



Transmitted via e-mail

August 28, 2013

Mr. Ken Pimlott, Director
California Department of Forestry and Fire Protection
1416 Ninth Street
Sacramento, CA 95814

Dear Mr. Pimlott:

Final Report—Wildland Fire Investigation Training and Equipment Fund Audit

The Department of Finance, Office of State Audits and Evaluations, has completed its audit of the Wildland Fire Investigation Training and Equipment Fund through its termination and subsequent closure on April 10, 2013.

The Department of Forestry and Fire Protection's (CAL FIRE) response to the report observations is incorporated into this final report. CAL FIRE agreed with our observations and we appreciate its willingness to implement corrective actions.

A detailed Corrective Action Plan (CAP) addressing the observations and recommendations is due within 60 days from receipt of this letter. The CAP should include milestones and target dates to correct all deficiencies.

We appreciate the assistance and cooperation of CAL FIRE. If you have any questions regarding this report, please contact Diana Antony, Manager, or Karis Feldkamp, Auditor, at (916) 322-2985.

Sincerely,

Original signed by:

David Botelho, CPA
Chief, Office of State Audits and Evaluations

Enclosure

cc: Ms. Janet Barentson, Chief Deputy Director, Executive Office, California Department of Forestry and Fire Protection
Mr. John Shipley, Staff Counsel III, Civil Cost Recovery, California Department of Forestry and Fire Protection
Mr. John Laird, Secretary, California Natural Resources Agency
Mr. Patrick Kemp, Assistant Secretary for Administration and Finance, California Natural Resources Agency

Audit Report

California Department of Forestry and Fire Protection Wildland Fire Investigation Training and Equipment Fund Through Fund Closure April 10, 2013



Prepared By:
Office of State Audits and Evaluations
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Final reports are available on our website at <http://www.dof.ca.gov>

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EXECUTIVE SUMMARY

In accordance with an interagency agreement with the Department of Forestry and Fire Protection (CAL FIRE), the Department of Finance, Office of State Audits and Evaluations performed an audit of the Wildland Fire Investigation Training and Equipment Fund (Fund) established by CAL FIRE and administered by the California District Attorneys Association (CDAA). The audit objectives were to:

- Determine authority for the establishment and intended uses of the Fund.
- Determine that funds were deposited and expended as authorized.
- Determine that fund transactions were made in compliance with the applicable laws, regulations, and the Memorandum of Understanding (MOU) between CAL FIRE and CDAA.
- Determine if any other funds were maintained outside the Centralized Treasury System (CTS).

Based on the audit evidence obtained, we conclude:

- CAL FIRE did not have specific statutory authority to establish the Fund and did not request or obtain Finance authorization to establish this account outside the CTS. The Fund was established using a portion of the civil cost recovery settlements resulting from civil action activities. During the Fund's existence, over \$3.6 million was collected and deposited into the Fund and over \$2.4 million was expended. Effective February 10, 2013, CDAA terminated its administration of the Fund and as of April 10, 2013 the Fund's remaining balance of \$813,600 was deposited into an approved special deposit fund account, effectively ending the operation of the Fund.
- CAL FIRE's decentralized process for the Civil Cost Recovery Program increases the risk of lost or stolen funds. Because case management, including the collection of monies, is delegated to the 2 region offices and 21 fire units, Program management is unaware of the number of cases or the potential cost recovery represented by those cases. Management is unaware of the case and its disposition until checks are received. More importantly, the same cost recovery process supports the collection of monies due the General Fund, which is far greater than the monies identified for the Fund. Without appropriate, timely information relating to active cases, the Program is at risk of losing monies due the General Fund. Program management should fully implement the policies and procedures established in their Handbook and should develop and implement a process to capture pertinent information relating to all active cases.
- Established state procurement and inventory processes were not followed and neither CDAA nor CAL FIRE claim ownership of the \$1.7 million equipment and software items purchased with the Fund. We recommend CAL FIRE management undertake a thorough inventory of all equipment purchased with the Fund and use the inventory to properly record the equipment in CAL FIRE's official accounting records in accordance with state requirements.

