



Fallen Leaf Lake Community Services District

Its Billing Practices and Small Electorate
Jeopardize Its Ability to Provide Services

July 2019

REPORT 2018-133





CALIFORNIA STATE AUDITOR

621 Capitol Mall, Suite 1200 | Sacramento | CA | 95814



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Elaine M. Howle *State Auditor*



July 18, 2019
2018-133

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As requested by the Joint Legislative Audit Committee, the California State Auditor presents this audit report concerning the Fallen Leaf Lake Community Services District (district). This report concludes that the district's billing and budgeting practices and its small electorate jeopardize its ability to provide services. The California Fire Assistance Agreement (fire agreement) between federal and state agencies provides for reimbursement to local fire agencies, including the district, for providing firefighting assistance to federal, state, and other local agencies during wildfires. However, the district claimed excessive personnel costs by inflating its salary rates and claiming over \$700,000 more than it should have for 2016 through 2018. Without the inflated reimbursements and if the district did not reduce expenditures or increase revenues from other sources, it would have experienced financial shortfalls. Also, the district jeopardized its financial viability because it may have to repay the excessive reimbursement amounts. Furthermore, the district's recent budget practice of counting on these reimbursements—a volatile revenue source—to help cover increases in budgeted personnel costs, adds to the district's financial risk. Separately, limited oversight by the California Governor's Office of Emergency Services of the reimbursement rates that local fire agencies claimed and weaknesses in the fire agreement's reimbursement process also enabled the district to claim the excessive reimbursements.

Additionally, the district's small electorate jeopardizes its ability to continue providing services. The district's board of director's (board) must have at least three members for it to conduct district business, but the district has had difficulty attracting candidates to run for the board. State law requires board members to be domiciled residents in the district and to be registered voters there. We estimate the number of domiciled residents in the district to be between five and 33. Although multiple options exist to address this challenge, redefining the district's electorate to include landowners and other community members, as well as domiciled residents, is the one with the fewest risks and that provides the best opportunity for the district to maintain services and costs at their current levels.

Respectfully submitted,

A handwritten signature in black ink that reads 'Elaine M. Howle'.

ELAINE M. HOWLE, CPA
California State Auditor

Selected Abbreviations Used in This Report

Agreement Committee	California Fire Assistance Agreement Committee
Board	Board of Directors, Fallen Leaf Lake Community Services District
Cal OES	California Governor's Office of Emergency Services
District	Fallen Leaf Lake Community Services District
Fire agreement	California Fire Assistance Agreement
Forest Service	U.S. Forest Service
LAFCO	local agency formation commission

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Summary

Results in Brief

Established in 1982, the Fallen Leaf Lake Community Services District (district) is a special district located south of Lake Tahoe in El Dorado County. The district includes 289 parcels of land that are either privately owned or used by individuals who have recreational permits from the U.S. Forest Service (Forest Service). The district provides the community with fire protection and park and recreation services. However, it has consistently overbilled other government agencies for reimbursements related to providing firefighting assistance, creating the risk that it will need to pay the funds back. Additionally, when balancing its annual budget, it has relied on the reimbursements it receives for providing such firefighting assistance, even though it has no assurance that this funding will be ongoing or consistent. Further, because the district has such a small electorate, it could face difficulties in the near future in electing enough members to its board of directors (board) to achieve a quorum—a majority of the board members. Without a quorum, the board may be unable to function and the district may be unable to provide the community with services at their current cost and service levels.

The California Fire Assistance Agreement (fire agreement) between federal and state agencies provides for reimbursement to local fire agencies—such as the district’s—for providing firefighting assistance, such as personnel and equipment (strike teams) during wildfires. Under the fire agreement, local fire agencies can receive reimbursement for personnel at a base rate or a higher, enhanced rate. To receive an enhanced rate, local fire agencies must calculate and submit to the California Governor’s Office of Emergency Services (Cal OES) their average actual salary rates. Cal OES uses these salary rates to calculate the reimbursement amounts due to the local fire agencies from the federal, state, and other local agencies to which they provided assistance.

However, when filing its salary forms for 2016 through 2018 with Cal OES, the district’s fire chief reported higher salary rates than the district actually paid its firefighters, which resulted in the district claiming over \$700,000 more than it should have. As a result of these improper reimbursements, the district’s audited financial statements for fiscal years 2015–16 through 2017–18 show that its revenue exceeded its expenditures. However, had it submitted salary forms with the appropriate salary rates and had it not reduced its expenditures or increased revenues from other sources, the district would have experienced a financial shortfall during that period. The district may need to repay the excessive

Audit Highlights . . .

Our review of the Fallen Leaf Lake Community Services District revealed the following:

- » *The district improperly profited from reimbursements it received for providing personnel to fight wildfires.*
 - *It overbilled reimbursing agencies by more than \$700,000 from 2016 through 2018.*
- » *Without the inflated reimbursements and if the district did not reduce expenditures or increase revenues from other sources, it would have experienced financial shortfalls.*
- » *The district jeopardized its financial viability because it may have to repay the excessive reimbursement amounts.*
- » *Cal OES’s limited oversight of the reimbursement rates claimed by local fire agencies and weaknesses in the reimbursement process enabled the district to claim excessive reimbursements.*
- » *The district’s small electorate challenges its ability to provide services to its community members.*
 - *It has difficulty attracting candidates to run for its five-member board because only permanent residents who are registered voters are eligible—only 17 of the 62 registered voters had mailing addresses in South Lake Tahoe.*
 - *Expanding the district’s electorate to include nonresident landowners and permit holders would allow more people the opportunity to vote on district matters and to serve on the board.*

reimbursements in the future. Doing so would significantly impact its reserve balance, which was \$1.2 million at the end of fiscal year 2017–18.

In addition, the district recently implemented a budget practice that has further jeopardized its ongoing financial viability. Specifically, since fiscal year 2017–18, the district's budgets have relied on strike team reimbursements to help cover increases in its personnel costs. Given that such reimbursements are subject to a number of variables—for instance, the number of wildfires that occur and the length of time firefighters spend on strike teams—we consider them to be a volatile revenue source, meaning that they are neither ongoing nor consistent. Consequently, the district has taken an unnecessary financial risk by relying on this revenue to support its personnel costs.

Cal OES's limited oversight of the enhanced salary rates claimed by local fire agencies and weaknesses in the reimbursement process under the fire agreement enabled the district to claim excessive reimbursements. For instance, although we recommended in 2012 that the California Emergency Management Agency—which the State later renamed Cal OES—analyze the accuracy of the rates that local fire agencies reported on their salary forms and audit a sample of invoices each year, it has completed only eight such audits over the past seven years. Cal OES is working to reinstate these audits and, as of June 2019, was negotiating an agreement with the State Controller's Office to perform them. Additionally, the current fire agreement does not require local fire agencies to submit documentation to support the enhanced salary rates they claim. Revising the fire agreement to require each local fire agency to submit documents demonstrating that its governing body approved its salary rates and supporting how the fire agency calculated the rates would allow Cal OES to determine whether the rates were reasonable. The California Fire Assistance Agreement Committee (Agreement Committee) is currently renegotiating a new fire agreement that Cal OES expects to become effective in January 2020.

In addition to its financial problems, the district faces a governance challenge because of its small electorate. Specifically, it has had difficulty attracting candidates to run for its five-member board because of the eligibility requirements that define which community members can vote on district matters or serve on the board. Only people who are domiciled—have their primary, fixed residence—in the district are eligible to register to vote and to sit on the board. Many community members live in the district for only part of the year because it is a seasonal community. Consequently, as of January 2019, the district had 62 registered voters, and only 17 of them provided mailing addresses in South Lake Tahoe. The other

45 voters, including all five of the district's current board members, registered with mailing addresses outside the area—an indication that these community members may actually be domiciled outside of the district and therefore be ineligible to register to vote in the district or serve on the board. The district has not had a contested election for a board seat since August 2010, and since January 2010, it has had seven different vacancies on its board.

Expanding the district's electorate would likely help to address its governance challenge. Although other options exist, they have more risks and are more likely to affect the services the district provides, as well as the costs of those services. We believe that expanding the district's electorate to include nonresident landowners and individuals who have permits to use Forest Service land would allow more people the opportunity to vote on district matters and to serve on the board. Doing so would not only address vacancy concerns for the board, it would also allow these individuals to vote on district matters that affect them.

Although the district's board faces a challenge as a result of its small electorate, existing state law does not require that when a local agency formation commission (LAFCO) is creating or modifying a special district, it must consider—along with other factors such as the potential district's ability to provide services—the size of the proposed special district's electorate.

Selected Recommendations

Legislature

To ensure that the district has an electorate of sufficient size from which it can elect a board, the Legislature should enact legislation to allow landowners and holders of Forest Service permits within the district, along with otherwise domiciled registered voters in the district, to vote on district matters and serve on the board.

To help voters in special districts elect full-size boards of directors and to help special district boards avoid quorum issues and service disruptions, the Legislature should amend state law to require a LAFCO to assess whether an electorate is of sufficient size when it considers creating or modifying a special district.

Cal OES

To better ensure that it reimburses local fire agencies appropriate amounts for responding to incidents, including the provision of strike teams for fighting wildfires, Cal OES should complete implementation of its plan to routinely audit a sample of salary forms and invoices that local fire agencies submit under the fire agreement. It should, by September 15, 2019, complete its negotiations to have the State Controller's Office perform these audits.

To further ensure that local fire agencies receive proper reimbursement for responding to incidents, Cal OES should recommend to the Agreement Committee that it include the following steps in the new fire agreement:

- Require local fire agencies to submit documents showing approval by their governing bodies of the average actual salary rates included on the salary form that the local fire agencies submit to Cal OES.
- Require local fire agencies to submit documentation to support their average actual salary rates.

District

To rectify the excessive reimbursement amounts it received for strike team assignments, the district should, by December 31, 2019, develop and implement a plan for returning to the paying agencies the excessive reimbursements it received from 2016 through 2018.

To improve its financial viability and safeguard its ability to continue providing services to the Fallen Leaf Lake community, the district should take the following actions by December 31, 2019:

- Monitor the financial risks it may face in the future, forecast their impact on its finances and budget, and plan and implement appropriate changes to its budget as necessary throughout the fiscal year.
- Limit the extent to which it relies on volatile revenue sources to balance its budget.
- Develop and implement a budget plan that realistically estimates changes in revenues and expenditures, and identifies approaches to address such changes.

- Develop a five-year forecast of estimated revenues and expenditures and a plan to guide its decisions and actions in the event of fluctuations.

Agency Comments

Although it generally intends to implement our recommendations, the district disagreed with certain of our report's conclusions, including that its financial viability may be in jeopardy. Cal OES stated that it intends to address our recommendations and described the corrective actions it will take. Finally, although we did not include recommendations for the El Dorado LAFCO in our report, it provided a written response, which we include on page 65. Because this LAFCO questioned certain statements and conclusions in our report, we provide our perspective on its response beginning on page 69.

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Introduction

Background

State law allows the creation of special districts, which are local governments that deliver specific services within their geographic boundaries. Community services districts, a type of special district, can provide up to 32 different services. Other types of special districts include fire protection districts and water districts. The Fallen Leaf Lake Community Services District (district) covers a small geographic area—6 square miles—in El Dorado County south of Lake Tahoe. Figure 1 shows the district's location and its boundaries. A five-member board of directors (board), whose members serve four-year, staggered terms, governs the district. Since 2014 board members have met four to six times per year to conduct the district's business.

Land parcels in the district can be publicly or privately owned. Many parcels have homes or cabins that community members occupy only seasonally; the district experiences road closures in the winter because of snow. The district's community members include 172 private landowners who own 192 parcels of land and the improvements on that land, such as houses or cabins.¹ They also include 96 holders of permits that the U.S. Forest Service (Forest Service) has issued for cabins or other improvements on 97 federal land parcels.² A residence on Forest Service land requires a permit from the federal government, and the permit holder may use the parcel only for recreation purposes, not as a primary residence. The Forest Service issues these special-use permits for 20-year periods.

¹ A landowner can be either an individual or an entity, such as a trust. Some district landowners own more than one parcel.

² A Forest Service permit holder can be either an individual or an entity, such as a trust. One person currently holds permits for two parcels in the district.

Figure 1
The District's Boundaries



Source: Analysis of data from the El Dorado County Assessor and El Dorado County Elections Department, parcel map from the county assessor, auditor observation, Google Maps, the El Dorado LAFCO, the district, the Forest Service, and state law.

The District's Services and Funding

The district was established in 1982 to provide fire protection services to the area. Besides basic fire protection, these services currently include emergency medical services, inspections to help community members comply with a state law that requires the maintenance of 100 feet of cleared space around structures to help protect those structures from wildfires, and responses to hazardous material incidents. To operate the fire department and conduct the district's day-to-day business, the district contracts with an individual who serves as both its fire chief and general manager. According to this individual, the district has six paid firefighters other than himself and an assistant fire chief, four volunteer firefighters who have been with the fire department for many years, and 16 unpaid resident recruit firefighters (recruits).³

To fund fire protection, the district's board annually sets a fire special tax that is levied in units. The maximum tax that the board can levy is \$660; in 2018 a unit was \$613. Owners and permit holders of parcels with improvements, such as cabins, pay a full unit, while owners of unimproved parcels pay one-half unit, or \$306 in 2018. Stanford Sierra, a conference center in the district, pays 40 units, or \$24,520 in 2018.

The district also provides park and recreation services. In 1993 the district accepted title to land at the south end of Fallen Leaf Lake. The title contained a covenant guaranteeing public access to the lake. The district's current park and recreation services include the operation of a marina, a general store, a community building, a boat launch and rental service, a swim beach, and parking areas, as well as inspection of watercraft to prevent invasive aquatic species from contaminating the lake. The district contracts with a vendor to provide these services. The vendor charges customers fees to cover the expenses for park and recreation services, and it pays the district an annual fee.

The Governance of Special Districts

Generally, each special district elects a board of directors that oversees its activities, although county boards of supervisors can govern certain types of special districts within their county boundaries. The type of special district determines who is eligible to vote in its elections, known as a district's *electorate*. For instance,

³ A September 2018 report to the board stated that the fire chief recruits graduates of the local Tahoe Basin Fire Academy to staff the district's station along with the district's paid personnel. The district provides the recruits with training and opportunities to gain hours of experience toward receiving their Fire Fighter 1 certification.

for individuals to be eligible to vote in a community services district, fire protection district, or park and recreation district, state law generally requires that they be domiciled—have their primary, fixed residence—in the district and be registered to vote in the district. However, state law defines the electorate for certain types of water districts as consisting of the individuals who own land within those districts. These distinctions become important in districts such as Fallen Leaf Lake, where many community members live for only part of the year and are likely domiciled elsewhere.

Eligibility Requirements for Community Services District Board Members

Stated simply, to qualify to be a board member of a community services district, a person must be a registered voter who resides in the district.

