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Misconduct alleged in bay salt ponds deal

By Paul Rogers
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Raising new questions about whether taxpayers overpaid by tens of millions of dollars to purchase the Cargill salt ponds three years ago, California's attorney general is pursuing misconduct charges against the appraiser in the deal.

The accusations from Bill Lockyer's office allege 24 areas where Mill Valley appraiser Charles Bailey violated appraisal standards in his December 2000 appraisal of Cargill's properties. They also say he produced a "grossly misleading value" in his report, done for the U.S. Fish and Wildlife Service.

The accusations, which could result in Bailey having his appraisal license revoked, come three years after the Mercury News first raised questions about whether taxpayers had overpaid for the land. On Thursday they sparked calls from environmentalists for a new law requiring appraisals in state land purchases to be made public before the deals close.

The documents from the attorney general's office do not say what an appropriate price should have been, although Lockyer could order a new appraisal if he pursues a deeper investigation.

Bailey's appraisal valued 16,500 acres of Cargill's salt ponds at \$243 million. In 2003, using it as a guide to set a fair price, the state and federal government announced a deal to pay Cargill \$100 million for the properties, which make up most of the bay's shoreline from Hayward to Alviso to Redwood City. The goal: to convert them back to wetlands for fish, birds and other wildlife. Cargill is seeking a tax write-off from the IRS for the other \$143 million.

But critics at the time noted that the administration of then-Gov. Gray Davis refused to make the appraisal public until after the money changed hands.

Even though the government paid less than the \$243 million appraised value, the public still may have overpaid, critics worry. They note the valuation will guide the prices taxpayers pay for other for wetlands in the Bay Area.

"The primary issue is, did the public get taken for a ride and pay too much money? I don't know. But this makes me suspicious. It's disturbing," said Marc Holmes, bay restoration director for the Bay Institute, an environmental group in Novato.

In an interview Thursday, Bailey denied any wrongdoing. He noted that his appraisal was reviewed by five real estate experts working for the U.S. Fish and Wildlife Service and for several state agencies.

"Everybody knew this was a politically sensitive acquisition," he said. "They wanted to make sure they covered all their bases. This is more review than I've ever had."

Bailey, who has been an appraiser for 36 years, said he has never had a formal complaint filed against him.

The charges were brought by the state Office of Real Estate Appraisers. Lockyer's office is, in effect, working as the state's lawyer against Bailey.

"The methodology was sloppy, and he relied on data that may or may not have been accurate," said Teresa Schilling, a Lockyer representative. "You can't tell whether the final estimate he turned in was accurate."

Schilling said, for now, Lockyer's office is representing the state Office of Real Estate Appraisers in a professional misconduct case, and hasn't decided whether to order a new appraisal or seek to recover funds spent in the deal.

"Is the attorney general concerned about the state getting fleeced in any transaction? Absolutely," she said. "He can't make a judgment on this because we don't have enough information."

Similar issues about when to make appraisals public arose last year when the state purchased development rights on Hearst Ranch near San Luis Obispo. Environmentalists are pushing a \$5 billion parks bond on the November ballot, which would provide new money for large land deals.

"Sunlight is the best disinfectant," said longtime wetlands advocate Florence LaRiviere, co-founder of the Citizens Committee to Complete the Refuge, an environmental group in Palo Alto.

"Only when the public is involved are we likely to have a fair and open contract -- and a fair price."

The state Fish and Game Department released the appraisal in 2003 after the deal had closed. A Mercury News analysis found that it was 28 months old. The U.S. Fish and Wildlife Service waived federal rules requiring appraisals to be updated every 12 months.

The appraisal also said the Cargill ponds were worth \$3,000 an acre to make salt. At that value they would be worth about

\$50 million -- half of what the state and federal governments paid Cargill. But the appraisal said the ponds were worth up to \$20,000 an acre as "mitigation," to be restored into wetlands by developers and government agencies seeking permits for construction projects. At the current rate of private development, it would take 165 years before all the ponds would be needed for mitigation, the appraisal said. But there would be a market for mitigation if San Francisco International Airport built new runways into the bay, the appraisal concluded. The airport withdrew the runway project, however, citing the economy, the Sept. 11 terrorist attacks and the bankruptcy of United Airlines.

The documents Lockyer filed say Bailey's appraisal failed to adequately evaluate comparable land sales, support revenue projections on the property or explain the costs and risks of restoring wetlands in mitigation deals.

Lori Johnson, a Cargill representative, said the company believes the price was fair. "We actually think it was low," she said.

Although the appraisal said Cargill could not build on the ponds because of federal wetlands laws, the company could have sold them piecemeal to cities and other agencies for wetlands restoration projects, getting a higher price, she said.

The deal's primary broker was Sen. Dianne Feinstein, D-Calif.

Mark Kadesh, Feinstein's chief of staff, said she does not think the public overpaid.

"It is an allegation," he said. "She'll have to see how it bears out. The Fish and Wildlife Service tells me they feel very comfortable with the process."

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Cargill salt ponds

- Land Cargill sold
- Land Cargill kept
- Refuge land where Cargill kept making salt
- Refuge land where Cargill stopped making salt
- Bought by San Jose



Source: Stuart Siegel, Wetlands & Water Resources, www.wetlands-and-water-resources.com

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