BACKGROUND, SCOPE AND METHODOLOGY

BACKGROUND

The California Department of Forestry and Fire Protection (CAL FIRE) serves and safeguards the people and protects the property and resources of California. CAL FIRE provides all hazard (fire, medical, rescue and disaster) emergency response to the public and provides leadership in the protection of life, property, and natural resources. CAL FIRE safeguards the public through: engineering; research, development and adoption of regulations; fire and life safety programs; fire prevention, law enforcement, and public information and education; resource protection; and emergency response.

As noted in the text box, the California Health and Safety Code section 13009 authorizes CAL FIRE to recover fire suppression costs incurred in fighting a fire and for the cost of providing rescue or emergency medical services. CAL FIRE is authorized to engage in civil action to recover these costs, as well as administrative costs of operating a fire suppression cost recovery program.

Prior to 2005, civil cost recovery monies were deposited into the General Fund. In May 2005, CAL FIRE entered into a Memorandum of Understanding¹ (MOU) with the California District Attorneys Association (CDAA) to establish and administer the Wildland Fire Investigation Training and Equipment Fund (Fund) with a portion of the civil cost recovery monies collected. The purpose of the Fund was to promote and improve the training and equipping of CAL FIRE's staff engaged in civil cost recovery activities.

Health and Safety Code Section 13009

Any person who negligently, or in violation of the law, sets a fire, allows a fire to be set, or allows a fire kindled or attended by him or her to escape onto any public or private property.....is liable for the fire suppression costs incurred in fighting the fire and for the cost of providing rescue or emergency medical services, and those costs shall be a charge against that person. The charge shall constitute a debt of that person, and is collectible by the person, or by the federal, state, county, public, or private agency, incurring those costs in the same manner as in the case of an obligation under a contract, expressed or implied.

During the nearly eight years of the Fund's existence, over \$3.6 million was collected and deposited into the Fund. CAL FIRE approved and CDAA paid over \$2.4 million from the Fund for training and equipment to enhance the civil cost recovery program. In July 2012, CAL FIRE froze the fund after questions arose about the Fund's governance. Subsequent events relating to the Fund's propriety led to the request for an audit by the Department of Finance.

Effective February 10, 2013, CDAA terminated its administration of the Fund. In April 2013 the Fund's remaining balance of \$813,600 was deposited into an approved special deposit fund account within the Centralized State Treasury System (CTS), effectively ending the operation of the Fund.

¹ The Memorandum of Understanding was amended in October 2011.

SCOPE

In accordance with an interagency agreement with CAL FIRE, the Department of Finance, Office of State Audits and Evaluations (Finance), was engaged to audit the Fund. The audit objectives were to:

- Determine authority for the establishment and intended uses of the Fund.
- Determine that funds were deposited and expended as authorized.
- Determine that fund transactions were made in compliance with the applicable laws, regulations, and the MOU between CAL FIRE and CDAA.
- Determine if any other funds were maintained outside the CTS.

METHODOLOGY

To determine the authority and intended uses for the Fund and that all funds and transactions were made in compliance with applicable laws, regulations and the MOU, we performed the following:

- Interviewed key personnel to gain an understanding of the Fund's policies and procedures.
- Reviewed applicable statutes, the Fund's Field Guide, and the MOU between CDAA and CAL FIRE.
- Reviewed and analyzed Attorney General's Office Opinion No. 00-510 provided by CAL FIRE as justification for establishing the Fund.
- Inquired of key CAL FIRE, CDAA, and Finance staff regarding the existence of additional funds/accounts outside the CTS established by CAL FIRE; reviewed "Report of Bank/Savings and Loan Association Account Outside the Treasury System" (Report No. 14).
- Verified that all monies resulted from civil cost recovery efforts and traced monies received by CDAA to accounting records and the periodic Statements of Activity reported to CAL FIRE.
- Verified that all projects were approved by CAL FIRE management and met the intended uses of the Fund and CAL FIRE guidelines.
- On a sample basis, traced expenditures from the general ledger supporting documentation and recalculated the overhead and administrative fees CDAA charged to the Fund.
- For a selected sample of equipment items, obtained certification letters from both region offices and all fire units, including photographs, and physically verified the existence and use of the selected equipment at both region offices and 16 of 21 fire units.