- State law requires that an individual who wishes to be a community services district board member be a voter of the district.
- State law further establishes the following requirements for an individual who wishes to be a voter:
 - Be registered to vote in accordance with the State's Elections Code.
 - Be a U.S. citizen 18 years of age or older.
 - Be a resident of an election precinct in California. State law defines *residence* for voting purposes as a person's domicile. It defines a person's *domicile* as "that place in which the person's habitation is fixed, wherein the person has the intention of remaining, and to which, whenever the person is absent, the person has the intention of returning".*

Source: Elections Code and Government Code.

* State law also says that at a given time, a person may have more than one residence but only one domicile.

State law requires a five-member board to govern community services districts, such as Fallen Leaf Lake. To conduct business, a community services district's board must have a quorum—a majority or at least three of the board members—present at a given meeting. To be a candidate for a community services district's board, a person must be a registered voter of the district, as we describe in the text box.

Entities With Key Responsibilities Related to Special Districts

In each county, two entities can play key roles related to special districts: the local agency formation commission (LAFCO) and the county board of supervisors. State laws govern the creation of and certain modifications to special districts, both of which LAFCOs must approve. For example, LAFCOs review applications to form new special districts. An application can come in the form of a petition, which individuals must sign in accordance with any legal requirements under which the district will be formed. Alternatively, an application can consist of a resolution either by a local agency that contains or would contain territory for the proposed district or by the LAFCO itself. An application must include a statement regarding the nature of the proposed

special district, a map and description of its boundaries, and a plan for providing services. The plan must include a description of the services currently provided to the affected territory, an indication of when the special district can feasibly provide the proposed services, and information regarding how the special district will finance those services.

The LAFCO's executive officer reviews the application and, if applicable, schedules and holds public hearings. At the hearings, LAFCO can receive written protests of the proposed special district. If 50 percent of the voters in the affected territory sign written protests, it will stop the application; similarly, if 25 percent or more of the voters or landowners sign written protests, the affected territory must hold an election regarding the special district. If the LAFCO approves the application and the public does not impede the application through such written protests, the special district can be formed.

LAFCOs also have other responsibilities regarding special districts. For instance, they must approve changes to existing special districts, such as the consolidation of two or more special districts or the dissolution of a special district. These changes can be initiated from various sources, including LAFCOs, voters, or landowners. State law also requires LAFCOs to conduct periodic municipal service reviews of special districts. These reviews must evaluate the services provided in the special district's area and determine the districts' financial ability to provide the services, and their accountability for the services, including their governmental structure and operational efficiencies. LAFCOs can use these reviews when proposing modifications to special districts. State law requires that LAFCOs conduct these reviews generally every five years. The El Dorado LAFCO's most recent review of the district is dated October 2013. According to its executive officer, the El Dorado LAFCO originally scheduled the district's next review for 2019, but it then moved other special districts ahead of the district because of the other districts' upcoming projects, including three possible reorganizations.

In certain cases, a county can also fulfill key responsibilities for special districts within its jurisdiction. For instance, under state law, a county's board of supervisors governs certain types of special districts. Furthermore, a county's board of supervisors can help fill vacant special district board seats. Specifically, if the membership of a special district's board falls below the number required for a quorum, the county's board of supervisors—at the request of the special district's secretary or a remaining board member—can either appoint a person to fill the vacancy or call an election to fill the vacancy. State law allows the county's board of supervisors to fill only enough vacancies to provide the special district with a quorum. Additionally, if a special district dissolves and if it was located entirely within the unincorporated territory of a single county, that county serves as a successor to wind up the dissolved special district's affairs.

The California Fire Assistance Agreement

Under an agreement between federal and state agencies, local fire agencies—such as the district’s—can provide personnel and equipment to federal, state, and other local agencies during severe wildfire conditions or other emergencies. This agreement, called the California Fire Assistance Agreement (fire agreement), describes

the process by which the State or other participating entities (paying agencies) can reimburse local fire agencies for the cost of providing such assistance. When local fire agencies provide firefighting assistance—for example, in the form of strike teams—to fight wildfires under the fire agreement, the agreement authorizes reimbursement for personnel on an hourly basis, for vehicles and equipment on an hourly or daily basis depending on the type, and for an administrative fee. The current fire agreement expires in December 2019.

The California Fire Assistance Agreement Committee (Agreement Committee) is responsible for negotiating the terms of the fire agreement and for the agreement’s maintenance. The fire and rescue chief of the California Governor’s Office of Emergency Services (Cal OES) or the chief’s designee chairs the Agreement Committee, which consists of representatives from Cal OES, the California Department of Forestry and Fire Protection (CAL FIRE), the federal fire agencies who sign the fire agreement (Forest Service, the Bureau of Land Management, the National Park Service, the U.S. Fish and Wildlife Service, and the Bureau of Indian Affairs), and three advisory representatives from local government fire agencies in California. The Agreement Committee meets as necessary to make changes to the fire agreement, and it also meets annually to establish reimbursement rates, establish new methods of reporting or invoicing under the fire agreement, and to negotiate procedural changes to the fire agreement.

Regardless of whether a federal, state, or local agency requested firefighting assistance, Cal OES is responsible for processing reimbursements for that assistance. To receive reimbursement under the fire agreement, local agencies must submit to Cal OES a number of documents, which we describe in the text box. First, on the annual salary form, local agencies must submit salary rates: the agencies

Forms and Authorizations Required for Reimbursement Under the Fire Agreement

Annual Salary Form: A local fire agency seeking reimbursement for its personnel must complete and sign an annual salary form and file it with Cal OES. The local fire agency may claim either of the following rates:

- Base rate—default reimbursement rate per hour (\$20.69 in 2018*).
- Average actual salary rate (enhanced rate)—the local fire agency uses its actual salaries to calculate the average actual hourly rate per classification (for example, firefighter, apparatus operator, captain, etc.).

Emergency Activity Record: After responding to an incident, a local fire agency fills out this form to record and substantiate the personnel and equipment it used for the response. The local fire agency notes the start and stop dates and times for its staff on the form from which Cal OES can calculate the number of hours assigned.

Reimbursement Invoice: Cal OES uses the local fire agency’s information to calculate the reimbursement amount for each individual incident.

- The number of hours based on information from the emergency activity record.
- The annual salary form contains the rates per hour. When calculating the reimbursement amount, Cal OES multiplies the rate on the annual salary form by 1.5 to ensure full reimbursement for direct costs for personnel.*

Cal OES forwards the reimbursement invoice to the local fire agency for verification and signature. Once the local fire agency returns it, Cal OES submits it to the appropriate federal, state, or local agency for payment.

Source: Analysis of the fire agreement, Cal OES’s instructions, and Cal OES’s reimbursement forms.

* This applies to certain personnel, such as firefighters, apparatus operators, and captains.

can claim reimbursement for personnel rates either at a base rate (\$20.69 per hour in 2018) or at an enhanced rate if their average actual salary rates are greater than the base rate. Cal OES publishes instructions for calculating enhanced rates on its website and references those instructions on the annual salary form. It expects local fire agencies to compensate their personnel at the rates the agencies include on their annual salary forms. Second, on the emergency activity record, local agencies must submit information regarding the length of time their personnel worked on an incident. Cal OES uses these two forms to calculate the reimbursement amounts for the local agencies for each incident.

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Audit Results

The District Inappropriately Profited From Providing Firefighting Assistance Under the Fire Agreement

Because it overbilled Cal OES and paid its own personnel less than the rate it told Cal OES it would, the district improperly profited from reimbursements it received from paying agencies for providing personnel to fight wildfires. Under the fire agreement, local fire agencies—such as the district’s—can provide strike teams to respond to incidents such as wildfires. We discuss the forms and authorizations local agencies must submit to Cal OES to seek reimbursement for providing these strike teams in the Introduction. According to the senior emergency services coordinator for Cal OES, Cal OES does not intend for local fire agencies to make money or profit from the fire agreement’s reimbursement process.

During our audit period, the district’s strike teams generally consisted of a captain, who was a paid employee, and two or three apparatus (equipment) operators and firefighters, most of whom were recruits. According to the fire chief the district does not send its volunteers to work on strike teams. During 2018 the district paid its six nonmanagement firefighting personnel \$18 per hour, regardless of rank, when performing regular, or non-strike team, duties in the district. The district did not pay its 16 recruits for performing regular duties in the district, such as responding to medical incidents or searching for lost persons. Given that the hourly salary rates for the district’s personnel when performing regular duties were below the fire agreement’s base rate of \$20.69 per hour and that the fire agreement’s default reimbursement rate is the base rate, we expected the fire chief to include the base rate—rather than an enhanced rate—on the annual salary form when claiming reimbursement amounts for the district’s personnel who served on strike teams.

However, rather than using the base rate for personnel, the fire chief instead improperly claimed enhanced rates for the firefighter through captain ranks for strike teams during each calendar year from 2016 through 2018. For instance, for 2018 the fire chief submitted hourly salary rates that ranged from \$32 for the district’s firefighters—including recruits—to \$37 for company officers, or captains. The district assigns both its nonmanagement personnel and its recruits to strike teams, and the fire chief told us that recruits receive pay only when assigned to a strike team. Further, the district did not pay its firefighters the full rate that it claimed for their strike team duty. For example, although the fire chief submitted an hourly salary rate of \$32 for a firefighter on strike team assignments for 2018, he told us that he instead paid each firefighter only \$28 per hour, a difference of \$4 for each hour.

By claiming enhanced salary rates for the district's personnel rather than the base rate, the fire chief failed to adhere to the terms of the fire agreement.

By claiming enhanced salary rates for the district's personnel rather than the base rate, the fire chief failed to adhere to the terms of the fire agreement when submitting the annual salary form. Specifically, according to the fire chief, he included in his calculations of the enhanced rate his employees' overtime rates plus an additional amount to pay for personnel who covered the strike team's duties at the district when they were on strike team duty. This practice violates the instructions for completing the salary form, which he signed. The fire chief told us that he read the fire agreement and watched a video that Cal OES created to describe the instructions for filling out the salary form but that he found them confusing. For example, he was unsure if the base rate included overtime. However, we believe the fire agreement and its instructions, which we discuss in the Introduction, are clear. In addition, the instructions for calculating the average actual rate state specifically that the rate should not include overtime. If the fire chief was unclear about the rates to include on the salary form, he should have contacted Cal OES for clarification.

In addition to claiming reimbursements based on the enhanced rates instead of the base rate, the district also retained reimbursement amounts that could cover overtime compensation for strike team personnel. The agreement includes provisions for compensating local fire agencies for its strike teams' direct costs. Direct costs can include overtime pay and payments for other employees to fill in for those who are on a strike team. Specifically, when calculating reimbursement amounts for firefighters and certain other strike team personnel, Cal OES multiplies the rate the local fire agencies submit by 1.5. By doing so, the fire agreement and Cal OES intend the payment to be a full reimbursement for direct costs for strike team personnel.

Documents pertaining to strike teams are clear regarding amounts local fire agencies should pay their personnel. First, the fire agreement states that it will not reimburse local fire agencies for enhanced rates that exceed the rates that the agencies themselves pay their personnel. Furthermore, Cal OES expects local fire agencies to compensate their personnel the rates they submit on their annual salary form. The fire chief told us that the district pays its personnel overtime compensation when they perform regular duties at the district for more than 106 hours in a two-week pay period. Given this information, we expected the district to pay its firefighting personnel the rates the fire chief claimed on the annual salary form, and to pay overtime of 1.5 times the claimed rate when strike team assignments exceed 106 regular hours in a pay period. However, the district did not meet this expectation. Specifically, in 2018 11 strike teams worked more than 106 hours in a pay period, but the district did not pay them overtime.

The fire chief’s practice of paying firefighting personnel less than the rate he claimed on the annual salary form and of not paying overtime to personnel for strike team assignments contradicted Cal OES’s intent in providing the reimbursements. According to the fire chief, the district paid each firefighter—paid or recruit—\$28 per hour while on a strike team assignment, regardless of the number of hours worked. Given that for 2018 Cal OES reimbursed the district \$48 for each hour a firefighter worked on a strike team, or 1.5 times the \$32 per hour rate that the fire chief submitted, we calculate that the district generally received about \$20 more than it paid its firefighters for every hour they worked on a strike team assignment. Furthermore, as we show in Table 1, the district claimed even higher rates for apparatus operators and company officers on strike teams.

Table 1
When Claiming Reimbursements Under the Fire Agreement, the District Inflated Its Hourly Rates for Three Types of Positions

YEAR	STRIKE TEAM PERSONNEL TYPE	HOURLY RATE DISTRICT PAID ITS STRIKE TEAM PERSONNEL	HOURLY RATE DISTRICT CLAIMED	HOURLY RATE REIMBURSED BY CAL OES*	DIFFERENCE BETWEEN CAL OES REIMBURSED RATE AND DISTRICT PAID RATE
2018	Firefighter	\$28.00	\$32.00	\$48.00	\$20.00
	Apparatus Operator	30.00	35.00	52.50	22.50
	Company Officer	32.00	37.00	55.50	23.50
2017	Firefighter	\$26.00	\$30.00	\$45.00	\$19.00
	Apparatus Operator	28.00	32.00	48.00	20.00
	Company Officer	30.00	35.00	52.50	22.50
2016	Firefighter	\$26.00	\$28.50	\$42.75	\$16.75
	Apparatus Operator	28.00	28.50	42.75	14.75
	Company Officer	30.00	30.00	45.00	15.00

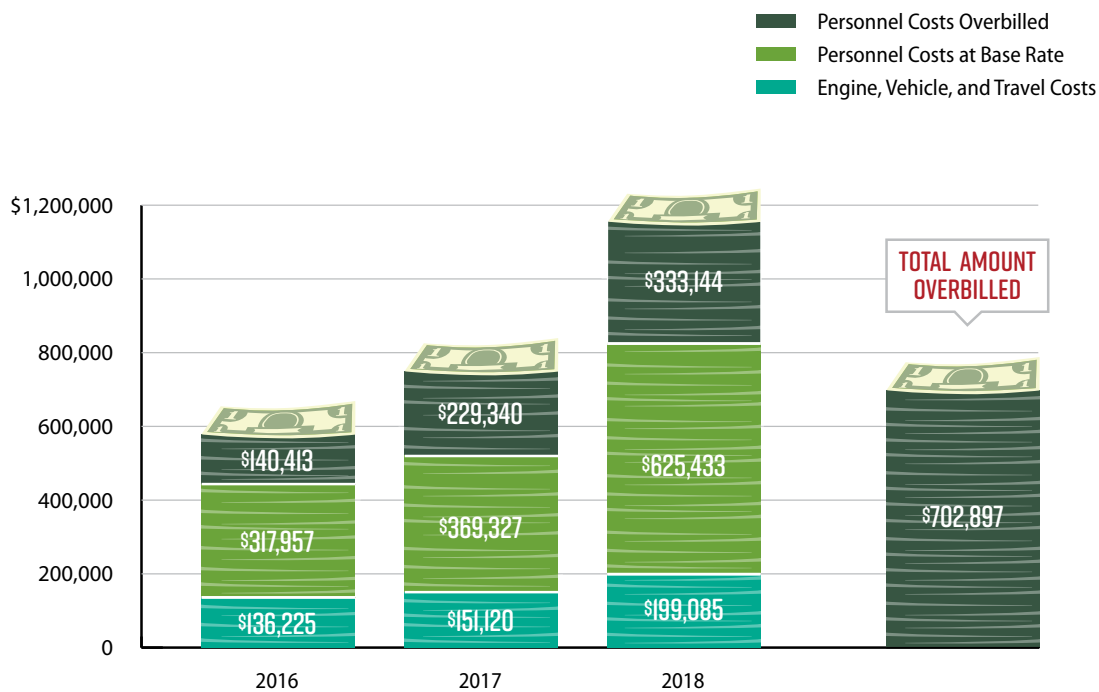
Source: Analysis of the fire agreement, salary forms signed by the district’s fire chief, reimbursement claim forms, district timesheet records, and interviews with the district’s fire chief.

