

Investigations of Improper Activities by State Agencies and Employees

Bribery, Conspiracy to Commit Mail Fraud, Improper Overtime Payments, Improper Use of Lease Proceeds, Improper Travel Expenses, and Other Violations of State Law

April 2011 Through June 2012

December 2012 Report I2012-1



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December 11, 2012

Investigative Report I2012-1

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

Dear Governor and Legislative Leaders:

Pursuant to the California Whistleblower Protection Act, the California State Auditor presents its investigative report summarizing investigations completed between April 2011 and June 2012 concerning allegations of improper governmental activities.

This report details nine substantiated allegations involving several state departments. Through our investigations, we found bribery, conspiracy to commit mail fraud, improper overtime payments, improper use of lease proceeds, and improper travel expenses. As an example of one of these improper acts, we determined that a Franchise Tax Board employee, an Office of the Secretary of State employee, and a courier service owner engaged in an elaborate scheme that enabled the courier service owner to steal nearly a quarter million dollars from the State. The three individuals were convicted of bribery and ordered to pay more than \$227,000 in restitution. In addition, a former Employment Development Department employee and two accomplices were convicted of conspiracy to commit mail fraud for executing a scheme for more than two years to fraudulently redirect nearly \$93,000 in state unemployment insurance benefits to the two accomplices, who were ineligible for the benefits.

In addition, this report provides an update on previously reported investigations and describes additional actions taken by state departments to correct the problems we previously identified. For example, in September 2005, we reported that the Department of Corrections and Rehabilitation (Corrections) had failed to track hours available in a release time bank and had inappropriately paid leave to certain union representatives. In January 2012 Corrections reached an agreement with the California Correctional Peace Officers' Association (union) that requires the union to pay the State a total of \$3.5 million for all Corrections employees on full-time union leave.

Respectfully submitted,



ELAINE M. HOWLE, CPA
State Auditor

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Overtime Payments, Improper Use of Lease
Proceeds, Improper Travel Expenses, and Other
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Summary

Results in Brief

The California Whistleblower Protection Act (Whistleblower Act) empowers the California State Auditor (state auditor) to investigate and report on improper governmental activities by agencies and employees of the State. Under the Whistleblower Act, an *improper governmental activity* is any action by a state agency or employee related to state government that violates a law, is economically wasteful, or involves gross misconduct, incompetence, or inefficiency.¹

This report details the results of nine particularly significant investigations completed by the state auditor or undertaken jointly by the state auditor and other state agencies between April 1, 2011, and June 30, 2012. This report also outlines actions taken by state agencies in response to the investigations of improper governmental activities described here and in previous reports. The following paragraphs briefly summarize the investigations and the state agencies' actions, which this report's individual chapters discuss more fully.

Franchise Tax Board and Office of the Secretary of State

A Franchise Tax Board (board) employee, an Office of the Secretary of State (secretary of state) employee, and a courier service owner engaged in an elaborate scheme that enabled the courier service owner to steal nearly a quarter of a million dollars from the State. The three individuals were convicted of bribery and ordered to pay more than \$227,000 in restitution to the secretary of state and the board. The failure of these state agencies to maintain adequate controls contributed to the individuals' ability to perpetrate the fraud.

Employment Development Department

A former Employment Development Department accounting technician and two accomplices were convicted of conspiracy to commit mail fraud for executing a scheme to redirect unemployment insurance (unemployment) benefits from the State to ineligible recipients. By falsifying information related to a bankrupt company's laid-off employees, the accounting technician enabled her two coconspirators to file unemployment claims against those wages. During the duration of their scheme, the two accomplices illicitly

Investigative Highlights . . .

State agencies and employees engaged in improper activities, including the following:

- » *Employees at two state agencies and a courier service owner were convicted of bribery and ordered to pay the agencies more than \$227,000 in restitution.*
- » *A former accounting technician and two accomplices were convicted of conspiracy to commit mail fraud for a scheme that fraudulently redirected nearly \$93,000 of unemployment insurance benefits to the two accomplices.*
- » *A state agency overpaid nearly \$118,700 to 18 employees for two years because it inappropriately paid them an overtime rate rather than a straight-time rate for their work.*
- » *A supervisor improperly directed the use of state funds to purchase more than \$53,800 in goods and services not required by a lease and he also used \$5,000 in gift cards but could not demonstrate that the purchases made were used for a state purpose.*
- » *The State improperly paid a total of 23 employees \$55,000 in travel benefits after a manager allowed them to receive reimbursements for their commutes and for expenses incurred near their homes and headquarters.*

¹ For more information about the state auditor's investigations program, please refer to the Appendix.

received nearly \$93,000 in unemployment claims for wages to which they were not entitled using the U.S. mail to deliver their benefits from August 2008 through October 2010. The accounting technician and one of her accomplices were sentenced to serve time in federal prison. The second accomplice was sentenced to three years of probation.

California State Athletic Commission

The California State Athletic Commission overpaid a total of nearly \$118,700 to 18 of its athletic inspectors from January 2009 through December 2010 because it inappropriately paid them an hourly overtime rate rather than an hourly straight-time rate for work they performed.

Department of Fish and Game

A supervisor with the Department of Fish and Game improperly implemented an agricultural lease agreement. He directed the lessee to use the state funds derived from the lease to purchase more than \$53,800 in goods and services that did not provide the improvements and repairs the lease required. In addition, he required the lessee to provide the State with \$5,000 in Home Depot gift cards, but he could not demonstrate that the purchases he and other state employees made with the gift cards were used for required improvements or for any other identifiable state purpose.

California Correctional Health Care Services and Department of Corrections and Rehabilitation

A manager with California Correctional Health Care Services (Correctional Health Services) improperly authorized Department of Corrections and Rehabilitation (Corrections) employees to use rental cars and receive mileage reimbursements for commutes that Corrections approved improperly. The manager also authorized these employees to receive reimbursements for improper expenses they incurred near their homes and headquarters, and Corrections inappropriately approved for payment. As a result, the State paid 23 employees a total of more than \$55,000 in travel benefits to which they were not entitled.

Natural Resources Agency

From January 2009 through June 2011, an executive with the Natural Resources Agency (Resources) circumvented state travel regulations by improperly reimbursing an official and an employee approximately \$48,000 in state funds for commutes between their homes

and headquarters. In addition, Resources improperly reimbursed the official approximately \$200 for lodging and meal expenses incurred near the Resources headquarters.

Correctional Health Services and Corrections

A supervising registered nurse at the California Training Facility in Soledad (facility) falsely claimed to have worked 183 hours of regular, overtime, and on-call hours that would have resulted in overpayments totaling more than \$9,700. However, because staff at the facility's personnel office made numerous errors in processing the nurse's time sheets, the State ultimately overpaid the nurses roughly \$8,600. In addition, the nurse's supervisor neglected her duty to ensure that the nurse's time sheets were accurate, thus facilitating the nurse's ability to claim payment for hours she did not work. The nurse returned to work at the facility in July 2012 after a nearly two-year absence on medical leave but left again after only one month. Staff at the facility's personnel office reported that they have begun the process to collect the overpayments identified in this report.

University of California, Office of the President

In December 2009 we reported that California State University, Chancellor's Office had wastefully reimbursed a high-level official more than \$152,400 between July 2005 and July 2008 for expenses he improperly claimed. In July 2008—before the issuance of our report—this official accepted employment from the Office of the President at the University of California (university). Our review found that the university reimbursed the official approximately \$6,100 in wasteful travel expenses from July 2008 through July 2011. Specifically, the official incurred \$4,200 of the wasteful expenses before we issued our report in December 2009, and he incurred \$1,900 after that date. We also determined that, although the university increased its monitoring of the official's travel expenses, its absence of defined limits for lodging expenses led to some of these excessive travel expenses.

California Department of Education

An employee at the California Department of Education misused state time and equipment when he posted nearly 4,900 comments on *The Sacramento Bee's* news Web site during state time. The employee also performed work for a third party using state resources during state time. Further, the employee's former supervisor failed to appropriately supervise the employee, thus enabling the employee's misuse of state time and equipment.

Update on Previously Reported Issues

In addition to conveying our findings about investigations completed from April 2011 through June 2012, this report summarizes the status of certain findings described in our previous reports. Chapter 11 details the actions that the respective agencies took—or declined to take—for 11 previously reported investigations. The following updates have particular significance:

- In January 2012 Corrections reached an agreement with the California Correctional Peace Officers Association (union) that requires the union to pay the State a total of \$3.5 million for all Corrections employees on full-time union leave through annual payments beginning that same month and continuing until the entire amount is repaid.
- The California Energy Commission reported that in December 2011 a retired employee reimbursed it \$6,589 for leave hours paid inappropriately before her retirement.

Table 1 summarizes the improper governmental activities appearing in this report, the financial impact of the activities, and their status.

Table 1
The Issues, Financial Impact, and Status of Recommendations for Cases Described in This Report

CHAPTER	DEPARTMENT	DATE OF OUR INITIAL REPORT	ISSUE	COST TO THE STATE AS OF JUNE 30, 2012*	STATUS OF RECOMMENDATIONS			
					FULLY IMPLEMENTED	PARTIALLY IMPLEMENTED	PENDING	NO ACTION TAKEN
New Cases								
1	Franchise Tax Board and the Office of the Secretary of State	December 2012	Bribery	\$227,430	●			
2	Employment Development Department	December 2012	Conspiracy to commit mail fraud	92,826	●			
3	California State Athletic Commission	December 2012	Improper overtime payments	118,650	●		●	
4	Department of Fish and Game	December 2012	Improper use of lease proceeds	58,813				●
5	California Correctional Health Care Services and Department of Corrections and Rehabilitation	December 2012	Improper travel expenses	55,053		●	●	
6	Natural Resources Agency	December 2012	Improper travel expenses	48,153	●			
7	California Correctional Health Care Services and Department of Corrections and Rehabilitation	December 2012	False claims, inefficiency, inexcusable neglect of duty	8,647		●	●	

CHAPTER	DEPARTMENT	DATE OF OUR INITIAL REPORT	ISSUE	COST TO THE STATE AS OF JUNE 30, 2012*	STATUS OF RECOMMENDATIONS			
					FULLY IMPLEMENTED	PARTIALLY IMPLEMENTED	PENDING	NO ACTION TAKEN
8	University of California, Office of the President	December 2012	Waste of state funds	\$6,074			●	
9	California Department of Education	December 2012	Misuse of state resources, inexcusable neglect of duty	NA		●		●
10	Various	December 2012	Misuse of state resources	6,408	●			
Previously Reported Cases								
11	Department of Corrections and Rehabilitation	September 2005	Failure to account for employees' use of union leave	3,500,000	●			
11	Department of Fish and Game, Office of Spill Prevention and Response	April 2009	Improper travel expense	71,747	●			
11	California State University, Chancellor's Office	December 2009	Improper and wasteful expenditures	152,441		●		
11	Department of Corrections and Rehabilitation	January 2011	Improper overtime reporting	446	●			●
11	Department of Corrections and Rehabilitation	January 2011	Delay in reassigning an incompetent psychiatrist, waste of state funds	366,656	●			
11	Department of Transportation	August 2011	Inexcusable neglect of duty	NA	●			
11	Department of Industrial Relations	August 2011	Failure to monitor adequately employees' time reporting	NA	●			
11	Department of Fish and Game	August 2011	Misuse of a state vehicle, improper travel reimbursements	8,877	●	●	●	●
11	Department of Corrections and Rehabilitation	August 2011	Misuse of state resources	212,261	●	●		
11	State Controller's Office	August 2011	Failure to report absences, failure to monitor adequately an employee's time reporting	6,591	●			
11	California Energy Commission	August 2011	Falsification of time and attendance records	6,589	●			

Source: California State Auditor.

NA = Not applicable because the situation did not involve a dollar amount or the findings did not allow us to quantify the financial impact.

* We estimated the costs to the State as noted in the individual chapters of this report.

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Chapter 1

FRANCHISE TAX BOARD AND OFFICE OF THE SECRETARY OF STATE: BRIBERY

Case I2009-0634

Results in Brief

A Franchise Tax Board (board) employee, an Office of the Secretary of State (secretary of state) employee, and a courier service owner engaged in an elaborate scheme that enabled the courier service owner to steal nearly a quarter of a million dollars from the State. The three individuals were convicted of bribery and ordered to pay a total of \$227,430 in restitution to the board and the secretary of state. The board's and the secretary of state's failure to maintain adequate controls contributed to these individuals' ability to perpetrate the fraud.

Background

This investigation involved employees from two state agencies. The board primarily administers the personal income tax and corporation tax programs. It also operates other programs and maintains field offices throughout the State with assistance offered at public counters. In providing its various services, the board issues entity status letters (letters) that generally disclose in writing whether a business is in good standing with respect to its legal status and outstanding tax liability. Until February 2012, the board released letters only in response to requests made at its public counters upon payment of a \$20 processing fee. Therefore, businesses wanting letters commonly have used courier services to request and obtain letters.

All board employees under investigation worked at the Los Angeles field office. Employee 1 and Employee 2 were both compliance representatives at the field office who occasionally assisted the board's public service counter staff by completing letter requests. Employee 3 was a tax technician. Employee 4 was an administrator II who supervised Employee 2. Employee 5 was a collections supervisor who oversaw Employee 1.

This investigation also involved employees from the secretary of state. The secretary of state primarily administers and enforces California's election laws and governs activities relating to elections, business, and legislative advocacy. Among its responsibilities, the secretary of state maintains records related to corporations and other business entities that wish to do business in California.

The board's and the secretary of state's employees must comply with state laws and regulations related to their conduct and to the proper use of state resources.

Similar to the board, the secretary of state offers certificates of status (certificates) certifying businesses' current status regarding compliance with state laws concerning corporate status, for which it charges \$15. Businesses often use couriers to present the secretary of state with certificate requests.

The secretary of state's employees involved in this investigation worked in the Los Angeles regional office, which is located in the same building as the board's Los Angeles field office. Employee A was a program technician who was responsible for processing various legal corporate documents, including certificates, and for providing public counter customer assistance. Employee B was a supervising program technician who oversaw Employee A. Employee C, who performed over-the-counter services such as issuing certificates, was also supervised by Employee B.

Like all other state employees, the board's and the secretary of state's employees must comply with state laws and regulations related to their conduct and to the proper use of state resources. Specifically, Penal Code section 67.5 specifies that every person who offers bribes to state employees may be punished by imprisonment. Similarly, Penal Code section 68 specifies that state employees who receive bribes in their official capacities may be punished by imprisonment for up to four years and by fines of at least the actual amount of the bribes. In addition, Government Code section 8314 prohibits state employees from using or permitting others to use state resources, including state-compensated time and equipment, for private gain or advantage. Further, section 19990 of the Government Code prohibits state employees from engaging in any employment, activity, or enterprise that is clearly inconsistent, incompatible, or in conflict with their duties as state employees. This prohibition includes receiving money from anyone who is doing or seeking to do business of any kind with the state employee's appointing authority under circumstances from which it reasonably could be substantiated that the gift was intended to influence the employee in his or her official duties or was intended as a reward for any official actions by the employee. Regarding the confidentiality of the investigation, Government Code section 8547.6 provides that no information obtained by any department, agency, or employee as a result of the California State Auditor's (state auditor) request for assistance should be divulged or made known to anyone without the prior approval of the state auditor. Finally, Government Code section 19572 identifies various causes for which the State may take disciplinary action against an employee, including incompetency, inefficiency, inexcusable neglect of duty, dishonesty, willful disobedience, misuse of state property, and other failures of good behavior that discredit the appointing authority or the person's employment.

Upon receiving an allegation of theft at the board, we asked for the board's assistance in conducting an investigation. When the board obtained evidence suggesting that similar misconduct had occurred at the secretary of state's Los Angeles regional office, we asked the secretary of state to assist us in conducting an investigation there as well.

Facts and Analysis

Employees at both the board and the secretary of state perpetrated a fraud scheme that resulted in three bribery convictions for stealing from the State. Consequently, both entities determined their existing internal control environment had weaknesses contributing to the fraud and reacted appropriately to strengthen their processes.

Employees at both the board and the secretary of state perpetrated a fraud scheme that resulted in three bribery convictions for stealing from the State.

To Deprive the State of Revenue, a Courier Bribed Employees From Two State Agencies

As the Background section discusses, the board charged \$20 for each letter. To avoid paying this fee, the courier paid \$300 to \$400 a week to Employee 1 to supply him with letters for his clients. From at least 2007 to 2009, Employee 1 used the board's computer system to prepare about six or seven letters for the courier each day without charging the required fee and without making entries to a control log or photocopying the letters, thus eliminating any evidence of the arrangement. She then faxed the letters to the courier, provided them to the courier's runner at the public service counter, or gave them directly to the courier. The board estimated that Employee 1's and the courier's theft caused it to suffer a loss of up to \$150,000.

