarily on one measure—whether they receive enough applications to distribute all Moyer Program funds—to evaluate their marketing efforts. Thus, they cannot ensure that their marketing efforts are resulting in applications that help maximize cost-effective emission reductions.

We recommended that the local air districts develop and implement techniques to measure the effectiveness of their marketing methods. Specifically, local air districts should identify business sectors from which they will obtain applications for more cost-effective projects, evaluate whether their current marketing efforts are reaching those sectors, implement marketing efforts to target sectors not being reached, and assess whether their marketing efforts enable them to select projects with more cost-effective emission reductions.

Local Air Districts' Actions: Partial corrective action taken.

Two of the four local air districts included in our review are taking steps regarding this finding. The Bay Area air district stated that it initiated a marketing study and developed an updated marketing plan designed to maximize outreach. The Bay Area district also stated that its consultants will follow up with a report on the successes of the marketing strategy. The district anticipates this work will be completed in 2008. The South Coast air district stated that it entered into a contract with a company to complete this task and that it had received a final report, which contained a proposed marketing strategy. According to the South Coast district, it used this report for Moyer Program funds appropriated for fiscal year 2007–08. It also stated that the number of applications increased from 133 to 242 over the prior year and the number of applications from individual owner-operators or small businesses increased over prior years. On the other hand, the San Joaquin Valley air district acknowledged that as emission reductions become more expensive, it may be necessary to perform more targeted outreach while the Sacramento Metropolitan air district stated that, based on the results of a survey it conducted, it believes the best way to reach participants is to continue to provide a high level of customer support to applicants.

Finding #7: Timing requirements for preinspections can be overly restrictive.

Timing requirements for conducting preinspections—inspecting the engine to be retrofit, repowered, or replaced to ensure that it is still operational—are overly restrictive. The Moyer Program guidelines generally require local air districts to perform preinspections after the districts have awarded funds but before they execute the related contracts. One district chose not to follow this requirement because delaying the execution of the contract would have delayed project implementation.

We recommended that, to help streamline the process for performing preinspections, the state board revise its requirement that local air districts must perform preinspections before executing contracts.

State Board's Action: Partial corrective action taken.

The state board amended its guidelines to give air districts flexibility to conduct preinspections after executing contracts provided that the districts include contract provisions for revising or voiding contracts based on information collected during the preinspections and any additional procedures necessary to ensure the projects provide acceptable emission reductions.

Finding #8: Local air districts use some best practices for contracting and administering Moyer Program funds.

During our visits to the state board and the four local air districts, we observed best practices that we believe can help districts select projects with lower costs per ton of intended emission reductions, reduce district workloads, and allow more time for project completion. Given the differences that exist among the districts, these practices may not be applicable in all cases. However, we believe they deserve serious consideration by the districts.

The Bay Area and South Coast air districts included a measure of pollution or the effects of pollution in their approaches for identifying disproportionately impacted communities—those communities with the most significant exposure to air contaminants, including communities of minority or low-income populations or both.

The state board included a measure of the cost per ton of emission reductions when selecting projects from disproportionately impacted communities for the multidistrict component of the Moyer Program, which increases the state board's ability to maximize emission reductions from multidistrict projects.

The Bay Area and Sacramento Metropolitan air districts include requirements in their contracts that projects selected from disproportionately impacted communities must continue to operate at least a specified percentage of their time in those communities after the project is completed and operational, which helps ensure that completed projects reduce emissions in disproportionately impacted communities.

The Sacramento Metropolitan air district uses only one application form for all its incentive programs, including the Moyer Program, which streamlines the application process for potential projects.

All but one of the four local air districts we visited had, by December 31, 2006, already allocated to projects their Moyer Program funds appropriated in fiscal year 2005–06, well ahead of the June 30, 2007, deadline. By making allocations before the deadline, these three districts allow more time for completing projects before the end of the two-year availability period.

Three local air districts issue one contract per project owner, as opposed to one contract per vehicle, which reduces the administrative burden on the districts.

The Bay Area and South Coast air districts included more detailed project milestones in their contracts, which allows the districts to more easily track the progress of their Moyer Program projects and take appropriate action if the projects veer off track.

The local air districts required projects to be completed before the statutory limit for expending funds, which helps districts ensure that they have sufficient time to perform required inspections and pay project owners before the two-year availability period for Moyer Program funds expires.

The Sacramento Metropolitan and San Joaquin Valley air districts delegated limited project approval and contract execution authority to staff of the local air districts, which may enable local air districts to issue contracts more quickly, thereby allowing more time for implementing projects before the end of the availability period.

The South Coast air district performed multiple inspections at the same time when possible. The district's staff found that this practice allowed them to save time and allowed the affected projects to move forward without unnecessary delay.

The South Coast and San Joaquin Valley air districts imposed stricter funding requirements on some projects, such as requiring certain types of projects to meet a lower threshold for cost per ton of emission reductions, or requiring project owners to pay a greater share of the costs. These practices could enable the districts to fund more projects with their Moyer Program dollars.

We recommended that, to improve their administration of the Moyer Program, local air districts consider implementing the following best practices:

- Include measures of pollution or the effects of pollution in their approaches for identifying disproportionately impacted communities.
- Include a measure for comparing the cost per ton of intended emission reductions when selecting projects from disproportionately impacted communities.
- Include in their contracts the requirement that projects selected from disproportionately impacted communities continue to provide benefits from reduced emissions to those communities after implementation.

- Use a single application for their Moyer Program application process.
- Allocate Moyer Program funds to applicants as soon as possible.
- Implement a system of one contract per project owner.
- Include in their contracts specific milestones against which the project owners and local air district staff can measure the progress of their projects.
- Include in their contracts the requirement that project owners complete projects and submit invoices a specific number of days or weeks before the June 30 deadline.
- Obtain delegated authority from their governing boards to approve Moyer Program projects and execute contracts. If their governing boards are not comfortable in providing delegated authority to approve all Moyer Program projects, obtain delegated authority to approve the more routine projects or projects costing less than a specified amount.
- Conduct consolidated preinspections to the extent practicable.
- Impose stricter standards (for example, caps on individual contract amounts or lower costs per ton of intended emission reductions) on project categories to the extent that such action does not reduce involvement in the Moyer Program.

Local Air Districts' Actions: Partial corrective action taken.

The four local air districts we reviewed have considered the best practices we identified. In many instances, the air districts have implemented or are implementing many of the best practices we identified. For instance, three of the four air districts report they have implemented the best practice of using one contract per project owner while the fourth has adopted it as a goal for 2008.

However, the air districts also indicate that some best practices are not practicable for them. Regarding best practices related to disproportionately impacted communities, the South Coast air district states that upon review by its legal counsel, it does not believe it is possible to incorporate language in its contracts that requires continued use of equipment in a specific location. We question the South Coast air district's limiting our recommendation for this best practice to a "specific location." Although our legal counsel has advised us that districts have considerable discretion when making spending decisions related to disproportionately impacted communities, districts must spend those funds to achieve statutory goals. As we mention in our audit report, the Bay Area and Sacramento Metropolitan air districts include requirements in their contracts that projects selected from disproportionately impacted communities must continue to operate at least a specified percentage of their time in those communities [emphasis added] after the project is completed and operational. This requirement helps local air districts ensure that completed projects reduce emissions in these communities as required by law. We do not suggest that the requirement be limited to a specific location.

California Environmental Protection Agency

Investigations of Improper Activities by State Employees, January 2008 Through June 2008

INVESTIGATION I2008-0678 (REPORT I2008-2), OCTOBER 2008

California Environmental Protection Agency's response as of September 2008

An employee of the California Environmental Protection Agency (Cal/EPA) failed to promptly submit time sheets that accurately reported her absences from work during the period August 2006 through June 2008. In addition, the officials responsible for managing her daily activities and for monitoring her time and attendance did not ensure that the employee documented her absences correctly and that Cal/EPA charged the absences against her leave balances. Consequently, Cal/EPA did not charge the employee's leave balances for the 768 hours that she was absent from work; instead, it paid her $23,320 for these hours.

Investigative Highlight . . .

An employee of the California Environmental Protection Agency (Cal/EPA) failed to promptly submit accurate time sheets during a 23-month period. As a result, Cal/EPA did not charge the employee's leave balances for 768 hours when she was absent, and it paid her $23,320 for those hours.

Finding #1: A Cal/EPA employee failed to promptly submit time sheets that accurately reported her absences from work during a 23-month period.

From August 2006 through June 2008, the employee did not submit monthly time sheets at the end of each pay period that accurately documented the time she spent working and the time she was absent. For the 23 pay periods we examined during the investigation, the employee never submitted time sheets for five pay periods, she submitted time sheets up to several months late for 12 pay periods, and she promptly submitted time sheets for just six pay periods. However, management declined to approve nearly all of the time sheets that the employee submitted late or on time because the time sheets either did not account for all absences or because the time sheets reported overtime work that had not received preapproval. Without the approved time sheets, Cal/EPA did not record the employee's absences or overtime in its leave accounting system. Consequently, Cal/EPA did not charge the employee's leave balances for the 768 hours that she was absent from work during the 23-month period; instead, it paid her $23,320 for these hours.