* Cal OES reimburses the district at the overtime rate (1.5 times the rate on the salary form) for these positions.

Because the fire chief submitted inflated salary rates rather than base rates to Cal OES and did not pay its strike teams overtime, the district improperly profited by receiving higher reimbursement amounts than it should have. In fact, we calculated that the district improperly claimed a total of nearly \$703,000 in excess personnel reimbursements from Cal OES for 2016 through 2018. In Figure 2, we depict the annual excess reimbursement amount for each year, along with the appropriate reimbursement amounts based on the

base rate. Because it also provided personnel for strike teams during 2013 through 2015, we believe it is possible that the fire chief also overbilled Cal OES for personnel in these years.

Figure 2
The District Overbilled Paying Agencies by More Than \$700,000 in Personnel Costs From 2016 Through 2018



Source: Analysis of the fire agreement, salary forms signed by the district's fire chief, reimbursement claim forms, district timesheet records, and interviews with the district's fire chief.

The district's fire chief stated that he submitted the enhanced pay rate in part to offset the low wages that the district's personnel make performing their regular duties. He asserted that he could not morally send district personnel on strike team assignments at the salary rate that the district pays for regular duties at the station. He further stated that the district's pay scales are lower than other fire districts nearby and that he believes it is uncommon for firefighters to serve on strike teams for low pay rates unless the firefighters are volunteers. He stated that he based the strike team salary rates he included on the survey form on his employees' overtime rates. Because the district pays its nonmanagement personnel \$18 per hour for their regular work at the district, they would receive \$27 per hour for overtime. Thus, a firefighter paid \$28 an hour would receive a slightly higher amount while on a strike team than they would for overtime work at the district.

The fire chief's explanations do not excuse his improper use of the fire agreement's reimbursement process. Had he claimed the base rate as he should have for 2018, Cal OES would have reimbursed the district at 1.5 times this rate, as the fire agreement describes.

The reimbursement amounts the district would have received would have covered the personnel costs for its strike teams: the base rate of pay for the firefighters on strike teams and overtime pay for these firefighters when necessary.

The fire chief also appears to have circumvented the board's role in governing the district. State law gives special districts' boards the authority to adopt policies for their districts' operation, including fiscal and personnel policies. The district provided no such fiscal or personnel policies related to its strike teams. In the absence of a policy delegating the authority to the district's fire chief to determine salary rates for fire fighters on strike teams, we expected the district's board to have approved the proposed salary rates. However, the fire chief could not provide evidence that the district's board approved the pay rates he submitted to Cal OES. Budget documents the fire chief presented to the board did not contain sufficient detail to demonstrate that the board knew of or approved the enhanced salary rates the fire chief claimed for strike team personnel. Furthermore, board meeting minutes that we examined similarly lacked this level of detail. Consequently, the fire chief should not have submitted the salary rates for strike team personnel without approval from the district's board.

Because the district inappropriately claimed excessive personnel reimbursements under the fire agreement, it sharply increased financial reserves for the fire department fund. The district's financial statements show that these reserves increased from about \$527,000 in fiscal year 2015-16 to about \$867,000 in fiscal year 2017-18, or an increase of 64 percent. Furthermore, this amount does not include most of the fire agreement reimbursements that the district received for 2018 because many of these fires happened after the end of the fiscal year. In a September 2018 report to the board, the fire chief stated that strike team income had provided the fire department the ability to establish reserve funds for anticipated projects, such as purchasing a new firetruck, planning for an expansion for the fire station, and planning for upgrades to the marina pier for the fireboat. However, if the district intends to pursue these projects, we believe it should find more appropriate funding sources. Namely, if the district's community members are the primary beneficiaries of these projects, then they should provide the funding rather than the fire chief inappropriately claiming reimbursements from the paying agencies under the fire agreement. One possible funding source could be the fire special tax paid by the district's property owners; if it is not currently high enough to cover the projects' costs, then the district could consider raising the tax.

The fire chief could not provide evidence that the district's board approved the pay rates he submitted to Cal OES.

Based on the fire chief's improper use of the fire agreement's reimbursement process and the resulting excessive strike team reimbursement amounts the district claimed, we forwarded our report to the Forest Service, Cal OES, CAL FIRE, and the El Dorado County District Attorney's Office for their consideration and, if appropriate, further investigation.

The District Mischaracterized Its Employment Relationship With Its Recruits

Not only did the district inappropriately profit from providing personnel for strike teams, it may also have violated federal law by not treating its fire agency recruits as employees. Laws related to whether employers should treat their personnel—including firefighters—as volunteers, interns, independent contractors, or employees are complex, and several factors can influence the determination. For instance, the Fair Labor Standards Act (Fair Labor Act) is a series of federal statutes that provide numerous protections, including minimum wages and allowable maximum work hours, for employees. The Fair Labor Act excludes persons such as volunteers or interns working as volunteers from being considered employees, but also it limits the amount of compensation volunteers can receive and continue to retain their volunteer status.

The federal regulations under the Fair Labor Act state that volunteers may be paid expenses, reasonable benefits, a nominal fee, or any combination thereof, for their service without losing their status as volunteers. Although the regulations do not specify what a "nominal fee" would be, the U.S. Department of Labor suggested that a fee would be considered nominal if it were 20 percent of what an entity would otherwise pay to hire someone for the same service. We would have expected that the district would have determined what a "nominal fee" amount would be as it relates to the district's recruit firefighters working on strike teams and that it would have then ensured that its recruits did not earn more than that amount from their strike team assignments.

Recruits can easily earn 20 percent of a district firefighter's annual salary while on strike team assignments because a single assignment can last for several weeks. For example, in 2018 three different strike teams had assignments that lasted about three weeks. On each of these assignments recruits earned more than 20 percent of what a paid firefighter for the district would normally earn in a year. Therefore, the risk exists that the district may have violated the Fair Labor Act by not treating these recruits—and other recruits who worked significant hours on strike teams—as employees.

The district may have violated the Fair Labor Act by not treating recruits who worked significant hours on strike teams as employees.

When we questioned the fire chief about this issue, he stated that he does not consider the district's recruits to be volunteers. As we note earlier, the district does not pay recruits for their normal duties at the district's fire station. According to the fire chief, he views the recruits as unpaid interns who are working toward completing the job performance requirements for their Firefighter 1 certifications. He noted that the district provides them with equipment and training, at no cost to the recruits other than their time.

The fire chief stated that the district pays recruits when they respond to strike team incidents because their strike team duties exceed their normal duties within the district. However, because the district has paid the recruits the same rates it paid employees while on strike team assignments and because those assignments are part of the training regimen for the recruits, the district may be in violation of the Fair Labor Act. To ensure that it complies with the applicable labor and wage laws, the district should have sought advice from appropriate experts regarding the payment of salaries to its recruits for strike team assignments. The consequences of violating the Fair Labor Act can be costly. For example, violation of the minimum wage law, which would include treating personnel as volunteers, can result in payment of back wages for up to two years and an equal amount as liquidated damages.

Furthermore, the district's treatment of recruits as independent contractors for payroll purposes appears incorrect. Different tax requirements exist for independent contractors and for employees. For instance, on wages it pays to its employees, the district is required to withhold income taxes, withhold and pay Social Security and Medicare taxes, and pay unemployment taxes. On the other hand, the district is not required to take these actions for independent contractors. According to the fire chief, before 2019 the district provided its recruits Internal Revenue Service Form 1099 (1099 tax forms). Doing so indicates that the district treated its recruits as independent contractors. However, the job requirements of a strike team firefighter suggest that the district should have treated the recruits as employees and provided them W-2 forms instead.

Because the fire chief treated the recruits as independent contractors rather than employees, he may have put the district at risk of unintended financial consequences. Specifically, the district may have violated federal law by misclassifying the recruits. Misclassifying workers as independent contractors rather than employees could subject the district to various unanticipated expenses, including penalties and payment of unpaid Social Security, Medicare, and unemployment taxes. Furthermore, under state law, willful misclassification of an employee as an independent contractor could subject the district to penalties of \$5,000 to \$15,000 for each violation, among other penalties.

Misclassifying workers as independent contractors rather than employees could subject the district to various unanticipated expenses.

The district could not provide a valid reason for treating its recruits as independent contractors for strike teams. According to the fire chief, the district gave the recruits 1099 tax forms based on advice that the district's auditor and bookkeeper gave it several years ago, when the district first started the recruit program. Specifically, he stated that the auditor and bookkeeper did not raise concerns about giving the recruits 1099 tax forms, so he assumed doing so was appropriate. We did not find, nor did the district provide, evidence that the board approved the recruits' classification as independent contractors. After we brought this issue to the fire chief's attention, he stated that for the 2019 fire season, the district would classify its recruits as employees. Nonetheless, the district should seek advice on this topic from appropriate experts.

Because the district's treatment of recruits as independent contractors may have violated federal and state laws, we forwarded our report to the U.S. Department of Labor, the Internal Revenue Service, and Employment Development Department for their consideration and, if appropriate, further investigation.

The District's Ongoing Financial Viability May Be in Jeopardy

Given the financial risks the district could face in the future, we believe its ongoing financial viability may be in jeopardy. Even the district's \$1.2 million reserve balance shown in its fiscal year 2017–18 financial audit report—of which \$867,000 is in the fire department fund—may not be sufficient to maintain its viability. Possible financial risks that could impact the district's reserve balance include a repayment to the paying agencies of up to \$703,000 in excess reimbursements the district claimed for 2016 through 2018 under the fire agreement; any repayments of excess reimbursements the district claimed for 2013 through 2015; and any penalties, back pay, or liquidated damages that federal and state agencies assess if the district violated labor laws. Should these potential risks become actual financial liabilities and if their combined total exceeds the district's reserve balance, the district may have to decrease its expenses; increase revenues from other sources, such as imposing a higher fire special tax; or both.

The district may also have to consider expenditure cuts or revenue increases if its strike team revenue drops when it starts submitting appropriately completed salary forms in the future.

The district may also have to consider expenditure cuts or revenue increases if its strike team revenue drops when it starts submitting appropriately completed salary forms in the future. The district's audited financial statements for the three fiscal years from 2015–16 through 2017–18 show that the district's revenues exceeded its expenditures during each of these years and that the district's total revenues for this period exceeded its total expenditures by roughly \$450,000. However, this apparent financial stability was because the district received \$703,000 in excessive reimbursement amounts

for providing strike teams for wildfires. Without these excessive reimbursements, it would have experienced financial shortfalls had it not reduced its expenditures or increased revenues from other sources.

The district's ongoing financial viability is further jeopardized by a budget practice that it implemented for its budgets for fiscal years 2017–18 and 2018–19. Generally speaking, government entities can plan to achieve financial sustainability by enacting structurally balanced annual budgets that they intend to implement in an upcoming fiscal year. A government entity can demonstrate a budget is structurally balanced when its recurring revenues meet its recurring expenditures. Therefore, counting on nonrecurring, or volatile, revenue sources to cover recurring expenditures can jeopardize the government's ability to operate programs.

Although the district did not include strike team revenues in its budgets for fiscal years 2015–16 and 2016–17, the district did include them in its budgets for fiscal years 2017–18 and 2018–19. For fiscal year 2017–18, the district budgeted strike team revenue of \$109,000, or 28 percent of the fire department's total budgeted revenue of \$384,000. Strike team revenue was the second largest budgeted revenue source for the district's fire department that year. It appears that the district included this revenue to help cover a \$124,000 (74 percent) increase in its budgeted personnel costs for the fire department, from \$169,000 in the prior fiscal year to \$293,000. For fiscal year 2018–19, the district budgeted strike team revenue of \$350,000, or 54 percent of the fire department's total budgeted revenue of \$645,000. Strike team revenue was the largest revenue source for the district's fire department in this fiscal year. Because the revenue amounts that strike team reimbursements actually generate can fluctuate based on a number of variables (including, for instance, the number of strike teams the district is capable of providing, the number of strike team assignments the State makes, and the length of the strike team assignments), we consider strike team reimbursements to be a volatile revenue source.

Likewise, the El Dorado LAFCO's 2013 review of the district stated that the district could be in a "deeper hole" if its strike team revenues were lower than budgeted. The LAFCO's executive officer also stated that strike team revenue cannot be considered regular, stable, and ongoing because it depends on a district's ability to field a strike team and the number of wildfires that occur around the State in any given year. Therefore, although the district's financial statements note that it received almost \$730,000 in strike team revenues during fiscal year 2017–18, we believe the district took an unnecessary financial risk when it included such a volatile source as a relatively large proportion of the revenue in its budget and

For fiscal year 2017–18, it appears the district included strike team revenue in its budget to help cover a \$124,000 increase in its budgeted personnel costs for the fire department.

counted on this revenue to pay for personnel. Had this revenue not materialized, the district's other budgeted revenues would not have been enough to cover its budgeted expenditures for the fiscal year.

Weaknesses in the Fire Agreement's Reimbursement Policy and Cal OES's Oversight of Enhanced Salary Rates Enabled the District's Overbilling

We identified three weaknesses in the fire agreement's reimbursement process that enabled the district's overbilling. First, Cal OES stopped auditing salary forms and reimbursement claims submitted by local fire agencies. In our January 2012 report, *California's Mutual Aid System: The California Emergency Management Agency Should Administer the Reimbursement Process More Effectively*, Report 2011-103, we recommended that the California Emergency Management Agency (Cal EMA) analyze the accuracy of the rates local fire agencies reported in their salary surveys and audit a sample of invoices each year.⁴ In that report, we identified instances of local fire agencies misbilling the State for personnel costs under the fire agreement. We noted that Cal EMA did not ensure that local fire agencies' calculations for the salary forms were correct and that until Cal EMA took steps to ensure the accuracy of the rates that local fire agencies claimed in their salary forms, local fire agencies would continue to be able to submit erroneous bills to the government agencies paying for these resources.