The courier engaged in a similar arrangement with Employee A at the regional office of the secretary of state. When that office investigated, it found that Employee A accepted checks from the courier service in exchange for providing certificates without charging the appropriate service fee. Although the secretary of state could not establish the exact number of certificate requests Employee A processed, it found that the courier service had in its possession carbon copies of checks for amounts ranging from \$175 to \$500 payable to Employee A from March 2006 through November 2008; altogether, these checks totaled \$54,625. When interviewed, Employee C stated that he was aware that Employee A received the courier's requests for certificates by e-mail or phone, processed the requests when the courier service arrived at the public counter, and then provided the courier service with the certificates without collecting the required fees.

For their involvement in the scheme, the Los Angeles County Superior Court convicted Employee 1 and Employee A of bribery under Penal Code section 68, and the courier of bribery under Penal Code section 67.5.

For their involvement in this scheme, the Los Angeles County Superior Court convicted Employee 1 and Employee A of bribery under Penal Code section 68, and the courier of bribery under Penal Code section 67.5. The court required Employee 1 to perform 400 hours of community service, and it sentenced her to seven days in county jail and four years probation. The court sentenced Employee A to three years probation, and ordered her to serve 400 hours of community service. For the courier's participation in the theft scheme with Employee 1, the court sentenced him to 14 days in custody and placed him on three years probation. For his participation in the theft scheme with Employee A, the court ordered the courier to serve 200 hours of community service and three years of probation.

Furthermore, the court found each of these three participants jointly and severally liable for their participation in the scheme and required them to make restitution. Specifically, the court ordered Employee 1 and the courier to pay the board \$14,500 and \$92,200, respectively. The court ordered Employee A and the courier to each pay the secretary of state \$54,625. Finally, the board seized \$11,480 from the courier's residence related to the letters.

The State terminated the employment of Employee 1 and Employee A under Government Code section 19572 for a series of violations involving neglect of duty, dishonesty, disobedience, misuse of state property as well as for incompatible activities, including violating Government Code section 19990. Their circumvention of established internal controls prompted the board and the secretary of state to conduct reviews of their processes related to issuing letters and certificates, the results of which we discuss later.

Other Board and Secretary of State Employees Were Involved in the Fraud

Although Employee 1, Employee A, and the courier were the only individuals convicted of bribery, the board and the secretary of state found that other state employees either had knowledge of the fraud, participated in the illicit scheme, or compromised the investigation. Specifically, the board determined that employees 2, 3, 4 and 5 had knowledge of Employee 1's illegal conduct but either failed to report it to board management or failed to report it timely as follows:

- Employee 2 was aware of Employee 1's actions but did not bring them to the attention of her supervisor. In fact, the board determined that Employee 2 directly assisted Employee 1 by delivering improper letters and bribe money and by shredding fax confirmations related to illegally faxed letters. Consequently, the board terminated Employee 2 for her violation of Government Code section 19572.

- Employee 3 lied during the investigation. He denied knowledge about Employee 1's illegal activities even though the board's review of his e-mails revealed that he knew of the illicit scheme. Employee 3 also failed to inform the board of Employee 1's wrongdoing for seven months after he found out about it; his silence allowed Employee 1 to continue to engage in the fraud. The board therefore suspended him without pay from his state job for 30 workdays.
- Employee 4 had no knowledge of the illegal activities before the whistleblower complaint. However, when advised of the issue during the investigation, she shared the substance of the complaint with another board employee. Her inappropriate disclosure of the confidential information contributed to the board demoting her.
- Employee 5 knew about Employee 1's illegal activities for three months before she reported them to the board. As a result, the board formally counseled her.

The secretary of state's investigation found that Employee B also accepted bribes for providing the courier with certificates without charging the required fees. Further, she instructed Employee C to prepare the certificates and waive the fees. Although Employee B was not charged with bribery, the secretary of state terminated her as the result of her dishonesty, inadequate management oversight, and violations of Government Code section 19572. Employee C admitted that his role in the scheme was similar to Employee B's; however, he had left employment with the secretary of state by September 2009, before the secretary of state completed its investigation.

In Response to the Bribery Scheme, the Board and the Secretary of State Strengthened Their Internal Controls

Following the investigation, the board made changes to the procedures used in its field offices to process legal status requests and store checks. It also initiated an internal control audit of its procedures related to processing letters, which it completed in July 2010. The board has already implemented many of the audit's recommendations. For example, while it planned to automate its process for issuing letters in the future, it restricted access to the letter template to designated staff. In February 2012 it implemented an automated letter process free of charge, eliminating the possibility of further bribery schemes occurring with this service. The board also now reconciles monthly its cash receipts, its letter log, the volume of letters produced by its employees, and its time-reporting system to ensure that it has accounted for all of the

Although Employee B was not charged with bribery, the secretary of state terminated her as the result of her dishonesty, inadequate management oversight, and violations of Government Code section 19572.

letters its employees produce. Further, its management has met with all staff in the Los Angeles field office to reiterate the board's expectations regarding accountability and oversight.

In January 2010 the secretary of state ordered that its Los Angeles and San Diego offices cease issuing certificates and that its Sacramento headquarters instead handle all certificate requests. It then conducted an internal control audit of its Sacramento headquarters public counter to determine the adequacy and effectiveness of its controls. This audit resulted in the secretary of state's strengthening its controls over the cash receipt and counter processes, increasing its oversight of its counter processes, and ensuring proper segregation of duties for employees who handle cash and reconcile receipts. It also issued an e-mail to staff reminding them of the consequences of violating the secretary of state's incompatible activities policy and state law.

Because the board and the secretary of state have addressed fully the improper activities identified in this report, we have made no recommendations to them.

Chapter 2

EMPLOYMENT DEVELOPMENT DEPARTMENT: CONSPIRACY TO COMMIT MAIL FRAUD Case I2008-1217

Results in Brief

A former Employment Development Department (EDD) accounting technician and two accomplices were convicted of conspiracy to commit mail fraud for executing a scheme to redirect the State's unemployment insurance (unemployment) benefits to ineligible recipients. Because she falsified a bankrupt company's wage information for its laid-off employees, the accounting technician enabled her two coconspirators to file unemployment claims against those wages. During the duration of their scheme, from August 2008 through October 2010, the two accomplices used the U.S. mail to receive illicitly \$92,826 in unemployment claims on wages they did not earn. The accounting technician and one of her accomplices were sentenced to serve time in federal prison. The second accomplice was sentenced to three years of probation.

Background

EDD administers the joint federal-state unemployment program, which provides unemployment benefits to individuals who lose their jobs through no fault of their own. A former worker who files for these benefits is known as a *claimant*. EDD uses the claimant's wages earned over a 12-month period to determine the amount of the unemployment claim. EDD verifies that the claimant's last employer reported to EDD the wages for the claimant. After the claimant files a claim, EDD sends notification to the employer that its former employee has filed a claim for unemployment benefits, and it provides the employer with the opportunity to contest the former employee's claim for benefits. Once EDD accepts an unemployment claim, the claimant must verify his or her continued lack of employment by completing a claim form and mailing it to EDD to receive payment.

The United States Code, title 18, section 1341, defines *mail fraud* as a scheme or plan to obtain money or property by fraudulent pretenses that uses the mail or a private interstate carrier to carry out the scheme. Anyone who knowingly devises such a scheme can receive a maximum sentence of 20 years of incarceration, a \$250,000 fine, a three-year period of supervised release, and a

For a two-year period spanning 2008 to 2010, the former EDD accounting technician helped two accomplices obtain unemployment benefits illegally in a conspiracy to defraud EDD.

special assessment of \$100. Section 1349 states that anyone who attempts or conspires to commit mail fraud is subject to the same penalties prescribed in section 1341.

When we received a complaint that an EDD accounting technician used her position to facilitate unemployment benefits for ineligible individuals, we requested that EDD assist us in conducting an investigation. In 2009 and 2010, EDD conducted a joint investigation with the United States Attorney's Office.

Facts and Analysis

For a two-year period spanning 2008 to 2010, the former EDD accounting technician helped two accomplices obtain unemployment benefits illegally in a conspiracy to defraud EDD. While working at EDD before she was fired in 2008 for matters unrelated to the fraud, the former accounting technician was authorized to adjust base wages of workers enrolled in the State's unemployment insurance program and to make routine adjustments of unemployment claims. After it filed for bankruptcy in 2006, a California employer reported its laid-off employees' wage data to EDD for entry into the unemployment system. In August 2008, using her access, the former employee manipulated several months of the bankrupt employer's 2007 wage data by substituting the names and social security numbers of her two friends for those of two other individuals who actually worked for the bankrupt company. The company did not notice the fictitious employees on its payroll reports because it was conducting massive layoffs and ceasing operations. By falsifying information related to the bankrupt company's wage data, EDD's former employee provided the two individuals with the opportunity to file fraudulent unemployment claims and to collect benefits illegally.

From August 2008 through October 2010, the former accounting technician's two friends filed EDD unemployment claims against wages they never earned, and they fraudulently received benefits to which they were not entitled. The investigation established that the accomplices filed their unemployment claims within hours of each other and that they listed the same bankrupt company and the name of the same company manager. After it processed the unemployment claims based on the false information submitted by the two coconspirators, EDD mailed unemployment checks to these accomplices along with the next claim forms that would allow them to file for continuous unemployment benefits. In June and July 2009, surveillance captured the two accomplices on video as they retrieved the unemployment checks from their mailboxes in Sacramento.

As a result of this scheme, the former accounting technician and her two coconspirators were convicted of conspiracy to commit mail fraud according to the United States Code, title 18, section 1349. For her role in executing the fraudulent scheme, the former EDD employee was sentenced in December 2011 to 21 months in federal prison as well as to three years of supervised release. One of her accomplices received the same sentence in February 2012. The second accomplice was sentenced in January 2012 to 36 months of probation. Each individual was assessed a \$100 criminal penalty and ordered to make collective restitution totaling \$92,826 to EDD.

Recommendation

To minimize the potential for unauthorized changes to employers' wage information, EDD should strengthen its controls surrounding employees' access and authorization to change data for companies reporting employment information used in EDD's unemployment system.

Agency Response

EDD reported in October 2012 that it created a new daily transaction report to alert managers when changes are made to the employment records. Most importantly, this report identifies changes made to names, social security numbers, or wage records on the unemployment system by EDD employees when no business need for such changes appears to exist. Finally, this new report provides managers with a necessary tool to monitor transactions performed by accounting technicians.

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Chapter 3

CALIFORNIA STATE ATHLETIC COMMISSION: IMPROPER OVERTIME PAYMENTS Case I2009-1341

Results in Brief

The California State Athletic Commission (commission) overpaid a total of \$118,650 to 18 athletic inspectors from January 2009 through December 2010 because it inappropriately paid them an hourly overtime rate rather than an hourly straight-time rate for work they performed.

Background

As part of the Department of Consumer Affairs (Consumer Affairs), the commission sets standards for amateur and professional boxing, kickboxing, and martial arts; conducts examinations and regulatory inspections of these sports; and issues licenses to promoters, managers, referees, trainers, and fighters. To accomplish its objectives, the commission employed 58 athletic inspectors as intermittent employees from January 2009 through December 2010. The athletic inspectors' responsibilities included enforcing state laws and commission rules at athletic events, recommending the issuance of licenses to event participants, and evaluating the performance of referees and judges. Twenty-four of the athletic inspectors the commission employed also held full-time positions with the State either at the commission or at other state agencies.

The Fair Labor Standards Act of 1938 (Fair Labor Act) provides for overtime compensation at one and one-half times the regular rate at which an employee is paid when the employee works more than 40 hours during a workweek. However, section 207, subdivision (p) (2), of the Fair Labor Act also recognizes that employers should exclude part-time work from overtime calculations if the part-time work is voluntary, occasional or sporadic, and in a different capacity than an employee's regular work.

The Code of Federal Regulations, title 29, section 553.30, provides guidance on how to determine if part-time work meets these criteria. Specifically, it states that when employees voluntarily perform occasional or sporadic part-time work for the same public agency in a different capacity from their regular work, the agency should not combine the part-time hours with the employee's regular hours to determine if overtime is owed. The regulations define occasional or sporadic as infrequent, irregular, or occurring

From January 2009 through December 2010, the commission overpaid 18 athletic inspectors a total of \$118,650 because it improperly paid them an overtime rate for certain hours that they worked.

in scattered instances. It further clarifies that employment may be *occasional or sporadic* even when it recurs or occurs seasonally and uses “officiating at youth or other recreation and sports events” as examples of occasional or sporadic work. The regulations also state that part-time work that falls within a different United States Department of Labor (Labor) general occupational category cannot result in an employee’s receiving overtime.

Upon receiving an allegation that the commission overpaid athletic inspectors for work they performed, we initiated an investigation.

Facts and Analysis

Our investigation revealed that from January 2009 through December 2010, the commission overpaid 18 athletic inspectors a total of \$118,650 because it improperly paid them an overtime rate for certain hours that they worked. We determined that an overtime rate was unwarranted in these instances because the work the athletic inspectors performed was voluntary, occasional or sporadic, and different in nature from the work they otherwise performed as state employees. Thus, the work did not meet the Fair Labor Act’s criteria for overtime. Although the commission paid these athletic inspectors overtime because of advice it obtained from the Department of Personnel Administration (Personnel Administration),² Personnel Administration based its advice on inaccurate information provided by Consumer Affairs.

In addition, we found that the commission’s hiring process often led it to hire athletic inspectors who had other full-time state jobs. As a result, the State’s costs increased because the commission paid \$29,051 more in overtime than it would have if it hired individuals not employed full-time by the State.

The Work Hours for 18 Athletic Inspectors Did Not Qualify for Overtime Under the Fair Labor Act

Our analysis determined that the work of 18 athletic inspectors was voluntary, occasional or sporadic, and in a different capacity than their full-time state positions. Thus, the commission should have excluded the work these employees performed as athletic inspectors from its calculations to determine whether overtime was warranted. Because it did not exclude their work as athletic inspectors from its overtime calculations, the commission overpaid

² Effective July 2012, the Department of Personnel Administration merged with certain programs of the State Personnel Board, and this merger created the California Department of Human Resources.

these employees during the two-year period we reviewed. Table 2 identifies the commission’s improper payments to each of the employees who worked intermittently as athletic inspectors.

Table 2
The California State Athletic Commission Overpaid 18 Athletic Inspectors

INSPECTOR	OVERPAYMENT
A	\$4,287
B	10,566
C	3,342
D	20,036
E	666
F	3,884
G	4,990
H	6,090
I	4,643
J	3,807
K	5,491
L	3,450
M	25,257
N	741
O	6,066
P	5,403
Q	8,753
R	1,178
Total overpayments	\$118,650

Sources: California State Auditor’s analysis of State Controller’s Office records and California State Athletic Commission time sheets.

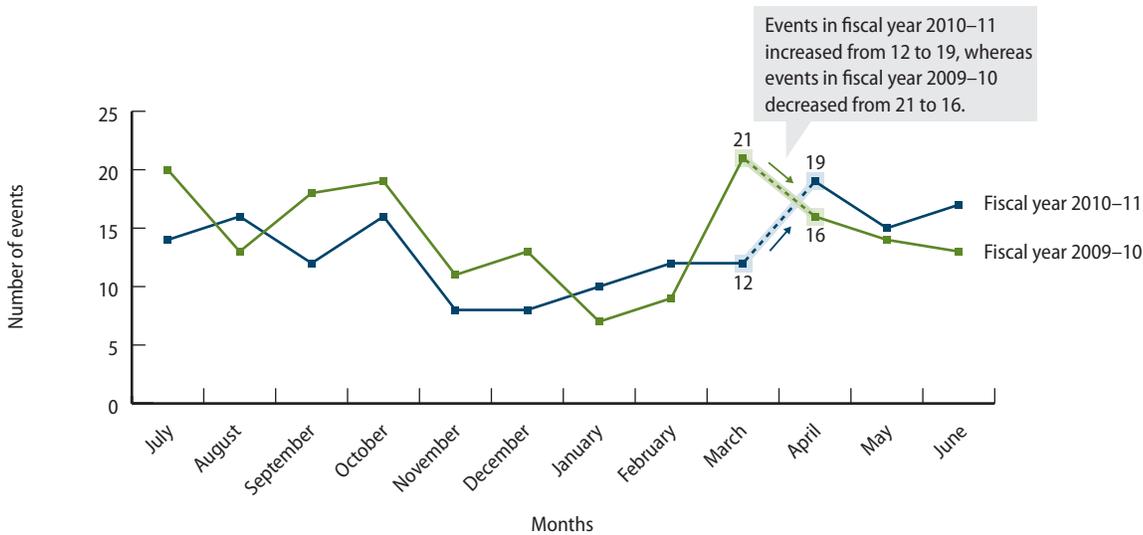
The Work That the Athletic Inspectors Performed Was Voluntary

The 18 intermittent athletic inspectors are full-time employees at the commission and other state agencies. These individuals voluntarily applied for the intermittent athletic inspector position: Their other full-time positions with the State did not require them to apply to be athletic inspectors. Moreover, all of the commission’s athletic inspectors can accept or decline assignments based on their stated availability. According to the commission’s former executive officer, the commission’s scheduling software identifies athletic inspectors in close proximity to a sporting event who have stated that they are available for work. If these athletic inspectors decline the assignment, the scheduling software identifies additional athletic inspectors who state that they are available but who may live further away from the event location.

