



Transmitted via e-mail

February 23, 2012

Mr. Mark Cowin, Director  
California Department of Water Resources  
P.O. Box 942836, Room 1115-1  
Sacramento, CA 94236-0001

Dear Mr. Cowin:

**Final Report—Brannan Andrus Levee Maintenance District, Proposition 84 Grant Audits**

The Department of Finance, Office of State Audits and Evaluations, has completed its audits of the following Brannan Andrus Levee Maintenance District (District ) grants:

<u>Grant Agreement</u>	<u>Grant Period</u>	<u>Award</u>
4600008489	July 1, 2007 through June 30, 2008	\$1,634,325
4600008813	July 1, 2008 through June 30, 2009	\$1,823,325

The Department of Water Resources and District responses and our evaluation of the responses are incorporated into this final report. This report will be placed on our website.

We appreciate the assistance and cooperation of the District. If you have any questions regarding this report, please contact Diana Antony, Manager, or Chikako Takagi-Galamba, Supervisor, at (916) 322-2985.

Sincerely,

Original signed by:

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

Enclosure

cc: Ms. Katherine S. Kishaba, Deputy Director, Business Operations, Department of Water Resources  
Ms. Gail Chong, Deputy Assistant DWR Executive, Bond Accountability, Department of Water Resources  
Mr. Jeffrey Ingles, Chief Auditor, Department of Water Resources  
Mr. Patrick Kemp, Assistant Secretary for Administration and Finance, California Natural Resources Agency  
Mr. Bryan Cash, Deputy Assistant Secretary, California Natural Resources Agency  
Ms. Julie Alvis, Deputy Assistant Secretary, California Natural Resources Agency  
Mr. Larry Gardiner, President, Brannan Andrus Levee Maintenance District  
Mr. Gilbert Labrie, Program Manager, DCC Engineering

# AUDIT REPORT

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## Brannan Andrus Levee Maintenance District Proposition 84 Bond Program Grant Agreements 4600008489 and 4600008813



Georgiana Slough  
Source: Brannan Andrus Levee Maintenance District

Prepared By:  
Office of State Audits and Evaluations  
Department of Finance

**MEMBERS OF THE TEAM**

Diana Antony, CPA  
Manager

Chikako Takagi-Galamba  
Supervisor

Staff  
Veronica Green

Final reports are available on our website at <http://www.dof.ca.gov>

You can contact our office at:

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# BACKGROUND, SCOPE, AND METHODOLOGY

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## BACKGROUND

The Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 (Proposition 84) authorized \$5.388 billion in general obligation bonds to fund waterway and natural resource protection, water pollution and contamination control, state and local park improvements, public access, and water conservation efforts.

The Delta Levees Maintenance Subventions Program (Program) provides financial assistance to local agencies for the maintenance and rehabilitation of levees in the Sacramento–San Joaquin Delta. The Program is authorized in the California Water Code, sections 12980 through 12995, and is managed by the Department of Water Resources (DWR). The Central Valley Flood Protection Board (Board) governs the Program. Water Code section 12987 requires DWR to prioritize projects for grant funding and make recommendations to the Board. The Board reviews and approves DWR's recommendations and enters into agreements with local agencies to reimburse eligible project costs. *(Source: DWR)*

The Brannan Andrus Levee Maintenance District (District) was formed in 1967 by a special act of the Legislature to improve, repair, operate, maintain, construct and reconstruct the levees, works, structures, or other facilities that provide flood control and flood protection to the 29.4 mile area encompassed by the District. *(Source: District)*

## SCOPE

In accordance with the Department of Finance's bond oversight responsibilities, we conducted performance audits of the following Proposition 84 grants:

<u>Grant Agreement</u>	<u>Grant Period</u>	<u>Award</u>
4600008489	July 1, 2007 through June 30, 2008	\$1,634,325
4600008813	July 1, 2008 through June 30, 2009	\$1,823,325

The audit objectives were to determine whether the District's grant expenditures claimed were in compliance with applicable laws, regulations, and grant requirements; and to determine whether the grant deliverables were completed as required. In order to design adequate procedures to conduct our audit, we obtained an understanding of the relevant internal controls. We did not assess the efficiency or effectiveness of program operations.