Although Cal OES told us that it fully implemented our recommendation to analyze the accuracy of rates local fire agencies submitted on salary forms and to audit a sample of invoices each year, it completed only eight such audits—four in 2013 and four in 2016. According to Cal OES, it completed only these audits because of extraordinary fire season activities and the statewide flooding disasters from 2015 through 2018. It stated that these fire seasons collectively resulted in approximately 32,100 fires, 4.9 million acres burned, and hundreds of thousands of structures destroyed. It also stated that its response and recovery priorities affected not only itself, but also the fire agencies it needed to audit because of their increased response and recovery commitments. Notwithstanding its reasoning, had Cal OES continued to perform these audits and had it performed more of them, it might have identified the fire chief's overbilling or overbilling by other fire agencies. Furthermore, even if Cal OES had not selected the district's salary forms for review, the fire chief's knowledge that Cal OES was performing such audits might have deterred him from improperly using the

Had Cal OES continued to perform audits and had it performed more of them, it might have identified the fire chief's overbilling or overbilling by other fire agencies.

⁴ Effective July 2013, a Governor's Reorganization Plan transferred Cal EMA to the Governor's Office, renaming it Cal OES.

fire agreement's reimbursement process. Cal OES is working to reinstate these audits: as of June 2019, it was negotiating an interagency agreement with the State Controller's Office to perform the salary survey audits and was in the process of developing the audit selection and performance methodologies.

A second weakness in the fire agreement's reimbursement process is that the current fire agreement does not require local fire agencies to submit documentation to support the enhanced salary rates they claim. As we discussed previously, a local fire agency must submit only an annual salary form to claim an enhanced salary rate that is higher than the base rate. Cal OES then uses the enhanced rate, along with the number of hours that the local fire agency claims for an incident, to calculate reimbursement amounts. Because the fire agreement does not require any supporting documentation for enhanced salary rates, Cal OES has insufficient evidence to confirm the accuracy of the enhanced rates that local fire agencies submit.

If the fire agreement were to require local fire agencies to submit two types of supporting documents, it would help Cal OES better ensure the accuracy of the enhanced salary rates they claim. First, the fire agreement can require each local fire agency to submit to Cal OES documents demonstrating that its governing body has reviewed and approved the enhanced salary rate. Because a local fire agency ought to have already completed its calculations of its average actual rates to support the enhanced salary rate, a reasonable next step would be to have the local fire agency's governing body review and approve those rates. Such documentation could be in various formats, including an approved resolution or copies of approved governing body minutes showing a motion and approval of the rates.

The fire agreement could also require each local fire agency to submit documentation to support the agency's calculations of an enhanced rate if it claims one and demonstrate how the agency calculated it. Given that local fire agencies should already be performing the calculations to support enhanced salary rates they claim, documentation to support those calculations should not present an additional burden. Their inclusion would give Cal OES the opportunity to review for reasonableness the documents supporting the enhanced salary rates and to ensure that the local fire agencies' calculations are reasonable and based on actual rates. Examples of documentation that could provide this level of assurance are average rate calculations supported by salary tables, labor agreements, or other similar documentation. We would expect Cal OES and the other fire agreement signatories to negotiate and agree on the specific types of documentation that would suit this purpose. Alternatively, local fire agencies could forego submitting the calculations and documentation by accepting the base salary rate.

If the fire agreement were to require local fire agencies to submit two types of supporting documents, it would help Cal OES better ensure the accuracy of the enhanced salary rates they claim.

Including a penalty of perjury statement on the annual salary form and reimbursement invoice can serve as a deterrent to signers providing false information.

The third weakness we noted was that neither the annual salary form nor the reimbursement invoice requires a signature from the fire agency's representative under penalty of perjury. Although the forms require signatures, they state only that the signers certify to the best of their knowledge and belief that the information is correct. The Cal OES senior emergency services coordinator told us that Cal OES accepts the enhanced salary rates that the local fire agencies include on their annual salary forms as factual in part because they are signed to the best of the signers' knowledge and belief. However, the current statement was clearly not sufficient to deter the district's fire chief from completing, signing, and submitting forms with inflated salary rates to Cal OES. Including a penalty of perjury statement can serve as a deterrent to signers providing false information.

We observed that other state agencies use forms that require a signature under penalty of perjury when local government entities claim reimbursement from the State. For instance, when counties claim reimbursement from the State for administrative expenses associated with certain Medi-Cal services, county representatives must sign under penalty of perjury that the amounts claimed are in accordance with state law. If the fire agreement were to require that signatories sign the annual salary form and the reimbursement invoice under penalty of perjury, Cal OES could obtain additional assurance that enhanced salary rates and the related reimbursement claims were accurate.

Because Cal OES's State Fire and Rescue Chief (fire and rescue chief) is the chair of the Agreement Committee, Cal OES is uniquely positioned to take a role in addressing the reimbursement issues we identify in this report. According to Cal OES's senior emergency services coordinator, about 1,100 local fire agencies participate in the California Fire Service and Rescue Emergency Mutual Aid System; each of them can be reimbursed for providing strike teams under the fire agreement. This large number, Cal OES's limited oversight of enhanced salary rates local fire agencies submit, and our prior audit work demonstrate that a significant risk exists that local fire agencies other than the district may have and may continue to submit unsubstantiated enhanced salary rates that may lead to excessive reimbursements.

The current fire agreement is set to expire in December 2019. The fire agreement is the appropriate document for the signatory agencies, including Cal OES, to communicate expectations to local fire agencies seeking reimbursement. When we discussed our recommendations with Cal OES, the senior reimbursement coordinator stated that the Agreement Committee must approve any changes to the agreement, such as requiring additional documentation from local agencies, and that Cal OES cannot make

such changes unilaterally. Additionally, according to the fire and rescue chief, any changes require agreement among all Agreement Committee members through a formalized negotiation process.

According to its state fire and rescue chief, Cal OES is currently renegotiating a new fire agreement with the other members of the Agreement Committee. Cal OES expects the new fire agreement to become effective in January 2020 and run through the end of 2024. Cal OES's participation in these negotiations provides the opportunity for it to advocate for the inclusion of written provisions related to strengthening its oversight of the enhanced salary rates that local fire agencies submit under the fire agreement, including, but not limited to, the following provisions:

- Cal OES will audit a sample of annual salary forms and reimbursement invoices that the local fire agencies submit and will work with local fire agencies to rectify any errors.
- Each local fire agency must provide sufficient documents to support its calculations of average actual salary rates and to demonstrate its governing body's approval of those rates.
- Each local fire agency must sign annual salary forms and reimbursement invoices under penalty of perjury.

Cal OES also has an opportunity to use this audit report and its implementation of our recommendations to help it address ongoing issues with the Forest Service related to the current fire agreement. In a July 2017 letter, the Forest Service informed Cal OES that a federal audit had determined that the Forest Service was overpaying local governments and that controls needed to be in place to ensure that such overpayments did not occur again. Similarly, in an April 2019 letter, the Forest Service informed Cal OES that a January 2019 federal audit had also questioned reimbursements made to multiple California fire agencies. Based on these findings, the Forest Service stated that it would impose additional requirements on reimbursements until the current fire agreement expires in December 2019. We show two of these requirements in the text box.

New Forest Service Reimbursement Requirements

In April 2019, the Forest Service stated that it would immediately implement several requirements regarding reimbursements under the current fire agreement, including the following:

- All outstanding and future invoices submitted for reimbursement must include supporting documentation that demonstrates a fire agency's actual paid costs. Local governments and Cal OES may still use existing reimbursement forms as long as they attach documentation of actual costs.
- Along with preparing a proper form for indirect costs, fire agencies must complete actual expense salary surveys that demonstrate actual salary costs.

Source: Forest Service letter to Cal OES dated April 17, 2019.

Cal OES and other California fire organizations have expressed concerns that the Forest Service's new requirements will present cumbersome administrative and fiscal burdens on local fire departments. In an April 2019 letter to the Forest Service, Cal OES stated that the Forest Service's new requirements

would have a significant impact on volunteer fire agencies with small operating budgets, in part because they would require those fire agencies to pay their responding firefighters to create documentation before receiving any reimbursement from the Forest Service. Cal OES stated that because of budgetary constraints, small agencies do not have the cash flow to pay their responding firefighters before receiving reimbursement, much less the funding to hire additional staff to manage the new administrative requirements.

Although the Forest Service's new requirement that local fire agencies include documentation for actual paid costs on each invoice could be onerous for both the local agencies submitting the reimbursement forms and the agencies processing these forms, we believe that the fire agreement's existing terms that allow Cal OES to rely on average actual salary rates when calculating reimbursement amounts continues to be a reasonable alternative in principle when properly followed. Cal OES's successful implementation of our current recommendations would provide additional assurance that local agencies will follow the terms of the fire agreement related to average actual salaries and, therefore, that Cal OES will calculate proper reimbursement amounts. Also, if the Agreement Committee takes steps to better ensure the accuracy of the rates that local fire agencies submit in their salary forms, local fire agencies will be less likely to submit potentially erroneous bills to the government agencies paying for these resources.

The District's Small Electorate May Threaten Its Ability to Function Effectively

The district's ongoing ability to have a complete board and therefore to provide fire protection and park and recreation services within the Fallen Leaf Lake area is uncertain. Only permanent residents, for whom Fallen Leaf Lake is their domicile, can legally register to vote and run for the board, meaning that very few people in the seasonal community are eligible. A district board member told us that none of the relatively few district residents are interested in serving on the board. If the district's board has too many vacancies, it will be unable to perform duties such as authorizing taxes, entering into contracts for services, and paying staff. Several options exist that could resolve this concern: the State could expand the district's electorate, the district could consolidate with another special district, or the district could dissolve. Although implementing any of these options would necessitate overcoming certain hurdles, expanding the district's electorate is the best option to ensure that the area will continue to receive services at their existing levels and costs.

Only permanent residents, for whom Fallen Leaf Lake is their domicile, can legally register to vote and run for the board, meaning that very few people in the seasonal community are eligible.

The District's Ability to Provide Services to Community Members Depends on It Having Enough Board Members

According to state law, the district's board is responsible for establishing policies for its operation, and its general manager is responsible for implementing those policies. Further, the board has the specific authority to impose taxes, such as seeking voter approval for a fire special tax assessed on each affected parcel of land and, in the cases of Forest Service land, each cabin; enter into contracts, such as the contract with the concessionaire who manages the park and recreation services; and pay staff, such as the district's fire chief. For the board to conduct district business and exercise its authority, state law requires that a majority of board members be present; thus, to have a quorum, the board needs three members to be present. If fewer than three board members are present, the board cannot propose a fire special tax for voter approval, approve contracts, or set salaries. The board also cannot appoint members to fill vacant seats without a quorum.

The district's recent history in fielding candidates for election to its board raises concerns regarding its ability to have a full-size board. The district has not had a contested election for a board seat since August 2010. In the five opportunities for elections since then, no more than one person has run for each open seat. Specifically, for 12 of the 15 open seats in the last five elections, one person filed to be a candidate for each one, and the El Dorado County Board of Supervisors (board of supervisors) appointed the lone candidates in lieu of holding the elections. For three of the 15 open seats, no one ran. In those instances, the county's board of supervisors appointed nominees whom the district's existing board members recommended.

In addition, the district's board has experienced numerous vacancies since 2010; too many vacancies at the same time can jeopardize the board's ability to achieve a quorum and conduct business. From January 2010 through November 2018, the board had a total of seven vacancies spanning 43 months. The shortest vacancy was about two months, while the longest was about 14 months. Moreover, for two months during 2013, the board experienced three vacancies at the same time. Because it had only two members at that time, the board did not have the ability to achieve a quorum and could not have conducted the district's business had it been necessary. The county's board of supervisors appointed board members in lieu of an election to fill two of the vacant positions in March 2013, which reestablished a quorum.

The district has not had a contested election for a board seat since August 2010. For 12 of the 15 open board seats in the last five elections, one person filed to be a candidate for each one; for the three other open seats, no one ran.

State law requires candidates for the board to be voters of the district. As of January 2019, the district had only 62 registered voters.

The Seasonal Nature of the District Limits the Number of Permanent Residents

A major factor contributing to the uncertainty over the district's ability to field a full board is the small size of the district's electorate. State law requires candidates for the board to be voters of the district. As of January 2019, records from the El Dorado County Elections Department show that the district had only 62 registered voters. According to one of the district's board members, the area is a community of summer cabins with only seasonal access. Therefore, it seems likely that many community members would register to vote in the locations of their primary homes. According to the board member, none of the residents who live only at Fallen Leaf Lake are interested in serving on the board.

The number of the district's registered voters declined sharply after the Secretary of State's Office identified improprieties associated with a 2010 district election. In August 2010, the district held a special election to recall and replace two board members and to select a third member to fill a vacancy. El Dorado County records for that election show that 313 votes were cast out of 461 registered voters. According to a September 2011 letter from the El Dorado County district attorney (district attorney), the Secretary of State's Office investigated complaints of voter fraud and candidate ineligibility or fraud related to this election. The letter indicated that the investigation revealed widespread improprieties surrounding voter registration. Specifically, the letter described that many, if not most, of the persons registered to vote at the time of the August 2010 election were ineligible to vote in the district. The district attorney placed all registered voters on notice that similar future violations would be prosecuted and that voting is permissible only in the location of a person's domicile, rather than in connection with any other residence a person may own. By June 2014, the number of registered voters in the district had declined to 102, suggesting that many of the district's registered voters from 2010 did not keep their voter registration in the district.

It is difficult to determine a precise number of domiciled residents who live in the Fallen Leaf Lake area and, of those, how many are eligible to vote in district elections. However, by taking into account the number of landowners who claimed a homeowner's exemption, the number of registered voters within the district who reported mailing addresses in the South Lake Tahoe area, and the number of individuals with vehicle registrations or driver licenses with addresses within the district, we estimated the number of

domiciled residents to be between five and 33.⁵ The board member said that his analysis showed that the district has only 13 people who could legitimately claim domicile and lawfully vote.

In particular, the number of registered voters in the district who have mailing addresses outside the South Lake Tahoe area raises questions regarding whether these individuals registered to vote in the correct location. Specifically, of the 62 individuals currently registered to vote in the district, only 17 (27 percent) identified mailing addresses in South Lake Tahoe. The other 45 voters (73 percent) registered with mailing addresses outside the area, and eight of those 45 have out-of-state mailing addresses. Out-of-area mailing addresses are an indication that these community members could be domiciled elsewhere; if true, this would mean they are not eligible to register to vote in the district. It is worth noting that the voter registrations of all five current board members include mailing addresses outside the district.

During our review of the district's voter registration information, we observed other irregularities in addition to out-of-area mailing addresses. These irregularities included 10 individuals with voter registrations in more than one county or state, two individuals who received ballots from more than one county for the same election, and four individuals who have switched their voter registrations at least twice since 2010 between El Dorado County and other counties. Because these irregularities indicate possible violations of California law, we forwarded our report to the California Secretary of State and the district attorney for their consideration and, if appropriate, further investigation.