The Work That the Athletic Inspectors Performed Was Occasional or Sporadic

Our analysis of athletic events and athletic inspectors’ time sheets confirmed that the work the 18 athletic inspectors performed was occasional or sporadic as defined by title 29, section 553.30(b) of the Code of Federal Regulations. Specifically, our analysis determined that the athletic events the commission approved during the two-year period covered by this investigation occurred irregularly. The former executive officer stated that the commission approves a requested event only if it can provide sufficient numbers of staff. Our review of events from July 2009 through June 2011 showed the total number of events varied from one fiscal year to another (that is, 174 events versus 159 events) and from month to month.³ Figure 1 highlights those months in which an increase or decrease of the number of events in one fiscal year did not match what occurred in the other fiscal year. For example, the number of events dropped from 20 to 13 from July to August 2009. The following year, the number of events increased from 14 to 16 during the same two-month time frame.

Figure 1
 Year-to-Year Comparison of the Number of California State Athletic Commission-Approved Athletic Events
 Fiscal Years 2009–10 and 2010–11



Source: California State Auditor’s analysis of California State Athletic Commission’s record of events.

Note: The green and blue arrows highlight an example of how the months in which an increase or decrease of the number of events in one fiscal year did not match what occurred in the other fiscal year.

³ The commission’s records do not include data for events held from January through June 2009.

In addition, the events did not occur on certain days of the week. The events tended to occur on weekends from Friday through Sunday but were not limited to those days. For example, of the 159 events that occurred during fiscal year 2010–11, 21 percent occurred on Monday through Thursday.

We also reviewed the athletic inspectors' time sheets from January 2009 through December 2010 to determine if any of the athletic inspectors worked any observable patterns (that is, every Friday, every other Friday, once a month). Instead, we found that the days and the frequency of days worked by inspectors varied from month to month and year to year; thus, we found no regular work pattern. For example, our analysis of one of these athletic inspectors showed the following:

- The number of days he worked each month ranged from none to 18.
- The number of days he worked in a specific month varied from year to year by as much as 16 days.
- He worked some Fridays but not every Friday or every other Friday.
- He worked some weekends (Friday through Sunday) but not consistently.
- He occasionally worked on weekdays. When he did so, the days of the week varied.

This particular athletic inspector worked a high volume of days during the two-year period; however, our analysis found a lack of a regular work pattern for this inspector and for the other 17 athletic inspectors as well. For example, our analysis of athletic inspector time sheets revealed the number of events each inspector worked varied widely each month; in fact, the athletic inspectors worked between zero and 12 events each month. In addition, one athletic inspector worked at events for the commission in only 13 months of the 24-month period while another worked at events for the commission in every month except one.

The commission provided us with additional information indicating that the work the athletic inspectors perform is occasional or sporadic. Specifically, the former executive officer stated that the number of commission events depends on inspector availability rather than on a predetermined schedule. Because staffing an event typically requires six to seven inspectors, the commission cannot schedule events until it has confirmed that multiple inspectors are available to work.

The days and the frequency of days worked by inspectors varied from month to month and year to year; thus, we found no regular work pattern.

The Work That 18 Athletic Inspectors Performed Differed From the Work Required by Their Regular Full-Time State Positions

As discussed previously, the Code of Federal Regulations, title 29, section 553.30, states that agencies should use Labor's categories of occupations to determine whether an individual's employment in a second capacity substantially differs from his or her regular employment. Our review determined that the athletic inspector position best fits in the category of "Inspectors and Investigators." The full-time state positions that 18 of the inspectors held fell into different categories. Specifically, their full-time job classifications included administrative positions, such as office technician and staff services analyst, and law enforcement positions, such as correctional officer and special agent.

Personnel Administration Based the Advice It Provided to the Commission on Inaccurate Information

In 2010 Consumer Affairs requested an opinion from Personnel Administration about whether the commission was required to pay overtime to athletic inspectors it employed on an intermittent basis who were also full-time state employees. Personnel Administration advised Consumer Affairs in March 2010 that the commission should pay overtime to these athletic inspectors. However, Personnel Administration based its advice in part on inaccurate information that Consumer Affairs provided to it. Specifically, Consumer Affairs stated that athletic inspectors regularly worked at two to four events each month. As discussed previously, the athletic inspector time sheets we reviewed during a two-year period did not support this statement.

Personnel Administration's advice was based on inaccurate information and did not support the commission's payment of overtime to the athletic inspectors.

When we interviewed the Personnel Administration attorney who advised Consumer Affairs, the attorney stated that she relied upon the facts provided by Consumer Affairs when she formed her advice and did not conduct any additional work to determine the accuracy of the information. Thus, Personnel Administration's advice was based on inaccurate information and did not support the commission's payment of overtime to the athletic inspectors.

The Commission's Hiring Process Increased the State's Overtime Costs

The commission's hiring process for athletic inspectors has contributed to both its proper and improper overtime payments, thus increasing the State's costs. As previously mentioned, 24 (41 percent) of the 58 athletic inspectors the commission employed from January 2009 through December 2010 also held full-time jobs with the State. In addition to paying overtime

improperly to 18 of these athletic inspectors, the commission also properly paid overtime to the six remaining inspectors who were also full-time state employees. Because their regular full-time work was similar to athletic inspectors' work, we excluded them from our calculation of the improper overpayments. Nevertheless, because they hired these athletic inspectors, the commission paid \$29,051 more in overtime than it would have if it hired individuals whom the State did not employ full time.

When we asked the former executive officer why the commission hired individuals as intermittent employees whom the State already employed in full-time positions, he stated that Consumer Affairs informed him that he could not exclude full-time state employees from the commission's hiring process. In addition, he stated that if state employees applied, he had to offer positions to them if they scored well during the exam and interview processes. When asked why so many state employees applied for athletic inspector positions, the former executive officer speculated that current athletic inspectors informed work colleagues at other state agencies about open positions, increasing the likelihood that state employees submitted applications. Furthermore, the former executive officer stated that most applicants have a limited understanding of athletic inspectors' work requirements and that individuals who are not already employed by the State may not be fully aware of the commission's hiring process or know where to obtain information about open athletic inspector positions.

We also asked the former executive officer about any efforts the commission has made to broaden the number of applicants for athletic inspector positions. The former executive officer stated that the commission advertises athletic inspector positions through the State's staff vacancy database. Moreover, he informed us that potential applicants often ask commission staff members at commission-approved events about the hiring process for becoming athletic inspectors. The former executive officer stated that in such instances, commission staff members provide individuals with information about the application process and explain where to get up-to-date information about athletic inspector openings. However, he stated that potential applicants must take responsibility to follow up by contacting the commission.

Because they hired these athletic inspectors, the commission paid \$29,051 more in overtime than it would have if it hired individuals whom the State did not employ full time.

Recommendations

To address the improper governmental activity identified in this investigation and to prevent similar improper activities from occurring, the commission should do the following:

- Immediately cease paying the 18 athletic inspectors discussed in this investigation an overtime rate for work they perform, and inform all athletic inspectors that it will compensate them at the classification's straight-time rate unless their work meets the Fair Labor Act's criteria for receiving overtime.
- Make greater efforts to broaden its hiring and increase the number of applicants who are not full-time state employees by posting hiring announcements at locations where the commission has a presence, such as gyms, promoter offices, and venues at which it holds events.

Agency Response

Consumer Affairs reported that it sought another opinion from Personnel Administration in June 2012 about whether or not the overtime rate is justified for athletic inspectors who work a second full-time job for the State. In August 2012 the California Department of Human Resources, which took over Personnel Administration's functions, provided an opinion to Consumer Affairs that the work did not meet the criteria for overtime pay. As a result, the commission ceased paying overtime to the affected employees beginning in October 2012. In addition, Consumer Affairs stated that it is reviewing the records and will devise a plan to address the overpayments to the athletic inspectors. Further, in November 2012 the commission's new executive officer began the process to broaden the base of potential applicants for the athletic inspector classification.

Chapter 4

DEPARTMENT OF FISH AND GAME: IMPROPER USE OF LEASE PROCEEDS

Case I2009-1218

Results in Brief

A supervisor with the Department of Fish and Game (Fish and Game) improperly implemented an agricultural lease agreement. He directed the lessee to use state funds derived from the lease to purchase \$53,813 in goods and services that did not provide the improvements and repairs the lease required. In addition, the supervisor required the lessee to provide the State with \$5,000 in Home Depot gift cards, but this supervisor could not demonstrate that the purchases he and other state employees made with the gift cards paid for improvements or for any other identifiable state purpose.

Background

As part of its responsibilities, Fish and Game maintains native fish, wildlife, plant species, and natural communities for their intrinsic and ecological value and benefits to the State. It also protects and maintains habitat to ensure the survival of all species and natural communities. Fish and Game manages over one million acres of fish and wildlife habitat, including 110 properties designated as wildlife areas.

To meet this part of its mission, Fish and Game entered into an agreement from October 2008 through September 2011 to lease 711 acres of farmland within a wildlife area to a local farmer in exchange for custom tractor work and direct habitation restoration in the overall wildlife area. According to the lease, instead of performing this work, the farmer could improve or repair the wildlife area; both Fish and Game and the farmer interpreted this clause in the lease to mean that the farmer could either make these improvements or repairs itself or pay third parties to make them. The value of the lease was \$29,862 a year, or \$89,586 for the three-year period. A Fish and Game supervisor in the region was responsible for managing the day-to-day operations of the wildlife area, including supervising construction, maintenance work, and habitat development work. He also was responsible for managing the lease with the farmer.

California Fish and Game Code section 1501.5 authorizes Fish and Game to enter into contracts for fish and wildlife habitat preservation, restoration, and enhancement when it finds that the contracts will assist Fish and Game in meeting its mission. Section 1348, subdivision (c) (2) of the same code authorizes Fish and Game to lease real property in its jurisdiction and requires it to deposit proceeds in the Wildlife Restoration Fund. In addition, section 9.04 of the *State Contracting Manual* states that the contract manager must maintain contract documentation. Further, Government Code section 16301 requires state agencies to report to the State Controller's Office all money received. Finally, section 12320 of the Government Code requires the deposit of those funds into the State Treasury.

When we received an allegation that the supervisor at the wildlife area had improperly used funds derived from the agricultural lease in question, we initiated an investigation.

Facts and Analysis

The supervisor improperly implemented the agricultural lease by directing a local farmer to pay more than \$53,000 to third-party vendors for the wildlife area's regular operating expenses rather than for repairs or improvements.

The supervisor improperly implemented the agricultural lease by directing a local farmer to pay more than \$53,000 to third-party vendors for the wildlife area's regular operating expenses rather than requiring the farmer to perform the work required by the lease to restore the wildlife area or to pay a third party for such repairs or improvements. In addition, the supervisor required the farmer to provide him with \$5,000 in Home Depot gift cards that the supervisor asserted he spent on purchases that served state purposes but for which he could provide no documentation to show what he bought. By directing the farmer to pay Fish and Game's operating expenses and provide the gift cards, the supervisor failed to follow the terms of the lease, which required the farmer to perform direct habitat restoration. Moreover, he also prevented proceeds from the leased property from being deposited into the Wildlife Restoration Fund as state law requires.

In addition, Fish and Game did not collect the full lease amount the farmer owed to the State until after we inquired about uncollected sums. As a result of our inquiry, Fish and Game collected more than \$30,000 of the \$89,586 lease amount in November 2011.

The Supervisor Implemented the Lease Improperly by Not Requiring the Farmer to Perform the Specified Work or Pay for Repairs and Improvements

The supervisor did not require the farmer to perform the custom tractor work or pay for the repairs and improvements specified in the lease; thus, Fish and Game did not implement the lease according to its own requirements. As discussed in the Background, the State agreed to lease to the farmer 711 acres at the wildlife area for a three-year period in exchange for the farmer performing certain tractor work or making improvements and repairs to the wildlife area. However, the supervisor did not require the farmer to perform work equaling the rental value of the leased property. In fact, the farmer performed custom tractor work only once, in February 2009. Instead, the supervisor directed the farmer to pay a number of third-party invoices. A few of these invoices related to improvements and repairs to the wildlife area as the lease required; however, contrary to the terms of the agreement, the farmer paid most of the invoices—covering costs that totaled \$53,813—for Fish and Game’s routine operating and equipment expenses.

According to the Department of Finance (Finance), the State permits the lease of state property in exchange for improvement, maintenance, agricultural, or similar services provided by a lessee on the leased property in limited situations. However, Finance stated that the parties must have a written agreement, the lease must reflect fair market values, and the exchange must provide public benefit to the State. In this case, the terms of the written agreement did not support the actual exchange that took place.

The Supervisor Held Lease Proceeds Outside the State Treasury and Failed to Ensure Their Appropriate Use

Fish and Game had an approved budget for operating and equipment expenses at the wildlife area, which included fixing state vehicles, repairing the roof of the wildlife area housing and office building, and purchasing an air conditioner for the office. Thus, these routine operating or equipment expenses had already been funded in the State’s Budget Act and did not directly involve improving or repairing the wildlife area, as the lease required.

By improperly directing the farmer to pay \$53,813 to third-party vendors and to purchase \$5,000 worth of Home Depot gift cards (which we discuss further in the next section), the supervisor circumvented state law regarding the use of those funds. Section 1348, subdivision (c) (2) of the Fish and Game Code authorizes Fish and Game to lease real property in its jurisdiction and requires it to deposit proceeds in the Wildlife Restoration Fund.

By improperly directing the farmer to pay \$53,813 to third-party vendors and to purchase \$5,000 worth of Home Depot gift cards, the supervisor circumvented state law regarding the use of those funds.

The supervisor improperly directed the collection and expenditure of these funds outside the State Treasury, circumventing cash receipt processes and accounting controls.

The Wildlife Conservation Board (wildlife board) administers this fund, which receives its revenues from several sources, including the rental of state property. Moneys from the fund are appropriated to the wildlife board to acquire lands and construct facilities suitable for recreation and adaptable for conservation, propagation, and use of fish and game resources. If the State's lease agreement with the farmer had required cash payments, existing state law would have required Fish and Game to deposit this revenue into the Wildlife Restoration Fund. Instead, the supervisor improperly directed the collection and expenditure of these funds outside the State Treasury. Because of this decision, he circumvented the Wildlife Restoration Fund's cash receipt processes and accounting controls.

Furthermore, unless otherwise provided for by statute, Government Code sections 12320 and 16301 require state agencies that receive money to report those receipts to the State Controller's Office so that the funds may be accounted for and to deposit those funds into the State Treasury. By directing the farmer to directly pay certain state expenses with money that was owed to the State under the terms of the lease agreement, the supervisor violated these code sections that otherwise govern the receipt of state revenues.

Moreover, Finance stated that leases must not circumvent administrative and legislative oversight. The Legislature must approve department budgets, including the budget for Fish and Game's operational costs. Therefore, by using lease proceeds for operating and equipment expenses, the supervisor circumvented legislative oversight of Fish and Game's budget.

According to the supervisor, the former area manager paid for improvements to the wildlife area through agricultural leases as a way to "keep local money local." The supervisor stated that under the former area manager, Fish and Game subtracted the value of the tractor work or improvements made to the wildlife area by the farmer and rolled over "overpayments" or "underpayments" from year to year. The supervisor explained that he therefore believed that this process was appropriate to follow when Fish and Game put him in charge of the wildlife area after the former area manager retired. The former area manager stated that he introduced the concept of exchanging work in lieu of rental payments and that the activities he authorized directly created, improved, or enhanced wildlife habitats. However, the supervisor failed to follow the terms of the lease agreement, which required the farmer to either perform custom tractor work or to make improvements or repairs to the wildlife area. The lease did not authorize the supervisor to direct the farmer to pay for the ongoing operating expenses of Fish and Game, nor could the lease have done

so without violating the laws and procedures governing the Wildlife Restoration Fund and the receipt, deposit, and accounting of state agency revenues.

The Supervisor Failed to Account Properly for Gift Card Purchases

In addition to directing the farmer to pay for operating expense invoices, the supervisor also required the farmer on three occasions to provide him with a total of \$5,000 in Home Depot gift cards from December 2008 through July 2009. The supervisor stated that he and other wildlife area staff used the cards to purchase for state purposes such items as office and cleaning supplies, hand and power tools, nuts and bolts, lumber, and cabinetry. However, the supervisor could not produce any receipts to support these purchases: He asserted that a former employee took the receipts from the wildlife area office. By failing to retain control of these receipts, the supervisor violated the *State Contracting Manual*, which states that contract managers must maintain contract documentation. Without evidence to support the supervisor's assertion that he used the gift cards to purchase items for the wildlife area, Fish and Game cannot ensure that it has a proper accounting of state equipment and property in the wildlife area.

Moreover, assuming the supervisor's assertions are accurate, requiring the farmer to provide gift cards to pay for the wildlife area's operating expenses was inappropriate for the same reasons that requiring the farmer to directly pay Fish and Game's operating costs was inappropriate. Because the wildlife area staff improperly accepted and used the gift cards to pay for operating expenses, Fish and Game failed to follow the terms of the lease agreement and violated state laws and procedures that govern the deposit and accounting of state agency revenues.