In addition, we performed procedures to assess the reliability of the general ledger used by CDAA to account for the Fund. Based on our review, we determined the data to be sufficiently reliable for audit purposes. We reviewed the working papers related to the November 2009 internal audit performed by CAL FIRE's Office of Program Accountability. We also reviewed the work performed by CAL FIRE's Law Enforcement support staff and CDAA's Director of Finance in response to the internal audit.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our observations and

conclusions based on our audit objectives. In connection with this audit, there are certain disclosures required by *Government Auditing Standards*. Finance is not independent of CAL FIRE, as both are part of the State of California's Executive Branch. As required by various statutes within the California Government Code, Finance performs certain management and accounting functions. These activities impair independence. However, sufficient safeguards exist for readers of this report to rely on the information contained herein.

CAL FIRE Did Not Have Authority to Establish the Fund

CAL FIRE did not have specific statutory authority to establish the Fund or the budget appropriation authority to expend monies from the Fund. Additionally, CAL FIRE management did not request or obtain Finance authorization to establish this account outside the Centralized State Treasury System (CTS). CAL FIRE provided Finance with an Attorney General's Office opinion (pertaining to a question from the Insurance Commissioner) to support its stance that CAL FIRE did have authority to establish and operate the Fund. Based on our review, we do not believe the opinion provided CAL FIRE with authority to establish the Fund.

Lacking authority for the Fund, CAL FIRE should have deposited all monies from civil cost recovery settlements or negotiations into the General Fund. Following established state budgetary policy and procedures, a budget change proposal should have been submitted to Finance for inclusion in the Governor's Budget, and approval by the Legislature to fund civil cost recovery program activities.

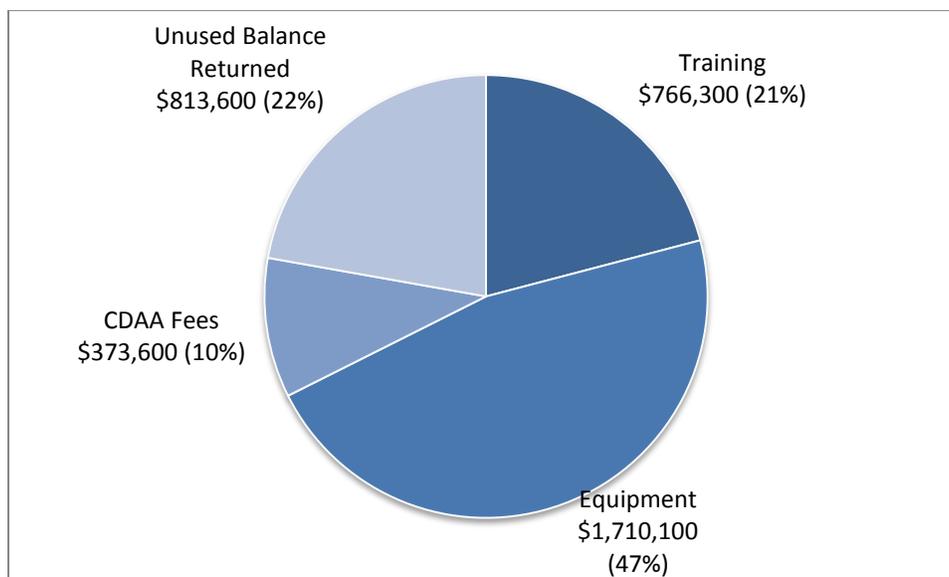
CAL FIRE established the Fund using a portion of the civil cost recovery settlements. CAL FIRE's policy was to designate a portion of the settlement amount for the Fund only when negotiations resulted in greater than 75 percent or 80 percent (policy changed over time) of the costs as stated in the Letter of Demand.¹

The purpose of the Fund was to (1) provide increased training for staff engaged in civil cost recovery activities, (2) provide state of the art equipment for staff, and (3) enhance and promote greater accuracy and standardization of civil cost recovery activities. CAL FIRE's Memorandum of Understanding (MOU) with CDAA and the Law Enforcement Handbook (Handbook) outlined the Fund's intended uses and expenditure approval process.