Cal/EPA's Action: Partial corrective action taken.

Cal/EPA approved the 23 timesheets in September 2008. In addition, it reported in September 2008 that it had recalculated, updated, and corrected the employee's leave balances to reflect her actual absences and overtime worked, based on the latest approved time sheets, for all pay periods through August 2008. Further, Cal/EPA notified us that it planned to establish an accounts receivable for 24 hours the employee was docked pay in September 2006.

Finding #2: Cal/EPA officials failed to take sufficient actions to correct the employee's lax time reporting and because of their inaction, the employee's absences were not charged against her leave balances.

Not only did the employee fail to submit her time sheets accurately and promptly, but the Cal/EPA officials responsible for managing her day-to-day activities and monitoring her time and attendance also failed to ensure that the employee submitted monthly time sheets that correctly reported her absences and time worked. The employee worked for Official A, who assigned Official B and then Official C to monitor the employee's time and attendance and to approve her time sheets. In particular, the efforts made by Official A and Official C in 2007 and early 2008 did little to resolve the employee's failure to accurately report her absences and overtime, and to promptly complete her time sheets. Official A assigned Official C around March 2007 to monitor the employee's time and attendance and to approve her time sheets. In May 2007 Official A met with the employee to counsel her about her absenteeism. However, the meeting notes indicate that Official A did not discuss the employee's failure to submit her time sheets promptly and accurately. Furthermore, Official C offered evidence that she tried to pressure the employee to comply with the time-reporting requirements through some oral conversations and numerous e-mails but the employee did not comply. Yet, Official C took no action to enforce her requests for compliance.

Cal/EPA's Action: Partial corrective action taken.

In September 2008 Cal/EPA informed us that Official A had issued a counseling memorandum to the employee, which discussed the employee's failure to promptly submit time sheets that accurately accounted for her absences. Moreover, Cal/EPA notified us that Official C had issued another counseling memorandum to the employee, which described the implementation of administrative controls to ensure that the employee correctly accounts for her absences and promptly completes her time sheets and other time reporting documents. Furthermore, Cal/EPA reported that, as soon as possible, it planned to transfer the employee to another position with a different assignment that does not require significant overtime. It stated that the new assignment would allow the employee to be more closely monitored by a different supervisor.

Department of Conservation

Investigations of Improper Activities by State Employees, July 2006 Through January 2007

INVESTIGATION I2006-0908 (REPORT I2007-1), MARCH 2007

Department of Conservation's response as of January 2008

We investigated and substantiated an allegation that an employee with the Department of Conservation (Conservation) engaged in various activities that were incompatible with his state employment, including using the prestige of his state position and improperly using state resources to perform work for the benefit of his spouse's employer, a charitable organization.

Finding #1: The employee misused state resources to engage in improper activities.

We found that the employee misused state resources to engage in numerous activities that were incompatible with his state employment, including misusing the prestige of his state position. We believe that the nature and extent of these improper activities caused a discredit to the State. Specifically, the employee engaged in the following improper activities:

- Failed to disclose stock ownership in oil industry companies and regulated companies.[1]
- Owned stock in a company at the time he issued permits to that company.
- Used state time and resources for fundraising.
- Solicited charitable contributions from oil industry companies and regulated companies.
- Used his state position to assist a charity.
- Requested and received personal discounts from a state vendor.
- Sent more than 65 e-mails that were insubordinate or of a nature to discredit the State.

The employee owns or has owned stock in a number of oil industry companies, including at least two regulated companies (Company A and Company J). However, he failed to disclose his ownership of stock in these companies, in violation of the Political Reform Act of 1974 (act).

As required by the act, Conservation requires the employee, who works in Conservation's Division of Oil, Gas & Geothermal Resources (division), and others in his job classification to annually complete

[1] The employee is required to disclose his stock ownership in companies regularly engaged in oil and gas exploration and related industries (oil industry companies), which includes regulated companies.

Investigative Highlights . . .

An employee at the Department of Conservation:

» *Failed to disclose his stock ownership in at least 18 instances.*

» *Owned stock in two companies at the time he made business decisions affecting those companies.*

» *Misused state resources to assist his spouse's employer.*

» *Used his state e-mail to directly solicit donations from oil industry and regulated companies.*

» *Used the prestige of his state position to obtain discounts on his personal cell phone purchases.*

» *Sent more than 65 e-mails that were insubordinate or were of such a nature to cause a discredit to the division.*

In addition, the employee's manager failed to adequately monitor the employee's improper activities and failed to disclose his own stock ownership in at least seven instances.

statements of economic interests because these employees have the authority to approve permits that allow companies to extract or produce oil or geothermal resources. Accordingly, the employee, his manager, and others in their job classifications are required to include on their statements of economic interests any investments in, interests in business positions in, and income from any business entity of the type that may be affected by their decisions. This includes, but is not limited to, stock ownership with a value of $2,000 or more in businesses that are regularly engaged in the extraction and/or production of oil, gas, or geothermal resources.

We obtained the employee's statements of economic interests for each year from 2000 to 2005. In each statement, the employee certified under penalty of perjury that he had no reportable business interests. However, information the employee stored on his state computer that he later confirmed as accurate indicated that the employee failed to disclose reportable investments every year during this time period. In particular, we found for those years at least 18 instances where the employee failed to disclose that his stock ownership in various companies exceeded $2,000 in value.

In addition, we believe the employee conducted himself in a questionable manner when he communicated with and approved permits for Company A, a company whose stock he owned at the time he approved its permit requests. Specifically, we believe that in doing so the employee may have violated the common law doctrine against conflicts of interest (doctrine). Similarly, we believe he also violated the doctrine when he made business decisions affecting Company B, the division's vendor for cellular phone services, while he owned stock in that company. The doctrine provides that a public officer is implicitly bound to exercise the powers conferred on him with disinterested skill, zeal, and diligence and primarily for the benefit of the public. Because he owned stock at the same time he approved permits for Company A and made purchases in his state capacity from Company B, we question whether the employee was able to make these business decisions with disinterested skill for the primary benefit of the State.

Further, we found that the employee misused his state e-mail—as well as other state resources—in a number of ways, and engaged in activities that were incompatible with his state employment while assisting his spouse in securing contributions on behalf of her employer, a charitable organization (Charity 1) in various capacities. These activities include soliciting donations from regulated companies even though he had been admonished for doing so in the past, and using his state position to facilitate Charity 1's potential purchase of a property on which he previously performed regulatory work.

The employee used his work e-mail account to send or receive more than 340 e-mails involving discussions of Charity 1 activities and events over the three-year period we reviewed. Nearly 80 of these e-mails involved soliciting donations for Charity 1 and in several instances he directly solicited donations from either oil industry or regulated companies. Many of the 340 e-mails indicate that the employee spent considerable state time and resources when serving as co-chairperson for an annual sponsorship event benefiting Charity 1 by assisting in planning and organizing the event and soliciting sponsorship donations from regulated and other oil industry companies for the event.

The employee also misused his state e-mail and improperly used his state position to facilitate Charity 1's attempt to purchase property from a property owner with whom he had previously interacted in his regulatory capacity as a state employee. The employee violated state law and Conservation's policy prohibiting its employees from using the prestige of their state positions for the gain of themselves or others when he contacted the property owner on behalf of Charity 1.

Moreover, the employee serves as the contact for the division's vendor for cell phone services, Company B. In this capacity, he has regular dealings with representatives of Company B. On two separate occasions the employee requested Company B to waive a $35 fee associated with his personal cell phone purchases. In his e-mail requests, the employee informed Company B that a large number of Conservation offices switched to Company B based on his recommendations. One could easily surmise from this request that Company B may have felt compelled to provide the discount in exchange for his continued efforts to recommend Company B to other Conservation offices. The employee's e-mail records show that Company B's representative agreed to waive the fee on both occasions.

Finally, our review of the employee's e-mail records also indicates that he regularly misused his state e-mail and engaged in a pattern of behavior that likely could be considered insubordinate or apt to cause a discredit to the State. Specifically, for the three-year period we reviewed, the employee sent or received more than 130 e-mails regarding personal financial matters. Most of these e-mails pertain to the potential value of specific stocks. At least 15 of them involved discussions of potential investments in either the oil industry or oil and gas industry companies. Further, we found that the employee sent more than 65 e-mails to coworkers, superiors, representatives of oil industry and regulated companies, and others that we believe were insubordinate or were of such a nature as to discredit the division.

Conservation's Action: Corrective action taken.