Fish and Game Did Not Collect the Full Amount for the Leased Property Until After Our Inquiry

Fish and Game did not collect the full lease amount for the wildlife area property until after we inquired about uncollected funds. Our analysis of the invoices the supervisor directed the farmer to pay revealed that it still owed the State \$30,773 at the end of the lease in September 2011. After bringing the matter to his attention, in October 2011 the supervisor informed us that he requested the regional office to collect all lease proceeds still owed to the State and that he provided a senior official a list of invoices the farmer had paid thus far to support the amount still owed. Fish and Game reported that it collected the \$30,773 owed to the State in November 2011. We noted that the lease did not specify how Fish and Game

By failing to retain control of these receipts, the supervisor violated the State Contracting Manual, which states that contract managers must maintain contract documentation.

should collect lease payments in the event that the farmer did not perform the necessary work or provide the required repairs and improvements.

Recommendations

To address the improper use of lease proceeds, Fish and Game should seek either corrective or disciplinary action for the supervisor for his failure to ensure that Fish and Game used lease proceeds in accordance with the terms of the lease and to ensure that these proceeds were accounted for in the State Treasury when necessary.

To ensure that similar problems do not arise in the future, Fish and Game should amend the terms of its leases either to require that the lessee make lease payments to the State or to include specific information about the improvements and repairs that a lessee must perform instead of paying the lease and about the value of these improvements and repairs. In either instance, Fish and Game should include a provision in the lease for payment if the lessee owes money to the State at the end of the lease period. If it decides that future leases should require a lessee to make specific improvements and repairs, Fish and Game should do the following:

- Develop a system to track all pertinent information related to a lessee's cost for improvements and repairs to be credited against the lease. This system should include a description of all payments the lessee makes, the reasons for the payments, an explanation of how payments either restore wildlife habitat or improve or repair the wildlife area, and indicate updated balances of the amount the lessee still owes on the lease.
- Require the supervisor to reconcile payment records at least annually with a lessee to ensure that the State's records are accurate and that the State receives the full benefit from leasing the state property.

Finally, Fish and Game should provide training to those involved with the lease to ensure that it properly accounts for and reconciles future work and payments related to the leased property, that it does not pay operational and equipment expenses with proceeds derived from the lease, and that all parties understand what work Fish and Game expects as the result of the agreement.

Agency Response

Fish and Game had failed to provide us with its response to this investigation as of November 29, 2012.

Chapter 5

CALIFORNIA CORRECTIONAL HEALTH CARE SERVICES AND DEPARTMENT OF CORRECTIONS AND REHABILITATION: IMPROPER TRAVEL EXPENSES

Case I2009-0689

Results in Brief

A manager with California Correctional Health Care Services (Correctional Health Services) improperly authorized Department of Corrections and Rehabilitation (Corrections) employees to use rental cars and receive mileage reimbursements for their commutes that Corrections improperly approved. The manager also improperly authorized these employees to receive reimbursements for expenses they incurred near their homes and headquarters and for which Corrections inappropriately approved payment. As a result, the State paid a total of 23 employees \$55,053 in travel benefits to which the employees were not entitled.

Background

Correctional Health Services is responsible for developing, implementing, and validating the health care systems within the State's correctional facilities to ensure that inmates receive adequate medical care. As part of its mission, Correctional Health Services manages the day-to-day operations of medical staff in these facilities. Although Correctional Health Services is managed independently from Corrections, the workforce is part of the state civil service. It also relies on Corrections employees to provide it with administrative support, such as processing travel claims.

A Correctional Health Services manager was responsible for supervising the 23 employees. The employees' responsibilities included traveling to 10 prisons in Southern California to conduct on-site health care program monitoring to ensure that nursing service activities met the needs of inmate patients and complied with inmate medical services' policies and procedures. In addition, the employees assessed the standard of inpatient care at acute care hospitals, correctional treatment centers, and skilled nursing facilities. Further, the employees provided on-site training to institution staff as necessary and developed management plans for the institutions where health care practices required improvement.

As the entity exercising powers vested in the secretary of Corrections, Correctional Health Services must comply with state laws, regulations, and administrative policies that govern state travel

practices unless the federal court exempts it from doing so. To date, the court has not exempted Correctional Health Services from the requirements governing state travel. Thus, it must follow state laws and regulations intended to ensure that it properly reports travel expenses and maintains adequate administrative controls to ensure the propriety of that reporting. Specifically, California Code of Regulations, title 2, section 599.615.1, subdivision (a), requires each state agency to determine the necessity for travel by its employees and to ensure that such travel represents the best interests of the State. In addition, this section requires the approving officer to certify that the expenses incurred are appropriate and within the State's travel rules. Section 599.631 of these regulations prohibits employees from claiming expenses arising from travel between their homes and headquarters. Further, labor agreements between the State and the relevant collective bargaining units (units 1, 6, 16, 17, and 20) govern the terms of employment for the employees involved in this investigation. These labor agreements specify that the State will reimburse employees for actual, necessary, and appropriate business expenses and for travel expenses incurred 50 miles or more from their home and headquarters. The labor agreements also specify that when employees travel to alternative work locations other than their headquarters, the State will reimburse them only for miles driven beyond their normal commutes.

When we received a complaint that a manager authorized her employees to receive improper travel expenses, we initiated an investigation.

Facts and Analysis

Our investigation revealed that from December 2007 through May 2009 the manager improperly authorized 23 employees to receive \$55,053 in travel-related benefits. Specifically, the manager regularly allowed employees to rent vehicles to use for their commutes. She also authorized employees to receive excessive mileage reimbursements when driving their personal cars to their headquarters or to locations near their homes or headquarters. In addition, the manager authorized nine employees to receive reimbursement for lodging and other expenses that they incurred near their homes or headquarters. Corrections accounting staff failed to adequately review the travel claims these employees submitted to ensure the expenses they claimed were allowed by state travel rules.

From December 2007 through May 2009 the manager improperly authorized 23 employees to receive \$55,053 in travel-related benefits by allowing them to rent vehicles to use for their commutes.

The Manager Authorized Employees to Receive Commute-Related Benefits to Which They Were Not Entitled

The manager violated state travel regulations by authorizing employees to receive commute-related benefits to which they were not entitled. Specifically, the manager authorized employees to use rental cars at the State's expense for their commutes and to receive mileage reimbursements when driving their personal vehicles for their commutes despite state regulations prohibiting these reimbursements. In addition, she authorized employees to use rental cars or to receive mileage reimbursements in excess of what they were entitled to when using their own vehicles to travel between their homes and prisons or other alternate work locations. As a result, the State incurred \$44,997 in improper expenses related to the employees' commuting to headquarters and prisons or alternate work locations.

In many instances, the misuse of rental cars occurred when an employee's initial rental of a car constituted an appropriate travel expense; however, the employee then kept the car for an extra day or two to use for his or her commute to work. In other instances, employees rented cars when they had no state-related reason to do so. We found that 20 of the 23 employees improperly used rental cars, at a cost to the State of \$33,534. Five of these employees misused rental cars to a particularly egregious extent: Each incurred more than \$3,000 in improper rental car expenses. One employee, Employee A, improperly used rental cars regularly from March 2008 through April 2009 at a cost to the State of \$9,577.⁴

The manager also violated state travel rules when she authorized employees to receive reimbursements to which they were not entitled for commuting to their headquarters or other locations in their personal vehicles. As previously mentioned, state regulations and the employees' collective bargaining agreements prohibit the payment of expenses arising from travel between an employee's home and headquarters and limit reimbursements when driving to alternate work locations to include only miles in excess of an employee's regular commute. However, we found that the manager authorized seven employees to receive reimbursements in violation of these conditions. For example, the State paid Employee B \$496 for nine trips he made between his home and headquarters even though he was not entitled to any compensation for his commute.

In many instances, the misuse of rental cars occurred when an employee's initial rental of a car constituted an appropriate travel expense; however, the employee then kept the car for an extra day or two to use for his or her commute to work.

⁴ The amount includes the cost of fuel associated with Employee A's misuse.

Employee C claimed lodging and meal expenses when she stayed at motels located less than four miles from her headquarters.

The Manager Authorized Employees to Claim Noncommute Expenses Incurred Near Their Homes or Headquarters

The manager authorized seven employees to claim noncommute expenses incurred within 50 miles of their homes or headquarters even though the relevant laws and collective bargaining agreements applicable to the employees prohibit the reimbursement of these expenses under these circumstances. As a result, these employees received \$10,056 for meal expenses they incurred when they worked at their headquarters and for lodging expenses they incurred as close as two miles from their headquarters.

For example, Employee C claimed improper lodging and meal expenses incurred near her headquarters for a total of 29 nights at a cost to the State of \$3,659. On all of these nights, she stayed at motels located less than four miles from her headquarters.

When we spoke about these improper expenses with the Correctional Health Services executive who supervises the manager, she stated that in some instances the job duties of certain employees required them to visit different institutions with little notice and to monitor inmates at specific 12-hour increments. However, the executive's explanation does not justify violating state travel rules: The employees could have driven from their respective residences and still performed their duties adequately. Further, state regulations and the employees' collective bargaining agreements do not allow for an exemption to the 50-mile expense prohibition under the circumstances the executive provided.

The findings of our investigation indicate that Correctional Health Services should have taken into account the factors that contributed to the payment of improper expenses and consequently provided greater administrative oversight to the manager so that she would have provided clearer direction to her employees. Specifically, the Correctional Health Services executive who supervised the manager stated that the manager had no prior state experience and was unfamiliar with state travel rules. In addition, before 2008, the manager and the employees—many of whom were also new to state service—used their homes as their “hubs” for travel because Correctional Health Services had not assigned them to specific headquarters. After Correctional Health Services assigned these employees to offices, some continued to submit expenses as though their homes were still their headquarters. Given these unique circumstances, the executive should have provided clear direction to the manager and to the employees regarding the appropriateness of claiming reimbursements for expenses incurred near headquarters and when commuting to headquarters or prisons.

Corrections Accounting Staff Failed to Review Employee Travel Claims Adequately

Corrections accounting staff failed to adequately review the employees' travel claims even though numerous expenses violated state travel rules. As mentioned previously, in many instances employees claimed meals and lodging near their headquarters. If Corrections' accounting staff had performed a simple review of these expenses, they should have noted the violations of travel rules and not have approved the claims for payment. In other instances, Corrections should have recognized that employees had improperly claimed reimbursement for their commutes. For example, Employee B listed his residence and headquarters addresses on his travel claim, and on the same page, he claimed reimbursement for five days' travel between his residence and his headquarters. If Corrections accounting staff had performed even a cursory review of this travel claim, they should have identified the violation of state travel rules. When asked why accounting staff did not question the claim, a Corrections manager told us that the expenses could be allowable if an employee worked on a regular day off or if Correctional Health Services asked the employee to return to work after completing his or her shift. However, because the travel claim did not state that these special circumstances existed, Corrections accounting staff should not have approved the expenses for payment without question.

Further, our investigation suggests that Corrections accounting staff lacked sufficient knowledge of state travel rules and regulations. The Correctional Health Services executive told us that some of these employees sought clarification from Corrections accounting staff regarding state travel rules but the accounting staff gave them conflicting information. To support this assertion, the executive provided us with an e-mail Employee B sent to Corrections accounting staff requesting clarification of the travel rules. We found that the response the accounting staff provided was unclear and, more importantly, contradicted state law.

Recommendations

To ensure that it reimburses employees only for allowable expenses, Correctional Health Services should do the following:

- Provide training to the manager and supervisors involved in the claim authorization process regarding the appropriate state rules for claiming travel expenses.
- Discontinue reimbursing employees for expenses claimed in violation of state regulations.

If Corrections accounting staff had performed even a cursory review, they should have noted the violation of state travel rules and denied claims for payment.

To ensure that Corrections accounting staff adequately review employee travel claims and reimburse employees only for allowable expenses, Corrections should do the following:

- Provide training to its accounting staff regarding state regulations and the applicable collective bargaining agreements that relate to travel reimbursements.
- Develop procedures to ensure that it provides accurate, clear responses when employees seek clarification of state travel rules.

Agency Response

In October 2012 Correctional Health Services reported that it is considering developing a “lesson plan” regarding state travel laws and regulations. Correctional Health Services also informed us that it will distribute and make available to its employees an online travel guide that includes information from state travel regulations and policies and relevant collective bargaining agreements. Correctional Health Services further reported that it will reevaluate the current assignments for the employees and will clarify their “home base” to eliminate confusion in instances when they are assigned to a work location other than their headquarters. Finally, to help detect any improper reimbursements and to ensure compliance with policies and procedures, Correctional Health Services indicated that it would initiate spot reviews of travel claims.

Corrections reported in October 2012 that it consolidated its travel functions to a regional office in January 2011 and that it has made consistent improvements to ensure accurate processing of travel related items, which has resulted in the development of a well-trained staff competent in providing direction concerning state laws, regulations, and administrative policies governing travel. In addition, Corrections stated that all new regional office employees receive training and are provided with all pertinent policies and training manuals to effectively perform their duties. Further, Corrections noted that it allows employees to obtain answers to travel-related questions by contacting its help desk, which is staffed and supervised by employees who have received extensive training regarding travel procedures to ensure that the information provided by help desk staff is clear and accurate.

Chapter 6

NATURAL RESOURCES AGENCY: IMPROPER TRAVEL EXPENSES

Case I2009-1321

Results in Brief

From January 2009 through June 2011, an executive with the Natural Resources Agency (Resources) circumvented state travel regulations by improperly reimbursing an official and an employee \$47,944 in state funds for commutes between their homes and headquarters. In addition, Resources improperly reimbursed the official \$209 for lodging and meal expenses incurred near the Resources headquarters.

Background

Headquartered in Sacramento, Resources provides oversight to multiple state departments, boards, and commissions as part of its mission to restore, protect, and manage the State's natural, historical, and cultural resources. Resources employed the official to develop and implement strategies and grant programs related to the State's natural resources. The official supervised four employees for Resources, including the employee who is one of the subjects of this investigation. The employee coordinates grants related to the State's natural resources.

As state employees, both the official and the employee are subject to regulations that govern state travel. California Code of Regulations, title 2, section 599.615.1, subdivision (a), requires that each state agency determine the necessity for travel by its employees and that the requested travel must represent the best interests of the State. Sections 599.626 and 599.626.1 of the regulations generally prohibit the State from reimbursing expenses that employees incur for travel between their homes and their headquarters, which sections 599.616 and 599.616.1 define as the place where employees spend the largest portion of their working time. Section 599.616.1 also prohibits the State from reimbursing employees that are excluded from labor agreements for travel expenses incurred within 50 miles of headquarters. Sections 599.630 and 599.631 prohibit reimbursement for parking expenses that employees incur at headquarters except under specific conditions. In addition, the labor agreement between the State and collective bargaining unit 1 to which the employee belongs specifies that the State will only reimburse employees for travel expenses they incur 50 miles or more from their home and headquarters.

The executive wasted state funds when he authorized the official and the employee to receive improper travel reimbursements for their commute-related expenses from January 2009 through June 2011.

Moreover, Government Code section 8314, subdivision (a), prohibits any state appointee or employee from using or permitting others to use public resources for purposes that are not authorized by law. Government Code section 8547.2, subdivision (c), states that any activity by a state agency or employee that is economically wasteful is an improper governmental activity.

When we received information that Resources had improperly reimbursed employees for travel expenses, we initiated an investigation.

Facts and Analysis

Our investigation revealed that the executive wasted state funds when he authorized the official and the employee to receive improper travel reimbursements for their commute-related expenses from January 2009 through June 2011. We also determined that Resources improperly reimbursed the official for lodging and meal expenses incurred near his headquarters, which state regulations do not allow.

Even though Resources headquarters is located in Sacramento, the official and the employee both told us that when Resources hired them more than 10 years ago it had allowed them to use offices near their San Francisco Bay Area residences as their headquarters as a condition of their employment. The official and the employee stated that former Resources executives had documented the arrangements; however, neither the official nor the employee could produce copies of these agreements. The executive who currently approves travel expense claims for both employees was also unable to provide copies of the agreements. When asked, he stated that he believed the only justification for Resources designating the official's and the employee's headquarters in the Bay Area was that it had been a condition of their employment when Resources hired them. Based on our investigation, the most likely explanation is that Resources had informal agreements with the official and employee, considering Resources was unable to provide any evidence of these arrangements. Under the arrangements that were apparently agreed upon, the official and the employee would regularly work at Bay Area offices of the agency, and Resources would reimburse them for mileage when they occasionally traveled to the Resources headquarters in Sacramento.

However, our analysis of leave records and travel expense claims since January 2009 showed that during the time of our review the official and the employee worked few hours at the Bay Area offices and instead spent the majority of their working time at Resources headquarters. We determined that the official spent

44 percent of his workdays in Sacramento, 38 percent at his home, and 18 percent at other locations. He did not work any hours at his Bay Area office. Similarly, the employee spent 47 percent of his workdays in Sacramento, 40 percent at his home, 11 percent at his Bay Area office, and the remaining 2 percent at other locations. Because state travel regulations define an employee's headquarters as the place where he or she spends the largest portion of his or her regular workdays or working time, the official's and the employee's headquarters were in Sacramento since at least January 2009.