During the Fund's existence, \$3.66 million was collected and deposited into the Fund. As noted below and in accordance with the MOU, the Fund was used for training, equipment, and CDAA administrative fees.

¹ Letter of Demand is a request for payment.

**Chart 1: Wildland Fire Investigation Training and Equipment Fund
\$3.66 Million
May 2005 through December 2012**



Source: CDAA accounting records.

On December 12, 2012, CDAA notified CAL FIRE that it was terminating its administration of the Fund effective February 10, 2013. Pursuant to CAL FIRE's March 4, 2013 request, the Department of Finance, Fiscal Systems and Consulting Unit, approved and established a special deposit fund account for the Fund's remaining balance. On April 10, 2013, CDAA closed the Fund bank account and provided CAL FIRE with the Fund's balance of \$813,600, effectively ending the operation of the Fund. The balance was deposited into the approved Special Deposit Fund Account within the CTS.

CAL FIRE's Other Accounts Outside the Centralized Treasury System Were Properly Authorized and Reported

CAL FIRE has two additional accounts (unrelated to this Fund) outside the CTS. Both were approved by Finance and have been reported annually in accordance with established state policy.

CAL FIRE pays its emergency fire fighters directly, rather than through the payroll system operated by the State Controller's Office. CAL FIRE appropriately withholds federal taxes, but the Internal Revenue Service will not accept office revolving fund checks. The Emergency Firetime Fund provides CAL FIRE with the ability to pay the Internal Revenue Service these withheld taxes.

The second account, Electronic Funds Transfer Account, provides CAL FIRE with the ability to accept credit card payments from the public for various user fees and charges unrelated to civil cost recovery settlements.

CAL FIRE's Decentralized Process for the Civil Cost Recovery Program Increases the Risk of Lost or Stolen Funds

The Civil Cost Recovery Program's (Program) case management is delegated to the 21 fire units and 2 region offices, as noted in the text box. As a result, most of the Program's cases are managed, negotiated, and settled by Program staff and/or management at the region offices and fire units. This process includes the collection of settlement monies.

As a result, Program management is unaware of the number of cases initiated or the potential cost recovery represented by those cases. Management is unaware of the case disposition until checks are received. As noted in CAL FIRE's 2009 internal audit report, cost recoveries payable to the Fund were not reported to CAL FIRE's accounting office or headquarters in Sacramento. There was no reconciliation process taking place to ensure expected recoveries were deposited into the Fund.

As a result of recent ongoing litigation, staff counsel at CAL FIRE headquarters assembled documentation related to 39 of 51 settlements (77 percent) where negotiation (either out-of-court or court approved) identified monies to be paid to the Fund. However, without reviewing all settlement claims located at the various fire units and regions, there is no assurance that all revenues due to the Fund were received by CDAA.

More importantly, the same cost recovery process supports the collection of monies due the General Fund, which, as noted below, are far greater than the monies identified for the Fund.