Conservation reported that it pursued adverse action against the employee and he resigned from state service. In addition, Conservation reported it has taken action to ensure that similar misconduct is not repeated. Included in its corrective action, Conservation stated that it:

- Developed a web page that its employees can use to review ethics and conflict-of-interest requirements.
- Established an internal ethics advisory panel that issued a report in October 2007. In the report the panel concluded that the types of misconduct we identified were not widespread. The panel's report also included several recommendations for conservation to consider.
- Required all employees who complete statements of economic interests to complete the Attorney General's online ethics training seminar.

Finding #2: The manager failed to adequately monitor the employee and failed to disclose his own interests in oil industry companies.

Information the employee stored on his state computer indicates that the manager should have known that the employee was involved in charitable functions involving regulated companies and Charity 1. These documents show that the manager participated in the annual charity event in 2005 and 2006 for which the employee and a representative of a regulated company were co-chairpersons in 2006. Additionally, these documents indicate that nine oil industry companies were sponsors for the event. We determined that six of them had previously submitted applications to the manager's district office for approval. Thus, it appears that the manager was aware—or should have been aware—that the employee was again soliciting donations from the regulated companies.

Documents stored on the employee's state computer also indicate that Company L, a company engaged in an industry related to oil and gas exploration, paid the manager's $150 entry fee for the annual charity event in 2006. When we questioned the manager, he stated that he was not certain whether Company L paid his entry fee but said he did not pay the fee. The manager added that he also did not pay for his entry into the previous year's event and stated that it was not uncommon for oil industry companies to pay for his entry into similar events. When we reviewed information relating to the annual charity event held in 2005, we found indications that Company M, which has submitted applications to the manager's office for his approval, paid his entry fee for the event. By accepting gifts from companies his office regulates, the manager may have violated conflict-of-interest laws and policies that prohibit a state employee from receiving any gift from anyone seeking to do business of any kind with the employee or his department under circumstances from which it reasonably could be substantiated that the gift was intended to influence the employee or was intended as a reward for official actions performed by the employee.

Finally, in the course of our interview, the manager also acknowledged that he has owned stock in a regulated company as well as in other oil and gas industry companies. Specifically, the manager informed us that in 2004 he held stock exceeding $2,000 in value in three oil and gas industry companies, including Company A, and four oil and gas industry companies in 2005. When we asked why he did not report his ownership of stock in regulated companies on his annual statement of economic interests, the manager responded that he did not believe he owned enough to require him to report them.

Conservation's Action: Partial corrective action taken.

Conservation reported in January 2008 that it had entered into a settlement agreement with the manager that required him to retire after he exhausted his leave credits.

Office of Spill Prevention and Response

It Has Met Many of Its Oversight and Response Duties, but Interaction With Local Government, the Media, and Volunteers Needs Improvement

REPORT NUMBER 2008-102, AUGUST 2008

Office of Spill Prevention and Response's response as of October 2008

In November 2007 the Cosco Busan, an outbound container ship, hit a support on the San Francisco—Oakland Bay Bridge, releasing about 53,600 gallons of oil into the bay. This event, known as the Cosco Busan oil spill, focused public attention on California's Office of Spill Prevention and Response (spill office), a division of the Department of Fish and Game (Fish and Game). The spill office, created in 1991, is run by an administrator appointed by the governor, who is responsible for preventing, preparing for, and responding to oil spills in California waters.

The spill office, along with the contingency plans it oversees, fits into a national framework for preventing and responding to oil spills, with entities at every level of government handling some aspect of the planning effort. When an oil spill occurs, the response is overseen by a three-part unified command consisting of representatives from the spill office; the party responsible for the spill and its designated representatives; and the federal government, represented by the U.S. Coast Guard (Coast Guard), which retains ultimate authority over the response.

Finding #1: The spill office has fulfilled most of its oversight responsibilities related to contingency planning but coordination with local governments could improve.

The spill office has met most of its oversight responsibilities for contingency planning but could improve several aspects of its oversight role. Specifically, the California Oil Spill Contingency Plan (state plan), which the spill office maintains, has not been updated since 2001 and is missing elements required by state law. The state plan also lacks references to other plans or documents that would better integrate it into the overall planning system. In addition, the spill office has carried out its duties to review and approve local government contingency plans (local plans) and to provide grant funding. However, only six of the 22 local governments participating have revised their plans since 2004, and seven of the 16 remaining local plans have not been revised since 1995 or before. Further, the spill office reported that few local governments in the San Francisco Bay Area have regularly participated in other oil spill response planning activities.

The outdated state plan and local plans and weak participation by local governments in oil spill response planning activities may have led to problems with integrating state and local government activities into the Cosco Busan response.

Audit Highlights . . .

Our review of the Department of Fish and Game's Office of Spill Prevention and Response (spill office) found that:

- *The spill office has met many of its oversight responsibilities; however, the California Oil Spill Contingency Plan is outdated and missing required elements.*
- *Only six of 22 local government contingency plans were revised after 2003 and local participation in joint planning efforts has been low.*
- *The spill office, the Governor's Office of Emergency Services, and private entities responding to the November 2007 Cosco Busan oil spill met their fundamental responsibilities.*
- *The spill office's shortage of trained liaison officers and experienced public information officers led to communication problems during the Cosco Busan oil spill.*
- *The spill office's lack of urgency in calculating the spill volume from the Cosco Busan may have delayed the mobilization of additional resources.*
- *Reserves for the Oil Spill Prevention and Administration Fund (fund) totaled $17.6 million as of June 30, 2007, but are projected to drop by half over the next two years.*
- *Payroll testing indicates the need to better assure that only oil spill prevention activities are charged to the fund.*

We recommended that the spill office regularly update the state plan and include references to sections of regional and area contingency plans that cover required elements. We also recommended that the spill office work with local governments to improve participation and should consider whether additional grant funding is needed.

Spill Office's Action: Pending.

The spill office said it has initiated an effort to update the state plan and expects to complete the update in fiscal year 2008–09. To help integrate local government participation before and during an oil spill, the spill office says that it expects to issue awards to local governments by the beginning of 2009 under a one-time budget augmentation of $650,000. Finally, it is working with the San Francisco Bay and Delta Area Committee to include the participation of a local government representative in the unified command during oil spill responses.

Finding #2: The spill office is fulfilling most of its review and approval responsibilities for vessel contingency plans (vessel plans) and oil spill response organizations (response organizations).

The spill office has an established system for reviewing vessel plans and has ensured that vessel plans are approved before any vessel enters California waters. In addition, it has generally assured that annual tabletop exercises have been conducted for vessel plans, and has conducted drills to verify the rating and equipment information related to response organizations. However, the spill office has not always ensured that it receives and maintains documentation showing that annual tabletop exercises have been conducted for each vessel plan. In addition, the spill office does not require owners to submit reviews of their vessel plans after oil spills (postspill reviews) when applicable. The spill office's deputy administrator said that he believes the postspill review requirement is worthwhile, but that the spill office needs to consider whether it is reasonable to ask vessel owners to admit problems when the admissions may influence penalties.

We recommended that the spill office obtain and retain documentation related to completion of required tabletop exercises. We also recommended that the spill office determine whether postspill reviews are an effective means for identifying areas for plan improvement and then take steps to either ensure the reviews are submitted or eliminate them from its regulations.

Spill Office's Action: Pending.

The spill office said it was hiring and training new staff in November 2008 to address documentation problems related to tabletop exercises. It also said that it has trained employees on compliance with the postspill review regulation, but is evaluating the effectiveness of the regulation and is considering removing the regulation in 2009.

Finding #3: State and private entities met their fundamental duties in the Cosco Busan response, but communication breakdowns caused problems.

The spill office, the Governor's Office of Emergency Services, and private contractors responding to the Cosco Busan incident performed the fundamental duties set forth in oil spill contingency plans. However, changes are needed in several areas to improve responses to future oil spills. We found that weaknesses in the spill office's handling of its liaison role during the initial days of the response, including a shortage of communications equipment and trained liaison officers, led to communication problems with local governments. The counties we spoke with confirmed these problems and expressed dissatisfaction with the spill office's role as a liaison. In addition, the spill office's lack of urgency in reporting its measurement of the spill quantity, as well as the understated spill amounts reported by others, may have delayed the mobilization of additional response resources on the first day of the spill and contributed to the delayed notification of local governments.

We recommended that the spill office collaborate with area committees in California to identify potential command centers that are sized appropriately and possess all necessary communications equipment. Additionally, the spill office should continue with its plans to develop qualification standards for liaison officers and to train more staff for that role and should ensure that staff in its operations center provide all necessary support to liaison officers in the field. Moreover, the spill office should ensure that staff assigned as liaison officers participate in drills to gain experience.