District management is responsible for ensuring accurate financial reporting and compliance with applicable laws, regulations, and grant requirements. DWR is responsible for the state-level administration of the bond program.

## **METHODOLOGY**

To determine whether grant expenditures were in compliance with applicable laws, regulations, and the grant requirements; and if the grant deliverables were completed as required, we performed the following procedures:

- Interviewed key personnel to obtain an understanding of the grant-related internal controls.
- Examined the grant files, the grant agreements, and applicable policies and procedures.
- Reviewed the District's reimbursement claims, accounting records, vendor invoices, vendor contracts, cancelled checks, and bank statements.
- Selected a sample of expenditures to determine if costs were allowable, grant-related, incurred within the grant period, supported by accounting records, and properly recorded.
- Performed procedures to determine if other revenue sources were used to reimburse expenditures already reimbursed with grant funds.
- Conducted a site visit to verify project existence.
- On a sample basis, evaluated whether grant deliverables required by the grant agreements were met.

The results of the audit are based on our review of documentation, other information made available to us, and interviews with staff directly responsible for administering grant funds. The audit was conducted from May 2011 through December 2011.

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 findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Except as noted below, the Brannan Andrus Levee Maintenance District (District) was in compliance with the requirements of the grant agreements. The Schedules of Claimed and Questioned amounts are presented in Table 1.

**Table 1: Schedules of Claimed and Questioned Amounts**

<b>Grant Agreement 4600008489</b>		
<b>For the Period July 1, 2007 through June 30, 2008</b>		
<b>Category</b>	<b>Claimed<sup>(1)</sup></b>	<b>Questioned</b>
Annual Routine Levee Maintenance	\$ 418,950	\$35,389
Fish & Wildlife Recreation	3,651	0
Levee Rehabilitation: Short-Term Hazard Mitigation Plan	642,835	1,317
Levee Rehabilitation: Long-Term Hazard Mitigation Plan	263,517	0
<b>Total Expenditures</b>	<b>\$1,328,953</b>	<b>\$36,706</b>

(1) The District was awarded a maximum of \$1,634,325, but only claimed \$1,328,953.

<b>Grant Agreement 4600008813</b>		
<b>For the Period July 1, 2008 through June 30, 2009</b>		
<b>Category</b>	<b>Claimed<sup>(2)</sup></b>	<b>Questioned</b>
Annual Routine Levee Maintenance	\$418,950	\$145,744
Fish & Wildlife Recreation	49,205	0
Levee Rehabilitation: Long-Term Hazard Mitigation Plan	348,667	0
<b>Total Expenditures</b>	<b>\$816,822</b>	<b>\$145,744</b>

(2) The District was awarded a maximum of \$1,823,325, but only claimed \$816,822.

**Observation 1: Contractor Expenditures Exceeded Approved Contract Amounts**

As presented in Table 2 below, the District paid contractor invoices that exceeded approved contract amounts by \$196,081. The contract amounts were based on estimates formed during the project bidding phase; however, the contracts were not amended for additional materials and/or labor incurred.

State Contracting Manual (SCM) section 2.05 states the contract must clearly express the maximum amount to be paid and the basis on which payment is to be made: e.g., a fixed amount regardless of time spent, billing based on time spent at a specified rate plus actual expenses, or cost recovery; and clear and concise language must be used to describe the scope.

SCM section 9.05 states the contract manager is not authorized to allow the contractor to incur costs over the original limit set in the contract without an executed and approved contract amendment.