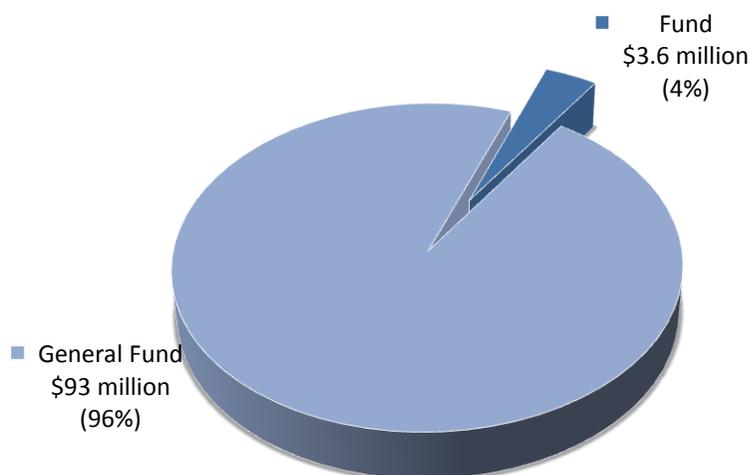
Delegation of Case Management

< \$50,000 – Fire Units, unless case is complex or resulted in a fatality

> \$50,000 – Region Offices

Note: The CAL FIRE Director retains authority to approve settlements over \$1 million

Chart 2: Comparison of Funds Recovered Under Each Fund



Source: CDAA accounting records and CAL FIRE website

In January 2011, CAL FIRE strengthened its procedures, including requiring copies of the Letters of Demand to be sent to the Region Fire Prevention Deputy Chief and a copy to the Sacramento Civil Cost Recovery Deputy Chief. However, based on our interviews and field visits, this procedure is viewed by some CAL FIRE staff as permissive and management in Sacramento is unable to ensure Letters of Demand reach them. Annual reporting requirements are identified in Section 9058 of the Handbook, but focuses on reporting at the fire unit level and is permissive for use at region offices and Sacramento. Region offices' staff used multiple spreadsheets, tracking various aspects of fire incidents in the cost recovery process, to manage fire incidents within their delegated authority. The type of information collected varied among fire units. Both written and informal reporting was used by fire units to communicate information to supervisors and to staff in the region offices. Information communicated to headquarters was informal and occurred on an ad hoc basis.

In the past eight years, the Program has grown significantly and management hasn't fully developed or implemented the internal control system procedures appropriate to manage the overall operation of the program.

Without appropriate, timely information relating to active cases, the Program is at risk of losing monies due the General Fund. Without regular tracking and monitoring of civil cost recovery activities, management cannot ensure policies and procedures are being followed and consistently applied among the 21 fire units and 2 region offices.

Recommendation:

Program management should fully implement the policies and procedures established in their Handbook and should develop and implement a process to capture pertinent information relating to all active cases. This would allow CAL FIRE management to monitor and track civil cost recovery activities and ensure their policies and procedures are implemented consistently at both region offices and 21 fire units.

Established State Processes Were not Followed and Neither CDAA nor CAL FIRE Claim Ownership of the \$1.7 Million Equipment Purchased with the Fund

Although monies were expended as approved by CAL FIRE through project proposals and reported periodically to CAL FIRE by CDAA, state procurement processes were not followed.

CAL FIRE established a separate procurement process for CDAA-purchased equipment. Based on our review of sample projects, each project was approved by CAL FIRE management and each approved project met at least one of the intended uses of the Fund. Specifically, CAL FIRE management established a voting committee (its composition changed as the department was restructured) to review and approve project proposals. While any staff engaged in the civil cost recovery process could propose a project, most proposals came from region office staff. Project proposals were submitted to the voting committee and reviewed to ensure the proposal fell into one of the appropriate expenditure categories and met the purposes of the Fund.

CDAA reported expenditures periodically to CAL FIRE and summarized those expenditures by project. Overall, CDAA accurately computed and collected overhead and administrative fees in accordance with the MOU.

However, the MOU explicitly stated CAL FIRE management's understanding and belief that the monies deposited into the Fund were not state monies within the meaning of California

Government Code section 16305.2. As such, neither CAL FIRE nor CDAA (acting as the Fund’s fiscal agent) claim ownership of the \$1.7 million equipment items purchased with the Fund.

Equipment (including software) purchased with the Fund has not been treated as state equipment. It is not tagged as state property, included on property registers, or recorded in accounting records, if capitalization is appropriate. More significantly, CAL FIRE does not have an inventory of the actual equipment items purchased or the equipment’s final distribution.