Expanding the District's Electorate Would Likely Resolve the Governance Challenge It Faces

Although several options exist that could enable the district to have a full board and continue to provide services, each option faces hurdles and would have different effects on the levels and costs of services at Fallen Leaf Lake. The key options are for the State to expand the size of the electorate that can vote on district matters and serve on the district's board, for the district to consolidate with another special district, or for the district to dissolve and for another entity or entities to provide its services. Table 2 summarizes these options, along with the risks and hurdles each presents. Because of the district's small geographic size and because

The voter registrations of all five current board members include mailing addresses outside the district.

⁵ A portion—\$7,000—of the full value of an owner's principal residence is exempt from property taxation. A property owner can receive this exemption for only one property. To receive the homeowner's exemption, homeowners in El Dorado County must file an application with the county assessor's office.

it consists mostly of vacation homes, we believe that expanding the district’s electorate provides the best opportunity for the Fallen Leaf Lake community to continue receiving services that are similar in terms of their level and cost to the services it currently receives. We discuss the other two options in more detail in Appendix B.

Table 2
Each Option for Resolving the District’s Governance Issues Involves a Number of Risks and Hurdles

OPTION	GOAL	ACTIONS REQUIRED	RISKS OR HURDLES	IF SUCCESSFUL, IMPACT ON SERVICE LEVELS AND COSTS
Legislative Solutions				
Expand the district’s electorate	More community members are eligible to vote and to serve on board.	Legislature enacts new statutes.	<ul style="list-style-type: none"> The State may not enact legislation. The new law may be challenged in court. 	None anticipated.
Local Solutions				
Consolidate the district with another special district	<p>New successor special district provides fire protection services; a different entity would provide park and recreation services.</p> <p>New successor special district provides both fire protection and park and recreation services.</p>	<ul style="list-style-type: none"> District board,* voters,† LAFCO, or county board of supervisors proposes the change. LAFCO holds public hearing.‡ <ul style="list-style-type: none"> Change is stopped if 50 percent of voters protest it in writing. 	<ul style="list-style-type: none"> District fails to give up its park and recreation power and therefore cannot consolidate with a fire protection district.§ District gives up its park and recreation power, but no other entity begins providing those services. Fallen Leaf Lake or the other special district’s community members successfully protest or vote against consolidation. 	<ul style="list-style-type: none"> Potential cost increases to Fallen Leaf Lake landowners: <ul style="list-style-type: none"> Fire special tax Fire insurance Potential decrease in emergency response time, if successor does not staff the station at Fallen Leaf Lake. Potential loss of park and recreation services.
Dissolve the district	One or more other entities provide services; the district ceases to exist.	<ul style="list-style-type: none"> District election is required if the district does not object to dissolution and 25 percent of voters or landowners protest. 	<ul style="list-style-type: none"> Fallen Leaf Lake community members successfully protest or vote against dissolution. District dissolves but one or more other entities do not take on responsibility for structure fire protection or park and recreation services at Fallen Leaf Lake. 	<ul style="list-style-type: none"> Potential cost increases to Fallen Leaf Lake landowners: <ul style="list-style-type: none"> Fire insurance Potential decrease in level of service for fire protection and in response time for emergency medical services. Potential loss of park and recreation services.

Source: Analysis of state law and guidelines, the district’s current circumstances, materials regarding other special districts, and information from El Dorado County.

Note: Two additional options exist for the district. However, because neither of them are likely to resolve the district’s small electorate, we did not include them in the table. First, the State could enact legislation to reduce the size of the district’s board from five to three members. Although doing so could make it easier to find candidates, the board might still experience vacancies and quorum issues. Alternatively, the district could give up its fire protection authority and then allow its territory to be annexed into a nearby fire protection district. Under this option, the district would continue to retain its park and recreation authority. We believe it unlikely that implementing either of these two options would resolve the district’s underlying issue of a small electorate, and therefore the risk of the board not being able to conduct business would remain high.

* Consolidation can be proposed by district boards or voters in either district, and voters of either district can protest the change and vote on it if it goes to an election.

† For voters to propose consolidation, 5 percent or more of the registered voters in each district must sign a petition. Alternatively, a petition for dissolution must be signed by either at least 10 percent of the registered voters in the district or at least 10 percent of the landowners in the district.

‡ If the district board—rather than community members or the LAFCO—proposes dissolution that is consistent with a prior LAFCO study or determination, the protest provision would not apply. The LAFCO could then approve and order the dissolution.

§ For the district to consolidate with a fire protection district, it must first give up its authority to provide park and recreation services.

The first option in Table 2, enacting legislation to expand the electorate, would increase the likelihood of the district's maintaining a full board, achieving a quorum, and having the ability to continue providing services at their current levels and costs. By expanding the district's electorate to include nonresident landowners and permit holders in addition to resident voters, the State could give a larger number of people the ability to vote on district matters and to serve on the board. As we discuss previously, although the district had 62 voters registered as of January 2019, only 17 provided local mailing addresses. In contrast, information from the El Dorado County Assessor's Office shows that the district has 172 landowners and 96 permit holders.

A board member summarized the district's electorate issues for us in this way:

In 2011, the El Dorado County District Attorney sent letters to the Fallen Leaf Lake community, advising them that they could no longer vote on Fallen Leaf Lake issues unless they were domiciled at the lake. . . . That letter was followed by another to all permittees from the Forest Service . . . [stating that] anyone who declared their cabin at Fallen Leaf to be their "domicile" would be in violation of the terms of their "recreational" permit. . . . Therefore . . . anyone who holds a Forest Service permit risks losing that permit if they vote at Fallen Leaf, even if they are domiciled there. Other community members vote at the peril of prosecution. Furthermore, since state law requires that board members be registered voters of the district, it has become nearly impossible to recruit candidates to serve on the . . . board. LAFCO recognizes that there is not [a] sufficient number of domiciled voters . . . to support the district.

Expanding the district's existing electorate of residents to include landowners and permit holders would allow these two groups of people to vote on district matters without fear of prosecution or loss of permit. Landowners and permit holders could receive ballots to vote only on district matters and could maintain their voter registrations at their domiciles. These individuals have an interest in the district's governance because they must pay the fire special tax that the district levies.

In addition, enacting legislation to enfranchise landowners and permit holders would resolve the issue of the district having a small electorate from which to select board members. Although we did not identify other community services districts that allow both nondomiciled landowners and domiciled residents to vote on district matters, we did identify a water district—which is another type of special district—that does so. In 1990 the Legislature enacted a statute that enfranchised domiciled

By expanding the district's electorate to include nonresident landowners and permit holders in addition to resident voters, the State could give a larger number of people the ability to vote on district matters and to serve on the board.

residents of the Sierra Lakes County Water District (Sierra Lakes) in Placer County for district elections—a right previously reserved by law for landowners only. Therefore, it is possible for the State to enfranchise the district’s landowners and permit holders for district elections. The Sierra Lakes service area, similar to the Fallen Leaf Lake area, has many nonresident landowners and relatively few permanent residents. The two districts both cover small areas geographically—6 square miles or less—and are composed primarily of vacation or second homes. Further, the boards for both districts address issues of interest to both property owners and residents alike, such as charges on property owners that fund district operations. Sierra Lakes has had three contested elections in the last seven elections, with an average of 840 people voting in each contested election.

Legislation to include landowners in the district’s electorate could face legal challenges because it would increase the number of potential voters, thereby diluting the influence of the resident voters. However, a California court already upheld similar legislation when the Legislature expanded the electorate for Sierra Lakes. In 1991 a California appellate court held that legislation that allowed both landowners and resident voters to vote on issues related to Sierra Lakes did not violate the U.S. or state constitutions. The court made its decision partly because Sierra Lakes’ operations affected landowners financially and affected both landowners and residents through services. The court noted that one factor contributing to its conclusion was that the legislation limited Sierra Lakes’ powers. To follow this precedent, legislation to expand the district’s electorate to include Fallen Leaf Lake landowners and permit holders could similarly limit the district’s powers to providing only its existing services.

Legislation to expand the district’s electorate to include Fallen Leaf Lake landowners and permit holders could limit the district’s powers to providing only its existing services.

The executive officer of El Dorado LAFCO believes that if the Legislature expands the district’s electorate to include both residents and landowners, the district will continue to have difficulty funding its fire protection services, largely because resident and landowner voters would be reluctant to raise the fire special tax to the level that the district needs to have a sustainable fire department. Further, with a larger electorate, obtaining the necessary number of votes could be even more difficult. We believe that despite this potential risk, an expanded electorate would provide the district the best chance to maintain its services at their current levels and costs.

When Creating and Modifying Special Districts, LAFCOs Are Not Required to Evaluate Their Electorate Size

LAFCOs must evaluate several factors when considering the creation of and modifications to special districts. These factors include the need for organized community services and the sufficiency of the revenue to pay for the services that will be provided. However, state law does not require LAFCOs to consider whether a special district's electorate will be large enough to provide an adequate pool of eligible board members. Without a large enough electorate, special districts run the risk of not having enough eligible people to serve on their boards.

Like the Fallen Leaf Lake district, other special districts have had issues with small electorates. The Legislature has attempted various solutions to resolve the issues, such as reducing the size of these special districts' boards of directors, with limited success. These special districts include the Sawyers Bar County Water District (Sawyers Bar) in Siskiyou County, the Santa Rita Hills Community Services District (Santa Rita Hills) in Santa Barbara County, and the Sierra Cedars Community Services District (Sierra Cedars) in Fresno County. Over the past 20 years, each of these special districts has at times had fewer than 20 registered voters and, like the Fallen Leaf Lake district, has faced vacancies, uncontested elections, or both.

To address their electorate problems, legislation sought to convert Sawyers Bar, Santa Rita Hills, and Sierra Cedars from five-member boards to three-member boards. However, these districts have continued to struggle to maintain full boards and to hold contested elections. For example, documents show that in 2001 Sawyers Bar had only 14 registered voters. In that same year, legislation required Sawyers Bar to reduce its number of board members from five to three if it received a petition requesting the change signed by a majority of its voters. Sawyers Bar serves a remote rural community in Siskiyou County, making it difficult to find five people who were willing to serve as board members. Although Sawyers Bar reduced its board size, it still has difficulty because of its small electorate. Specifically, it had uncontested elections in 2015 and 2017 and at least one vacancy during that time period.

Similarly, in 2014 Santa Rita Hills had 10 to 12 registered voters. Located in northern Santa Barbara County, Santa Rita Hills is authorized to provide road-related services. Legislation enacted in that year authorized Santa Rita Hills to reduce its board size from five members to three. However, no board members ran for reelection for the November 2014 election, and as of December 2014, the board had no members. Therefore, the board lost its quorum before it could enact the change to its board size.

Like the Fallen Leaf Lake district, other special districts have had issues with small electorates.

As of August 2018, Santa Rita Hills still did not have a quorum and was unable to provide services. Because Santa Rita Hills was not conducting business, the Santa Barbara County LAFCO attempted to dissolve it in early 2016. However, more than 50 percent of the landowners protested, which stopped the dissolution. Efforts by the Santa Barbara County Board of Supervisors to appoint members to Santa Rita Hills' board have not been successful. Santa Rita Hills' continued struggle to function calls into question whether the Fallen Leaf Lake district's board would benefit from legislation to reduce its size from five members to three.

Finally, the Legislature considered legislation introduced in 2015 to allow Sierra Cedars to have a smaller board. However, the Legislature did not enact this legislation, which would have allowed the Sierra Cedars board to reduce its members from five to three. While the Legislature was considering this bill, Sierra Cedars had board vacancies and lacked a quorum. Fresno County records show that in January 2016 the county's board of supervisors appointed two members to Sierra Cedars board because of vacancies that put the board below a quorum. They also show that Sierra Cedars had an uncontested board election in 2017 and the board had a vacant seat in early 2019. As of April 2019, Sierra Cedars had 18 registered voters and was considering reorganizing as a landowner-voter district.

LAFCOs could reduce the risks presented by small electorates by considering electorate size when reviewing proposals to create or make changes to special districts.

LAFCOs could reduce the risks presented by small electorates by considering electorate size when reviewing proposals to create or make changes to special districts. Current law related to special districts encourages orderly growth and the efficient provision of services. It requires LAFCOs to consider the likelihood of significant growth in the area, the need for organized services, and the ability of a special district to provide the proposed services. Although current law requires LAFCOs to consider population size and density when reviewing proposed changes to special districts, it does not require them to consider the number of individuals eligible to vote in the district and whether the electorate provides a large enough pool of eligible board members. The executive officer of the El Dorado LAFCO believes that when LAFCOs consider forming or making changes to a special district, they should consider whether that special district has a large enough base of voters and whether enough individuals are eligible to serve on the district board to enable contested elections. By enacting legislation that requires LAFCOs to consider an electorate's size when reviewing proposals to create or change a special district, the State would better ensure that special districts do not encounter governance issues like those faced by the district, Sawyers Bar, Santa Rita Hills, and Sierra Cedars.

Recommendations

Legislature

To ensure that the district has an electorate of sufficient size from which it can elect members to its board, the Legislature should enact legislation to allow landowners and holders of Forest Service permits within the district, along with otherwise domiciled registered voters in the district, to vote on district matters and serve on the board.

To help voters in special districts elect full-size boards of directors and to help special district boards avoid quorum issues and service disruptions, the Legislature should amend state law to require a LAFCO to assess whether an electorate is of sufficient size when it considers creating or modifying a special district.

Cal OES

To better ensure that it reimburses local fire agencies appropriate amounts for responding to incidents, including the provision of strike teams for fighting wildfires, Cal OES should complete implementation of its plan to audit a sample of salary forms and invoices that local fire agencies submit under the fire agreement. It should, by September 15, 2019, complete its negotiations to have the State Controller's Office perform these audits.

To further ensure that local fire agencies receive proper reimbursement for responding to incidents, Cal OES should recommend to the Agreement Committee that it include the following steps in the new fire agreement, anticipated to be effective starting in 2020:

- Require local fire agencies to submit documents showing approval by their governing bodies of the average actual salary rates included on the salary form that the local fire agencies submit to Cal OES.
- Require local fire agencies to submit documentation to support their average actual salary rates.
- Revise the salary form and reimbursement invoice form so that authorized representatives of local fire agencies sign them under penalty of perjury.

To ensure that local fire agencies receive proper reimbursement for responding to incidents for the remainder of the current fire agreement, Cal OES should recommend that as part of the negotiations process, the Agreement Committee implement the preceding recommendation for the remainder of the current agreement.

District

To ensure that the district complies with the reimbursement terms of the fire agreement and does not claim excessive reimbursement amounts, the district's board, by September 15, 2019, should create and implement a policy governing the reimbursement rate the fire chief claims for paid and recruit firefighters who participate on strike team assignments under the fire agreement. Additionally, the district's board should review and approve the annual salary form before the fire chief submits it to Cal OES.