**Table 2: Contracts with Expenditures Exceeding Approved Contract Amounts**

Grant Agreement	Contract	Approved Contract Amount	Expenditures Exceeding Approved Amount	Claimed Amount (75% Rate)
4600008489	Contract A	\$87,309	\$1,756	\$1,317
4600008813	Contract B	\$278,460	\$35,856	\$26,892
	Contract C	\$453,526	\$39,966	\$29,975
	Contract D	\$105,280	\$87,315	\$65,486
	Contract E	\$27,100	\$31,188	\$23,391
	<b>Subtotal for 4600008813:</b>			\$194,325
<b>Grand Total</b>			<b>\$196,081</b>	<b>\$147,061</b>

The Grant Agreements state the local agency shall be reimbursed up to 75 percent of the costs incurred in excess of the \$1,000 per mile of non-project and eligible project levee. Therefore, we questioned \$147,061.

**Recommendations:**

- A. The District should comply with the state contracting regulations and not pay expenditures exceeding the approved contract amount without amending the contract.
- B. The Department of Water Resources will make the final determination on whether to recover or offset the \$147,061 questioned costs against any future claim for reimbursement.

**Observation 2: Lack of Contract With Engineering Firm**

The District could not provide evidence of a valid contract with the engineering firm that provides direction and supervision of levee maintenance and rehabilitation work. According to the District, the engineering firm and the District entered into a contract in 1991; however, without evidence of a valid contract that clearly defines the scope of work, allowable and unallowable costs, and final deliverables, there is an increased risk that expenditures are not in compliance with program requirements and state fiscal policies, and final deliverables are not completed as intended.

Grant Agreements 4600008489, Article 8, and 4600008813, Article 10, state the local agency shall be responsible for compliance with competitive bidding, contract administration laws, and all applicable labor laws.

DWR’s Delta Levees Maintenance Subventions Program manual, Article 4.9, states the District's contracting procedures should be in conformance with state law.

**Recommendation:**

Execute a valid contract with all subcontractors and consultants performing state-funded services, and ensure the work performed is adequate and eligible per the bond act prior to payment. Retain the original signed contract for audit.

**Observation 3: Fiscal Controls Need Improvement**

The District should improve its review and approval processes for vendor invoices and DWR reimbursement requests. For example, 21 of 54 (39 percent) vendor invoices had no indication of District management review and approval. Additionally, there is no formal review of the reimbursement claim prior to submission to DWR.

As a result, the District's reimbursement claim for Grant Agreement 4600008489 included a contractor retention amount of \$47,185 twice, resulting in a \$35,389 ( $\$47,185 \times 75$  percent) over-reimbursement to the District.

Grant Agreements 4600008489 and 4600008813 require the District to maintain complete and accurate records of its actual project costs, and that reimbursement claims include only eligible project costs.

**Recommendations:**

- A. Develop and implement proper review and approval procedures to ensure expenditures submitted for reimbursement are eligible, incurred, and supported.
- B. DWR will make the final determination on whether to recover or offset the \$35,389 questioned costs against any future claim for reimbursement.







PLANNING  
PERMITTING  
ARCHITECTURE  
CIVIL ENGINEERING  
PROJECT MANAGEMENT

January 30, 2012

Larry Gardiner, President  
Brannan-Andrus Levee Maintenance District  
PO Box 338  
Walnut Grove, CA 95690

**Subject: State Department of Finance  
Proposition 84 Bond Program  
Draft Audit Report Observations**

Dear President Gardiner,

We have reviewed the *Draft Audit Report* you received, attached to correspondence from the State Department of Finance, Office of State Audits and Evaluations, dated January 18, 2012. The Report includes two *Observations* regarding District contracting procedures and construction contract management that Department auditors previously discussed with this office, and which we reported to the Brannan-Andrus Board of Directors. A third *Observation*, involving the consulting contract the Board has with DCC Engineering, was not previously discussed with the Board of Directors because it only appeared to involve a misplaced document. DCC Engineering's response to the *Draft Audit Report Observations* follow.