Approved versus Purchased Equipment

Program management could not provide us with a listing of the equipment and software purchased with the Fund. For a sample of approved projects we noted the number of each item of equipment approved. We also requested that all fire units and both region offices report the number of each type of equipment in their possession. There were differences between the number of items approved and the number of items reported for every piece of equipment. One approved project identified data storage equipment to be purchased for and used by staff at the Attorney General’s Office. However, the Attorney General representative could not locate or identify the equipment and CAL FIRE staff stated that the equipment had been kept by CAL FIRE.

Equipment Verification

On a sample basis, we requested all fire units and region offices to report the number of items of equipment on hand. We visited both region offices and 16 of the 21 fire units to verify the use and existence of this equipment. Equipment was inspected where practical.

Table 1: Results of Sample Equipment Verification

Item	Self-Reported by CAL FIRE	Verified by Finance	Percent Verified
Canon PowerShot digital camera	389	51	13.1
1 TB hard drive with docking station	55	40	72.7
Hydrocarbon detector	52	43	82.7
Debris sifting screen set	50	42	84.0
Laser printer	20	17	85.0
Video camera	55	42	76.4
Close focusing binoculars	59	40	67.8
Metal detector	17	15	88.2
Leica DISTO 8 hand held laser measurement tool	53	32	60.4
ACE Workstation – Printer	19	18	94.7
ACE Workstation – Signature pad	19	17	89.5
ACE Workstation – Bar code reader	19	18	94.7
Tuff Shed	12	12	100.0
Gorilla commercial storage rack	52	48	92.3
Sandusky Lee cabinet	27	25	92.6

As noted in the Table above, all evidence storage “Tuff Sheds” were located and verified. However, location and verification of other equipment, including digital cameras, hard drives and related docking stations, hydrocarbon detectors, debris sifting screen sets, laser printers, video cameras, close focusing binoculars, metal detectors, and hand held laser measurement tools, ranged from 13.1 percent to 94.7 percent.

There were a variety of reasons for the variances:

- Digital cameras were issued to each fire investigator (battalion chief) and fire truck at each fire unit. Each fire unit had multiple fire stations spread geographically throughout the fire unit to facilitate efficient day-to-day operations. It was impractical for us to travel long distances to verify a piece of equipment costing \$100.
- Because of the confidentiality of the data stored on the hard drives, investigators locked the equipment in their offices to maintain security when they were not on the premises. Auditors were unable to verify those hard drives and docking stations.
- Other equipment was in the field with CAL FIRE staff being used for cost recovery activities or training.

The lack of equipment inventory increases the risk that equipment can be stolen or misused. It also makes it more difficult for CAL FIRE management to ensure the equipment is used correctly, by appropriate staff, maintained properly, and replaced when necessary.

As the equipment purchased with the Fund is used by state employees to perform the duties of their job classification and to assist CAL FIRE management achieve the department’s objectives, we view the equipment as state equipment. California’s State Administrative Manual (SAM), Chapter 8600, Property Accounting, establishes the state’s accounting policies and procedures for equipment.

Recommendation:

CAL FIRE management should undertake a thorough inventory of all equipment purchased with the Fund. Use the results of the inventory to record the equipment in CAL FIRE’s official accounting records in accordance with the property accounting requirements contained in SAM.

**DEPARTMENT OF FORESTRY AND FIRE PROTECTION**

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August 27, 2013

Via e-mail (OSAEReports@dof.ca.gov)

Mr. David Botelho, CPA
Office of State Audits and Evaluations
California Department of Finance
915 L Street
Sacramento, California 95814

Re: Draft Report- Wildland Fire Investigation Training and Equipment Fund Audit

Dear Mr. Botelho:

The California Department of Forestry and Fire Protection (CAL FIRE) provides the following information and response to the August 12, 2013, Draft Audit Report from the Department of Finance regarding the audit of the Wildland Fire Investigation Training and Equipment Fund (the Fund). CAL FIRE appreciates the thoroughness of the Audit and the constructive recommendations for improvements. Prior to the initiation of the Audit, CAL FIRE started taking important steps to address the internal control issues noted in the draft report's observations and recommendations. CAL FIRE's goal is to fully implement the necessary changes and procedures by the end of this calendar year. We look forward to providing you with our plan that sets forth our implementation milestones. In addition, we welcome any input that you may have to ensure the steps CAL FIRE is taking properly address the Audit's recommendations.