We also recommended that the spill office collaborate with the Coast Guard to establish spill calculation protocols and establish procedures to ensure that staff promptly report spill calculations to the State on scene coordinator. Finally, the spill office should include spill calculations as part of its drills.

Spill Office's Action: Partial corrective action taken.

The spill office stated that area committees are continuing to identify potential command posts and that these sites will be incorporated in future area drills. It also said that it coordinated an extensive liaison officer training course for 30 of its employees, assigned liaison officers to all 13 drills in 2008 where an agency liaison officer was requested, and plans to develop specific training and experience criteria for staff assigned to spill incidents. The spill office indicates that in its next response to the bureau, it will describe additional steps it is taking to strengthen operations center support of liaison officers in the field. Finally, the spill office indicates that it has established spill calculation protocols with the Coast Guard, has directed its field response teams to report spill quantification results promptly to the State on-scene coordinator, and will make spill quantification protocols part of its drills.

Finding #4: A lack of information officers with oil spill experience impaired the spill office's ability to assist with media relations and an insufficient number of trained responders may have hindered wildlife rescue efforts.

When the Cosco Busan spill occurred, an information officer experienced in oil spill response was not available to represent the State within the information center. This deficiency during the early days of the response appears to have hindered the dissemination of information about the role of volunteers in spill cleanups. Additional missteps by the Coast Guard, which managed the information center, and the spill office, appear to have contributed to the public's frustration with the clean-up effort and received widespread media attention. In addition, insufficient staffing may have hindered wildlife rescue efforts carried out by the spill office and the Oiled Wildlife Care Network (wildlife network) after the Cosco Busan spill. The number of staff mobilized for recovery and transportation of oiled wildlife remained lower than the general guidelines laid out in the California wildlife response plan for the first three days of the spill. Staffing increased only after the unified command loosened the requirements for hazardous waste training for volunteers participating in the response. The network director noted that the wildlife network has had difficulty maintaining trained personnel capable of serving on recovery teams because of the requirement to have 24 hours of hazardous waste training, supplemented by a yearly eight-hour refresher course.

We recommended that public relations staff in Fish and Game's communications office participate in spill drills, and that the spill office develop protocols to ensure that key information, such as the role of volunteers, is disseminated early in a spill response. We also recommended that the spill office ensure that the wildlife network identifies and trains a sufficient number of staff to carry out recovery activities. Furthermore, the spill office should continue to clarify with California Occupational Safety and Health Administration (Cal/OSHA) whether reduced requirements for hazardous waste training are acceptable for volunteers assisting on recovery teams, and should consider working with the wildlife network to ensure that this training is widely available to potential volunteers before a spill.

Spill Office's Action: Pending.

The spill office said that communications office staff continue to be trained in incident command and oil spill response. It also indicated that it has a communications structure in place to issue key information to the public during an oil spill, and has identified funding to develop a Web site that can be activated during a spill to allow widespread access to key response information. Moreover, the spill office noted that Assembly Bill 2911 provided $500,000 in additional funding for the wildlife network, which the spill office intends to distribute in the fiscal year 2009–10 budget. Finally, the spill office states it has corresponded with Cal/OSHA regarding training standards for volunteers engaged in oil spill responses.

Finding #5: The Oil Spill Prevention and Administration Fund (fund) has a high reserve balance and has paid for inappropriate personnel charges.

The amount of reserves in the Oil Spill Prevention and Administration Fund (fund) has increased significantly over the past several years, leading to a reserve of $17.6 million at June 30, 2007, or six months of budgeted expenditures for the next year. A fee increase without corresponding expenditure increases and failure of the spill office to annually assess the level of the reserve, as required by law, contributed to the high balance. A more reasonable reserve for a fund with a fairly stable level of expenditures would be about one and a half months, according to the spill office's deputy administrator.

Money in the fund can only be used for statutorily defined purposes relating to spill prevention activities. Based on our review of selected transactions and spending trends from fiscal years 2001–02 through 2006–07, we determined that expenditures charged to the fund generally appear to be consistent with the spill office's authorizing statute. However, our review of a sample of 30 employees' labor distribution reports (time sheets), as well as our interviews with spill office managers and employees, disclosed several instances in which employee salaries are being charged to the fund for time spent on general activities. These instances include spill office employees who sometimes perform general activities and, in one instance, an attorney who works for another Fish and Game unit and performs no spill prevention activities.

We recommended that the spill office annually assess the reasonableness of the reserve balance and the per-barrel fee on crude oil and petroleum products. Further, we recommended that the spill office and Fish and Game provide guidelines to employees concerning when to charge activities to the fund, take steps—such as performing a time study—to ensure that spill prevention wardens' time is charged appropriately, and discontinuing charges to the fund for the attorney we identified.

Spill Office's Action: Partial corrective action taken.

The spill office indicated that it would prepare a plan projecting revenues and expenses for the fund by January 20, 2009. It also said that all staff will be trained on the proper use of the fund by the end of 2008, and that supervisors will now be responsible for ensuring staff compliance. Additionally, the spill office said that Fish and Game's Law Enforcement Division would conduct a time study of all enforcement personnel operating in the marine zone of southern California in the first quarter of 2009. Finally, the spill office made adjustments to correctly charge the time of the referenced attorney.

Finding #6: Restructuring of positions appears to have caused friction between the spill office and Fish and Game management.

Since 2000 Fish and Game has restructured 45.5 staff positions from the direct control of the spill office to other Fish and Game units. Although it does not appear to have affected the spill office's overall ability to carry out its mission related to the three largest restructured units, the limited problems

we did identify, plus serious reservations by both the past administrator of the spill office and the current deputy administrator, suggested the need for a better understanding between Fish and Game management and the spill office on their roles and authority related to these employees.

We recommended that the spill office and other Fish and Game units discuss their respective authorities and better define the role of each in the management of spill prevention staff consistent with the administrator's statutory responsibilities and the other needs of Fish and Game.

Spill Office's Action: Pending.

The spill office said that it continues to improve communication and cohesiveness on an internal level with Fish and Game.

Department of Fish and Game

Its Limited Success in Identifying Viable Projects and Its Weak Controls Reduce the Benefit of Revenues From Sales of the Bay-Delta Sport Fishing Enhancement Stamp

REPORT NUMBER 2008-115, OCTOBER 2008

Department of Fish and Game's response as of December 2008

The Joint Legislative Audit Committee (audit committee) asked the Bureau of State Audits to independently develop and verify information related to the Bay-Delta Sport Fishing Enhancement Stamp (fish stamp) program. Generally speaking, the audit committee's request focused on spending authority for the fish stamp revenues, the appropriateness of expenditures incurred in the program, and the required reporting to the fish stamp advisory committee (committee).

Finding #1: The Department of Fish and Game has not fully used revenues from the fish stamp program.

The Department of Fish and Game (Fish and Game) has not identified or pursued a course of action to ensure the full use of the revenues that it generates through sales of the fish stamp. Since the inception of the fish stamp program, Fish and Game has sold nearly 1.5 million annual fish stamps, generating $8.6 million in revenue and interest; however, as of June 2008, it had approved only 17 projects representing $2.6 million in commitments to funding. In addition, during the first two fiscal years in which it collected the fish stamp fee, Fish and Game did not request any spending authority to use the revenue to fund fish stamp projects. Further, during this same period Fish and Game did not reallocate unused funding from other accounts within the Fish and Game Preservation Fund (preservation fund), which holds money collected under state laws governing the protection and preservation of birds, mammals, fish, reptiles, and amphibians.

Therefore, it did not have the authority to spend any of the revenues generated to pay either for projects or for related administrative expenses. Even though it did request spending authority in fiscal years 2005–06 through 2007–08, Fish and Game still did not actively identify and fund projects up to the level of spending authority obtained. As a result, the balance in the fish stamp account continues to increase, and individuals who pay for fish stamps are not receiving the full benefit from their purchases.

To ensure that the fish stamp fulfills its intended benefit, we recommended that Fish and Game work with the committee to develop a spending plan that focuses on identifying and funding viable projects and on monitoring revenues to assist Fish and Game in effectively using the fish stamp revenues.

Audit Highlights . . .

Our review of the Department of Fish and Game's (Fish and Game) Administration of the Bay-Delta Sport Fishing Enhancement Stamp (fish stamp) program revealed the following:

- *Fish and Game's use of the money collected from fish stamp sales has been limited.*
- *Fish and Game and the fish stamp advisory committee (committee) have been slow in identifying and approving projects.*
- *As of June 30, 2008, the fish stamp account had an unspent balance of over $7 million, although a portion of this amount was committed to approved projects that have not yet been funded.*
- *Fish and Game does not have an accurate accounting of either its administrative expenditures or individual project expenditures for the fish stamp program.*
- *Periodic reports Fish and Game provides to the committee do not include all the required information.*
- *During fiscal years 2005–06 through 2007–08, Fish and Game spent an estimated $201,000 in fish stamp funds to pay for payroll costs and goods and services unrelated to fish stamp activities.*

Fish and Game's Action: Partial corrective action taken.