To rectify the excessive reimbursement amounts it received for strike team assignments, the district should take the following actions by December 31, 2019:

- Develop and implement a plan for returning to the paying agencies the excessive reimbursements it received for 2016 through 2018.
- Work with Cal OES to identify the amounts of excess reimbursements the district received for 2013 through 2015 and then develop and implement a plan for returning those amounts to the paying agency.

To ensure that it complies with all applicable labor and wage laws, the district should, by September 15, 2019, seek advice from appropriate experts, such as legal counsel and tax advisors, regarding the proper characterization and compensation of its recruit firefighters. It should develop and implement a policy in this area that meets all applicable requirements.

To improve its financial viability and safeguard its ability to continue providing services to the Fallen Leaf Lake community, the district should take the following actions by December 31, 2019:

- Monitor the financial risks it may face in the future, forecast their impact on its finances and budget, and plan and implement appropriate changes to its budget as necessary throughout the fiscal year.

- Limit the extent to which it relies on volatile revenue sources to balance its budget.
- Develop and implement a budget plan that realistically estimates changes in revenues and expenditures, and identifies approaches to address such changes.
- Develop a five-year forecast of estimated revenues and expenditures and a plan to guide its decisions and actions in the event of fluctuations.

We conducted this audit under the authority vested in the California State Auditor by Government Code 8543 et seq. and according to 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 specified in the Scope and Methodology section of the report. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Respectfully submitted,



ELAINE M. HOWLE, CPA
California State Auditor

Date: July 18, 2019

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Appendix A

Scope and Methodology

The Joint Legislative Audit Committee (Audit Committee) directed the California State Auditor to examine the district. As part of this examination, it asked us to evaluate whether other entities are capable of providing the district’s services, determine whether having other entities take over the district’s services would jeopardize public safety and public access, and assess the district’s financial condition. Table A.1 lists the objectives that the Audit Committee approved and the methods we used to address them.

Table A.1
Audit Objectives and the Methods Used to Address Them

AUDIT OBJECTIVE	METHOD
<p>1 Review and evaluate the laws, rules, and regulations significant to the audit objectives.</p>	<ul style="list-style-type: none"> • Reviewed relevant laws and other documents applicable to the formation, reorganization, dissolution, and governance of special districts. • Reviewed relevant laws and other criteria applicable to voting and voter eligibility. • Reviewed relevant laws and other criteria applicable to employer and employee relationships. • Reviewed the fire agreement and other documents applicable to reimbursements paying agencies made to local fire agencies for strike team assignments.
<p>2 To the extent possible, determine the number of residents, landowners, and Forest Service permit holders in the district.</p>	<ul style="list-style-type: none"> • Reviewed data obtained from the El Dorado County Assessor’s Office to determine the number of parcels, landowners, and Forest Service permit holders within the district. • Reviewed voter registration information for the district obtained from the El Dorado County Elections Department to determine the number of registered voters within the district. • Analyzed maps of the Fallen Leaf Lake area, registered voter information obtained from the El Dorado County Elections Department, property ownership data obtained from the El Dorado County Assessor’s Office, and driver’s license and vehicle registration data obtained from the Department of Motor Vehicles to estimate the number of residents within the district.
<p>3 For fiscal years 2015–16 through 2017–18, review the district’s financial reports and assess its financial condition and ongoing financial viability.</p>	<ul style="list-style-type: none"> • Analyzed the district’s audited financial information and assessed trends in the district’s expenditures, revenues, and fund balances for fiscal years 2015–16, 2016–17, and 2017–18 to determine the district’s financial stability. • Reviewed and analyzed district documents to determine if the district overbilled for personnel hours related to the fire agreement. • Reviewed the district’s revenue and expenditure information from its audited financial reports and budget documents to determine whether the district could sustain itself if it received appropriate strike team reimbursement amounts.

AUDIT OBJECTIVE	METHOD
<p>4 Determine whether the dissolution or reorganization of the district into a different entity would jeopardize public access to Fallen Leaf Lake or public safety at Fallen Leaf Lake and the surrounding area.</p>	<ul style="list-style-type: none"> • Reviewed relevant documents and interviewed staff to identify services the district currently provides. • Reviewed deed documents pertaining to the property to determine requirements for public access to Fallen Leaf Lake, including whether and how those requirements would continue to apply in the event that the district dissolved or the land changed ownership. • Reviewed relevant documents and interviewed individuals to determine the ability of other entities to take over fire protection duties within the district.
<p>5 Identify and assess alternative governmental or nongovernmental entities, if any, that are capable of providing services similar to those that the district currently provides.</p>	<ul style="list-style-type: none"> • Reviewed relevant documents and interviewed individuals to assess the public safety risks of the governance options we identified, if applicable, including the potential for increased response times for fire and medical incidents. • Reviewed relevant documents and interviewed individuals to identify public or private entities that could provide the fire protection and recreation services that the district currently provides.
<p>6 Review and assess any other issues that are significant to the audit.</p>	<ul style="list-style-type: none"> • Reviewed the district board’s meeting minutes, the board of supervisors’ meeting minutes, and other relevant documents to determine the number of contested and uncontested district elections and the extent of district board vacancies since 2010. • Identified four existing special districts that have a small number of residents or that have experienced recurring vacancies on their boards of directors. For each district, we determined how they either addressed or plan to address their small electorate size or board member vacancies. • Interviewed the district’s fire chief and reviewed district documents concerning the resident recruit firefighters to evaluate their employment status.

Source: Analysis of Audit Committee’s audit request number 2018-133, and information and documentation identified in the column titled Method.

Assessment of Data Reliability

In performing this audit, we relied on electronic data files that we obtained from El Dorado County, the Secretary of State’s Office, and the Department of Motor Vehicles. The U.S. Government Accountability Office, whose standards we are statutorily obligated to follow, requires us to assess the sufficiency and appropriateness of computer-processed information we use to support our findings, conclusions, or recommendations. Table A.2 describes the analyses we conducted using data from the information systems we used, our methods for testing them, and the results of our assessments.

Table A.2
Methods Used to Assess Data Reliability

DATA SOURCE	PURPOSE	METHOD AND RESULT	CONCLUSION
El Dorado County Elections Department Election Interface Management System (EIMS) January 2019	To determine the number of registered voters in the district and the number of registered voters in the district who included mailing addresses outside of the South Lake Tahoe area as part of their voter registration as of January 2019.	<ul style="list-style-type: none"> • We performed dataset verification procedures and conducted electronic testing of key data elements. We did not identify any significant issues. • Because EIMS is a partially paperless system, we did not perform completeness or accuracy testing. Furthermore, we did not perform a review of the system controls over these data because of the significant resources required to conduct such an analysis. To gain some assurance of the data's reliability, we compared key data elements from EIMS to other databases and identified no exceptions. 	Undetermined reliability for the purposes of this audit. Although this determination may affect the precision of the numbers we present, there is sufficient evidence in total to support our findings, conclusions, and recommendations.
El Dorado County Assessor's Office Megabyte Property Tax System (MPTS) January 2019	To determine for the district the number of parcels, landowners, and holders of Forest Service permits.	<ul style="list-style-type: none"> • We performed dataset verification procedures and conducted electronic testing of key data elements. We did not identify any significant issues. • Because MPTS is a partially paperless system, we did not perform completeness and accuracy testing. Furthermore, we did not perform a review of the system controls over these data because of the significant resources required to conduct such an analysis. To gain some assurance of the data's reliability, we compared certain MPTS data with another database and identified no exceptions. 	Undetermined reliability for the purposes of this audit. Although this determination may affect the precision of the numbers we present, there is sufficient evidence in total to support our findings, conclusions, and recommendations.
Secretary of State's Office California Voter Registration System (VoteCal) April 2019	To confirm the number of active voters in the district and examine the registration histories of those voters.	We did not perform any assessment of these data because the supporting documentation is maintained among California's 58 counties, making accuracy and completeness testing impractical.	Undetermined reliability for the purposes of this audit. Although this determination may affect the precision of the numbers we present, there is sufficient evidence in total to support our findings, conclusions, and recommendations.
Department of Motor Vehicles (DMV) Driver's License Database and Vehicle/Vessel Registration Database March 2019	To determine the number of individuals holding driver's licenses, identification cards, and vehicle registrations listing an address within the district.	<ul style="list-style-type: none"> • We performed dataset verification and electronic testing of key data elements from DMV's dataset; we identified no exceptions. • Because the dataset is partially paperless, we did not perform completeness or accuracy testing. Furthermore, we did not conduct a review of the system controls because of the significant resources required to conduct such an analysis. To gain some assurance of the data's reliability, we compared key elements from DMV's dataset to other databases and identified no exceptions. 	Undetermined reliability for the purposes of this audit. Although this determination may affect the precision of the numbers we present, there is sufficient evidence in total to support our findings, conclusions, and recommendations.

Source: Analysis of data and documents from, and interviews with, El Dorado County, the Secretary of State's Office, and the DMV.

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Appendix B

Although Other Options Could Also Address the District's Governance Challenge, They Include Additional Risks and Hurdles

As we discuss in the Audit Results, one option to address the governance challenge the district faces in ensuring it has an adequate number of board members would be for the Legislature to expand the size of its electorate. In the absence of state action to expand the electorate, local actions could implement one of two other options—consolidating the district with another special district or dissolving the district and having different entities provide the services. Both of these options could potentially resolve the district's governance challenge; however, given the risks and hurdles inherent in each, implementing them might not improve the district's situation. Having other entities provide the services would mitigate the risk of the service disruptions that would occur if the district's board lost its quorum and could no longer conduct the district's business. However, the continued provision of services following a district consolidation or dissolution would depend on multiple stakeholder groups agreeing on the outcome. Table 2 on page 32 outlines the actions these stakeholder groups would need to take.

Consolidating the district with another special district could either create a single new successor special district or result in one of the districts being designated as the successor special district. Given that the Lake Valley Fire Protection District (Lake Valley) surrounds much of the district and there are no other adjoining fire protection districts or nearby community services districts, Lake Valley is a likely candidate for consolidation with the district. However, to consolidate with Lake Valley and create a successor fire protection district, the district's board would have to give up its authority to provide park and recreation services. State law requires that at the time of consolidation, the new successor special district must be authorized to deliver all the services previously provided by both consolidating special districts. Because state law authorizes fire protection districts to provide only services related to the protection of lives and property, the district must also be authorized to provide only those services before it can consolidate with another special district, such as Lake Valley, to form a successor fire protection district. The district could identify a different entity to provide park and recreation services if it chose to consolidate with Lake Valley. Alternatively, it could keep all of its current powers and consolidate with another special district to form a successor community services district that would provide both fire protection and park and recreation services.

Further, for any type of consolidation to occur, stakeholders would need to take a number of steps. First, a proposal would need to be submitted to the El Dorado LAFCO either by both district boards or the county board of supervisors, by a petition signed by not less than 5 percent of the voters in each district, or by the LAFCO itself if the proposal is consistent with a prior LAFCO recommendation or conclusion. The LAFCO can either disapprove or approve the proposal; if it approves the proposal, it then must hold a hearing to conduct protest proceedings. A key hurdle to a consolidation is that voters of either special district can stop the change if 50 percent or more of them protest it in writing. Additionally, if 25 percent or more of the voters or landowners in either special district protest, an election must be held, during which the voters of each district can either approve or reject the change. If fewer than 25 percent of voters or landowners protest, LAFCO can order the consolidation.

If the district gives up providing park and recreation services so that it can consolidate with another special district to form a fire protection district, the park and recreation services could continue under a different owner; however, the district's current level of operations would not necessarily endure. Although the property's deed covenants require that the owners of the land maintain public access to the lake, they do not require that future owners maintain or operate the store, the marina, or restroom facilities, which the district owns. However, the district's financial reports for fiscal years 2015–16 through 2017–18 show that its park and recreation services have been financially self-sufficient, so a successor entity may be interested in maintaining a similar level of services.

In addition to the hurdles to initiate and implement consolidation, this option increases the risk of higher costs to Fallen Leaf Lake landowners and permit holders and lower levels of services to the Fallen Leaf Lake community. For example, the district's fire department currently uses many unpaid recruit firefighters, in addition to some volunteer firefighters and paid seasonal staff. As a result, the district has lower personnel costs than if it employed the same number of paid, full-time staff. However, Lake Valley does not use volunteer firefighters, according to its fire chief. If the successor district after consolidation were to use only paid personnel and keep service levels the same, the costs for firefighting services would likely increase, which in turn could mean increases to the fire special taxes assessed to property owners in the district's and Lake Valley's jurisdictions. Alternatively, the successor district might be able to avoid significant increases in personnel costs either by using volunteers or by not staffing the Fallen Leaf Lake firestation to the same extent that the district does. This latter approach would likely result in a lower level of fire protection services to the district's community, leading to slower response times than the district currently provides. If the community's fire

protection service levels decrease, it could result in the loss of fire insurance coverage, lower levels of fire insurance coverage, or higher fire insurance costs for property at Fallen Leaf Lake.

Alternatively, dissolving the district would terminate its existence. El Dorado County would then control the district's funds and take on its powers and duties for the sole purpose of winding up its affairs, unless the LAFCO required another district to instead take that role. The requirements for dissolution are similar to those for consolidation, with key differences being that a petition to propose dissolution must be signed by not less than 10 percent of the district's voters or landowners and that a dissolution involves stakeholders only within the district rather than within multiple special districts. Additionally, if the district board—rather than community members or the LAFCO—proposes dissolution that is consistent with a prior LAFCO study or determination, the protest provision would not apply, as Table 2 shows.

As the successor, El Dorado County would not be required to continue the services the district provides, and if neither the county nor another entity were to implement replacement services, the Fallen Leaf Lake community would likely receive diminished emergency services. The land within the district comprises areas in which the State—through CAL FIRE—is responsible for wildland fire protection and areas in which federal fire agencies are responsible for wildland fire protection. However, these entities have only limited responsibility for structure fire suppression. In that situation, the costs for fire insurance for property at Fallen Leaf Lake could increase or the ability to obtain fire insurance could decline. Fortunately, Fallen Leaf Lake is within an area that receives ambulance and emergency medical services through a joint powers authority. However, if the district were to dissolve, the remaining emergency medical services providers would be located outside of Fallen Leaf Lake, likely resulting in a slower response time than the district can currently provide.

The LAFCO has authority to require El Dorado County to continue the district's services if it dissolves, although the LAFCO's executive officer explained that LAFCO cannot reasonably impose such an obligation unless extensive discussions occur and the county agrees to provide the services. The county could continue the services either directly or by establishing a zone within a county service area. A county service area is a special district governed by the county board of supervisors that can provide any service that the county is authorized to provide. When the county board of supervisors determines that it is in the public interest to raise additional revenues within specific areas of a county service area or to provide such areas with different authorized services, different levels of service, or different authorized facilities, it may form

one or more zones. However, implementing a zone to provide the services that the district currently provides would require several actions. These steps include the county's requesting and the LAFCO's authorizing fire services within the county service area that already encompasses the district's boundaries. In addition, the county's board of supervisors or Fallen Leaf Lake's registered voters would need to propose the creation of a zone and identify a funding method within the county service area. Moreover, a majority of voters could stop the zone's formation by protesting it. The voters may be averse to approving this arrangement if they prefer more localized control, as exists in the current structure under which the local district board controls the local assessment. The establishment of a zone would give the county board of supervisors some control over the local assessment.