Finding 1: CAL FIRE Did Not Have Authority to Establish the Fund

CAL FIRE's Response to Finding 1:

Although CAL FIRE agrees that there was no specific statutory authority establishing this Fund, management in 2005 believed that legal authority existed to support the Department's ability to establish use of the Fund through civil cost recovery settlements so long as it was used for proper purposes and did not violate public policy. The authority to establish the Fund is currently the subject of litigation that we hope to resolve shortly. The Department will ensure that any future funds are established pursuant to specific Executive, Legislative or Judicial authority.

Finding 2: CAL FIRE's Other Accounts Outside the Centralized Treasury System Were Properly Authorized and Reported

CAL FIRE's Response to Finding 2:

CAL FIRE agrees with Finding 2.

Finding 3: CAL FIRE's Decentralized Process for the Civil Cost Recovery Program Increases the Risk of Lost or Stolen Funds

DOF Recommendation Regarding Decentralized Process for the Civil Cost Recovery Program: *Program management should fully implement the policies and procedures established in their Handbook and should develop and implement a process to capture pertinent information relating to all active cases. This would allow CAL FIRE management to monitor and track civil cost recovery activities and ensure their policies and procedures are implemented consistently at both region offices and 21 fire units.*

CAL FIRE's Response to Finding 3:

CAL FIRE agrees with this Finding.

As noted in the Draft Audit Report, the Program has grown significantly and procedures once appropriate to manage the Program are no longer sufficient. Starting in July 2012, the Program identified two specific procedures/control systems and is currently working to implement them.

First, CAL FIRE is creating a centralized database that will contain information regarding active and settled civil cost recovery actions. CAL FIRE is working with staff to ensure that all necessary case-related information is captured by the database. The database will not only allow real-time tracking of what cases have been initiated, but it will also allow Program management and legal staff, at the region and Sacramento level, to monitor all ongoing cases. CAL FIRE believes the database will not only reduce the risk of lost and/or stolen funds, but will ensure that all cases are more efficiently managed.

Second, CAL FIRE is in the process of implementing procedures that would require payments for all civil cost recovery cases be made/delivered to a single point of remittance located within CAL FIRE's Departmental Accounting Office in Sacramento. The single point of remittance will be utilized for unit and region level cases. This procedure will ensure that the person sending out the Letter of Demand and settling cases is not involved in handling and/or processing the settlement payment. In short, there will be a separation of duties that will greatly reduce the risk of lost and/or stolen funds.

David Botelho, CPA
August 27, 2013
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These new internal controls are being created to ensure that policies and procedures are in place to manage the overall operation of the Program as caseload increases.

Finding 4: Established State Processes Were not Followed and Neither CDAA nor CAL FIRE Claim Ownership of the \$1.7 Million Equipment Purchased with the Fund

DOF Recommendation Regarding Inventory and Accounting of Equipment:
CAL FIRE management should undertake a thorough inventory of all equipment purchased with the Fund. Use the results of the inventory to record the equipment in CAL FIRE's official accounting records in accordance with the property accounting requirements contained in SAM.

CAL FIRE's Response to Finding 4:

CAL FIRE agrees with this Finding.

Capital assets, as defined in SAM 8600, for which the useful life has not expired will be inventoried and recorded in CAL FIRE's official accounting records in accordance with the requirements contained in SAM.

Sincerely,

ORIGINAL SIGNED BY

KEN PIMLOTT
Director

cc: John Laird, Secretary, Natural Resources Agency
Patrick Kemp, Assistant Secretary Administration and Finance,
Natural Resources Agency
Janet Barentson, Chief Deputy Director, CAL FIRE
Stephanie Shimazu, Chief Counsel, CAL FIRE
Windy Bouldin, Chief of Program Accountability