Nonetheless, during this 30-month period, Resources continued to designate the headquarters for the official and the employee as the Bay Area offices. Thus, when the executive approved travel expenses for trips to these employees' actual headquarters in Sacramento, Resources violated state travel regulations that prohibit reimbursement for the employees' commute-related expenses. Consequently, it misspent \$47,944 in state funds for mileage and parking reimbursements that it made to the official and the employee from January 2009 through June 2011. Table 3 shows the improper commute-related reimbursements we identified.

Table 3
Natural Resources Agency's Improper Commute-Related Reimbursements
January 2009 Through June 2011

RESOURCES EMPLOYEE	MILEAGE REIMBURSEMENTS	PARKING AND TOLL REIMBURSEMENTS	TOTAL IMPROPER REIMBURSEMENTS
Official	\$19,608	\$3,112	\$22,720
Employee	22,250	2,974	25,224
Totals	\$41,858	\$6,086	\$47,944

Sources: California State Auditor's analysis of the official's and the employee's leave records and travel expense claims.

In addition to allowing the official and the employee to receive improper travel reimbursements, we determined that Resources improperly reimbursed the official for lodging and meal expenses he incurred near its headquarters in Sacramento. In March 2011 the official stayed at a hotel in Sacramento in order to attend a late-night meeting followed by an early-morning meeting the next day. Resources reimbursed him \$209 for his meal and lodging expenses even though state regulations prohibit the reimbursement of expenses when working near headquarters.

The official left employment with the State in September 2011.

Recommendations

To ensure that it reimburses employees for only those expenses to which they are entitled, Resources should do the following:

- Designate the employee's headquarters as Resources headquarters in Sacramento.
- Discontinue improperly reimbursing employees for their commute-related expenses and lodging and for meal expenses incurred within 50 miles of their headquarters.

Agency Response

Resources reported in October 2012 that previously it had designated the employee's headquarters as Sacramento and had stopped all commute-related expense reimbursements to him. In addition, Resources stated it has directed that no employees will be headquartered at locations other than Sacramento.

Chapter 7

CALIFORNIA CORRECTIONAL HEALTH CARE SERVICES AND DEPARTMENT OF CORRECTIONS AND REHABILITATION: FALSE CLAIMS, INEFFICIENCY, AND INEXCUSABLE NEGLIGENCE OF DUTY Case I2010-1151

Results in Brief

A supervising registered nurse at the California Training Facility in Soledad (facility) falsely claimed to have worked 183 hours of regular, overtime, and on-call hours that would have resulted in \$9,724 of overpayments. However, because staff at the facility's personnel office (personnel staff) made numerous errors in processing the nurse's time sheets, the State ended up overpaying the nurse \$8,647. The nurse's supervisor neglected her duty to ensure that the nurse's time sheets were accurate, thus facilitating the nurse's ability to claim payments for hours she did not work. The nurse returned to work at the facility in July 2012 after a nearly two-year absence on medical leave. However, she left again on medical leave after only one month. Personnel staff reported that they have begun the process to collect the overpayments identified in this report.

Background

California Correctional Health Care Services (Correctional Health Services) oversees more than 7,000 staff to provide health care at the 33 adult correctional institutions in California. Although Correctional Health Services is managed independently from the Department of Corrections and Rehabilitation (Corrections), the workforce is part of the state civil service and Correctional Health Services relies on Corrections employees to provide administrative support. For example, Corrections processes the time sheets of all Correctional Health Services medical staff for payment.

Like employees at all state agencies, staff at Correctional Health Services and Corrections must comply with a number of laws and regulations governing their conduct. Specifically, Government Code section 19572, subdivisions (d) and (f), states that dishonesty and inexcusable neglect of duty are prohibited and constitute grounds for discipline. In a precedential decision, the State Personnel Board defined inexcusable neglect of duty as "an intentional or grossly negligent failure to exercise due diligence in the performance of a

known official duty.”⁵ Further, Correctional Health Care Services and Corrections staff must perform their responsibilities in an efficient manner. Government Code section 8547.2 states that an improper governmental activity occurs when state agencies or state employees engage in grossly inefficient conduct.

Correctional Health Services and Corrections must also comply with state laws, regulations, and administrative policies that govern payroll procedures. To ensure that state agencies correctly pay their employees, the California Code of Regulations, title 2, section 599.665, mandates that state agencies keep complete and accurate time and attendance records. To comply with this mandate, Corrections requires all employees, including Correctional Health Care Services staff, to submit monthly time sheets and on-call status reports documenting their absences and the overtime and on-call hours they work.⁶ After reviewing and approving the information employees submit, supervisors send the time sheets and on-call status reports to Corrections personnel office for processing and determination of payment. During the period we investigated, the facility required nursing staff to indicate their arrival and departure times on daily sign-in sheets at their assigned workstations in addition to submitting monthly time sheets. The facility also required nurses to call in when they were sick or otherwise unable to come to work.

Government Code section 19838, subdivision (a), requires that when a state agency determines that it has made an overpayment, it must notify the employee and afford him or her the opportunity to respond before the agency begins recouping the overpayment. Corrections gives its employees 15 days to respond to this type of notification. Thereafter, the state agency and employee must agree that the employee will reimburse the State by making cash payment, setting up installment payments, or offset the payment by using appropriate leave credits. Government Code section 19838, subdivision (d), gives the State three years from the date of overpayment to seek recovery.

When we received information that a nurse improperly claimed time she did not work and that her supervisor failed to ensure the accuracy of her time sheets, we initiated an investigation.

We received information that a nurse improperly claimed time she did not work and that her supervisor failed to ensure the accuracy of her time sheets.

⁵ Jack Tolchin (1996) *State Personnel Bd. Dec. No. 96-04*, page 11, citing *Gubser v. Dept. of Employment* (1969) 271 Cal.App.2d 240, 242.

⁶ The nurses collective bargaining agreement allows employees to earn one hour of compensating time off for every four hours for which they are on call. However, the agreement does not allow employees to claim on-call hours when they use approved leave. For example, if an employee asks to take a day of vacation, the employee cannot claim on-call hours on that day.

Facts and Analysis

Our investigation revealed that the nurse submitted false time sheets that misrepresented the time she actually worked. Because of these misrepresentations, the nurse improperly claimed a total of \$9,724 in salary that she did not earn. However, we also found that the facility's personnel staff made numerous errors in processing the nurse's time sheets. These errors reduced the State's total overpayments to the nurse to \$8,647. The nurse's supervisor was aware of the nurse's attendance issues, yet she neglected her duty to adequately ensure the accuracy of the nurse's time sheets. The nurse left work on medical leave in October 2010. After she returned to work in July 2012, Corrections began the process of collecting the overpayments it made. However, the nurse left on medical leave again after only one month.

On Her Time Sheets and On-Call Reports, the Nurse Falsely Claimed Hours She Did Not Work

From February 2010 through July 2010, the nurse falsely claimed on her time sheets and on-call reports that she worked 183 hours. Our comparison of the nurse's time sheets to other sources of available information identified numerous instances when the nurse falsely claimed that she worked. For example, on March 23, 2010, the nurse claimed on her time sheet that she arrived at work at 6 a.m. and stayed until 4:30 p.m., a 10.5-hour workday. However, other information showed that on that same day she called in sick at 7:42 a.m., she did not report to work at any of the workstations, nor did she send any e-mails from her state e-mail account. We found a significant number of similar discrepancies involving other days. Table 4 summarizes the hours the nurse falsely claimed to work and the cost to the State.

Table 4
Hours the Nurse Falsely Claimed
February Through July 2010

MONTH	WORK HOURS FALSELY CLAIMED	COST TO THE STATE
February	2	\$95
March	21	1,073
April	52	2,688
May	7	368
June	30	1,631
July	71	3,869
Totals	183	\$9,724

Sources: California State Auditor's analysis of the nurse's time sheets, payments history, and other available documents.

Despite the nurse's assertion, our investigation revealed that she consistently submitted false claims of work that resulted in her improperly claiming a total of \$9,724.

When we interviewed the nurse, she confirmed that the facility required her to sign in and out every time she arrived and left. She asserted that she rarely forgot to do so, and that on the rare occasions she did forget to sign in when she arrived, she would fill in the information when she departed. When we asked about the numerous discrepancies on her time sheets, the nurse stated that she might have made mistakes on her time sheets but that she had not broken any laws. Despite the nurse's assertion, our investigation revealed that she consistently submitted false claims of work that resulted in her improperly claiming a total of \$9,724.

The Facility's Personnel Staff Made Significant Errors When Processing the Nurse's Time Sheets

Our comparison of the nurse's time sheets to records at the State Controller's Office revealed that the facility's personnel staff made numerous errors when processing the nurse's time sheets for May 2009 through October 2010. These errors included failing to dock the nurse's pay when she claimed more leave than she had available to use, failing to catch days where the employee should have charged leave but did not, failing to properly credit the employee for on-call hours she worked, and failing to properly pay her for overtime she earned. The errors resulted in a significant number of overpayments and underpayments to the nurse. In total, Corrections overpayments for such errors totaled \$11,640, while its underpayments totaled \$12,717, resulting in a net underpayment to the nurse of \$1,077. The overpayments typically occurred when personnel staff failed to reconcile accurately the amount of leave the nurse claimed on her time sheets to her available leave. For example, in June 2009 the nurse showed 80 hours of leave on her time sheet. However, the nurse had only 39 hours of leave available to use. The facility's personnel staff correctly documented that Corrections should dock the nurse's pay by 41 hours but failed to establish an accounts receivable to properly dock her pay. As a result, the State overpaid the employee by \$1,530 in June 2009 alone.

Underpayments, on the other hand, generally resulted from personnel staff's failing to account accurately for the on-call hours the nurse worked. Specifically, we found that personnel staff failed to credit the nurse with compensated time off for seven of the nine months for which the nurse submitted on-call status reports with her time sheets.

The facility's personnel manager identified four possible reasons staff might have made these errors:

- One personnel specialist is responsible for processing the time sheets for all medical staff the facility employs. The medical staff are subject to multiple collective bargaining agreements, each of which has its own set of rules regarding the processing of time sheets. This situation increases the likelihood of errors.
- Since 2009 the facility has assigned three different personnel specialists to process the time sheets for all medical staff.
- Each of these personnel specialists had less than five years of experience in this classification when the facility assigned the task to him or her.
- The nurse's time sheets were unusually complex to process because she often charged significant amounts of leave, and she often charged significant amounts of leave due to medical issues.

Despite the personnel manager's explanations, the numerous errors we identified revealed a highly inefficient and unreliable process for ensuring that the facility accurately pays employees what it owes them.

The Nurse's Supervisor Neglected Her Duty to Ensure the Accuracy of the Nurse's Time Sheets

The nurse's supervisor neglected her duty to ensure the accuracy of the nurse's time sheets from March 2010 until July 2010, when the nurse went on medical leave. After working as the nurse's coworker for several years, the supervisor assumed an oversight role in March 2010. The nurse's former supervisor, who left the facility in February 2010, communicated numerous concerns about the nurse's attendance and time reporting to the current supervisor before leaving. In fact, he prepared a nearly 300-page packet outlining the nurse's recent absences and recommending actions the current supervisor should take. In particular, the former supervisor stated that he had not yet met with the nurse to discuss an unsatisfactory probationary report and a letter of instruction he had prepared because of her frequent absences. He requested that the current supervisor provide to the nurse the probationary report and letter of instruction for signature and that the current supervisor include these documents in the nurse's personnel file. He also stated that because he had documented the nurse's overall performance as unsatisfactory, he would "highly recommend that [the nurse] be monitored very closely."

When we interviewed the nurse consultant, she contradicted the supervisor's assertion, stating that she had told the supervisor to issue immediately the former supervisor's letter of instruction.

However, the nurse's current supervisor stated that she failed to follow her predecessor's instructions because she felt uncomfortable with the task and believed that the former supervisor should have met with the nurse before he left. The supervisor also asserted that she consulted with the Correctional Health Services nurse consultant for the region and that the nurse consultant counseled her to "start fresh" with the nurse and not give the nurse the letter of instruction. However, when we interviewed the nurse consultant, she contradicted the supervisor's assertion, stating that she had told the supervisor to issue immediately the former supervisor's letter of instruction, to prepare a new performance evaluation using any new information as well as the documents the former supervisor prepared, and to set clear guidelines with the nurse on expected behavior. When we reviewed the nurse's official personnel file in April 2011, we did not find the letter of instruction from the former supervisor or probationary reports from the current supervisor. When asked that same month, the supervisor told us she had not evaluated the nurse's performance since she began to supervise the nurse in March 2010.

Even though the supervisor was aware of the nurse's time and attendance issues, she failed to ensure that the nurse's time sheets were accurate. The supervisor could have compared the nurse's time sheets to daily sign-in sheets, absence reports, or her own e-mails to identify the nurse's false claims. For example, on June 20, 2010, the nurse called at 11:30 p.m. saying that she would be late for work the next day, then called two more times, at 4:30 a.m. and 9:15 a.m., saying that she was sick and would not be coming to work. The sign-in sheets for that day confirm that the nurse did not report to the three possible workstations, yet the nurse claimed on her time sheet that she had arrived to work at 6:30 a.m. and stayed until 6 p.m., an 11.5-hour workday. Moreover, the nurse did not work the following day either, yet she claimed to work 12.5 hours. Although the supervisor and the nurse subsequently exchanged e-mails about the nurse's absences and the supervisor's concerns, the supervisor approved the nurse's inaccurate time sheet two weeks later and never took any action to reprimand the nurse.

When we asked the supervisor why she had approved the nurse's time sheets when she was aware of the nurse's absences, she stated that she had not consistently scrutinized the sign-in sheets as well as she should have to verify the nurse's attendance and that she had signed the time sheets in error. Nonetheless, the supervisor neglected to fulfill her supervisory duties when she approved the nurse's inaccurate time sheets, and thus, allowed the nurse to falsely claim \$9,724 for time she did not work.

Corrections Has Begun the Process to Collect the Overpayments

The nurse returned to work in July 2012. Corrections reported that she worked in the same capacity and with the same supervisor. However, she left work on medical leave again after only one month. Corrections also provided evidence that it had notified the nurse in August 2012 to pay a portion of the overpayments identified in this investigation and it planned to issue additional notifications for payment as well.

Recommendations

To address the improper acts we identified and prevent similar acts in the future, Correctional Health Services and Corrections should work together to take the following actions:

- Collect all of the improper payments the State made to the nurse and seek corrective action for the time the nurse falsely claimed to work.
- Provide training to the supervisor related to timekeeping requirements and the proper procedures for taking disciplinary actions.
- Seek corrective action for the supervisor's failure to adequately monitor and discipline the nurse.
- Provide training to the facility's personnel office staff related to the application of the terms of the collective bargaining agreements for medical staff, the processing of docked pay, and the processing of on-call hours.
- Implement additional controls within the facility's personnel office to ensure that supervisors regularly monitor and review their staff's processing of time sheets.

Agency Response

In October 2012 Correctional Health Services reported that after it reviews the evidence related to our recommendation to collect improper payments, it would work with Corrections to confirm that an accounts receivable has been established and is being collected. As stated in the report, Corrections told us that in August 2012 it had notified the nurse to pay a portion of the overpayments. Correctional Health Services stated that it would consider seeking corrective action against the nurse after it reviews the supporting evidence. In addition, Correctional Health Services

stated that it would develop a process to train its managers and supervisors regarding timekeeping and attendance requirements. It also stated that Corrections sent a memorandum in October 2012 that required all wardens and chief executive officers to ensure that on-the-job training is provided to all staff, including supervisors and managers, within 45 days of the memorandum's issuance. Finally, Correctional Health Services reported that it would determine and take any necessary and adequate corrective and disciplinary actions for the supervisor's failure to monitor and discipline the nurse.

Corrections reported to us in October 2012 that it agreed with our recommendations and would work with Correctional Health Services to make the necessary changes. Corrections stated that all the personnel specialists at the facility have been and will continue to be sent to training. Moreover, it reported that the facility's personnel supervisors met with the personnel specialists and reviewed the bargaining unit agreements' rules and regulations for on-call hours and for dock training. Regarding our recommendation for additional controls at the facility's personnel office, Corrections reported that monthly it provides to Correctional Health Services copies of time sheets for relevant staff to review and audit for possible discrepancies. Although this control was in place during the period we investigated, the nurse's time sheets were never audited by Correctional Health Services. As a result, this control was not used as intended and was ineffective in preventing a similar situation from occurring. Finally, Corrections stated that the facility planned to conduct supervisory audits of personnel files to ensure the integrity of time and attendance.

Chapter 8

UNIVERSITY OF CALIFORNIA, OFFICE OF THE PRESIDENT: WASTE OF STATE FUNDS Case I2010-1022

Results in Brief

In December 2009 we reported that for 37 months—from July 2005 through July 2008—a high-level official at California State University received wasteful reimbursements totaling \$152,441 for expenses he improperly claimed. In July 2008—before we had issued our previous investigative report—this official accepted a position at the University of California (university) in the Office of the President. Our more recent review found that the university reimbursed this same official \$6,074 for wasteful travel expenses he incurred from July 2008 through July 2011. Specifically, we determined that the official incurred \$4,186 of the wasteful expenses before December 2009, when we issued our previous report, and \$1,888 after that date. We also ascertained that although the university increased its monitoring of the official's travel expenses, its absence of defined limits for lodging expenses led to some of these wasteful expenditures.