According to Fish and Game, its staff has prepared a draft spending plan that is currently being reviewed by management. The draft will be provided to the audit committee for comment and review at the next business meeting, scheduled for January 2009. Fish and Game officials expect a final spending plan to be completed by April 2009.

Finding #2: Weak controls limit Fish and Game's ability to monitor and report project activity.

Fish and Game does not have a sufficient system of internal or administrative controls to monitor fish stamp project activity. For example, the department's accounting system does not adequately track project expenditures. As a result, project expenditures are difficult to reconcile, and have been incorrectly charged to other funding sources. For example, in fiscal year 2005–06, Fish and Game approved using $50,000 in fish stamp funds to enhance its efforts to enforce laws against sturgeon poaching. However, Fish and Game actually charged the $50,000 to another of its funding sources. In another instance, the agreement for one fish stamp project required Fish and Game to pay a specified percentage of annual lease payments from the fish stamp account. However, according to a department official, Fish and Game paid this expenditure out of its general fund appropriation in fiscal year 2005–06 and 2006–07 rather than from the fish stamp account.

Additionally, information provided by Fish and Game to the committee both in periodic reports and in committee meetings is not always accurate or complete. Therefore, the committee is less able to make informed decisions on funding fish stamp projects.

To track and report project costs adequately, we recommended that Fish and Game improve the tracking of individual project expenditures by assigning each fish stamp project its own project cost account within the accounting system. Additionally, we recommended that Fish and Game require that project managers approve all expenditures directly related to their projects and periodically reconcile the records for their respective projects to accounting records and report expenditures to the staff responsible for preparing the advisory committee reports. We also recommended that Fish and Game reimburse its general fund appropriation for the lease payments that should have been paid from the fish stamp account.

Further, we recommended that Fish and Game should, at least annually, provide the committee with written reports of actual project expenditures and detailed information on project status as well as total administrative expenditures. Finally, we recommended that Fish and Game ensure that the information it communicates to the committee is accurate.

Fish and Game's Action: Partial corrective action taken.

Fish and Game reports that fish stamp staff and the Accounting Services Branch have met to discuss options to better track and monitor project expenditures. Fish and Game decided that project costs could be isolated with a unique index code. The index code is associated with the division, unit, or region performing the work. In situations where project costs cannot be isolated by an index/project cost account (PCA) combination, new PCA's will be added as needed. All new projects funded by the fish stamp will be uniquely identified by an index code or PCA.

Additionally, according to Fish and Game, officials have contacted all fish stamp project managers requesting detailed expenditure data to date and will continue to request this information quarterly or as needed depending on the project's duration. Fish and Game officials also stated that fish stamp staff have begun reconciling expenditures with CalSTARS reports. Fish stamp staff will also be requesting detailed expenditure information quarterly or as needed. Fish and Game expects to have all project expenditures reconciled by the beginning of 2009.

Fish and Game also reports that the fiscal year 2006–07 lease payments have been adjusted from its general fund appropriation and reflected in the fish stamp account. Fish and Game is continuing to research the prior year payments and expects to complete adjustments by April 2009.

Fish and Game plans to provide the committee with a detailed financial overview at the next business meeting, scheduled for January 2009. According to Fish and Game, the detailed overview will include administrative costs, project costs, amount encumbered, actual expenditures, and project status. Finally, according to Fish and Game, fish stamp staff always strive to provide accurate information and are continuing to work to ensure budget and expenditure data are accurate.

Finding #3: Expenditures charged to the fish stamp account were inaccurate.

During fiscal years 2005–06 through 2007–08, Fish and Game charged expenditures totaling an estimated $201,000 to the fish stamp account that were unrelated to fish stamp activities. Although state law cites a broad definition of expenditures allowed under the fish stamp program, the expenditures we identified as inappropriate were payroll and invoice costs that were not related to any approved fish stamp project or administrative activity.

In addition, Fish and Game did not charge the account for certain administrative expenditures it incurred during the fish stamp program's first two fiscal years. Appropriate administrative expenditures would include costs for staff assigned to facilitate operating the program. These administrative expenditures also include indirect charges, which are agency wide costs proportionally distributed among all the agency's funds or accounts. The manager of the program management branch stated that the administrative expenditures for these two years were charged to the nondedicated account within the preservation fund. Based on invoices provided by Fish and Game, we know that during fiscal years 2003–04 and 2004–05, Fish and Game incurred at least $18,000 in administrative expenditures for printing the fish stamps sold in 2004 and 2005. We also know that Fish and Game should have charged these costs to the fish stamp account but that it did not do so.

We recommended that Fish and Game provide guidelines to its employees to ensure that they appropriately charge their time to fish stamp projects. In addition, we recommended that Fish and Game discontinue the current practice of charging payroll costs to the fish stamp account for employee activities we identified as not pertaining to the program. Finally, we recommended that Fish and Game determine whether it inappropriately charged any other expenditures to the fish stamp account and make the necessary accounting adjustments.

Fish and Game's Action: Partial corrective action taken.

Although Fish and Game did not directly address our recommendation that it provide guidelines to staff concerning when to charge activities to the fish stamp account, it believes that regular reconciliations of project manager detailed expenditures against CalSTARS reports will ensure that any inappropriate charges made to the fish stamp account will be identified and corrected.

Fish and Game reports that current year charges that were inappropriately made to the fish stamp account have been corrected. Fish and Game has also retrieved some of the prior year time sheets that had inappropriate charges to the fish stamp account and are waiting on the receipt of other time sheets. Once these time sheets are corrected to reflect the appropriate charges, Fish and Game will make adjustments to correct the payroll costs to the correct funds. Fish and Game expects to have all payroll adjustments made by April 2009.

Electronic Waste

Some State Agencies Have Discarded Their Electronic Waste Improperly, While State and Local Oversight Is Limited

REPORT NUMBER 2008-112, NOVEMBER 2008

Responses from eight audited state agencies as of November 2008

The Joint Legislative Audit Committee asked the Bureau of State Audits to review state agencies' compliance with laws and regulations governing the recycling and disposal of electronic waste (e-waste). The improper disposal of e-waste in the State may present health problems for its citizens. According to the U.S. Environmental Protection Agency (USEPA), computer monitors and older television picture tubes each contain an average of four pounds of lead and require special handling at the end of their useful lives. The USEPA states that human exposure to lead can present health problems ranging from developmental issues in unborn children to brain and kidney damage in adults. In addition to containing lead, electronic devices can contain other toxic materials such as chromium, cadmium, and mercury. Humans may be exposed to toxic materials from e-waste if its disposal results in the contamination of soil or drinking water.

Finding #1: State agencies appear to have improperly discarded some electronic devices.

In a sample of property survey reports we reviewed, two of the five state agencies in our audit sample—the Department of Motor Vehicles (Motor Vehicles) and the Employment Development Department (Employment Development)—collectively reported discarding 26 electronic devices in the trash. These 26 electronic devices included such items as fax machines, tape recorders, calculators, speakers, and a videocassette recorder that we believe could be considered e-waste. The property survey reports for the other three state agencies in our sample—the California Highway Patrol (CHP), the Department of Transportation (Caltrans), and the Department of Justice (Justice)—do not clearly identify how the agencies disposed of their electronic devices; however, all three indicated that their practices included placing a total of more than 350 of these items in the trash.

State regulations require waste generators to determine whether their waste, including e-waste, is hazardous before disposing of it. However, none of the five state agencies in our sample could demonstrate that they took steps to assess whether their e-waste was hazardous before placing that waste in the trash. Further the California Integrated Waste Management Board (Waste Management Board) has advised consumers, "Unless you are sure [the electronic device] is not hazardous, you should presume [that] these types of devices need to be recycled or disposed of as hazardous waste and that they may not be thrown in the trash."

Audit Highlights . . .

Our review of five state agencies' practices for handling electronic waste (e-waste) revealed that:

- *The Department of Motor Vehicles and the Employment Development Department improperly disposed of electronic devices in the trash between January 2007 and July 2008.*
- *The California Highway Patrol, Department of Transportation, and Department of Justice did not clearly indicate how they disposed of some of their e-waste; however, all indicated that they too have discarded some e-waste in the trash.*
- *The lack of clear communication from oversight agencies, coupled with some state employees' lack of knowledge about e-waste, contributed to these instances of improper disposal.*
- *State agencies do not consistently report the amount of e-waste they divert from municipal landfills. Further, reporting such information on e-waste is not required.*
- *State and local oversight of e-waste generators is infrequent, and their reviews may not always identify instances when state agencies have improperly discarded e-waste.*

To avoid contaminating the environment through the inappropriate discarding of electronic devices, we recommended that state agencies ascertain whether the electronic devices that require disposal can go into the trash. Alternatively, state agencies could treat all electronic devices they wish to discard as universal waste and recycle them.