Further, for full services to continue after the district's dissolution, several entities would need to agree to become involved, potentially including El Dorado County, CAL FIRE, and others. If the county does assume responsibility for services after the dissolution, it would need to contract with another entity, such as a nearby fire protection district or CAL FIRE, to provide fire protection and with a vendor to provide park and recreation services. These entities may not provide the level of service that the district currently provides. Additionally, CAL FIRE uses an extensive process to evaluate whether it will enter into agreements for services, and it may decline to approve such an agreement. A failure to create a contract with a fire service provider could result in diminished protection at Fallen Leaf Lake, since the state and federal fire protection responsibilities do not include structure fires, as we previously describe.

A final option is that the district could give up its fire protection authority and then allow its territory to be annexed into a nearby fire protection district, such as Lake Valley; the district would continue and retain its park and recreation authority. The executive officer of the El Dorado LAFCO noted that with fewer responsibilities, the district could continue to fulfill its duties related to park and recreation services even with a board with vacant seats. However, this option would not resolve the governance problem because the district would likely continue to have a small electorate, so the risk of the board being unable to conduct business would remain high.

GAVIN NEWSOM
GOVERNOR

MARK S. GHILARDUCCI
DIRECTOR



June 25, 2019

Ms. Elaine M. Howle, CPA*
California State Auditor
621 Capitol Mall, Suite 1200
Sacramento, CA 95814

Dear Ms. Howle:

The California Governor's Office of Emergency Services (Cal OES) received the California State Auditor's (CSA) Draft Report regarding an audit of Fallen Leaf Lake Community Services District (Fallen Leaf), on June 18, 2019. Cal OES appreciates the opportunity to provide a response to CSA's draft report.

Methodology

During the audit, Cal OES observed two possible limitations to CSA's methodology that may impact our response. ①

First, according to CSA, Cal OES was not originally within the scope of this audit. During the course of CSA's original audit of Fallen Leaf, Cal OES was included after CSA inquired into certain topics related to Fallen Leaf's participation in the Fire and Rescue Mutual Aid System and the California Fire Assistance Agreement (CFAA). Fallen Leaf is just one of more than one thousand local entities that participate in the CFAA. It is important to note that CSA's recommendations were made in the context of the review of Fallen Leaf, as opposed to all, or a larger sample, of the entities that comprise the CFAA. ① ②

Second, CSA denied Cal OES's request for additional time to address the content of this report. Cal OES is concerned that this constrained timeline did not afford adequate time to respond. ① ③

Nevertheless, Cal OES intends to address CSA's recommendations and responds to each recommendation as follows:



3650 SCHRIEVER AVENUE, MATHER, CA 95655
(916) 845-8506 TELEPHONE (916) 845-8511 FAX

* California State Auditor's comments begin on page 53.

Elaine Howle
June 25, 2019
Page 2 of 3

CSA Recommendation

To better ensure that it reimburses local fire agencies appropriate amounts for responding to incidents, including the provision of strike teams for fighting wildfires, Cal OES should complete implementation of its plan to audit a sample of salary forms and invoices that local fire agencies submit under the fire agreement. It should complete its negotiations with the State Controller's Office (SCO) for it to perform these audits by September 15, 2019.

Cal OES Response

Cal OES is currently in the process of contracting with SCO to conduct audits of submitted salary surveys and invoices. Cal OES hopes to have an inter-agency agreement with SCO by September 2019.

CSA Recommendation

To further ensure that local fire agencies receive proper reimbursement for responding to incidents, Cal OES should recommend to the CFAA Committee that it include the following steps in the new fire agreement, anticipated to be effective starting in 2020:

- Require local fire agencies to submit documents showing approval by their governing body of the average actual salary rates included on the salary form.
- Require local fire agencies to submit documentation to support their average actual salary rates.
- Revise the salary form and reimbursement invoice form so that authorized representatives of local fire agencies sign them under penalty of perjury.

Cal OES Response

Cal OES will work with the CFAA Committee members during their next CFAA negotiations meeting to address the following:

- Require local fire agencies to submit supporting documentation showing that their governing body approved their submitted average actual rate forms;
- Require local fire agencies to submit documentation to Cal OES supporting their average actual salary rates; and
- Revise the salary survey and reimbursement invoice forms to show that the authorized representatives of local fire agencies sign them under penalty of perjury.

Elaine Howle
June 25, 2019
Page 3 of 3

Cal OES appreciates the assistance and guidance offered by CSA during their audit. If you have additional questions or concerns, please contact Ralph Zavala, Cal OES Internal Audits Office Chief, at (916) 845-8437.

Sincerely,



MARK S. GHILARDUCCI
Director

cc: Mark Ghilarducci, Director
Grace Koch, Chief Deputy Director
Timothy Perry, Chief of Staff
Brian Marshall, State Fire and Rescue Chief
Lori Lopez, Senior Emergency Services Coordinator, Fire and Rescue
Ralph Zavala, Chief, Internal Audits Office

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Comments

CALIFORNIA STATE AUDITOR'S COMMENTS ON THE RESPONSE FROM THE CALIFORNIA GOVERNOR'S OFFICE OF EMERGENCY SERVICES

To provide clarity and perspective, we are commenting on the response to our audit from Cal OES' director. The numbers below correspond to the numbers we have placed in the margin of the director's response.

We disagree that including Cal OES in the audit and affording it the same length of time to review the draft report as we do other auditees on other audits is a limitation in our methodology or should have affected Cal OES's response. Our work related to assessing the district's financial condition and ongoing financial viability included determining whether the district overbilled reimbursing agencies for personnel hours related to the fire agreement. We included Cal OES in our audit after we identified evidence of the district's overbilling because of the key role Cal OES plays in the fire agreement's reimbursement process. At that point, we took the same actions that we would take for any audit: we issued Cal OES an engagement letter; we held an entrance conference with Cal OES to explain the audit; we obtained and reviewed documentary evidence of its policies and the actions it took related to reimbursing fire agencies for their staff on strike teams; we interviewed Cal OES personnel to gain perspective; we held an exit conference to share our proposed findings, conclusions, and recommendations; and we provided Cal OES a copy of our draft report for it to review and provide comments.

The director's inference that we based our Cal OES recommendations on a review of a single local fire agency among thousands is wrong. We based our findings, conclusions, and recommendations related to Cal OES on sufficient, appropriate evidence obtained from a variety of sources. Our report specifically mentions this evidence, which we believe clearly supports our results. For instance, on pages 24 through 26, we mention three weaknesses in the fire agreement's reimbursement process, including the fact that Cal OES no longer audits salary forms and reimbursement claims, a control we recommended in an audit we issued in 2012; the fire agreement does not require local fire agencies to submit documentation to support the enhanced salary rates they submit to Cal OES; and the fire agreement does not require local fire agency representatives to sign the salary forms or reimbursement invoices under penalty of perjury. Furthermore, as we point out on page 26, Cal OES accepts as factual the enhanced rates that local fire agencies submit on their salary forms, in part, based on those signatures. These weaknesses, in conjunction

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with evidence related directly to the district, enabled us to arrive at our findings and conclusions. Therefore, we stand by our recommendations to Cal OES.

- ③ Cal OES's complaint about a "constrained timeline" for providing a response is misplaced. We gave Cal OES the same five-business-day time period to provide a written response to our audit that we have given to all auditees for the last several decades. Furthermore, when we held the exit conference on June 4, 2019, or three weeks before its response was due, we informed Cal OES of all the findings related to it in our report, shared a preliminary draft of the portion of the report that pertained to it, and advised it to start preparing its response at that time.



Post Office Box 9415
South Lake Tahoe, CA 96158

June 24, 2019

Ms. Elaine Howle*
State Auditor
Office of the State Auditor
621 Capitol Mall, Suite 1200
Sacramento, CA 95814

Re: Draft Auditor Report/District Response

Dear Ms. Howle,

The Fallen Leaf Lake Community Service District governance team, which consists of the Board of Trustees and the Fire Chief, have reviewed your draft report. The District takes this report very seriously, and thanks your office for the opportunity to review the report and respond to it.

As you may be aware, the District provides valuable fire-fighting and emergency resources to the South Lake Tahoe community and to the State. Our District is committed to improving internal practices to ensure the District can serve California long into the future. We thank your staff for their time and effort in performing this review to help strengthen our operations.

If you have any questions or require additional information, please have your staff contact Gary Gerren, Fire Chief, at (530) 544-3300. Attached are our comments and response to the recommendations and findings contained in your draft.

Sincerely,

FALLEN LEAF LAKE
COMMUNITY SERVICES DISTRICT

A handwritten signature in black ink, appearing to read "Mike Cathcart", is written over a horizontal line.

Mike Cathcart (Robert J (Mike) Cathcart)
Board President

Ms. Elaine Howle
State Auditor
Office of the State Auditor

June 24, 2019
Page 2

DISTRICT RESPONSE TO DRAFT STATE AUDIT REPORT

A. To begin, the District would like to comment on the Report's conclusion and recommendation in favor of the expansion of the District's electorate through legislation. The District strongly agrees with that conclusion and recommendation, believing as it does that the Report's conclusion and recommendation on this topic is the best approach to solving the voting-rights problem that has brought the District before the Legislature. The Report's conclusion and recommendation is in line with and validates the efforts by the District to accomplish that goal, and the District intends to continue its pursuit of that goal through AB 1053, which is the successor bill to SB 561. Compared with the other "Local Solutions" detailed within the report, the Legislative option is the only reasonable approach to ensuring an independent, represented electorate.

B. The District also provides the following responsive comments to the audit's factual findings:

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1) In reference to Page 16 that local agencies must submit the number of hours worked on an incident in an emergency record: The District responds that the local agency does not submit the hours worked during the emergency activity, as those hours are maintained by the strike team leader and accounted for on the F42 form. At the end of the emergency activity, the strike-team leader also records (on the F42 form) the estimated arrival time for the emergency unit back at their home base. These total hours are collected at the incident, and OES files the paperwork and presents the local agency with an invoice.

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2) a. In reference to Page 17 that the District did not pay its 16 recruits as part of regular duties: The District informed the audit team that recruit duties were performed by the recruits as part of their training program. The District has treated the recruits, consistently with labor law, as interns that were performing and completing training that is provided by the District in exchange for necessary experience in order to complete their training.

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b. In addition, with respect to sending the recruits out on strike teams, the Fire Chief did not use an enhanced rate as stated in the audit. The salary schedule was filled out based upon rates the Fire Chief established for strike teams. The Board approved the strike-team operations as part of its normal District budgets, including the anticipated income from the strike team activities. The fire department's routine operations were not considered as part of this process.

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3) With respect to Page 18, which references "rather than using the base rate for personnel." The District responds that the Fire Chief did not claim enhanced rates for strike teams during calendar years 2016-2018. The Fire Chief used a "strike-team only" salary survey for compensation and direct costs for firefighters, engineers and captains.

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Ms. Elaine Howle
State Auditor
Office of the State Auditor

June 24, 2019
Page 3

The Fire Chief is able to assign firefighting personnel, both paid and interns, to a strike team. The interns are compensated as a firefighter while performing during emergency, strike-team incidents. The interns (recruits) were paid while performing duties as firefighters while assigned to the Fallen Leaf Lake F. D. during operations requested by the State of California. The Fire Chief adhered to the terms of the OES MOU as he reasonably understood them. (7)

4) With respect to the reference on Page 20 that the Fire Chief also stated that he had submitted an enhanced pay rate to offset the low wages: The District responds that the Fire Chief stated that he had submitted a strike-team salary-survey rate which was higher than the lower wage paid during routine operations. (4)

5) With respect to the reference on Page 21 that the Fire Chief “stated that the District's pay scales are lower than other fire districts nearby, and that he believes it is uncommon for firefighters to respond to strike team incidents for low pay rates unless the firefighters are volunteers,” the District responds as follows: The Fire Chief’s understanding is that volunteers receive the default rate. The Fire Chief’s justification for the salary survey was based upon his understanding and previous salary surveys that were submitted and approved by Cal OES. The Fire Chief has not circumvented the board’s role of governing the District, as he explained to the auditors several times. The Fire Chief provided evidence to the auditors (in the form of Board meeting minutes) that the District has approved the use of strike teams as part of the budget process, which is a normal procedure for the Board. (8)
(9)
(5)

6) With respect to the reference on Page 22 that “based on the authorization, the fire chief should not have submitted salary rates for strike team personnel without approval from the district’s board,” the District responds that the Fire Chief did submit the salary rates for strike team personnel with approval based on the board’s normal operation of budget approval. (5)

7) With respect to the first paragraph on Page 23, the District responds as follows: Based on the Fire Chief’s understanding of the reimbursement process, there were no willful or intentionally improper submissions of reimbursement funding. (10)

8) With respect to references on Pages 23-25 that the District mischaracterized its employment relationship with its recruits: As stated previously several times to the auditors, there was no willful misclassification of an employee as an independent contractor. The classification as 1099 employees was based on expert opinion from the District’s and Chief’s auditor and the District’s bookkeeper. The District understands that the State auditors have reached a different legal conclusion and will respond to their recommendations as stated below. (10)

Ms. Elaine Howle
State Auditor
Office of the State Auditor

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Page 4

District's Responses to the Report's Recommendations:

The District responds to each recommendation as described below:

- **To ensure that the District complies with the reimbursement terms of the fire agreement and does not claim excessive reimbursement amounts, the district's board, by September 15, 2019, should create and implement a policy governing the reimbursement rate the fire chief claims for paid and recruit firefighters who participate on strike team assignments under the fire agreement. Additionally, the district's board should review and approve the annual salary form before the fire chief submits it to Cal OES.**

District Response: The District agrees to create and implement a policy to comply with the reimbursement terms of the Cal OES fire agreement. The District's board will also review and approve the annual survey form prior to submission to Cal OES.

- **To rectify the excessive reimbursement amounts it received for strike team assignments, the district should take the following actions by December 31, 2019:**

1) Develop and implement a plan for returning to the paying agency the excessive reimbursements it received for calendar years 2016 through 2018.

District's Response: The District will develop and implement a plan to identify and return to the paying agency any excessive reimbursements for calendar years 2016-2018.

2) Work with Cal OES to identify the amounts of excess reimbursements the District received for calendar years 2013 through 2015 and then develop and implement a plan for returning those amounts to the paying agency.

District's Response: The District will work with OES to determine overpayment, if any, for the calendar years 2013-2015 and, if so, will develop and implement a plan for returning any excess monies received.

- **To ensure that it complies with all applicable labor and wage laws, the District should, by September 15, 2019, seek advice from appropriate experts, such as legal counsel and tax advisors, regarding the proper characterization and compensation of its recruit firefighters, and develop and implement a policy in this area that meets all applicable requirements.**

District's Response: The District agrees to seek such advice and to develop and implement an appropriate policy meeting the applicable requirements.