Background

In 2009 we completed an investigation of a California State University official who had incurred improper and wasteful expenses of \$152,441 from July 2005 through July 2008. Some of the wasteful expenses we identified in that investigative report included costs for international travel, airport parking, lodging, and meals. Before our issuing the report, the official left the California State University system to accept a comparable position at the university. Because he transferred from one state university system to another after incurring the improper expenses, we conducted this investigation to determine whether the official was continuing to engage in wasteful activities as an employee of the university.

The Office of the President functions as the university system's administrative headquarters. The official provides information technology services for the 10 university campuses and the Office of the President.

As an employee of the university, the official is subject to Government Code section 8547.2, subdivision (c), which states that any activity by a state agency or employee that is economically wasteful is an improper governmental activity. In addition, the

University travel policy prohibits employees from claiming lodging, meals, and incidentals within the vicinity of the employees' headquarters, which the policy defines as the places where the employees spend most of their working time.

employee is subject to the university's travel policy, which requires that all employees traveling on official business must observe normally accepted standards of propriety in the type and manner of expenses they incur. Although the university expects its employees to claim actual expenses up to an established maximum rate for most domestic travel-related expenses, university travel policy does not currently require employees to claim actual lodging or meal expenses when traveling outside the continental United States. Instead, the university's policy allows employees to claim the federal per diem lodging rate for the respective area of travel and to use the federal per diem rate for meals they purchase outside the continental United States. The policy states, however, that the university will reduce the per diem rate if any meals are provided to employees. For example, if an employee travels overseas to attend a conference that provides lunch, the employee must deduct the value of the lunch from the total amount allowed by the federal per diem rate. When an employee extends travel to take advantage of less expensive airfare, the university covers additional expenses, such as lodging, car rental, and meals; however, the cost of these expenses must be less than the cost of airfare had the traveler not extended the trip.

The official is also subject to other aspects of university policies that are pertinent to this investigation. Specifically, university travel policy prohibits employees from claiming lodging, meals, and incidentals within the vicinity of the employees' headquarters, which the policy defines as the places where the employees spend most their working time.⁷ In addition, university employees occasionally provide hospitality to donors, guests, other employees, or other individuals as part of business meetings or entertainment events. Whether the meetings involve university employees only or include external organizations, the university's policy on such expenditures requires that the meals employees provide in the course of business meetings must be necessary and integral rather than matters of personal convenience.

Facts and Analysis

During the three years from July 2008 to July 2011, the official incurred \$2,689 in wasteful travel expenses. Moreover, the university's lack of a defined limit for lodging costs resulted in its wastefully reimbursing the official a total of \$3,385.

⁷ The university does not provide a distance test for this policy. However, the university's director of payroll coordination and tax service stated that it uses 50 miles as a rule of thumb, and this method is similar to practices established in the *State Administrative Manual* for most other state employees.

In the 18 Months Before the Release of Our December 2009 Report, the Official Continued to Incur Wasteful Travel Expenses

After beginning his employment with the university in July 2008, the official traveled to various business meetings, conferences, and other events as part of his duties. Our investigation determined that during the first 18 months of his employment, the official continued to incur wasteful expenses while traveling on state business. Table 5 summarizes the wasteful expenses we identified.

Table 5
Wasteful Expenses the Official Incurred
July 2008 Through December 2009

TYPE OF EXPENSE	COST
International travel expenses*	\$624
Parking expenses [†]	572
Expenses incurred within the vicinity of headquarters [‡]	835
Business meal expenses [§]	343
Total	\$2,374

Source: California State Auditor's analysis of the official's travel records.

* *International travel expenses* include improper or wasteful reimbursements for lodging, meals, and other expenses that the official incurred while on travel outside the United States.

[†] *Parking expenses* relate to the official's wasteful airport parking fees while traveling on university business.

[‡] These expenses include reimbursements for lodging, meals, and other expenses that the official incurred within 50 miles of his headquarters.

[§] *Business meals* include events at which the official inappropriately paid meal expenses or provided refreshments for at least one other person and himself.

The official's unnecessary expenses included costs for his September 2008 travel to England for five days to attend board meetings for a nonprofit group that specializes in the development and adoption of software standards for educational institutions. The nonprofit organization's Web site indicated that it held all its meetings in Birmingham over a five-day period. The official's travel expense claim, on the other hand, stated that he stayed for two days in Birmingham and spent the remaining three days in London, about two hours away. The official claimed meals and other incidental costs for his three days in London, for which the university reimbursed him \$428. When we asked the official if he was conducting state business during his time in London, he stated that he attended meetings with the nonprofit organization only on the first two days of the trip, when he stayed in Birmingham. The official asserted that he visited London for the additional three days to take advantage of a lower airfare available

Not only did the official improperly claim an extra three days of travel expenses when he visited England, but he also claimed costs for the trip that did not always match his actual costs.

on the fifth day and that his secretary accidentally submitted claims for his costs for this time. Because the university reimbursed the official in error, he agreed to repay the \$428.

Not only did the official improperly claim an extra three days of travel expenses when he visited England, but he also claimed costs for the trip that did not always match his actual costs. Specifically, when the official stayed in Birmingham, he paid \$162 per night for his hotel, but he claimed the \$239 per night that is the federal maximum per diem allowed for lodging over the two-night stay. Although allowed by university policy, this claim nevertheless resulted in an overpayment of \$154 for expenses he did not incur. Further, for one of the two days in Birmingham, the hotel and the nonprofit organization provided breakfast and lunch to the meeting participants. However, the official did not reduce his per diem accordingly as university policy requires, resulting in a \$42 overpayment. Consequently, the official claimed and received a total of \$624 in wasteful travel reimbursements for this trip.

As in the case of our earlier investigation, the official also received reimbursements for a number of claims involving wasteful parking expenses. Specifically, when traveling on university business, the official parked regularly in short-term parking at airports. For example, in November 2009 the official parked in short-term parking at Sacramento International Airport for five days at a rate of \$27 a day when parking at the airport's economy lot would have cost \$9 a day. The official's supervisor stated that he expects employees to claim the lowest daily parking rate. Consequently, the official wasted \$90 in parking costs for this trip alone. We determined that the official wasted a total of \$572 in state funds because of his parking practices.

Our review of the official's travel claims from July 2008 through December 2009 also revealed that he violated university policy by claiming \$835 in costs for lodging, meals, and incidentals incurred in the vicinity of his headquarters.⁸ For example, in September 2008 the official attended a three-day conference in San Francisco, about 10 miles from his headquarters in Oakland, for which he claimed \$649 in expenses for his lodging, meals, and incidentals. The official stated that his understanding of the university's policy was that he could receive reimbursement for these expenses as long as he could justify them. For example, the official believed that if he attended a conference session at night and another session early the next morning, he could receive reimbursement for his lodging and meals because his commute from his home to his headquarters was

⁸ As the Background section notes, the university generally uses a 50-mile radius to define the vicinity of an employee's headquarters.

almost 70 miles. However, university policy does not consider an employee's personal commute when reimbursing expenses. Because the university no longer employs the official's former supervisor, we could not determine why the university approved these expenses. However, the official's current supervisor stated that he would not have approved the reimbursements.

Finally, we determined that the official violated university policy when he claimed \$343 for five business meals that were not justified. University policy clearly prohibits reimbursement for meals taken with colleagues at the same work location unless the participants were unable to accomplish the business purpose within working hours. For example, when the university initially hired the official, he met with his predecessor at a restaurant about a block away from his headquarters to discuss his new job. When questioned about these business meal expenses, the official could not provide a reason consistent with university policy that would justify reimbursement for the business meals that were claimed. He asserted that he had obtained preapproval from his former supervisor. However, for three of the five meals, we found no evidence of preapproval. For the two remaining meals, the documentation supporting his former supervisor's preapproval did not identify a rationale for why meals were reimbursable under university policy.

After Our December 2009 Report, the University Increased Its Monitoring of the Official's Travel Expenses

Our review of the travel claims the official submitted after the release of our December 2009 report indicated that the university gave greater scrutiny to his expenses to ensure that they were appropriate. The university's hiring of a permanent new supervisor in February 2010 appears to have contributed significantly to this increase in oversight. Specifically, the official's supervisor requires his subordinate staff to submit annual proposed travel plans that he reviews and approves. In addition, before each trip, the supervisor requires the employees he supervises to submit preapproval forms to him detailing their estimated costs. Further, as a result of our December 2009 report, the supervisor advised his staff that they may only claim the lowest daily rate for parking reimbursement.

Even with new instructions from his supervisor, the official incurred a total of \$315 in wasteful expenses during the 19-month period following our December 2009 report. These expenses included one business entertainment expense in February 2010 that cost \$230 and various wasteful parking expenses that cost \$85. When we questioned the official about the business entertainment expense, he stated that he had obtained preapproval and postauthorization for the expense. However, he did not indicate

Because the university no longer employs the official's former supervisor, we could not determine why the university approved these expenses.

that the expense had been justified under the university's policy for reimbursement of business meeting expenses. When we spoke with his supervisor about this specific incident, the supervisor stated that the expense had occurred around the time the university had formally hired him for his position and that at the time he had not been as vigilant in monitoring the official's travel expenses. We did not identify any additional wasteful expenses by the official from April 2010 through July 2011.

Further, the official's total travel costs have decreased significantly because of the supervisor's increased scrutiny. Our review of his travel expenses showed that the official's costs in fiscal year 2008–09 totaled \$23,294. In fiscal year 2009–10, the costs decreased by 43 percent to \$13,194. By fiscal year 2010–11, they had fallen another 14 percent to \$11,294. These decreases may have occurred because the supervisor met with the official on several occasions regarding the supervisor's expectations of appropriate travel expenses. Further, as of July 2011, the official had not taken any international trips at the university's expense since 2009.

The University's Lack of a Defined Limit for Lodging Costs Resulted in Wasteful Reimbursements

Unlike the administrative branch of state government, which sets its maximum lodging rate between \$84 and \$140 per night depending on the locale, the university did not define maximum limits for reimbursing the costs of lodging in the United States, and this failure led to its reimbursing the official for wasteful expenses.⁹ The university's travel policy requires that the cost of lodging be "reasonable." However, when we compared the official's lodging costs from July 2008 through July 2011 to the federal government's reimbursable rates for lodging, we determined that he exceeded the federal lodging maximum rate 28 of the 41 times he stayed in hotels in the United States.¹⁰ For example, in October 2008 the official spent three nights at a four-star hotel in Orlando, Florida, in a room that, according to the hotel's Web site, provided "extravagant amenities," such as valet parking, hors d'oeuvres, evening drinks, private concierge service, nightly turndown service, and the use of a private lounge and athletic club. The maximum federal rate for a hotel room in Orlando during this time was \$109 per night, yet the official paid \$319 per night before taxes. Table 6 lists this incident and other egregious examples of the official's travel expenses.

We determined that the official exceeded the federal lodging maximum rate 28 of the 41 times he stayed in hotels in the United States.

⁹ In our December 2009 report, we noted a similar problem involving California State University, Chancellor's Office.

¹⁰ We used the federal per diem rates because the official frequently traveled outside California. In addition, the maximum federal rates are higher, and thus less restrictive, than the rates used by the State.

Table 6
Examples of Lodging Expenses Claimed by the Official Compared to Reimbursable Lodging Rates
Used by the Federal Government

DATE	LOCATION	COST CLAIMED PER NIGHT	FEDERAL RATE PER NIGHT	AMOUNT OF EXPENSE THAT EXCEEDED FEDERAL RATE	PERCENTAGE OF EXPENSE THAT EXCEEDED FEDERAL RATE
October 2008	Orlando, Florida	\$319	\$109	\$210	193%
March 2009	Lake Arrowhead, California	205	97	108	111
October 2010	Anaheim, California	234	123	111	90
November 2010	The Woodlands, Texas	249	109	140	128

Source: California State Auditor's analysis of the official's travel records.

Over the course of the three years, the official exceeded the federal rate by 50 percent on average, and at times he exceeded that rate by up to 193 percent. During the period that we investigated, the university reimbursed the official a total of \$3,385 more than it would have paid him if it had established maximum limits for lodging costs similar to those the federal government uses. By not defining any limits and by not requiring employees to provide justification for any exceptions, the university enabled the official to waste state funds.

Recommendations

To address the improper acts we identified, the university should collect \$1,802 from the official for the wasteful expenses he claimed for lodging and meals during his trip to England, the expenses he incurred within the vicinity of his headquarters, and the business meal expenses.

To prevent similar acts from occurring in the future, the university should take the following actions to strengthen its travel expense policies and procedures:

- Revise the policies to allow employees to claim only actual lodging expenses up to established rates for international travel.
- Include a policy specific to parking to assist supervisors in determining appropriate expenses. For example, the university should consider mirroring the State's current criteria for airport parking expenses.
- Clarify policies to include a distance test for expenses that employees incur within the vicinity of their headquarters.

- Revise policies to establish defined maximum limits for the reimbursements of domestic lodging costs, and establish controls that allow for exceptions to the limits under specific circumstances only.

Agency Response

In October 2012 the university reported that it intends to seek reimbursement from the official for the wasteful expenses identified in this report. In addition, the university stated that it has reviewed the official's most recent expenses for fiscal year 2011–12 and that it would seek reimbursement from the official for any additional improper expenses it finds. Further, the university stated that the official is leaving university employment at the end of 2012.

In responding to the four policy-related recommendations, the university stated that it is prepared to explore ways to strengthen its expense policies and procedures. Consequently, the university stated that it has assigned an individual to work with the systemwide campus controllers to analyze the recommendations and determine the feasibility of adopting the recommendations into applicable university policy.

Chapter 9

CALIFORNIA DEPARTMENT OF EDUCATION: MISUSE OF STATE RESOURCES, INEXCUSABLE NEGLIGENCE OF DUTY Case I2011-1083

Results in Brief

An employee at the California Department of Education (Education) misused state time and equipment when he posted approximately 4,900 comments on *The Sacramento Bee's* news Web site during state time. The employee also performed work for a third party using state resources during state time. The employee's former supervisor failed to appropriately supervise the employee, thus enabling the employee's misuse of state time and equipment.

Background

Education oversees the State's public school system. Its responsibilities include providing information to the public on student academic achievement and promoting the effective use of technology to improve teaching and learning.

Education's employees are subject to Government Code section 8314, which prohibits any state employee from using state resources, including state-compensated time and state equipment, for purposes unrelated to state employment. Education's employees are required to exercise good behavior and efficiency in performing their official duties. In addition, inexcusable neglect of duty by a state employee is prohibited and such misconduct constitutes grounds for discipline under Government Code section 19572, subdivision (d).

When we received an allegation that an Education employee had misused state resources, we initiated an investigation.

Facts and Analysis

The employee, who analyzes Education's information systems and conducts technical research, misused state resources when he spent state time and used state equipment to post thousands of comments on *The Sacramento Bee's* Web site between December 2010 and December 2011. He also misused state time and equipment during this period to perform work for his second job. The employee's misuse of resources occurred in part because his former supervisor (Supervisor A) failed to provide

Education failed to take formal disciplinary action, and the employee continued to use state resources to post comments online.

adequate supervision. When Education reorganized the employee's division in October 2011, his new supervisor (Supervisor B) initiated an internal investigation regarding the employee's online habits. Education took some informal action against the employee as a result of this investigation. However, Education failed to take formal disciplinary action, and the employee continued to use state resources to post comments online.