State Agencies' Actions: Pending.

According to their responses to our audit report, the five state agencies we sampled—CHP, Motor Vehicles, Caltrans, Employment Development, and Justice—indicated that they were taking steps to implement our recommendation. CHP stated that it will establish internal policies and procedures to ensure future compliance with e-waste standards. Motor Vehicles stated that as of August 1, 2008, its property and equipment control unit does not allow any electronic equipment to be disposed of in a landfill; it donates this equipment to public schools or, if in bad condition, disposes of it through a recycler that will properly dispose of the equipment. Caltrans stated that it will issue a memorandum to staff responsible for e-waste disposal, clarifying responsibilities and providing direction on implementation of new electronic disposal procedures to include managing all electronic equipment as if it contains hazardous waste. Employment Development stated that it will evaluate the opportunity to dispose of all its electronic devices as universal waste. Finally, Justice stated that it concurs with the report's recommendations and will continue to dispose of surplus equipment through recycling.

Finding #2: Opportunities exist to efficiently and effectively inform state agencies about the e-waste responsibilities.

Because all five state agencies in our sample had either discarded some of their e-waste in the trash or staff asserted that the agencies had done so, we concluded that some staff members at these agencies may lack sufficient knowledge about how to dispose of this waste properly. We therefore examined what information oversight agencies, such as the Department of Toxic Substances Control (Toxic Substances Control), the Waste Management Board, and the Department of General Services (General Services) provided to state agencies and what steps state agencies took to learn about proper e-waste disposal. Staff members at the five state agencies we reviewed—including those in charge of e-waste disposal, recycling coordinators, and property survey board members who approve e-waste disposal—stated that they had received no information from Toxic Substances Control, the Waste Management Board, or General Services related to the recycling or disposal of e-waste.

Further, based on our review of these three oversight agencies, it appears they have not issued instructions specifically aimed at state agencies describing the process they must follow when disposing of their e-waste. At most, we saw evidence that General Services and the Waste Management Board collaborated to issue guidelines in 2003. These guidelines state: "For all damaged or nonworking electronic equipment, find a recycler who can handle that type of equipment." However, the Waste Management Board indicated that state agencies are not required to adhere to these guidelines; General Services deferred to the Waste Management Board's opinion.

Alternatively, some state agencies we spoke with learned about e-waste requirements through their own research. For example, the recycling coordinator at Justice conducted her own on-line research to identify legally acceptable methods for disposing of e-waste. Through her research of various Web sites at the federal, state, and local government levels, she determined which electronic devices Justice would manage as e-waste and located e-waste collectors who would pick up or allow Justice to drop off its e-waste at no charge.

While Justice's initiative is laudable, we believe that it is neither effective nor efficient to expect staff at all state agencies to identify e-waste requirements on their own. Some state agencies may not be aware that it is illegal to discard certain types of electronic devices in the trash, and it may never occur to them to perform such research before throwing these devices away. Further, having staff at each of the more than 200 state agencies perform the same type of research is duplicative.

The State could use any of at least five approaches to convey to state agencies more efficiently and effectively the agencies' e-waste management responsibilities. One approach would be to have Toxic Substances Control, the Waste Management Board, or General Services, either alone or in collaboration with one or more of the others, directly contact by mail, e-mail, or other method the director or other appropriate official, such as the recycling coordinator or chief information officer, at each state agency conveying how each agency should dispose of its e-waste. Other approaches include:

- Having the Waste Management Board implement a recycling program for electronic devices owned by state agencies.
- Including e-waste as part of the training related to recycling provided by the Waste Management Board.
- Having General Services, Toxic Substances Control, and the Waste Management Board work together to amend applicable sections of the State Administrative Manual that pertain to recycling to specifically include electronic devices.
- Modifying an existing executive order or issuing a new one related to e-waste recycling that incorporates requirements aimed at e-waste disposal.

To help state agencies' efforts to prevent their e-waste from entering landfills, we recommended that Toxic Substances Control, the Waste Management Board, and General Services work together to identify and implement methods that will communicate clearly to state agencies their responsibilities for handling and disposing of e-waste properly and that will inform the agencies about the resources available to assist them.

State Agencies' Actions: Pending.

The three oversight agencies included in our audit concurred with our recommendation and agreed to work collaboratively with each other to implement solutions for ensuring that e-waste from state agencies is managed legally and safely. Further, General Services stated that after consulting with other entities, it will amend applicable sections of the State Administrative Manual to ensure that they clearly require the recycling or disposal of e-waste in accordance with applicable laws, regulations, and policies.

Finding #3: State agencies report inconsistently their data on e-waste diverted from municipal landfills.

Most of the five state agencies in our sample reported diverting e-waste from municipal landfills. Waste diversion includes activities such as source reduction or recycling waste. In 1999 the State enacted legislation requiring state agencies to divert at least 50 percent of their solid waste from landfill disposal by January 1, 2004. State agencies annually describe their status on meeting this goal by submitting reports indicating the tons of various types of waste diverted. A component of the report pertains specifically to e-waste. Between 2004 and 2007, four of the five state agencies in our sample reported diverting a combined total of more than 250 tons of e-waste. The fifth state agency, Caltrans, explained that it reported its e-waste diversion statistics in other categories of its reports that were not specific to e-waste.

Several factors cause us to have concerns about the reliability and accuracy of the amounts that these state agencies reported as diverted e-waste. First, these state agencies were not always consistent in the way they calculated the amount of e-waste to report or in the way they reported it. For example, Employment Development's amount for 2007 include data only from its Northern California warehouse; the amount did not include information from its Southern California warehouse. Also for 2007, the CHP included its diverted e-waste in other categories, while Caltrans did so for all years reported. Further, although instructions call for reporting quantities in tons, for 2007 Justice reported 3,951 e-waste items diverted. Moreover, diversion of e-waste does not count toward compliance with

the solid waste diversion mandate, so state agencies may not include it. The Waste Management Board explained that e-waste is not solid waste, and thus state agencies are not required to report how much they divert from municipal landfills.

The Waste Management Board also allows state agencies to use various methods to calculate the amounts that they report as diverted. For instance, rather than conduct on-site disposal and waste reduction audits to assess waste management practices at every facility, a state agency can estimate its diversion amounts from various sampling methods approved by the Waste Management Board.

If the Legislature believes that state agencies should track more accurately the amounts of e-waste they generate, recycle, and discard, we recommended it consider imposing a requirement that agencies do so.

Legislative Action: Unknown.

We are not aware of any legislative action at this time.

Finding #4: State agencies' compliance with e-waste requirements receives infrequent assessments that are simply components of other reviews.

A state agency's decision regarding how to dispose of e-waste is subject to review by local entities, such as cities and counties, as well as by General Services. We found that the Sacramento County program agency and General Services perform reviews infrequently, and these reviews may not always identify instances in which state agencies have disposed of e-waste improperly.

Local agencies certified by the California Environmental Protection Agency are given responsibility under state law to implement and enforce the State's hazardous waste laws and regulations, which include requirements pertaining to universal waste. These local agencies, referred to as program agencies, perform periodic inspections of hazardous waste generators. The inspections performed by the program agency for Sacramento County are infrequent and may fail to include certain state agencies that generate e-waste. According to this program agency, which has the responsibility to inspect state agencies within its jurisdiction, its policy is to inspect hazardous waste generators once every three years. For the five state agencies in our sample, we asked the Sacramento County program agency to provide us with the inspection reports that it completed under its hazardous waste generator program. The inspection reports we received were dated between 2005 and 2008. We focused on the hazardous waste generator program because Sacramento County's inspectors evaluate a generator's compliance with the State's universal waste requirements under this program (universal waste is a subset of hazardous waste, and it may include e-waste). In its response to our request, the Sacramento County program agency provided seven inspection reports that covered four of the five state agencies in our sample. The Sacramento County program agency provided three inspection reports for Caltrans, one report for Justice, one for the CHP, and two inspection reports for Motor Vehicles. The program agency did not provide us with an inspection report for Employment Development, indicating that this department is not being regulated under the program agency's hazardous waste generator program. The Sacramento County program agency explained that it targets its inspections specifically toward hazardous waste generators and not generators that have universal waste only, although the program agency will inspect for violations related to universal waste during its inspections. As a result, the Sacramento County program agency may never inspect Employment Development if it generates only universal waste.

The State Administrative Manual establishes a state policy requiring state agencies to obtain General Services' approval before disposing of any state-owned surplus property, which could include obsolete or broken electronic devices. In addition to reviewing and approving these disposal requests, General Services periodically audits state agencies to ensure they are complying with the State Administrative Manual and other requirements. General Services' reviews of state agencies are infrequent and it is unclear whether these reviews would identify state agencies that have inappropriately disposed of their e-waste. According to its audit plan for January 2007 through June 2008, General Services conducts "external compliance audits" of other state agencies to determine whether they comply with requirements that are under the purview of certain divisions or offices within General Services.

