

*CDAA Circuit Prosecutor Project
Annual Report 2009*



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Award for Distinguished Achievement in
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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 2009, the Environmental and Circuit Prosecutor Project opened 26 environmental civil and criminal cases, closed 38 cases, and obtained \$503,295 in fines, penalties, cost recovery, and additional relief, as well as 20 days jail time, 21 years probation and 64 hours of community service.

In addition, in 2009, the Circuit Prosecutor Project continued to provide service to the following counties through direct filings or as a result of a multi-jurisdictional case: Alpine, Amador, Calaveras, Colusa, 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, the ability to engage in comprehensive environmental enforcement was severely hampered. 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 eleven 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 provided environmental prosecutors to rural counties that lack 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 2009, due to a continuing lack of stable resources, Circuit Prosecutors continued 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 (now the California Department of Resources, Recycling and Recovery), county agriculture departments and local environmental task forces.

State of the Circuit Prosecutor Project – 2009

In calendar year 2009, the Project received a total of \$201,761 from FY2008/2009 and FY2009/2010 funds from the PC 14300 account.

In 2009, the Project employed the following full time attorneys: Ann Carroll, Matt Carr, Jay Cross, Roy Hubert, Matt Maclear, Elisabeth Strayer, Danielle Teeters, and a part-time attorney, William Richmond (District Attorney for Alpine County). The Project also employed a part-time investigator, Rodney Fong, as well as a paralegal, Lauren Estonilo. The project also had the services of several interns during the year.

2009 was also a year of much transition. Jay Cross was loaned to the project from DTSC as a full time Circuit Prosecutor. Ms. Teeters left the project for private practice in April 2009 and was replaced by Mr. Roy Hubert, a senior attorney on staff. Ms. Carroll left to take a position with the State Water Resources Control Board in June 2009. In addition, Will Richmond left the program in July 2009, although he continued to provide services for several months after that to close out his caseload. Ms. Strayer left the project in December 2009 to take a position with Caltrans. However, Matt Carr joined the project as a Circuit Prosecutor in September 2009. As in 2008, project direction and oversight was provided by the Assistant CEO, Martin Vranicar, Jr.

In 2009, the Project continued its participation 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. Circuit prosecutor Matt Maclear worked closely with the Attorney General's Office and local environmental prosecutors on several major cases in 2007 and 2008. As a result of a major multi-jurisdictional settlement in the Home Depot case, the Rural District Attorneys decided to allocate funds to establish a Rural Counties Statewide Circuit Prosecutor position whose assignment was to solely prosecute these types of cases on behalf of the rural counties. Circuit Prosecutor Matt Maclear was selected for this position effective January 1, 2009, based upon his extensive prior experience with these types of cases.

The above personnel transitions, after a relatively stable period in 2008, forced the project to become increasingly more selective regarding the number and types of cases they open and which counties to provide services to. In July 2009, an agreement was reached with Stanislaus County to no longer provide Circuit Prosecutor services. The District Attorney's Office thereafter assigned a Deputy District Attorney to prosecute any future environmental cases.

The contract with the Integrated Waste Management Board was continued in 2009. However, it was unclear whether that contract would be renewed in 2010 with the pending reorganization of the Board. However, the Project continues to need adequate long-term funding to ensure thorough and effective enforcement of environmental laws. In that regard, further discussions were held with Cal-EPA staff and the CDAA Environmental Protection Committee and the Department of Fish and Game to explore options for a long-term and stable funding source.

However, the Project has continued to be strongly supported by rural county District Attorneys. The Project ensures that environmental enforcement, a cornerstone to effective environmental protection, continues in some of the most vulnerable and pristine areas of California. Rural counties continue 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 3300 civil and criminal cases to date, with over \$41 million in fines, penalties, costs and supplemental environmental projects (SEPs) imposed. Circuit prosecutors have also obtained significant jail time over the last 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 to provide supplemental funding to the Project. Today, the PC 14300 account remains a fundamental source of funding; given that fewer and fewer settlements are being provided the Project.

Over the past decade, project revenues have come from prior case settlements, contracts with agencies such as the California Integrated Waste Management Board for waste tire enforcement and disbursements and grants from the Penal Code section 14300 account. Case settlements have not proven to be a reliable source of Project funding. Case settlements have usually come after several years of litigation and are often paid over several years time, making revenue projections uncertain

and budget decisions more art than science. In addition, it is projected that the disbursement from the PC14300 account for 2010 may only amount to less than \$50 thousand, clearly an amount insufficient to meet daily operational needs of the Project. Without additional or a permanent source of funding, the Project will not survive operating at that level of funding, nor can it regain its position of providing enforcement in all of California's rural counties.

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,

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