

# Update on State Auditor Report 2018-120

Enforcement Committee & Commission Presentation

May 16, 2019

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# Performance Audit – Report 2018-120

California State Auditor conducts audits to:

- (1) Measure performance
- (2) Assess efficiency and effectiveness
- (3) Test key management and administrative controls
- (4) Offer insights and solutions for value-added approaches, process improvements, and future strategies

“In short, performance audits identify ways government can work better and cost less.”



# Report Findings

- There is a backlog of about 230 cases and some of these are several years old
- Staff take too long trying to resolve cases amicably and without formal action
- The Commission needs to develop more formal policies, guidance and regulations governing enforcement
- The Committee needs to be more active – the report states that reconvening the Enforcement Committee was “a positive step” but without regular meetings of the Committee staff was deprived of guidance
- There is no formal process for documenting management review of decisions

# Report Findings

- There is not enough enforcement staff and BCDC needs to do a workforce study to support an increase
- Staff are not conducting regular site visits or doing regular patrols
- Staff have improperly resolved dredging violations using the standardized fines process
- The new prioritization process developed to assist in moving cases has not made the process more efficient and is too complex
- The newly developed database is lacking information

# Some other findings

- The lack of action to remove anchor-outs from Richardson's Bay has resulted in continued harm
- More needs to be done to protect Suisun Marsh
- The State Auditor disagrees with prior decisions approving use of the Bay Fill Clean-up and Abatement Fund for enforcement staff salaries
- BCDC generally drafts reasonable permit conditions that comply with applicable law and meets deadlines for issuing decisions

# The major issues

- 1) Delegation
- 2) Risk of (a) harm to the Bay and public access; and (b) inconsistencies

# The tugboat Polaris

Ran aground on the rocks near the City of Rodeo on April 14, 2013 – weeks later BCDC case opened

USCG responded but owner declined assistance and remained on board

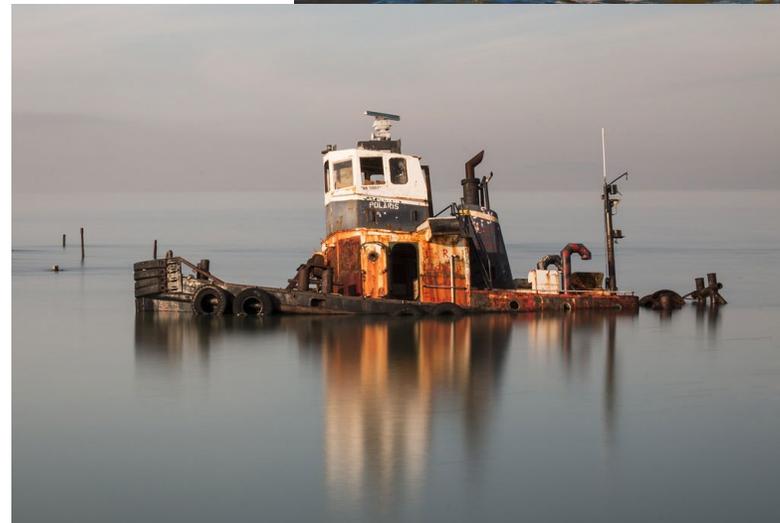
After weeks of negotiations, vessel cleared of fuel and moved to a nearby marina

Repair efforts failed and the vessel sank

CalRecycle and Contra Costa Sheriff requested that State Lands exercise authority to remove

In early December 2013, SLC authorized removal

BCDC closed case on 12-30-13



# The tugboat *Polaris*

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P. Pelkofer

CONSIDER AUTHORIZATION FOR THE STAFF OF THE CALIFORNIA STATE LANDS COMMISSION TO REMOVE AND DISPOSE OF A DERELICT VESSEL, THE *POLARIS* (USCG # 511032), ILLEGALLY OCCUPYING STATE LANDS IN SAN PABLO BAY, OFFSHORE OF LONE TREE POINT, CITY OF RODEO, CONTRA COSTA COUNTY

**PARTY:**

California State Lands Commission (Commission)

**AREA, LAND TYPE, AND LOCATION:**

State sovereign tidelands and submerged lands in the San Pablo Bay, Contra Costa County, California.

