

**REPORT BY THE
AUDITOR GENERAL
OF CALIFORNIA**

**A REVIEW OF THE FISH AND GAME COMMISSION'S
ANNUAL PACK TRIP AND THE POTENTIAL
UNAUTHORIZED RELEASE OF CONFIDENTIAL
INFORMATION BY EITHER THE COMMISSION OR
THE DEPARTMENT OF FISH AND GAME**



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Office of the Auditor General

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Kurt R. Sjoberg
Acting Auditor General

August 15, 1990

P-856

Honorable Elihu M. Harris, Chairman
Members, Joint Legislative
Audit Committee
State Capitol, Room 2148
Sacramento, California 95814

Dear Mr. Chairman and Members:

We reviewed specific activities of the Fish and Game Commission (commission) and the Department of Fish and Game (department) to answer questions about the commission's annual pack trip, to determine if any commission member had been hosted on other fishing or hunting trips, and to determine if either the commission or the department had released confidential information to unauthorized persons.

We determined that the commission did not use state funds to finance its annual pack trip and that the department's use of its aircraft to transport several participants to an airport near the pack site did not violate provisions in the State Administrative Manual. In addition, based on an opinion of the Legislative Counsel, we concluded that the commissioners' participation in the pack trips did not violate the Bagley-Keene Open Meeting Act. In our review of other activities, we found no evidence that the commissioners had been hosted on other hunting or fishing trips, nor did we find that the commission or the department had released confidential information to unauthorized persons.

BACKGROUND

The department administers programs and enforces laws to protect, conserve, enhance, and restore the State's fish and wildlife resources and habitats. The department's responsibilities include monitoring public and commercial fishing and hunting practices. To carry out these responsibilities, the department receives personal and confidential information that it must safeguard.

Separate from the department is the commission, whose five commissioners are appointed by the governor. The commission establishes policies to guide the department in its activities. The director of the department is responsible to the commission for administering the department in accordance with these policies. As a

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state body, the commission is required by the Bagley-Keene Open Meeting Act to conduct its meetings publicly. Since 1969, with the exception of 1986, the commission has hosted an annual pack trip for legislators, state and federal employees, and members of the public. The pack trip provides an opportunity for participants to discuss resource issues of common interest.

SCOPE AND METHODOLOGY

We reviewed all of the commission's records of the annual pack trips from 1983 through 1989. For the last three pack trips, we determined the cost of the trips and the source of funds used to pay these costs, and we examined the use of the department's aircraft to transport some participants to an airport near the pack site. We also obtained an opinion from the Legislative Counsel about whether the pack trips violated the provisions of the Bagley-Keene Open Meeting Act. In addition to our review of these pack trips, we examined the commissioners' statements of economic interest and surveyed the commissioners to determine if any of them had been hosted on other fishing or hunting trips. Finally, we determined what confidential information is available to the commission or department, and we reviewed the commission's minutes and the department's Personal/Confidential Records Reports for evidence of the unauthorized release of that information.

THE ANNUAL PACK TRIP

The first pack trip was held in 1959. Since 1969, with the exception of 1986 when there was no trip, the commission has sponsored these annual trips. The executive secretary of the commission organizes the trip, generally held in the High Sierras in a remote location. From a central packing site, participants ride horses or hike into the campsite while hired packers carry their gear on mules. According to a former director of the department, the purpose of the pack trip is to bring together people interested in resource management to discuss issues of common interest in a remote setting. However, no specific agenda is set for the trip, and the atmosphere is casual. Participants have the opportunity to fish and enjoy the outdoors.

Participation in the pack trip has been by invitation. Participants have included legislators and their staff, representatives of the United States Forest Service, personnel from state resource agencies, and members of the public. An average of 23 people have participated

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in each of the last three pack trips. No more than two commissioners have participated in each trip since 1985; on two pack trips, no commissioners participated.

State Funds Not Used To Finance Pack Trips

The costs of the pack trips have included the mules, horses, packers, food, drinks, and equipment. Total costs ranged from less than \$6,300 in 1987 to almost \$7,800 in 1989. To cover these costs, participants have paid to attend the pack trips. For example, each participant paid \$240 in 1987, \$300 in 1988, and \$335 in 1989.