- **To improve its financial viability and safeguard its ability to continue providing services to the Fallen Leaf Lake community, the district should take the following actions by**

Ms. Elaine Howle
State Auditor
Office of the State Auditor

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Page 5

December 31, 2019:

- **Monitor the status of the financial risks it may face in the future, forecast their impact on the district's finances and budget, and plan and implement appropriate changes to its budget as necessary throughout the fiscal year.**

District's Response: The District and its auditors believe that the District is financially viable. The District will strengthen its financial viability by incorporating the recommendation as appropriate.

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- **Limit the extent to which it relies on volatile revenue sources to balance its budget.**

District's Response: The District believes it makes financially sound choices. The District will strengthen its finances by taking the necessary steps to review and assess, on an annual basis, any revenue sources that it and its auditors may reasonably conclude are "volatile."

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- **Develop and implement a budget plan that realistically estimates changes in revenues and expenditures, as well as identifies approaches to address such changes.**

District's Response: The District believes it has been realistic in estimating changes in revenues and expenditures. The District will strengthen its budget plan by annually reviewing and assessing any potential changes in revenues and expenditures.

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- **Develop a five-year forecast of estimated revenues and expenditures and a plan to guide its decisions and actions in the event of fluctuations.**

District's Response: The District agrees with the recommendation.

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COMMENTS

CALIFORNIA STATE AUDITOR'S COMMENTS ON THE RESPONSE FROM THE FALLEN LEAF LAKE COMMUNITY SERVICES DISTRICT

To provide clarity and perspective, we are commenting on the response to our audit from the president of the district's board of directors (board president). The numbers below correspond to the numbers we have placed in the margin of the board president's response.

While preparing our draft audit report for publication, page numbers shifted. Therefore, the page numbers that the board president mentions in his response do not correspond to the page numbers in our final report.

Although accurate, the board president's comments fail to convey the extent of the district's role in providing information concerning reimbursements for its staff's efforts on strike teams. As we note in the text box on page 12, the local fire agency notes the start and stop dates and times for its staff on the emergency activity record. Cal OES uses this information to determine the number of hours the fire agency's staff worked on an incident, calculates the reimbursement amount, and creates and submits an invoice—which includes the number of hours and the reimbursement amount—for the local fire agency. For the district, the fire chief signed and returned these invoices to Cal OES, certifying them as correct to the best of his knowledge and belief. We revised the text on page 13 to clarify that a local fire agency must submit information regarding the length of time its personnel work on an incident.

We do not agree that it is clear that the district has treated its recruits consistently with labor laws. On pages 20 through 22, we describe our concerns regarding the district's compliance with labor laws, including that recruits can earn more than the allowed nominal fee while on strike team assignments.

Contrary to the board president's comment, the fire chief did, in fact, submit enhanced salary rates to Cal OES. As we describe in the text box on page 12 and further on page 13 of our report, enhanced salary rates are rates that are greater than the default base salary rate.

The board president's comment is misleading. As we state on page 19, the fire chief could not provide evidence that the district's board approved the pay rates he submitted to Cal OES. In reaching this conclusion, we examined budget documents and board meeting minutes, neither of which contained sufficient detail to demonstrate

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that the board knew of or approved the enhanced salary rates the fire chief claimed for strike team personnel. Furthermore, although the district's budgets for fiscal years 2017–18 and 2018–19 identified the revenue amounts the district expected to obtain from strike team reimbursements, they do not identify the enhanced salary rates the fire chief submitted to Cal OES for reimbursement. Finally, even after we shared our statement with the fire chief at the exit conference, he failed to provide us with evidence that would support the board president's statement. To clarify how we reached our conclusion on this issue, we revised the text on page 19.

- ⑥ The fire chief's use of a "strike-team only" salary survey was improper. As we state on page 16 of our report, the fire agreement states that it will not reimburse local fire agencies for enhanced salary rates that exceed the rates that the agencies themselves pay their personnel. We also state on page 15 that the fire agreement's default reimbursement rate is the base rate and that we expected the fire chief to include the base rate on the salary form.
- ⑦ As we indicate in our report on page 15, the fire chief did not follow Cal OES's instructions for submitting salary information to Cal OES and the district improperly profited as a result. As we state on page 16 of our report, we believe the fire agreement and its instructions are clear. If the fire chief found the fire agreement and Cal OES's instructions for completing the salary form confusing, he should have contacted Cal OES for clarification. We stand by our conclusion.
- ⑧ Volunteers are not the only strike team personnel who can receive the base rate: any personnel normally paid less than the base rate can also receive it. Because the fire agreement's default reimbursement rate is the base rate and because the district's personnel who participate on strike teams are either unpaid or normally earn less than the base rate, the base rate would be appropriate for the district's firefighters and recruits, as we state on page 15.
- ⑨ Submitting inflated salary information in salary surveys in one year without repercussions does not justify the district continuing to do so. As we state on page 26 of our report, Cal OES told us that it accepts the enhanced salary rates that local fire agencies include on the salary forms in part because they are signed to the best of the signer's knowledge and belief.
- ⑩ Nowhere in our report do we assert that the fire chief willfully, or intentionally, submitted incorrect reimbursement forms or willfully misclassified employees. However, the evidence we obtained shows clearly that the fire chief knowingly submitted enhanced salary rates to Cal OES for typically unpaid recruits, knowingly did not

pay his recruits the full salary rates he claimed for strike team reimbursements, and knowingly did not pay his recruits overtime for their strike team work.

As we explain on pages 22 through 24 of our report, the district's ongoing financial viability may be in jeopardy. Thus, our recommendations in this area are not only prudent but necessary.

We look forward to reviewing the updates on the district's progress in implementing this recommendation at 60 days, six months, and one year following the issue date of this report.

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LOCAL AGENCY FORMATION COMMISSION
550 Main Street, Suite E. Placerville, CA 95667
(530) 295-2707 · lafco@edlafco.us · www.edlafco.us

June 19, 2019

Elaine Howle, CPA*
California State Auditor
621 Capitol Mall, Suite 120
Sacramento, CA 95814

SUBJECT: Fallen Leaf Lake Community Services District, Report 2018-133 (dated July 18, 2019)

Dear Ms. Howle,

Thank you for the opportunity to review and comment on the draft report on Fallen Leaf Lake Community Services District (Fallen Leaf Lake CSD or FLL). I understand this agency's review was a courtesy and that the draft report must be kept confidential per Government Code Sections 8545(b) and 8545.1. The final draft of the report will be published next month and I may not disclose the draft report's content before that time. I also understand that the report does not contain any recommendations to this Commission.

While a written response from LAFCO was not expected, the following comments are respectfully submitted after the review of the draft report.

Page 45 of 61: *"If the district gives up its park and recreation services so it can consolidate to form a fire protection district, the park and recreation services could continue, but the current level of operations would not necessarily endure" (emphasis added).* ①

Because LAFCO did not have access to the full report, it is possible that the redacted section of this paragraph contains the necessary information to support this statement. As a result, this comment is limited to LAFCO's experience independent of the research and analysis that was performed in the draft report. Setting aside that no one, to LAFCO's knowledge, has recommended the divestiture of FLL's park and recreation services, the premise is imperfect based on three premises. First, FLL outsources parks and recreation services. A private vendor runs and operates the marina and its store. FLL has no dedicated staff or programs that it runs independent of this vendor. Second, the records from prior years indicates that the contract with the current vendor makes the parks and recreation services side of FLL self-sustaining for the district. Third, the fire service operations have no impact on the preceding two factors given that the revenue streams for these services are kept separate and there is no shared staff between these two ② ③

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COMMISSIONERS

Public Member: Michael Powell • Alternate Public Member: Dyana Anderly
City Members: Mark Acuna, Cody Bass • Alternate City Member: Kara Taylor
County Members: Shiva Frentzen, Brian Veerkamp • Alternate County Member: John Hidahl
Special District Members: Tim Palmer, Vacant • Alternate Special District Member: Holly Morrison

STAFF

José C. Henríquez, Executive Officer • Erica Sanchez, Assistant Executive Officer
Riley Nork, Assistant Policy Analyst • Denise Tebaldi, Administrative Assistant • Kara K. Ueda, Commission Counsel

* California State Auditor's comments begin on page 69.

*State Auditor Report on Fallen
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Page 2 of 3*

functions (it is understood that the fire chief also acts as general manager to the district; however, that role is for the district as a whole). As a result, there is no evidence known to LAFCO that supports the contention that “the current level of operations would not necessarily endure” if FLL ceases to exist, if parks and recreation services are provided by another entity or if FLL continues to exist as a district that only provides parks and recreation services.

Page 46 of 61: *“Alternatively, the successor district may be able to avoid significant increases in personnel costs either by using volunteers or by not staffing the Fallen Leaf Lake station to the same extent the district does. This approach would likely result in a lower level of fire protection services to the Fallen Leaf Lake community, such as slower response times than the district currently provides. These potentially reduced fire protection service levels could also result in the loss of, or lower levels of, fire insurance coverage or higher fire insurance costs for property at Fallen Leaf Lake.”*

- ④ In LAFCO’s estimation, this conclusion is only partially accurate. The paragraph implies that only by keeping the status quo – an independent FLL providing fire suppression services – would service levels and costs remain at current levels. It is true that Fallen Leaf Lake CSD controls costs by using volunteer firefighters. It is true that costs would increase if a successor entity taking over fire suppression from FLL chooses to staff the Fallen Leaf Lake Station 9, fully or partially, with paid personnel. It is also true that residents would experience lower levels of services or longer response times if the successor entity chooses not to staff Station 9. However, if the successor entity chooses to staff Station 9 with volunteers at the same number of firefighters that FLL currently has, then the premise for the last two cases no longer stands.
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The hope is that the following issues are addressed in the redacted portions of the report. It should be also noted that fire insurance carriers are seriously reconsidering whether to extend coverage in the wildland-urban interface. But there should be a discussion about how “fire insurance coverage or higher fire insurance costs” would be impacted by services continuing to be provided by a financially-distressed district. Equally important is a discussion on the costs of constant turnover. There is very little retention in volunteers year-over-year during fire/tourist high season when Station 9 is staffed. Fallen Leaf Lake CSD has to recruit volunteer firefighters annually in order to maintain operations.

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- ⑥ Lastly, not all of the information that the State Auditor had in reaching its recommendation that the best option is to expand FLL’s electorate was available for review in the draft report. As a result, this agency will not question this recommendation. However, there should be an understanding that there will be consequences should the Legislature adhere to this recommendation for two reasons. Notwithstanding the issue of who would be tasked with running District elections, creating a hybrid district (where landowner-voter, registered voter and/or a third class of voter, a permit-holder voter, may be enfranchised) would make future reorganizations problematic under existing State Law. This will be true regardless of who instigates the reorganization, whether it is the FLL Board of Directors, its residents, or another entity. Special legislation may be necessary should a future reorganization involving LAFCO be needed in the future.

*State Auditor Report on Fallen
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Second – with the understanding that it is possible that this was raised in the redacted portions of the report – LAFCO will emphasize again that the governance issue that FLL faces is not just a local oddity. There are multiple counties along the mountains and the coast that have districts with the quandary of serving a substantial number of second and third homeowners (Placer County by itself has 13 districts). The draft report cited at least four other districts with similar traits. This issue needs to have a more comprehensive approach in order to arrive at a solution that ensures equity and the furtherance of goals of the Legislature. Otherwise legislators will continue to grapple with these issues in an ad hoc manner as these districts continue to struggle. This report has the tremendous potential of raising the visibility of this issue so that a dialog can begin with all stakeholders on a workable, permanent solution.

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Please contact me at 530-295-2707 or a jhenriquez@edlafco.us should you have any questions relating to this letter.

Regards,



José C. Henríquez
Executive Officer

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Comments

CALIFORNIA STATE AUDITOR'S COMMENTS ON THE RESPONSE FROM THE EL DORADO LOCAL AGENCY FORMATION COMMISSION

To provide clarity and perspective, we are commenting on the response to our audit from the executive officer of the El Dorado Local Agency Formation Commission (LAFCO). The numbers below correspond to the numbers we have placed in the margin of the executive officer's response.

While preparing our draft audit report for publication, page numbers shifted. Therefore, the page numbers that the executive officer mentions in his response do not correspond to the page numbers in our final report.

The executive officer's comment pertains, in part, to redacted text concerning the district that was in the draft report that we provided to the El Dorado LAFCO: the text was redacted for reasons of confidentiality as required by state law. The Audit Committee directed us to perform this work. As we note on page 41 in the Scope and Methodology for this audit, the Audit Committee asked us to identify and assess alternative governmental or nongovernmental entities that could provide services similar to those that the district provides and determine whether reorganizing the district would jeopardize public access to Fallen Leaf Lake. We also point out on page 9 that one of the two types of services the district provides is park and recreation services.

We draw no connection in the report between our concerns regarding the district's fire protection services and the operation of its park and recreation services. In fact, on pages 45 and 46 we discuss the possible effects if the district gives up park and recreation services in order to consolidate with another district to form a fire protection district. Specifically, we state that although deed covenants for certain land the district owns require the district to maintain public access to the lake, they do not require a future owner to retain other park and recreation services, such as operating the store, marina, or restroom facilities, which the district owns.

While we acknowledge on page 46 that a successor entity may be able to avoid significant increases in personnel costs by using volunteers, this prospect seems unlikely. As we indicate on page 46, the fire chief for Lake Valley—the only adjoining such district, and thus a likely candidate for consolidation—informed us that it does not use volunteer firefighters. We stand by our conclusion.

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- ⑤ The executive officer's comment pertains, in part, to redacted text concerning the district that we did not share with the El Dorado LAFCO. We discuss the district's financial issues on pages 22 through 24 and the potential impact of fire insurance coverage and costs on page 47. Furthermore, because it was not among the audit objectives the Audit Committee approved, we did not assess turnover among the district's firefighting staff.
- ⑥ We do not share the executive officer's concern over possible consequences of a future reorganization of the district if the Legislature chose to enfranchise the district's landowners and permit holders; he does not explain why a future reorganization would be problematic or why special legislation would be necessary as a result of reorganization. Furthermore, according to our legal counsel, stakeholders would not need additional legislation to undertake a reorganization of the district if the Legislature enfranchised landowners and permit holders.
- ⑦ We considered proposing a comprehensive solution for resolving governance issues for existing special districts other than the district to be beyond the scope of this audit. Despite certain similarities these districts may have in common, such as vacation home communities and small electorates, additional attributes may make the solution we propose impractical for these other special districts. We did, however, propose a recommendation to the Legislature to help keep future special districts from encountering governance issues like the ones encountered by the special districts named in our report. Namely, on page 37 we recommend that the Legislature amend state law to require a LAFCO to assess whether an electorate is of sufficient size when it considers creating or modifying a special district.