

CDAA Circuit Prosecutor Project
Annual Report 2008



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*Recipient of the American Bar Association
Award for Distinguished Achievement in
Environmental Law and Policy.*

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Our rural counties remain particularly vulnerable to environmental crime, especially given our limited resources. Circuit prosecutors provide us with the expertise and the resources to meet this enforcement challenge!

- *District Attorney John Poyner*
Colusa County

Circuit prosecutors continue to be essential to meeting the challenges we face in effectively enforcing California's environmental laws in our rural counties.

- *District Attorney Gregg Cohen*
Tehama County

In 2008, the Project opened 50 environmental civil and criminal cases, closed 39 cases, obtained \$6,964,400 in fines, penalties, cost recovery, and additional relief (\$6,000,000 of which came from a single multi-jurisdictional case), and 8 years and 6 month of probation.

In addition, the 2008 Circuit Prosecutor Project provided service to the following counties through direct filings or as a result of a multi-jurisdictional case: Alpine, Amador, Calaveras, Colusa, El Dorado, Glenn, Humboldt, Inyo, Kings, Lake, Mariposa, Mendocino, Merced, Modoc, Mono, Nevada, San Benito, Shasta, Stanislaus, Sutter, Tehama, Tuolumne and Yuba.

Circuit Prosecutor Project

In 1998, there was a serious void in the enforcement of environmental laws in California's rural counties. The California District Attorneys Association's Environmental Circuit Prosecutor Project (the Project) was created to fill that void. In 2003, the Project was codified into the Penal Code at section 14300, *et seq.* The purpose of the Project is to discourage environmental law violations through fair, uniform and effective statewide prevention.

Prior to the Project's formation, rural county District Attorneys were unable to engage in comprehensive environmental enforcement due to a lack of resources. Large numbers of criminal environmental violations under state law involving air and water pollution, illegal solid waste disposal, and fish and wildlife issues went unaddressed. Since its inauguration ten years ago, the Project's mission of assisting rural district attorneys to prosecute environmental crimes and training prosecutors and enforcement cadre has not changed.

The Project initially provided environmental prosecutors to rural counties that lacked the resources to prosecute environmental crime. The rural area once covered by the Project included 32 counties and approximately 81,500 sq. miles – a territory larger than the state of Nebraska!

However, during 2008, due to fewer available resources than in prior years, Circuit Prosecutors were only able to provide services to 22 rural counties. Circuit prosecutors have continued to analyze and prepare cases presented by state and county agencies and prosecute violators under the supervision of the district attorneys who deputize them.

Circuit prosecutors not only investigate and prosecute environmental violations, but provide environmental enforcement training and education through a variety of task forces, special seminars, and case-by-case “hands-on” training. By networking with local communities and agencies across the state, the Project has been instrumental in developing fair, consistent, and uniform enforcement standards throughout California.

Circuit prosecutor cases run the gamut of environmental crime, including water pollution, air pollution, illegal transportation and disposal of hazardous waste, oil spills, illegal tire piles, stream diversions, improper use of pesticides, and underground storage tank violations, among others. Referrals continue to come from local, state, and federal agencies, including the Bureau of Land Management, the Department of Fish and Game, state and regional water quality control boards, county health departments, Cal-EPA, the California Air Resources Board, the Department of Toxic Substances Control, the Department of Forestry, the California Integrated Waste Management Board, county agriculture departments and local environmental task forces.

State of the Circuit Prosecutor Project – Calendar Year 2008

In calendar year 2008, the Project received \$230,672 in FY2007/2008 PC 14300 funds and initially employed three full-time attorneys, Matt Maclear, Danielle Teeters, Ann Carroll and a part-time attorney, William Richmond (District Attorney for Alpine County). In October 2008, Elizabeth Strayer, a former intern joined the ranks of the Circuit Prosecutors. The Project also employed a part-time investigator, Rodney Fong, as well as a paralegal, Lauren Estonilo. Project direction and oversight was provided by the new Assistant Chief Executive Officer of CDAA, Martin Vranicar Jr.

With fewer circuit prosecutors than in 2007 available to cover 32 rural counties, the decision was made to cut back on the support for some of the more remote rural counties to 22 counties with active caseloads. Even with this retrenchment, there was additional stress on the travel budget. Circuit prosecutors were forced to become increasingly more selective regarding the number and types of cases they opened.

The last several years have seen an increase in multi-jurisdictional cases. These cases typically have involved corporate defendants whose environmental violations have impacted numerous counties. These cases have involved the coordination of multi-county investigations as well as the coordination of prosecution efforts to effectuate appropriate case dispositions. However, these cases are both time and resource intensive. Circuit prosecutors have worked closely with the Attorney General’s Office and local environmental prosecutors on several major cases, including the recent case involving a construction company operating diesel equipment without the required air pollution permits. The case was originally prosecuted by the Circuit prosecutor for Mendocino County, who after further investigation, determined that the construction company was engaged in similar conduct in several counties. Ultimately the case was jointly prosecuted by the Attorney General, Ventura County District Attorney and Mendocino County District Attorney as represented by the Circuit Prosecutor Matt Maclear. After several years of litigation, the case was settled for \$6

million of which \$4 million was for penalties and costs, and \$2 million to replace older, high-polluting diesel equipment.

Contracts with the Integrated Waste Management Board and the State Water Resources Control Board were initiated in late 2007. The contracts provided funds to reimburse the Circuit Prosecutor Project for work on cases brought by the respective agencies. While these contracts were limited to specific cases, in 2008, Circuit Prosecutor Ann Carroll provided much litigation support to a major multi-county waste tire case. Unfortunately, no new cases met the criteria for reimbursement under the State Water Resources Control Board contract.

In spite of the above personnel transitions and funding setbacks, the Project continued to be strongly supported by California's rural county District Attorneys. "But for" the Circuit Prosecutor Project there would be little, if any, environmental enforcement in the rural counties. The Project ensured that environmental enforcement, a cornerstone to effective environmental protection, continued in some of the most vulnerable and pristine areas of California. Rural counties continued to see tangible results from its efforts; in particular, increased compliance from companies doing business in rural counties.

Since the Project's inception, Circuit Prosecutors have processed over 3200 civil and criminal cases to date, with over \$40 million in fines, penalties, costs and supplemental environmental projects (SEPs) imposed. Circuit prosecutors have also obtained significant jail time over the past decade for egregious offenders. By every measure, the Project can be called an unqualified success.

Conclusion

The PC 14300 account is vital to the Circuit Prosecutor Project. Initially, the PC 14300 account was seen as a means of providing a stable source of funding to the Projects. However, given the reduced funding amounts provided in 2008, it is essential to begin the process of seeking additional funds. In that regard, discussions were held with Cal-EPA staff and the CDAA Environmental Protection Committee to explore options for a long-term and stable funding source.

The Project, through PC 14300 funding, serve to enhance an appreciation and understanding of our environmental laws, the concern for public health and respect for scientific integrity. The numbers and types of environmental cases handled by Circuit Prosecutors throughout California's 22 rural counties, and the outstanding results obtained, demonstrate the continuing need to maintain the project. The project provides the People of California with an efficient and cost-effective means to accomplish the goal of ensuring environmental compliance through uniform enforcement. Simply put, the Circuit Prosecutor Project is essential for prosecuting environmental crime.

Respectfully submitted,

Martin Vranicar Jr.
Assistant Chief Executive Officer
California District Attorneys Association

John Fentis
Environmental Training Project Director
California District Attorneys Association

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