**(1) Contractor Expenditures Exceeded Contract Amounts** - This observation stems from the long standing DCC Engineering practice of formatting the bid schedule, for District levee repair and rehabilitation projects, to obtain unit pricing for the key elements of work. This approach utilizes engineering quantity estimates to illustrate the scope of work involved, but allows for the potential variation in the actual quantity based on site conditions that cannot be totally anticipated from line drawings and pre-construction surveys. In the past, the quantity variations have not been significant. However, in 2008-09 the District undertook a project to replace a toe ditch, with a French drain, on Georgiana Slough and, because of site conditions, added a rock drainage blanket to the project, which significantly increased the quantities of materials required. The Board was appraised of this change in scope and the project proceeded to a successful completion, but with an ultimate cost exceeding the original amount bid. All of the additional cost could be traced to material quantities, that were covered by in place unit prices included in the original bid. A project Change Order

was not issued at the time because the potential over-run was unknown and because it was believed that the unit cost bid allowed this type of contract management flexibility. To have halted the project and re-bid, with the change in scope, would have added unnecessary cost and time to a project that needed to be completed before the beginning of flood season. According to the Finance auditor, state contracting regulations preclude payment of expenditures in excess of the approved contract amount without amending the contract. Since this procedure was not followed, the appropriateness of the state reimbursement of 75% of the cost over-run was questioned in the Draft Report, but left up to the Department of Water Resources for a final determination as to whether the District should be penalized.

In response to the contract management issue raised by the audit, DCC Engineering has taken steps to insure that contract amendments are prepared when appraised of potential material estimate shortfalls or other oversights, in the field. Additionally, DCC Engineering plans to build a larger contingency in bid-quantity estimates for future projects and add construction contract language in the General Conditions to put a contractor on notice that, to receive payment, job quantities cannot exceed the bid schedule estimates without formal approval, in the form of a contract amendment.

**(2) Lack of Contract with Engineering Firm** - This observation is because of our inability to produce the signed copy of the consulting contract DCC Engineering has with the Brannan-Andrus Levee Maintenance District, that was endorsed in 1991. There are some records missing, in the District archives, from the early months of that year. DCC Engineering has unsigned copies of an Engineering Services agreement dated December 31, 1990. While the Fee Schedule of hourly rates and task classifications has been updated over the years, the original contract has not been formally amended or updated. In the ensuing period, all applicable engineering plans and reports have been prepared and signed, pursuant to Delta Levees Maintenance Subventions Criteria and the State Practice Act.

Prompted by the revelation of this deficiency during the audit, DCC Engineering is preparing an updated agreement for BALMD Board review and approval.

**(3) Fiscal Controls Need Improvement** - This observation was, no doubt, prompted by the accounting oversight that resulted in double counting the contractor retention payment, when the District Subventions Claim for 2007-08 was prepared. It also reflects the concern expressed about wet signed approval of vendor invoices, to indicate District management review. DCC Engineering has always, and continues to make every effort, as the District's professional consultant, to insure that expenditures are justifiable and, where appropriate, are eligible for reimbursement under the State, Delta Levees Subventions Program.

President Larry Gardiner, January 30, 2012  
Finance Draft Audit Report, page 3, of 3

However, in response to the Audit observations, DCC Engineering has taken additional steps to tighten Subventions-eligible, District expenditure, review and approval procedures both in house and at Board of Directors meetings.

Respectfully,

ORIGINAL SIGNED BY

Gilbert Labrie, Managing Principal  
DCC Engineering, BALMD District Engineer

cc BALMD Board of Directors  
Joseph Schofield, Downey Brand, District Counsel  
Delta Bookkeeping, District Treasurer

**OFFICE MEMO**

<b>TO:</b> Mike Mirmazaheri Program Manager Delta Levees Program	<b>DATE:</b> February 1, 2012
<b>FROM:</b> John Wilusz, Sr. Engineer Delta Levees Subventions Program	<b>SUBJECT:</b> DOF Audit Report, Brannan Andrus Levee Maintenance District (BALMD), December 2011

Per your request, my staff and I reviewed DOF's audit report and we have the following comments:

Re: Observation 1: Contractor Expenditures Exceeded Approved Contract Amounts

The following comments are in regard to Table 2 on page 4:

1. Contract A corresponds to a contract with Asta Construction Co., Inc. and BALMD's Subventions Program claim for FY 07/08. Our records agree with the figures shown.
2. Contract B corresponds to a contract with Warren E. Gomes Excavating, Inc. and BALMD's claims for FY 07/08 and FY 08/09. Our records show the contract signed by the parties is a multi-year contract for \$278,460 and the expenditures exceeded the contract amount by \$34,931.35. The claimed amount is \$26,198 (\$34,931 x 0.75), which is \$694 less than the amount shown in Table 2.
3. Contract C corresponds to a contract with Asta Construction Co., Inc. and BALMD's claims for FY 07/08 and FY 08/09. Our records show the contract signed by the parties is a multi-year contract for \$453,526. We agree with the figures shown in Table 2.
4. Contract D corresponds to a contract with Sun Harvest, Inc. and BALMD's claim for FY 08/09. Our records agree with the figures shown in Table 2.
5. Contract E corresponds to a contract with Sun Harvest, Inc. and BALMD's claim for FY 08/09. Our records agree with the figures shown in Table 2, however, our files also contain a subsequent contract with Sun Harvest in the amount of \$96,375. BALMD's claim is unclear as whether or not this contract covers expenditures exceeded under Contract E.

The cases above pertain to eligible levee work that exceeded the contract amount. We agree with DOF recommendations that the local agency should comply with all applicable laws, but it's worth noting that our audits of the final claims and subsequent field inspections confirmed a cost-effective use of state funds in each case.

Re: Observation 2: Lack of Contract With Engineering Firm

As stated in the audit report, DWR's Delta Levees Maintenance Subventions Program Guidelines requires that the local agency's contracting procedures be in compliance with all applicable laws.

Re: Observation 3: Fiscal Controls Need Improvement

We agree with these comments. Regarding Grant Agreement 4600008489 (BALMD's FY 07/08 claim), staff intends to deduct the \$35,389 retention over-reimbursement from BALMD's FY 10/11 claim.

Our Recommendations:

To comply with DOF recommendations, we suggest deducting the following amounts from BALMD's FY 10/11 Subventions Program claim:

**Amounts from Grant Agreement 4600008489:**

Contract A (claimed amount that exceeds contract value): \$1,317 ( $\$1,756 \times 0.75$ )  
Contractor retention over-reimbursement: \$35,389 ( $\$47,185 \times 0.75$ )

**Amounts from Grant Agreement 4600008813:**

Contract B (claimed amount that exceeds contract value): \$26,198 ( $\$34,931 \times 0.75$ )  
Contract C (claimed amount that exceeds contract value): \$29,975 ( $\$39,966 \times 0.75$ )  
Contract D (claimed amount that exceeds contract value): \$65,486 ( $\$87,315 \times 0.75$ )  
Contract E (claimed amount that exceeds contract value): \$23,391 ( $\$31,188 \times 0.75$ )

**Total: \$181,756**

Conclusion

The level of sophistication between local agencies varies considerably and we have many challenges in working with some of them. To avoid similar errors in the future, we will deduct amounts that exceed the contract value unless we receive (a) evidence that the work was done in accordance with the terms of the original contract, and (b) an engineer's report justifying the additional work. We will continue to remind local agencies that their contracting procedures, including contracts with their consultants, must be in compliance with all applicable laws, and we will double-check our staff audits to guard against unintended over-reimbursements.

## EVALUATION OF RESPONSES

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The Department of Finance reviewed the Brannan Andrus Levee Maintenance District's response dated January 31, 2012 and the Department of Water Resources' (Department) response dated February 1, 2012 to our draft audit report. For Observation 1, we provide the following comments:

### **Observation 1: Contractor Expenditures Exceeded Approved Contract Amounts**

For Contract B in Table 2, the Department stated the claimed expenditures exceeded the contract amount by \$26,198 per its records. However, no additional documents were provided for our review. Therefore, our recommendation remains as reported and we will defer to the Department regarding the final resolution of questioned costs.