

## STAFF REPORT

**AGENDA ITEM:** 2010/11 Off-Highway Motor Vehicle Recreation Division Grant Cycle – Acquisition Projects.

**STAFF:** Sixto J. Fernandez, OHMVR Division

**DATE:** October 14, 2011

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**Issue:** Withdrawal of acquisition projects by the Bureau of Land Management (BLM).

**Background:** The Off-Highway Motor Vehicle Recreation (OHMVR) Division administers the Grants and Cooperative Agreements Program (Grants Program). The Public Resources Code requires fifty percent (50%) of the funds appropriated by the legislature for the Grants Program be expended “for the acquisition, maintenance, operation, planning, development, or conservation of trails and facilities associated with the use of off-highway motor vehicles (OHV) for recreation or motorized access to non-motorized recreation.”

The Grants Program regulations includes the items above in the Operations and Maintenance category which is further broken down into four separate sub-categories: Ground Operations, Development, Planning, and Acquisition. Within the Ground Operations category, seventy percent (70%) is reserved for Operations and Maintenance projects, while the Development, Planning, and Acquisition projects are each eligible for up to ten percent (10%) of the available funds.

For the 2010/11 grant cycle, \$13M was allocated to the Operations and Maintenance category. As a result, up to \$1.3M was available for Acquisition projects.

The OHMVR Division received four Acquisition projects requesting a total of \$448,797. All four Acquisition projects were successful and recommended for funding. The acquisition projects in the order in which they scored included:

1. BLM Redding - \$147,700 to acquire two privately-owned parcels within the Chappie-Shasta OHV Area.
2. BLM Eagle Lake - \$99,264 to acquire one privately-owned parcel to expand the staging area at Fort Sage Special Recreation Management Area.

3. County of El Dorado - \$56,833 to acquire easements from private land owners along the Rubicon Trail. Acquisition of these easements from private land owners would facilitate County efforts to perform trail maintenance.
4. City of California City - \$145,000 to acquire a privately owned 1.85 acre parcel adjacent to Borax Bill OHV Park in the city limits of California City.

**Discussion:**

Final awards for the 2010/11 grant cycle for the Grants Program were announced on July 6, 2011. Shortly after the announcement, the OHMVR Division was contacted by the BLM California State Office and notified that the BLM could not abide by Section 4970.10.4(e)(2) of the Grants Program regulations. This section includes a “Warranty for OHV use” requirement and states:

*The Applicant shall cause to be inserted in the acquisition deed or other recorded transfer of title document a condition that the property shall be used for OHV Recreation purposes as defined in these Regulations and that the State of California is granted Power of Termination pursuant to California Civil Code Section 885.010 et seq. providing that, in the event the property is not used for OHV Recreation, title to the property shall be transferred to the State of California.*

Section 4970.10.4(e)(2) was intended to ensure real property acquired with funding from the Grants Program would continue to be used for the purpose for which it was obtained. This section was added to the Grants Program regulations following the 2008/2009 grants cycle.

This change to the regulations was conducted in accordance with the Administrative Procedures Act and was the product of a transparent, public process. The process included a public comment period whereby interested parties were able to review and comment on proposed changes to the regulations. No comments were made relative to the “Warranty for OHV use” language. The regulation was approved in January 2010 and in effect for the 2009/10 grant cycle.

The BLM informed the OHMVR Division that federal agencies are precluded from accepting property with deed restrictions containing reversionary clauses such as the one found in Section 4970.10.4(e)(2). The BLM and the OHMVR Division had numerous discussions exploring possible solutions to resolve the issue, but

ultimately legal and policy issues resulted in the BLM formally withdrawing the two Acquisition projects on September 20, 2011.

Withdrawal of the two BLM acquisition projects resulted in \$246,964 becoming available to the next highest ranking projects. Two projects benefitted from this funding.

A Ground Operations project (Desert Tortoise monitoring) submitted by the BLM State Office was at the “cut-line” and only partially funded when the funding recommendation was announced. This project requested a total of \$179,998, but was only awarded \$92,207 due to the funds being exhausted. The additional funds available after the withdrawal of the BLM acquisition projects will be used to complete the grant request.

The remaining \$159,173 will be awarded to the County of Madera who submitted a Planning project for a total of \$470,345. This project is to plan for development of 390 acres of land donated by Pacific Gas & Electric to the County of Madera. The County of Madera plans to develop this land into a family recreational OHV park.

The OHMVR Division will continue to work with the BLM to develop ways for BLM to accept acquisition funds in the future.

**Commission  
Action:**

For information only.