One such office is General Services' Office of Surplus Property and Reutilization, which reviews and approves the property survey reports that state agencies must submit before disposing of surplus property. According to its audit plan, General Services' auditors perform reviews to assess whether state agencies completed these reports properly and disposed of the surplus equipment promptly. General Services' audit plan indicates that it audited each of the five state agencies in our sample between 1999 through 2004, and that it plans to perform another review of these agencies within the next seven to eight years.

When General Services does perform its reviews, it is unclear whether General Services would identify instances in which state agencies improperly discarded e-waste by placing it in the trash. General Services' auditors focus on whether state agencies properly complete the property survey reports and not on how the agencies actually dispose of the surplus property. For example, according to its audit procedures, General Services' auditors will review property survey reports to ensure that they contain the proper signatures and that the state agencies disposed of the property "without unreasonable delay." After the end of our fieldwork, General Services revised its audit procedures to ensure that its auditors evaluate how state agencies are disposing of their e-waste. General Services provided us with its final revised audit guide and survey demonstrating that its auditors will now "verify that disposal of e-waste is [sent] to a local recycler/salvage company and not sent to a landfill."

If the Legislature believes that more targeted, frequent, or extensive oversight related to state agencies' recycling and disposal of e-waste is necessary, we recommended that the Legislature consider assigning this responsibility to a specific agency.

Legislative Action: Unknown.

We are not aware of any legislative action at this time.

Finding #5: Some state agencies use best practices to manage e-waste.

During our review we identified some state agencies that engage in activities that we consider best practices for managing e-waste. These practices went beyond the requirements found in state law and regulations, and they appeared to help ensure that e-waste does not end up in landfills. One best practice we observed was Justice's establishment of very thorough duty requirements for its recycling coordinator. These requirements provide clear guidelines and expectations, listing such duties as providing advice and direction to various managers about recycling requirements, legal mandates, goals, and objectives. The duties also include providing training to department staff regarding their duties and responsibilities as they pertain to recycling. In addition, the recycling coordinator maintains current knowledge of recycling laws and works with the Waste Management Board and other external agencies in meeting state and departmental recycling goals and objectives. Three of the remaining four state agencies in our sample did not have detailed duty statements specifically for their recycling coordinators. These three state agencies—the CHP, Motor Vehicles, and Employment Development—briefly addressed recycling coordination in the duty statement for the respective individual's position. Caltrans, the remaining state agency in our sample, indicated that it did not have a duty statement for its recycling coordinator. The creation of a detailed duty statement similar to the one used by Justice would help state agencies ensure that they comply with mandated recycling requirements, that they maintain and distribute up-to-date information, and that agencies continue to divert e-waste from municipal landfills.

A second best practice we noted was state agencies' use of recycling vendors from General Services' master services agreement. General Services established this agreement to provide state agencies with the opportunity to obtain competitive prices from prequalified contractors that have the expertise to handle their e-waste. For a contractor to be listed on General Services' master services agreement, it must possess three years of experience in providing recycling services to universal waste generators, be registered with Toxic Substances Control as a hazardous waste handler, and ensure that all activities resulting in the disposition of e-waste are consistent with the Electronic Waste Recycling Act of 2003.

The master services agreement also lists recycling vendors by geographic region, allowing state agencies to select vendors that will cover their area. Many recycling vendors under the agreement offer to pick up e-waste at no cost, although most require that state agencies meet minimum weight requirements. Based on a review of their property survey reports, we saw evidence that the CHP, Caltrans, Justice, and Employment Development all used vendors from this agreement to recycle some of their e-waste.

We recommended that state agencies consider implementing the two best practices we identified.

State Agencies' Actions: Pending.

Regarding a thorough duty statement for a recycling coordinator, as we mentioned in our audit report, Justice already follows this best practice. In their responses to our audit report, Motor Vehicles, Caltrans, and Employment Development stated that they would take steps to implement this best practice; CHP thanked us for suggesting it.

Regarding the use of recyclers from the master services agreement, we noted in our audit report that CHP, Caltrans, Justice, and Employment Development all used vendors from the master services agreement. Motor Vehicles stated that in the future, its property and equipment control unit will make an effort to use the master services agreement when disposing of obsolete equipment and that its asset management section will adopt the recommendation and develop guidelines on the use of the master services agreement. Motor Vehicles stated that the guidelines will be disseminated to all divisions by February 2009.

Department of Water Resources

Its Administration of Grants Under the Flood Protection Corridor Program Needs Improvement

REPORT NUMBER 2007-108, NOVEMBER 2007

Department of Water Resources' response as of November 2008

The Joint Legislative Audit Committee (audit committee) requested that the Bureau of State Audits review the Department of Water Resources' (Water Resources) administration of the Flood Protection Corridor Program (flood protection program). California's voters created the flood protection program by approving the Safe Drinking Water, Clean Water, Watershed Protection and Flood Protection Bond Act (Proposition 13) in March 2000. With an initial funding of $70 million, of which $57 million was available for projects, the program aims to increase flood protection, agricultural land preservation, and wildlife habitat protection throughout the State by taking various actions, such as acquiring real property interests and setting back and strengthening existing levees. The audit committee asked us to review and evaluate Water Resources' processes for selecting projects under the flood protection program. We were also asked to assess Water Resources' policies and procedures for monitoring projects and its fiscal controls over payments to grantees. In addition, the audit committee asked us to assess how Water Resources holds grantees accountable to the terms of their grant agreements and to determine whether it has properly reported on project status.

In November 2006 California's voters approved two propositions—the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 (Proposition 84) and the Disaster Preparedness and Flood Prevention Bond Act of 2006 (Proposition 1E)—that will provide Water Resources an additional $330 million for similar flood protection projects.

Finding #1: Water Resources selected projects using poorly defined criteria and made funding decisions based on incomplete information.

Decisions made by Water Resources to award first $28 million and then $29.1 million more in local grants were based on poorly defined selection criteria and incomplete information. Water Resources awarded the initial $28 million to five projects without a scoring process to consistently compare the benefits in flood protection, agricultural land conservation, and wildlife habitat protection specified in each project proposal. Although Water Resources had developed a scoring tool for this purpose, it chose not to use the tool based on the advice of its legal counsel. As a result, it is unclear why the five projects Water Resources chose to fund were better investments of Proposition 13 funds from the flood protection program than the six projects it rejected. Most notably, the flood protection program's highest priced grant, the purchase of Staten Island at a cost of $17.6 million, has yet to result in a tangible flood protection project.

Audit Highlights . . .

Our review of the Department of Water Resources' (Water Resources) administration of the Flood Protection Corridor Program revealed that:

- ***When Water Resources awarded $28 million for grants in 2001, it based the decisions on a weak selection process with poorly defined selection criteria.***
- ***It is unclear whether the highest priced grant, the acquisition of Staten Island, will result in a tangible flood protection project in return for the $17.6 million in funds awarded.***
- ***Water Resources awarded an additional $29.1 million for grants in 2003 without the aid of key information called for in its regulations to evaluate potential projects' flood protection benefits.***
- ***Water Resources has not enforced many of the monitoring procedures it established.***
- ***Water Resources has not contacted the city of Santee since March 2004, when it disbursed the final $3.65 million remaining on a $4.75 million project, despite the city's failure to submit required reports.***
- ***Water Resources neither resolved its appraisal staff's concerns nor those of the Department of General Services that the appraised value of Staten Island was too high, and as a result, the State potentially paid more than fair market value for the property.***

When awarding $29.1 million in a second round of grants, Water Resources did not require applicants to submit two key types of information mandated in the flood protection program's regulations—hydrologic studies and evidence that owners were willing to sell their properties—for Water Resources to evaluate the relative merits of potential projects. Water Resources was also inconsistent when deciding whether to approve funding requests for structural and recreational enhancements, like pedestrian bridges and bike trails.

To provide consistency in its project selection process and to better justify its future funding decisions for the additional $330 million that it will receive from propositions 84 and 1E, we recommended that Water Resources select projects in a manner that allows it to justify its funding decisions. One way Water Resources could achieve this would be to develop and use a consistent scoring process and use the scores as a basis for making funding decisions. We also recommended that Water Resources adhere to the flood protection program regulations by requiring applicants to submit hydrologic studies and evidence that owners are willing to sell their properties. Finally, Water Resources should develop policies and procedures to consistently evaluate whether proposed structural and recreational enhancements conform to the goals of the flood protection program and are the most effective use of funds.

Water Resources' Action: Pending.