Although participants' fees paid the total costs of the 1988 pack trip, they did not cover all the costs for the 1987 and 1989 pack trips. In 1987, participants' fees did not cover approximately \$700 in costs, an average of \$31 for each participant; in 1989, participants' fees did not cover approximately \$400 in costs, an average of \$18 for each participant. The commissioners made up these costs with their voluntary contributions.

Department Aircraft Used in Accordance With State Regulations

The department has used its aircraft to transport department officials and a few pack trip participants to an airport near the pack site. We examined the use of the department's aircraft to transport participants to the 1987, 1988, and 1989 pack trips. Each year the department transported between five and nine participants to and from airports near the pack site. The most that the department spent to use the aircraft to transport pack trip participants was approximately \$2,000 in 1987.

Sections 743 and 744 of the State Administrative Manual state specific conditions under which the department may use its aircraft. For example, the department may use the plane if the commercial flights to the area cannot meet the department's scheduling needs and if the trip is longer than two hours by car.

We determined that the department's use of the aircraft for the commission pack trips met conditions described in Sections 743 and 744 of the State Administrative Manual. For example, for the 1989 trip, no scheduled flight met the department's needs, and the trip was more than five hours by car.

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Bagley-Keene Open Meeting Act Not Violated

As part of our review, we were asked to determine if the commissioners' participation in the pack trips has violated the Bagley-Keene Open Meeting Act. The Bagley-Keene Open Meeting Act, contained in the Government Code, Section 11120, et seq., states, in part, that state bodies should conduct their proceedings openly so the public may remain informed. As a multimember body required to hold official meetings, the commission is subject to the Bagley-Keene Open Meeting Act. Because commissioners have participated in the pack trips and participation in the pack trip is not open to the public, we requested a Legislative Counsel opinion to determine if these circumstances violated the Bagley-Keene Open Meeting Act.

The Legislative Counsel identified two possible conditions under which the pack trip would violate the Bagley-Keene Open Meeting Act. First, if participants discuss problems affecting management of fish and wildlife and three or more commissioners participate in those discussions, they have held a commission meeting, a meeting required to be public under the Bagley-Keene Open Meeting Act. Second, if only two commissioners on the pack trip participate in discussions relating to the management of fish and wildlife and the commission has expressly delegated its authority to these two commissioners to act as a committee or has appointed them to an advisory committee by formal action, the two commissioners may constitute a state body under the Bagley-Keene Open Meeting Act.

Based on our evaluation of the pack trips since 1985, neither of the conditions identified by the Legislative Counsel applies to the commission pack trips. Specifically, no more than two commissioners have attended each trip, and only in 1989 did two attend. Our review of the commission's minutes in 1989 reveals that the commission did not delegate authority to act for the commission to the two commissioners who went on the 1989 pack trip.

OTHER HUNTING OR FISHING TRIPS

We were requested to determine if any commissioners had been hosted on other fishing or hunting trips. To do so, we examined the statements of economic interest filed annually by each commissioner since 1985. In this statement, each commissioner must report gifts with a value of \$50 or more. Such gifts would include being hosted on a hunting or fishing trip. The statement includes the donor's name, the type and value of the gift, and the date the gift was received. No commissioner reported a gift of a subsidized hunting or fishing trip.

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In addition to examining the statements of economic interest, we asked one former and each current member of the commission if he had been hosted on a hunting or fishing trip. No commissioner reported having been hosted on such a trip.

CONFIDENTIAL INFORMATION AT
THE COMMISSION AND THE DEPARTMENT

As part of our review, we were asked to determine if the commission or the department released confidential information to unauthorized persons. According to the Legislative Counsel, the commission's deliberations are covered by the Bagley-Keene Open Meeting Act. Although certain meetings may be closed and involve confidential information, the commission can hold these closed meetings only for specific reasons set out in the Bagley-Keene Open Meeting Act. For example, the commission can hold closed meetings to discuss pending litigation or personnel matters. However, these closed meetings must be held during a regular or special meeting of the commission, and the commission must announce the general purpose of the closed meeting.