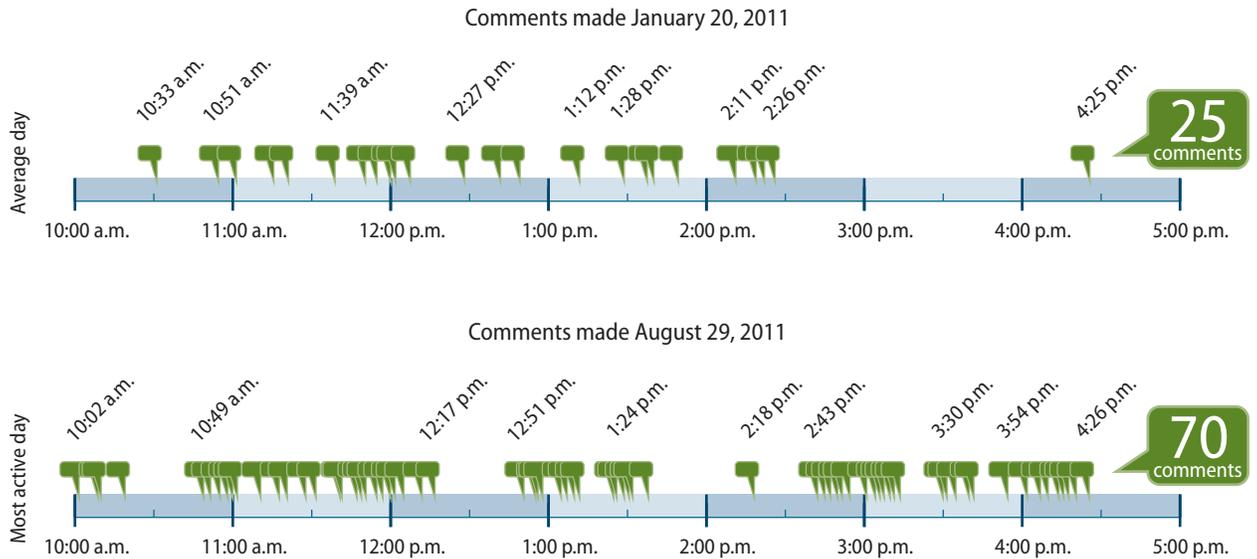
The Employee Misused State Time and Equipment When He Posted Almost 4,900 Comments on The Sacramento Bee's Web Site

On December 1, 2010, *The Sacramento Bee* introduced a new commenting platform on its Web site. The next day, the Education employee who is the subject of this investigation registered for an account with his state e-mail address in order to post comments on the Web site. Our investigation revealed that from December 2, 2010, through December 1, 2011, the employee posted almost 4,900 comments onto the Web site during hours for which the State paid him to perform his job. The employee posted comments on the Web site during 195 of the 208 days (94 percent) he was present at work. He averaged about 25 comments per day, although we noted he posted up to 70 comments in a single day. In fact, as of July 2012, *The Sacramento Bee's* Web site identified the employee as one of its most active contributors.

When we spoke to the employee regarding the number of comments he made on *The Sacramento Bee's* Web site, the employee initially claimed that he only posted on the Web site during his break and lunch times. However, when we looked at the employee's average daily activity on the Web site, we found that he did not keep his commenting confined to his break and lunch periods. Figure 2 shows that during an average day of commenting, the employee consistently posted comments from 10:30 a.m. to 2:30 p.m., and he posted a comment at the end of his workday. Figure 2 also demonstrates that on his most active day, the employee steadily posted comments starting at 10 a.m. until the end of his workday at 4:30 p.m. The figure does not include the time the employee spent to read each of the articles and draft his comments for posting.

The employee also claimed that he commented frequently on *The Sacramento Bee's* Web site because his position required him to stay informed about news pertaining to educational technology. Although the employee's duty statement allocated 15 percent of his time to technical research and analysis, it made no mention of using state time to post public commentary regarding the results of his research. Moreover, when we looked at a one-week sample of the

Figure 2
 The Employee's Comments on an Average and His Most Active Day of Commenting



Source: California State Auditor's analysis of the employee's comments on *The Sacramento Bee's* Web site.

comments the employee posted during April 2011, we found that of the 148 comments posted during his state workday, only one related to education.

Finally, the employee claimed that for the majority of 2011, he had a significant amount of available time because he had no assigned tasks to complete. He stated that he actively requested additional assignments but received none. Supervisor A confirmed that changes implemented by the federal government had caused Education to drastically reduce the employee's responsibilities from July 2010 until October 2011. However, Supervisor A stated that he had been able to find other projects to fill approximately 80 percent of the employee's time.

The Employee Misused State Time and Equipment to Perform Work for a Third Party

In conjunction with the excessive Internet usage noted in the previous section during 2011, the employee also misused state time and equipment by performing work as a contractor during his state workday from April 2011 until October 2011. In April 2011 the employee contacted Supervisor A to determine if his accepting a second job as a private contractor would be allowable under state regulations. Supervisor A stated that he sought guidance from Education's personnel department and informed the employee

that his accepting the position would be appropriate as long as he did not perform work as a private contractor during state time or on state equipment. Despite this prohibition, while on state time, the employee used his state e-mail account in the subsequent months to send and receive more than 450 e-mails related to his work as a private contractor, thereby using state resources for a personal purpose in violation of Government Code section 8314, subdivision (a).

We also noted other instances in which the employee performed work for his second job during his state work hours. For example, the contents of the employee's e-mails show that he submitted his time sheets for his second job while on state time. In addition, his e-mails suggest that he regularly worked on spreadsheets or documents using state time and equipment. When questioned, the employee admitted that his other employer sometimes asked him to revise spreadsheets or documents on state time in order to provide timely billing to clients.

The employee also improperly claimed time worked for Education when he was off-site performing work for his second job. For example, the employee reported to his second employer that on September 1, 2011, he worked off-site from 8:30 a.m. until 12:30 p.m., and he submitted pictures that he had taken while off-site to this employer. However, on that same day the employee also charged a full day of work to Education. When we asked the employee about this specific instance, he stated that he came in early and stayed late that day to compensate for the time off-site. However, we found that he had sent an e-mail 15 minutes before the end of his regularly scheduled state workday stating that he was "just about ready to leave" for the day.

The employee ultimately admitted that he had spent some of his state time attending meetings and responding to e-mails for his second job.

Although the employee initially denied using Education resources and time to complete work for his second job, he ultimately admitted that he had spent some of his state time attending meetings and responding to e-mails for his second job.¹¹

The Former Supervisor Failed to Take Appropriate Action Regarding the Employee's Misuse of State Time and Equipment

When we met with Supervisor A in February 2012, he stated that he was well aware that the employee had used the Internet excessively. Supervisor A stated that he had difficulty filling all of the employee's time because other Education staff members were not willing to

¹¹ Because the employee's time sheets for his second job listed only the total hours he worked rather than start and end times for his work, we were unable to quantify the total time the employee improperly claimed as state time when working for his second job.

have the employee assigned to their projects. Moreover, Supervisor A stated that if the employee did not find the projects assigned to him interesting, he would take longer to complete them and instead fill his time with reading online articles in newspapers and commenting on them.

When interviewed, Supervisor A made conflicting statements regarding the appropriateness of the employee's online behavior. Initially, Supervisor A stated that he thought it was acceptable for the employee to spend state time on *The Sacramento Bee's* Web site if he had no state work to perform. Later in the interview, Supervisor A claimed that he spoke to the employee 15 to 20 times regarding his online activity and that he had written him up two or three times for this behavior. However, the supervisor was unable to provide any documentation supporting his assertion that he had taken administrative action regarding the employee. When asked why he did not spend more effort to discipline the employee given his cited concerns with the employee's online activity, Supervisor A explained that managers were not given enough power to discipline employees and that only Education's personnel office could take corrective action. However, Supervisor A admitted that he had never contacted the personnel office regarding this issue.

When asked about the employee's second job, Supervisor A confirmed that he was aware of the employee's other employment as a private contractor. The *State of California Supervisor's Handbook* clearly states that a supervisor is expected to ensure that employees are aware of acceptable and unacceptable conduct on and off the job as it pertains to their employment. Because Supervisor A was also aware that the employee had a diminished workload that provided him with an opportunity to misuse his state time, Supervisor A had a responsibility to monitor the employee to ensure that he used his state time appropriately. However, when we asked Supervisor A what actions he took to ensure that the employee did not misuse state time and resources, Supervisor A stated that he did not monitor the employee.

Given the employee's reduced workload combined with Supervisor A's stated concerns regarding the employee's online activities and his knowledge of the employee's second job, Supervisor A had a responsibility to exercise greater diligence to prevent or correct the misuse of state time and equipment.

The Division Chief and the Employee's Current Supervisor Took Only Limited Corrective Actions Against the Employee

During the course of our investigation, we learned that in October 2011 the employee's new division chief and Supervisor B initiated an internal investigation related to the employee's use of state time and resources. The internal investigation resulted in an in-person conversation between the employee, Supervisor B, and the division chief. An informal e-mail from the division chief to the employee after the meeting stated that he had instructed the employee to cease commenting on *The Sacramento Bee's* Web site or other Web sites during his state time and informed him that his supervisors would need to review any potential future jobs outside of Education to ensure that they were not incompatible with his Education work.

Despite these verbal and written instructions, we noted that the employee continued to frequently post comments on *The Sacramento Bee's* Web site during his state work hours. For example, the day before we interviewed the employee in February 2012, we noted that he had already posted 13 comments before 10:30 a.m. Coincidentally, the employee's division chief also made the same observation that day and sent another e-mail to the employee stating that his behavior was not consistent with their earlier conversation regarding this issue. However, due to the informal nature of the division chief's e-mails to the employee, Supervisor B stated that Education's personnel office considered them warnings and not disciplinary actions.

Recommendations

To ensure that the employee does not misuse state resources, Education should do the following:

- Block *The Sacramento Bee's* Web site from the employee's computer station for a specified period.
- Evaluate the necessity of the employee's direct access to *The Sacramento Bee's* Web site and take appropriate actions to prevent further abuses of state resources. These actions may include blocking other specific Web sites or periodically monitoring the employee's Internet usage.
- Take appropriate corrective action against the employee for misusing state resources.

In addition, Education should take appropriate corrective action against Supervisor A for failing to adequately monitor and discipline the employee.

Agency Response

In October 2012 Education reported to us that it takes all claims of improper use of state resources very seriously and that it will continue to take all reasonable steps necessary to ensure that resources are used properly. Specifically, in response to two of our recommendations Education stated that it had recently updated its Internet usage policy and its software management policy to ensure that its employees understand the appropriate use of its computers. In addition, Education reported that it recently acquired a web filtering feature that allows Education employees to access certain Web sites but prevents them from submitting posts to a Web site. However, Education did not indicate whether it decided to implement this new feature to prevent the employee from posting on *The Sacramento Bee's* Web site as we recommended. Moreover, Education did not state whether it had evaluated the necessity of the employee's direct access to *The Sacramento Bee's* Web site as we also recommended.

Regarding the recommendation that Education take appropriate action concerning the employee's misuse of state resources, Education stated that Supervisor B provided a directive to the employee in October 2011 when he and the division chief met with the employee to discuss their expectations and the employee's inappropriate use of state resources. In addition, Education stated that it provided a written follow-up to the employee after this meeting. Further, Education noted that when it noticed the employee's postings on one day in February 2012, it immediately reminded the employee that this behavior was unacceptable. Thus, Education asserted that these actions were appropriate and acceptable in preventing the behavior from reoccurring.

We disagree with Education's assertion regarding its actions taken in response to this recommendation. As we stated in our report, Education found the employee's postings in February 2012 and sent a reminder to him; however, the employee's supervisors did not notice that after their initial meeting in October 2011, the employee went online the very next day to post a comment and posted 70 additional comments through December 1, 2011, the end of the one-year period we reviewed. For example, on one day in early November 2011, the employee posted 23 comments during his state work hours. This action shows that the employee did not follow the

directive and that his supervisors failed to discover his continued behavior until four months later. Therefore, Education's past efforts were insufficient to prevent future instances of this behavior.

Finally, Education failed to respond to our recommendation that it take appropriate corrective action against Supervisor A for failing to monitor and discipline the employee adequately.

CHAPTER 10

OTHER INVESTIGATIVE RESULTS

In addition to the investigations reported in the previous chapters, during the period from April 1, 2011, through June 30, 2012, the California State Auditor (state auditor) referred numerous investigations to state departments to perform in response to whistleblower complaints that the departments appeared best suited to investigate. Based on an evaluation of these investigations by the state auditor's staff, six of the investigations substantiated the occurrence of improper governmental activities by one or more state employees. The following identifies the improper governmental activities substantiated through these investigations.

Department of Rehabilitation Case I2011-1085

An employee of the Department of Rehabilitation (Rehabilitation) misused state time by arriving late, taking extended lunches, and leaving early, at a cost to the State of \$6,408. Rehabilitation dismissed the employee in November 2011. In addition, Rehabilitation gave the employee's supervisor a formal letter of discipline and revoked the supervisor's telework schedule.

Department of Health Care Services Case I2011-1459

Two employees at the Department of Health Care Services (Health Care Services) who carpooled together misused state time by regularly arriving late to work from August 2011 through February 2012. Health Care Services issued a counseling memorandum to each of the employees and deducted 30 hours from each employee's available leave balance.

California State Lottery Commission Case I2011-1620

A manager at the California State Lottery Commission (lottery) admitted that he had subordinate employees take him to and from the airport for personal reasons about every six weeks for more than two years. The manager resigned in lieu of a demotion in May 2012.

**California Conservation Corps
Case I2011-0824**

Two employees of the California Conservation Corps (Conservation Corps) improperly received 46 free meals from their department between January 2011 and August 2011. The employees subsequently paid the Conservation Corps for the meals, and the Conservation Corps initiated a new accounting process intended to ensure that its employees do not receive free meals to which they are not entitled.

**Department of Public Health
Case I2011-0983**

An employee at the Department of Public Health (Public Health) misused state time by reading books after she completed her assigned tasks. Public Health increased her assigned duties and stated that it would monitor her workload to ensure that these duties fully occupy her time.

**California Energy Commission
Case I2012-0266**

A supervisor at the California Energy Commission (Energy Commission) improperly used an interlibrary loan system for personal reasons. The Energy Commission required the supervisor to repay the minimal costs to the State and it revised its interlibrary requests to limit their use to state business.

Chapter 11

UPDATE OF PREVIOUSLY REPORTED ISSUES

Chapter Summary

The California Whistleblower Protection Act requires an employing agency or appropriate appointing authority for the State to report to the California State Auditor (state auditor) any corrective action or disciplinary action that it takes in response to an investigative report. The agency or authority must submit information regarding its actions implemented in response to recommendations made by the state auditor no later than 60 days after the state auditor notifies it about the improper governmental activities. If the agency or authority has not implemented the recommendations within this time, it must submit monthly reports to the state auditor until it completes that implementation. This chapter summarizes actions that agencies and authorities implemented in response to 11 previous investigations.

Department of Corrections and Rehabilitation Cases I2004-0649, I2004-0681, and I2004-0789

Issued in September 2005, this investigation revealed that the Department of Corrections and Rehabilitation (Corrections) failed to track the total number of hours available in a release time bank (time bank) composed of leave hours donated by members of the California Correctional Peace Officers Association (union) for use by union representatives performing union business. Consequently, Corrections released employees to work on union-related activities without knowing whether the bank had sufficient balances to cover such release time. In addition, the reports that Corrections used to track time bank charges did not capture the time that three union representatives used. In total, Corrections inappropriately paid these representatives \$434,407 from May 2003 through June 2005.

At the time of the 2005 report, the state auditor did not make recommendations for investigations. Nevertheless, Corrections subsequently reported that it was unable to reconstruct an accurate leave history for the three union representatives before July 2005. Corrections did not seek to recover the \$434,407 it paid the representatives improperly. Instead, it directed its efforts toward the period beginning in July 2005, and it billed the union for another \$1,220,257 for unreimbursed union work that the three employees performed from July 2005

through March 2011.¹² In June 2010 Corrections notified us that it had initiated litigation against the union to recover the unreimbursed costs for all Corrections employees on full-time union leave. In January 2012 Corrections reached an agreement with the union that requires the union to pay the State a total of \$3.5 million for all Corrections employees on full-time union leave through annual payments beginning that same month and continuing until the entire amount is repaid.

Department of Fish and Game, Office of Spill Prevention and Response Case I2006-1125

Issued in April 2009, this investigation determined that the Department of Fish and Game (Fish and Game) improperly reimbursed \$71,747 to a former high-level official in its Office of Spill Prevention and Response (spill office) for commute, lodging, and meal expenses from October 2003 through March 2008.

The following list identifies the state auditor's recommendations as well as the status of corrective action taken in response to those recommendations as of December 2011:

RECOMMENDATION	STATUS OF CORRECTIVE ACTION
Fish and Game should seek to recover \$71,747 it reimbursed the official for her improper travel expenses. If it is unable to recover any or all of the reimbursement, Fish and Game should explain and document its reasons for not seeking recovery.	Fully implemented. Fish and Game reported that it would not seek to recover any reimbursement from the official for her improper commute and travel expenses because former Fish and Game officials had informed her that she would receive such reimbursements and had honored these "agreements" throughout her employment with the spill office.
To improve Fish and Game's review process for travel claims submitted to its accounting office, it should require all employees to list clearly on all travel expense claims their headquarters address and the business purpose of each trip.	Fully implemented.
Fish and Game should ensure that the headquarters address listed on travel expense claims matches the headquarters location assigned to the employee's position.	Fully implemented.
For instances in which the listed headquarters location differs from the location assigned to the employee's position, a Fish and Game official at the deputy level or above should provide a written explanation justifying the business need to alter the headquarters location. This justification must also include a cost-benefit analysis and should be forwarded for additional approval.	Fully implemented.

¹² In January 2008 one of the three union representatives ended his full-time union leave.

**California State University, Office of the Chancellor
 Case I2007-1158**

Issued in December 2009, this investigation concluded that the Office of the Chancellor for the California State University (university) system had improperly reimbursed a former official \$152,441 from July 2005 through July 2008 for unnecessary expenses that did not reflect the best interests of the university or the State.¹³ The improper reimbursements related to travel costs, costs of business meals, commute expenses, personal expenses, long-term living expenses, and duplicate reimbursements and overpayments. The former official’s supervisor and the university failed to review the official’s reimbursement claims sufficiently or to follow long-established policies and procedures designed to ensure the accuracy and adequate control of expenses. In addition, the lack of clarity in university policies regarding business meals contributed to the waste of public funds, as did the university’s failure to place limits on lodging expenses.