Since the audit, Water Resources' flood protection program has awarded $24 million in competitive grants for eight projects being funded under Proposition 84. Water Resources awarded this funding in May 2008 and it is currently developing a Flood Protection Corridor Program Guidelines document that appears to address many aspects of this recommendation. While still in draft form as of late October 2008, Water Resources intends to use this document to guide how it will allocate funding for additional projects under propositions 84 and 1E. The document appears to address many aspects of our recommendation including evaluating the merits of noncompetitive grants [direct-expenditure grants] using a point-based system, requiring applicants to submit evidence that affected landowners are willing participants in any proposed real-property transactions, and evaluating the potential impact of scope changes on a project's benefits. Water Resources has also developed guidelines that should promote greater consistency when it evaluates the merits of a project's proposed structural or recreational enhancements. Specifically, Water Resources will limit project funding for these activities to no more than 30 percent of the award, unless the grant recipient obtains prior approval from the director of Water Resources.

Water Resources' draft guidelines do not change its prior practice of evaluating the merits of potential projects without complete hydrological studies. Instead, Water Resources continues to allow program applicants to submit an engineer or hydrologist's opinion of a project's flood benefits in lieu of a hydrological study, as long as the applicant completes a full analysis early in the project's schedule. However, it does not appear that Water Resources is following this policy in practice. Specifically, Water Resources disbursed more than $4.5 million in 2008 to a grant recipient without a hydrological study. Instead, Water Resources relied on an engineer's opinion of the project's flood benefits. When we asked a manager in Water Resources why his program had not obtained the full study, he indicated that the project's flood benefits were obvious and requiring a hydrological study was unnecessary and expensive. However, as we state on page 24 of the audit report, such a practice is inconsistent with state regulations and is counter to its intent to use these studies to help reduce the risk of funding projects with uncertain flood protection benefits. Further, our recommendation on page 29 of the audit report suggested that program funds could be used to pay for the hydrologic studies upfront before Water Resources committed more funding to projects.

Finding #2: Water Resources has not adequately monitored projects.

Although Water Resources has established a monitoring approach that would be effective if enforced, it did not always follow good monitoring practices. Progress reports for nine of 12 projects we reviewed failed to discuss schedule and budget status, did not include records of project expenditures to support

costs incurred, and did not report on any key issues affecting timely project completion. This lack of critical information has compromised Water Resources' ability to effectively monitor these flood protection program projects.

Further undermining the inadequate progress reports received was Water Resources' inability to meet its goal of regularly visiting project sites to monitor progress, inconsistent documentation of communication with grantees, and inadequate tracking of project expenditures against their budgets. Additionally, Water Resources chose not to withhold a percentage of each progress payment to grantees to ensure project completion, which may have contributed to the delays that most projects have encountered. Water Resources claims that staff turnover, staff redirection, vacancies caused by the hiring freeze, and travel restrictions due to budget restrictions contribute to these monitoring weaknesses, but its lack of formal procedures to guide staff also likely contributed to its inconsistent monitoring approach.

To effectively monitor projects, we recommended that Water Resources develop policies and procedures to ensure that it receives sufficiently detailed and complete progress reports from grantees; communicates to staff its expectations for conducting and documenting site visits; develops a process to consistently record communication with grantees; and accurately track and monitor funds disbursed to grantees. To help ensure projects are completed timely and in accordance with the grant agreements, Water Resources should withhold a percentage of payments to a grantee when appropriate and release the funds only after it is satisfied that the project is reasonably complete.

Water Resources' Action: Pending.

Since the audit was published in November 2007, Water Resources has awarded $24 million for eight projects; however, only one of the eight projects has received funding. As a result, it is too early to assess whether Water Resources is adequately monitoring its projects. Nevertheless, we noted that Water Resources' staff now use software that may help them better monitor their projects. Through the use of templates and procedures that are built in to the software, as well as the requirements described in its guidelines document, we noted the following:

- Water Resources requires grantees to submit progress reports containing actions taken since the previous report, key issues to resolve, an update on whether the project remains on budget and on schedule, and supporting documentation for expenditures.
- Water Resources has communicated its expectations that staff contact grant recipients at least once every six months, regardless of whether any progress has been made and for staff to retain this documentation in project files.
- Water Resources has communicated its expectations that staff should generally conduct site visits twice each year. In addition, it has developed standardized site visit checklists to assess a project's status, timeline, and key issues to be resolved.
- Water Resources has developed a policy of withholding up to 10 percent of certain grant payments to ensure the timely completion of projects. We saw evidence that Water Resources withheld more than $50,000 for one project when the payment was not going into escrow for land acquisition.

Further, Water Resources indicates hiring an analyst who will be responsible for ensuring that project budget-tracking sheets are accurate and kept up to date.

Finding #3: Water Resources failed to adequately monitor the $5 million project with the city of Santee.

Even though Water Resources executed what appears to be a strong letter of agreement with the city of Santee, its efforts to enforce the fiscal and reporting provisions governing the project were minimal. Proposition 13 specifically earmarked $5 million to Santee for flood protection of its streets and highways, of which Water Resources withheld $250,000 for its administrative costs. We found that Water Resources had not contacted the city of Santee since March 2004, when it disbursed the

remaining $3.65 million to the city. Although Water Resources' agreement with Santee required the city to submit semiannual progress reports detailing the project's progress and expenditures, we noted that Santee had submitted only two progress reports to Water Resources since November 2000, when the agreement between them was executed. Water Resources issued a letter in March 2004 asking the city to provide an accounting of its spending, but did not follow up or take any further action when it did not receive the requested information. Additionally, Water Resources has not received from Santee an audit report with an accounting of how the $4.75 million disbursed to the city was spent or a final inspection report by a registered civil engineer, even though they are required in the letter of agreement. Our inquiry of Santee resulted in obtaining expenditure records that were not always consistent with the invoices the city had previously submitted to Water Resources for payment.

We recommended that Water Resources follow up with Santee to determine how the city spent its allocated funds. Additionally, because Water Resources has not spent most of the $250,000 withheld for its administrative costs, it should release these funds to the city only after Santee demonstrates it can use the funds for flood protection purposes, provides an audit report with an accounting of how the city used the $4.75 million previously disbursed, and submits a final inspection report by a registered civil engineer as the letter of agreement with Santee requires.

Water Resources' Action: Corrective action taken.

Water Resources reports that this project is now complete and that the grant recipient has provided its final progress report detailing accomplishments and project expenditures. Water Resources was able to provide a letter dated July 30, 2008, from a civil engineer employed by the city of Santee certifying that the project was completed as planned. Further, Water Resources provided a copy of a report from an independent auditor indicating that the project's expenditures were allowable under the grant agreement. As a result, Water Resources reported that the remaining $250,000 available for the project is included in the Governor's fiscal year 2009–10 budget, and it will release these funds when the budget is approved.

Finding #4: Water Resources needs to develop a process for reporting future costs of the flood protection program.

Although Water Resources has informally reported project status in the past, it lacks an adequate internal reporting process on the flood protection program. Because the flood protection program will administer additional grants and projects with the $330 million it will receive from propositions 84 and 1E, Water Resources will need to develop processes to report to the Legislature and the Department of Finance to comply with the State General Obligation Bond Law and a January 2007 executive order from the governor that directs agencies to exhibit greater accountability over expenditures financed by bonds.

To comply with reporting requirements for projects it funds with propositions 84 and 1E, and to ensure that its management is kept apprised of key issues, we recommended that Water Resources develop a process for reporting project status. This process should include regular reporting of each project's budget and costs, progress in meeting the goals and time schedules of the grant agreement, and any key events affecting the project.

Water Resources' Action: Corrective action taken.

Water Resources states it has been providing quarterly updates to its management showing project status. Water Resources provided us with copies of these status reports, which describe each project's status, expenditures, and the anticipated completion date.

Finding #5: Although it is not legally required to do so, Water Resources has voluntarily chosen to seek General Services' advice on some land acquisition grants.

Water Resources is not legally required to obtain the advice of the Department of General Services (General Services) on appraisals for land acquisitions unless it is taking title to property valued at $150,000 or more. Nevertheless, on several occasions Water Resources did seek General Services' advice but did not always heed it, potentially resulting in overpaying for land. In the case of the acquisition of Staten Island, Water Resources did not resolve the concerns noted by its staff or General Services that the appraised value of the land was too high. Specifically, both its staff and General Services noted problems with the appraisal for Staten Island, which General Services noted at that time could be a basis for negotiating a lower overall value for the island.

To avoid paying more than fair market value for properties, we recommended that before disbursing funds, Water Resources take steps to ensure that it resolves concerns about the quality of appraisals raised by its staff, and General Services, when its advice is sought.

Water Resources' Action: Corrective action taken.

In its six-month response to the audit, Water Resources indicated that all appraisals are being reviewed by department staff or staff at General Services. To the extent that disagreement exists between its staff and General Services, Water Resources indicates that such disagreement will be elevated to upper management for resolution.