**BACKGROUND:**

The *Polaris* (USCG#511032) is a 69-foot steel tug boat that ran aground on the rocks at Lone Tree Point near the City of Rodeo in Contra Costa County on the night of April 14, 2013. The U.S Coast Guard, (USCG) Rio Vista Station, responded, but the owner, Larry Speer, declined assistance and remained on board. The boat is located within the East Bay Regional Park District (District). The District's marine officer issued a notice to remove it, but Mr. Speer did not comply.

After weeks of negotiation between the original owner, subsequent owners, the District, the USCG, Commission staff, and potential salvors, the vessel was cleared of fuel and moved off the rocks to a nearby marina. Efforts to repair the vessel were undertaken, but ultimately abandoned; and the vessel sank. The vessel now constitutes a public nuisance. The USCG has removed any remaining petroleum products from the vessel and California Department of Resources Recycling and Recovery (CalRecycle) has agreed to fund its removal. CalRecycle and the Contra Costa County Sheriff's Marine Patrol have requested the Commission exercise its authority to remove the derelict vessel under Public Resources Code (PRC) section 6302.1. Under PRC section 6302.1, the Commission may take action to remove a vessel that constitutes a public nuisance. As stated above, the *Polaris* is abandoned and constitutes a public

# Recommendations

- Create policies, procedures and/or regulations covering:
  - Penalty assessments
  - Calculating violations
  - Minor violations and violations constituting significant harm
  - Case milestones and timelines
- Update the database
- Simplify the prioritization matrix
- Conduct a workforce study and hire a compliance position
- Conduct a review of local agency compliance with the marsh program and issue recommendations
- Evaluate and update the permit fees
- Appoint a new CAC

# And for the Legislature

- Require BCDC to develop timelines for cases, procedures for management review, and a penalty matrix
- Require reporting on Suisun Marsh responsibilities
- Clarify the use of the Bay Fill Clean-up and Abatement Fund and consider fully funding enforcement staff through the General Fund
- After everything is done, provide BCDC with the ability to record notices of violations on title

# What is BCDC doing?

We're moving cases:

- Staff are working on developing establishment of a case management plan – milestones and timeframes – for cases after they are opened
- Enforcement team has weekly meetings to move active cases and discuss new violation reports

We're reviewing best practices:

- Have spoken with other agencies and are reviewing Virginia DEQ Enforcement Manual



# What is BCDC doing?

We're working on implementing the recommendations

- Identifying actions – additional policies, changes in regulations, etc.
- Scheduling updates for the Committee

We're working on improving the database

- But we need to recognize the limitations

# Delegation of authority workplan

Issue	Current state	Line of demarcation	Audit recommendation	Action
Managerial review	Informal process for review – not always documented	10261 - Opening, closing, processing of cases delegated to ED and redelegated to staff	Create and implement procedure to ensure that managers perform documented review and substantiate staff decisions	
No formal procedures addressing opening, investigation, and closure of			Develop and implement procedures to ensure that staff opens, investigates , and closes cases in a manner consistent with law and that encourages the responsible use of staff time	
Prioritization system is too complex		10261 - Opening, closing, processing of cases delegated to ED and redelegated to staff - Enforcement Committee was allowed to review and comment on prioritization system		

# What's next

- Within **60 days** BCDC has to respond to the auditor regarding efforts to implement the recommendations within our authority.
- This should be updated in **six months** and again in **one year** (note that several procedural changes should be done by January 2020)
- We will establish regular meetings and updates for the Enforcement Committee
- We will institute procedural changes, as appropriate, through public processes with input from stakeholders

**QUESTIONS?**