We reviewed the minutes from commission meetings for 1987, 1988, and 1989. These minutes included notices of closed meetings and the subject matter to be discussed in those meetings. The minutes contained no evidence that the commission had discussed any unauthorized release of confidential information.

The department is required to maintain various kinds of personal and confidential information, such as department personnel records, data regarding the catch and sale of commercial fish, and names and addresses of big game hunters. The Government Code, Section 19990, provides that employees of the department who have access to confidential information because of their jobs should not provide that information to unauthorized persons.

In contrast, the Government Code, Section 6250, et seq., known as the California Public Records Act, states that the access to information concerning the conduct of the people's business is a fundamental and necessary right. In considering the release of personal and confidential information, the department must balance requirements to keep information confidential with the right of the public to be informed. The department's general policy regarding disclosure of personal and confidential information is to withhold the information if the public interest is better served by keeping the information confidential. The department determines this case by case.

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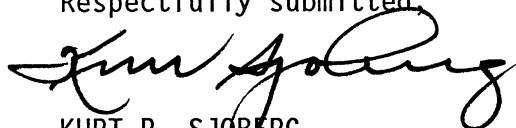
The Civil Code, Sections 1798.9 and 1798.10, requires that the department keep track of all personal and confidential information it retains. To accomplish this, the code requires the department to file a notice, the personal/confidential records report, with the Office of Information Practices describing each type of personal and confidential information kept by the department. As part of this notice, the department must report each year any known instances in which its personal and confidential information has been distributed or obtained in an unlawful manner. We reviewed copies of the personal/confidential records reports filed by the department from 1987 through 1990. For each of these years, the department reported no unauthorized release of personal and confidential information.

CONCLUSION

In response to questions concerning commission-sponsored pack trips, we found that no state money has been involved in financing the trips. Instead, participants' fees and commissioners' donations fund these trips. In addition, the use of the department's aircraft to transport department officials and a few other pack trip participants did not violate provisions in the State Administrative Manual. Further, the commissioners' participation in the pack trips has not violated the Bagley-Keene Open Meeting Act because no more than two commissioners have participated each year and they did not receive the commission's delegated authority to act on its behalf. In our review of other activities, we found that none of the commissioners reported being hosted on a hunting or fishing trip. Finally, we found no evidence in their records that either the commission or the department released personal and confidential information to unauthorized individuals.

We conducted this review under the authority vested in the auditor general by Section 10500, et seq., of the California Government Code and according to generally accepted governmental auditing standards. We limited our review to those areas specified in the audit scope section of this letter report.

Respectfully submitted,



KURT R. SJOBERG
Acting Auditor General

Responses:

The Resources Agency of California
Fish and Game Commission

Memorandum

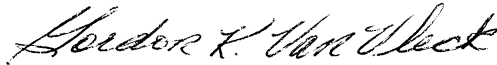
Date : August 7, 1990

To : Mr. Kurt R. Sjoberg
Acting Auditor General
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660 J Street, Suite 300

From : Office of the Secretary
1416 Ninth Street, Suite 1311
Sacramento, CA 95814

Subject: Auditor General's Draft Report P-856

Thank you for allowing us to review the draft report. It appears that there are no findings or recommendations that require the Resources Agency's response. We are pleased to see that the activities engaged in appear to have been held acceptable pursuant to the scope of the audit.



Gordon K. Van Vleck
Secretary for Resources

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STATE OF CALIFORNIA

Fish and Game Commission

August 8, 1990

Mr. Kurt R. Sjoberg
Acting Auditor General
Office of the Auditor General
660 J Street, Suite 300
Sacramento, CA 95814

Dear Mr. Sjoberg:

The Fish and Game Commission has reviewed your draft letter report (P-856) regarding your review of the Commission's annual pack trip and the potential unauthorized release of confidential information by either the Commission or the Department of Fish and Game. The Commission agrees with the findings and conclusions made in the report; and therefore, does not have any specific comments.

The Commission appreciates the opportunity to review your draft report.

Sincerely,

Robert R. Treanor
Acting Executive Secretary

cc: All Commissioners
Director Bontadelli