The following list identifies the state auditor’s recommendations as well as the status of corrective action taken in response to those recommendations as of September 2012:

RECOMMENDATION	STATUS OF CORRECTIVE ACTION
The university should recover from the official the \$1,834 in duplicate payments and overpayments.	Fully implemented.
The university should reexamine its review process for preapproving and reimbursing high-level university employees for their expenses.	Fully implemented.
The university should terminate informal agreements that allow university employees to work at locations other than their headquarters.	Fully implemented.
The university should specify upper monetary limits for its food and beverage policy and specify when this policy applies.	Fully implemented.
The university should revise its travel policy to establish defined maximum limits for reimbursing the costs of lodging and to establish controls that allow for exceptions to such limits only under specific circumstances.	Partially implemented. The university has drafted a policy to establish maximum limits for reimbursing the costs of lodging.

**Department of Corrections and Rehabilitation
 Case I2007-0887**

Issued in January 2011, this investigation found that a Corrections employee improperly reported 16 hours of overtime for responding to building alarm activations that never occurred. Because Corrections did not have adequate controls to detect the improper reporting, it compensated the employee \$446 in overtime pay she did not earn.

¹³ The official left the university in July 2008.

The following list identifies the state auditor's recommendations as well as the status of corrective action taken in response to those recommendations as of October 2012:

RECOMMENDATION	STATUS OF CORRECTIVE ACTION
Take appropriate disciplinary actions against the employee and pursue collection efforts for the \$446 in compensation she did not earn.	No action taken.
Obtain monthly logs from the alarm company and verify that overtime reported for responding to building alarm activations is consistent with the logs.	Fully implemented.

Department of Corrections and Rehabilitation Case I2009-0607

Issued in August 2011, this investigation determined that Corrections placed parolees at risk by allowing a psychiatrist to continue to treat them for four months after it received allegations of his incompetence. In addition, Corrections wasted at least \$366,656 in state funds by not conducting a timely investigation of the allegations. Because it identified the investigation as low priority, Corrections took 35 months to complete it, resulting in the psychiatrist performing only administrative duties for 31 months before being discharged. Nonetheless, during the 35-month investigation, he received more than \$600,000 in salary, including two separate merit-based salary increases of \$1,027 and \$818 per month. The psychiatrist also accrued 226 hours of leave for which Corrections paid him an additional \$29,149 upon his termination.

The following list identifies the state auditor's recommendations as well as the status of corrective action taken in response to those recommendations as of November 2011:

RECOMMENDATION	STATUS OF CORRECTIVE ACTION
Corrections should establish a protocol to ensure that upon receiving credible evidence that a medical professional may not be capable of treating patients competently, it promptly relieves that professional from treating patients, pending an investigation.	Fully implemented.
Corrections should increase the priority the Office of Internal Affairs assigns to the investigation of high-salaried employees.	Fully implemented.

California Department of Transportation Case I2008-0731

Issued in August 2011, this investigation revealed that for nearly three years, a transportation planning supervisor for the California Department of Transportation (Caltrans) neglected his duty to supervise the work of a subordinate transportation planner, resulting in the transportation planner's receiving compensation, including overtime pay, for which the State lacked assurance that such compensation was justified.

The following list identifies the state auditor’s recommendations as well as the status of corrective action taken in response to those recommendations as of January 2012:

RECOMMENDATION	STATUS OF CORRECTIVE ACTION
To address the inexcusable neglect of duty, Caltrans should take appropriate corrective action against the transportation planning supervisor for neglecting his duty to supervise the transportation planner.	Fully implemented.
To prevent similar improper acts from occurring, Caltrans should institute training to ensure that all Caltrans employees are aware of the requirement that all overtime work be preapproved.	Fully implemented.
Caltrans should establish controls to ensure that its telecommuting agreements are reviewed and renewed annually in order for an employee to be allowed to continue telecommuting.	Fully implemented.
Caltrans should revise its telecommuting policy to require that employees participating in the telecommuting program provide regular documentation of the work they perform away from the office.	Fully implemented.

**Department of Industrial Relations
 Case I2008-0902**

Issued in August 2011, this investigation found that an official and a supervisor at a district office of the Department of Industrial Relations (Industrial Relations) failed to monitor adequately the time reporting of four subordinate employees from July 2007 through June 2009.

The following list identifies the state auditor’s recommendation and the status of corrective action taken in response to the recommendation as of September 2011:

RECOMMENDATION	STATUS OF CORRECTIVE ACTION
To ensure that employees at this district office follow time-reporting requirements in accordance with applicable state law and department policies, Industrial Relations should continue to monitor the time-reporting practices of the official and his staff.	Fully implemented.

**Department of Fish and Game
 Case I2009-0601**

Issued in August 2011, this investigation concluded that a manager at Fish and Game improperly directed an employee under his supervision to use a state vehicle for commuting between her home and work locations at a cost to the State of \$8,282 during a nine-month period. In addition, the employee improperly requested—and the manager improperly approved—reimbursement for \$595 in lodging and meal expenses incurred by the employee near her headquarters.

The following list identifies the state auditor's recommendations as well as the status of corrective action taken in response to those recommendations as of November 2012:

RECOMMENDATION	STATUS OF CORRECTIVE ACTION
To recover the \$8,282 cost of the improper use of the state vehicle, Fish and Game should follow the guidelines established in state regulations and initiate repayment from the manager for the costs associated with the misuse of a state vehicle.	No action taken. Fish and Game reported that it had reason to believe a former regional official ultimately directed the vehicle misuse so it did not pursue the recovery of costs from the manager. However, had Fish and Game reviewed the work supporting our conclusions and recommendations as it is allowed by the California Whistleblower Protection Act, it would have been aware that the manager acknowledged that he made the decision to allow the employee to use a state vehicle for her commute.
To recover the cost of the improper travel reimbursements, Fish and Game should seek recovery of the \$595 in lodging and meal reimbursements that were paid to the employee.	Pending. After we inquired about its collection efforts, Fish and Game reported that it billed the employee for this expense in October 2012. In addition, Fish and Game stated that its failure to bill the employee sooner resulted from miscommunication between the regional office and headquarters.
Fish and Game should take appropriate disciplinary action against the manager for directing the misuse of a state vehicle.	Fully implemented.
Fish and Game should provide training to the manager and the employee about state rules for the payment of employee travel expenses.	Partially implemented. Fish and Game reported that it provided relevant training to the manager but it did not indicate that it provided any training to the employee.

Department of Corrections and Rehabilitation Case I2009-1203

Issued in August 2011, this investigation revealed that the chief psychologist at a correctional facility operated by Corrections used his state-compensated time and state equipment to perform work related to his private psychology practice, costing the State up to an estimated \$212,261 in lost productivity.

The following list identifies the state auditor's recommendations as well as the status of corrective action taken in response to those recommendations as of November 2012:

RECOMMENDATION	STATUS OF CORRECTIVE ACTION
To ensure that the chief psychologist does not misuse state resources, Corrections should take appropriate disciplinary action against the psychologist for misusing state resources.	Fully implemented.
To ensure that the chief psychologist and other Corrections employees do not misuse state resources, Corrections should require psychology staff at the correctional facility, including the chief psychologist, to specify hours of duty.	Fully implemented.

To ensure that the chief psychologist and other Corrections employees do not misuse state resources, Corrections should establish a system for monitoring whether psychology staff at the correctional facility, including the chief psychologist, are working during specified hours of duty.

Partially implemented. Corrections issued a memorandum to staff and created an operating procedure that outlined the requirement for staff to complete requests for leave or notify a supervisor when leaving work early. It also indicated that its staff are required to use sign-in and sign-out sheets, and that supervisors check the sheets and compare them with approved time-off calendars. However, Corrections' actions will not fully ensure that psychology staff work during specified hours of duty. For instance, the use of sign-in and sign-out sheets relies heavily on the truthfulness and accuracy of the information that each employee inputs on the sheets, which limits the reliability of this control. In addition, it has not formally documented in a policy, procedure, or otherwise the supervisors' responsibilities to monitor the sign-in and sign-out sheets and compare them to attendance reports.

**State Controller's Office
 Case I2009-1476**

Issued in August 2011, this investigation found that an employee of the State Controller's Office (Controller's Office) failed to report an estimated 322 hours of absences over an 18-month period. Because her supervisor, a high-level official, failed to monitor her time reporting adequately, the State paid the employee \$6,591 for hours she did not work.

The following list identifies the state auditor's recommendations as well as the status of corrective action taken in response to those recommendations as of September 2011:

RECOMMENDATION	STATUS OF CORRECTIVE ACTION
To address the employee's improper time reporting, the Controller's Office should seek reimbursement from the employee for the \$6,591 in wages she did not earn.	Fully implemented.
To address the supervisor's failure to monitor the employee's time adequately, the Controller's Office should take appropriate disciplinary action against the supervisor.	Fully implemented.
The Controller's Office should provide training to the supervisor on proper time-reporting and supervisory requirements.	Fully implemented.

**California Energy Commission
 Case I2010-0844**

Issued in August 2011, this investigation found that an employee and a personnel specialist at the California Energy Commission (Energy Commission) falsified time and attendance records to enable the employee—at the time of her retirement—to receive a payment for unused annual leave that was higher than the amount to which she was entitled, costing the State an estimated \$6,589.

The following list identifies the state auditor's recommendations as well as the status of corrective action taken in response to those recommendations as of December 2011:

RECOMMENDATION	STATUS OF CORRECTIVE ACTION
The Energy Commission should seek to recover the \$6,589 it improperly paid the retiring employee for unused annual leave hours. If it is unable to recover any or all of this reimbursement, the Energy Commission should explain and document its reasons for not obtaining recovery of the funds.	Fully implemented. In December 2011 the retired employee reimbursed the Energy Commission the \$6,589 for leave hours paid inappropriately before her retirement.
The Energy Commission should take appropriate disciplinary action against the personnel specialist for making unauthorized changes to the retiring employee's leave balances.	Fully implemented. The Energy Commission reported that the personnel specialist retired in June 2011, before it learned of our recommendation. In October 2011 it placed a memorandum in her personnel file that described her actions related to the falsification of time sheets and the unauthorized changes she made.
The Energy Commission should monitor the personnel specialist's payroll and leave balances transactions to ensure that she follows Energy Commission policies.	Fully implemented. As mentioned previously, the personnel specialist retired before the Energy Commission learned of our recommendation, but it placed a memorandum in her personnel file describing her improper activities.
The Energy Commission should provide training to employees responsible for managing leave balances and time sheet transactions to ensure that they understand the Energy Commission's policies for safeguarding their accuracy and respecting the limitations on the use of sick leave for family member illness as specified by the law and applicable collective bargaining agreements.	Fully implemented.

Respectfully submitted,



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State Auditor

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Appendix

THE INVESTIGATIONS PROGRAM

The California Whistleblower Protection Act (Whistleblower Act) authorizes the California State Auditor (state auditor) to investigate allegations of improper governmental activities by state agencies and employees. Contained in the Government Code, beginning with section 8547, the Whistleblower Act defines an *improper governmental activity* as any action by a state agency or employee during the performance of official duties that violates any state or federal law; is economically wasteful; or involves gross misconduct, incompetence, or inefficiency.

To enable state employees and the public to report suspected improper governmental activities, the state auditor maintains a toll-free Whistleblower Hotline (hotline) at (800) 952-5665. The state auditor also accepts reports of improper governmental activities by mail and over the Internet at www.auditor.ca.gov.

The Whistleblower Act provides that the state auditor may independently investigate allegations of improper governmental activities. In addition, the Whistleblower Act specifies that the state auditor may request the assistance of any state entity in conducting an investigation. After a state agency completes its investigation and reports its results to the state auditor, the state auditor's investigative staff analyzes the agency's investigative report and supporting evidence and determines whether it agrees with the agency's conclusions or whether additional work must be done.

Although the state auditor conducts investigations, it does not have enforcement powers. When it substantiates an improper governmental activity, the state auditor reports confidentially the details to the head of the state agency or to the appointing authority responsible for taking corrective action. The Whistleblower Act requires the agency or appointing authority to notify the state auditor of any corrective action taken, including disciplinary action, no later than 60 days after transmittal of the confidential investigative report and monthly thereafter until the corrective action concludes.

The Whistleblower Act authorizes the state auditor to report publicly on substantiated allegations of improper governmental activities as necessary to serve the State's interests. The state auditor may also report improper governmental activities to other authorities, such as law enforcement agencies, when appropriate.

Improper Governmental Activities Identified by the State Auditor

Since 1993, when the state auditor activated the hotline, it has identified improper governmental activities totaling \$31.2 million. These improper activities include theft of state property, conflicts of interest, and personal use of state resources. For example, the state auditor reported in September 2005 that a supervisor at the Military Department embezzled at least \$132,523 in state funds over an eight-year period. As another example, the state auditor reported in September 2007 that the California Highway Patrol wasted \$881,565 in state funds when it purchased 51 vans that remained unused for more than two years. The investigations have also substantiated improper activities that cannot be quantified in dollars but have had negative social impacts. Examples include violations of fiduciary trust, failure to perform mandated duties, and abuse of authority.

Corrective Actions Taken in Response to Investigations

The chapters of this report describe the corrective actions that departments implemented on individual cases that the state auditor completed from September 2005 through June 2012. Table A summarizes all of the corrective actions that departments took in response to investigations between the time that the state auditor opened the hotline in July 1993 until June 2012. In addition to the corrective actions listed, these investigations have resulted in many departments modifying or reiterating their policies and procedures to prevent future improper activities.

Table A
Corrective Actions
July 1993 Through June 2012

TYPE OF CORRECTIVE ACTION	TOTALS
Convictions	13
Demotions	20
Job terminations	87
Resignations or retirements while under investigation	9*
Pay reductions	55
Reprimands	318
Suspensions without pay	24
Total	526

Source: California State Auditor (state auditor).

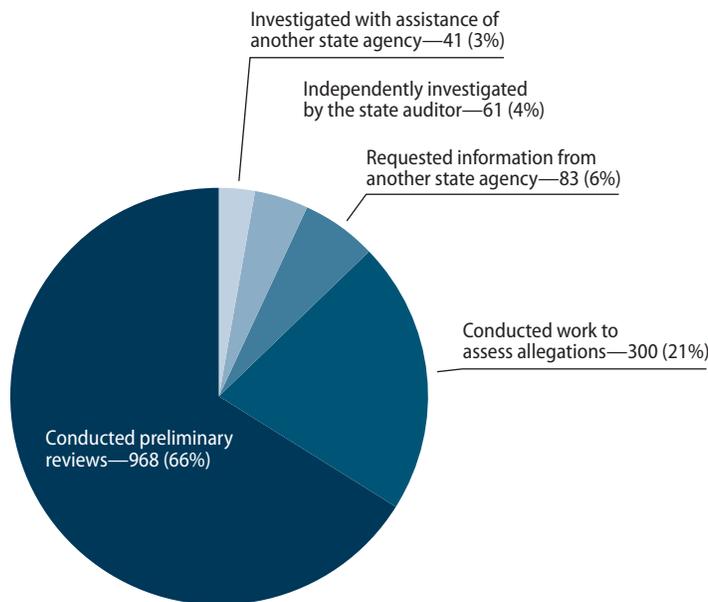
* The number of resignations or retirements consists of those that occurred during investigations that the state auditor has completed since 2007.

The State Auditor’s Investigative Work From April 2011 Through June 2012

The state auditor receives allegations of improper governmental activities in several ways. From April 1, 2011, through June 30, 2012, the state auditor received 7,238 calls or inquiries. Of these, 5,781 came through the hotline, 891 through the mail, 559 through the state auditor’s Web site, and seven through individuals who visited the State Auditor’s Office. When the state auditor determined that allegations were outside its jurisdiction, it referred the callers and inquirers to the appropriate federal, local, or state agencies, when possible.

During this 15-month period, the state auditor conducted investigative work on 1,453 cases that it opened either in previous periods or in the current period. As Figure A shows, after conducting a preliminary review of these allegations, the state auditor’s staff determined that 968 of the 1,453 cases lacked sufficient information for investigation. For another 300 cases, the staff conducted work—such as analyzing available evidence and contacting witnesses—to assess the allegations. In addition, the staff requested that state departments gather information for 83 cases to assist in assessing the validity of the allegations. The state auditor’s staff independently investigated 61 cases and investigated 41 cases with assistance from other state agencies.

Figure A
Status of 1,453 Cases
April 2011 Through June 2012



Source: California State Auditor.

Of the 61 cases the state auditor independently investigated, it substantiated an improper governmental activity in nine of the investigations it completed during the period. In addition, the state auditor conducted analyses of the 41 investigations that state agencies conducted under its direction, and it substantiated an improper governmental activity in 12 of the investigations completed. The results of 15 investigations with substantiated improper governmental activities appear in this report.

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University of California, Office of the President	I2010-1022	Waste of state funds	49

cc: Members of the Legislature
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