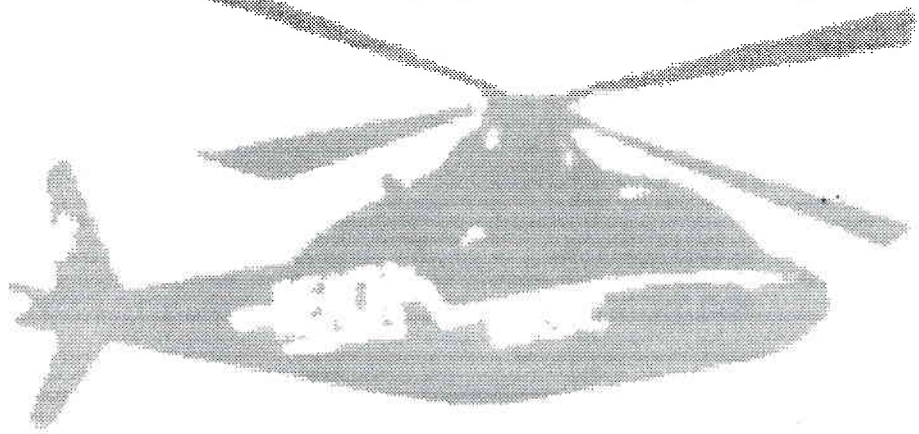


**DON'T LAND THAT BIRD!**  
*Understanding and Solving Conflicts Between  
California Public Safety Agencies During Emergencies*



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## EXECUTIVE SUMMARY

An infant was seriously injured when his parent's vehicle overturned in a rural area at three o'clock in the morning. Per county protocol, an air ambulance was dispatched. In the meantime, firefighters prepared to land the helicopter nearby. When asked to assist with the landing effort, California Highway Patrol ("CHP") officers refused to allow the helicopter to land on the roadway, even for a few minutes. With all options exhausted, the firefighters were forced to turn the air ambulance away.

California law states that the CHP is the agency responsible for controlling highways and freeways within our state.<sup>1</sup> California law also provides local fire agencies with the primary responsibility for fire suppression and patient care.<sup>2</sup> Under practical application of these laws, however, when incidents occur on a roadway, conflict occurs.

Currently, when an accident occurs on a roadway, officers of the CHP prefer to maintain the flow of traffic through the area providing the road remains passable, and it is otherwise safe to permit vehicles through the area.<sup>3</sup> Although there are several reasons for the predisposition to maintain traffic flow, a primary one is for safety reasons.<sup>4</sup>

On the other hand, fire agencies prefer to close roadways. Closure allows firefighters to extricate and treat victims without having to risk being struck by passing cars. Additionally, closure provides additional space for additional emergency vehicles, including air ambulance helicopters.

Serious problems arise when the statutory authorities and the policy interests of these two agencies conflict during an emergency. The conflicts take various forms. As evidenced above, sometimes the conflicts cause delayed patient care and waste of scarce response equipment. Sometimes the conflicts take the form of inefficient rescue or fire suppression techniques. Regardless, any problems arising between responding agencies on a purely jurisdictional basis can only serve to decrease the ability of either agency to complete their statutory obligations.

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<sup>1</sup> Cal. Vehicle Code §§ 2810 - 2812.

<sup>2</sup> Cal. Health & Safety Code § 13862.

<sup>3</sup> See *People v. Uffindell* (1949) 202 P.2d 874, 875. A basis for this reason is that since the primary purpose of a roadway is the movement of people and property, the same Constitutional police powers authorizing the closure also requires permitting its intended use. See also *Legal Guidelines for Controlling Movement of People and Property During an Emergency*, Governor's Office of Emergency Services (Ver. 082599-0900, 1999) at 28.

<sup>4</sup> This excludes incidents such as accidents involving hazardous material spills, fires, and other external factors that would potentially be unsafe for vehicle occupants.

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Almost without exception, the statutory authority used to bolster an agency's position during a conflict is of a permissive, rather than of a mandatory nature. Accordingly, a large number of these conflicts do not arise from what would technically be considered conflicting statutes, but more from what are conflicting permissions.

Although the reason for the conflicts are not clear, it appears that most instances are the direct result of an intentional lack of cooperation from one or both agencies. What initially appears to be a legal matter on the surface is in reality primarily a lack of personal relationships between the rank and file of each agency.<sup>5</sup> These causes can be addressed through policy changes or adaptations.

Formulation of policy varies between the agencies. The CHP is authorized to promulgate state regulations, and the majority of policies are cleared, at least implicitly, through the Commissioner's Office. In this way, policies remain relatively uniform throughout the state.

Fire agencies, on the other hand, are special districts created by the Legislature. There are several different methods of creating a fire district, and equally numerous methods of governing them. Fire districts may be subject to strict city or county control, or they may be subject to only limited control by the county. There is no official statewide overarching authority over the fire districts. Each fire district operates as a distinct body, and consequently, there is little statewide uniformity in either rules or governing methods.

The degree of statewide differences between the CHP and the fire agencies is further hampered by the relatively recent change in employee makeup of the agencies. The CHP is experiencing a higher attrition rate due to retirement. And volunteers on a career path, rather than community members protecting their own interests, are now serving the fire agencies.

Further cause of the conflicts may also be the result of the unique view the employees of each agency share within their own group. Each group has essentially the same civic-minded goal of providing safety to citizens, yet the unique cultural background each possesses has diverged over the years.

Several solutions are available to reduce the incidence of the conflicts. First, legislation could be enacted requiring greater cooperation between representatives of the agencies during incidents. Secondly, existing Standardized Emergency

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<sup>5</sup> Neither agency openly admits these conflicts occur periodically, nor is the existence of these conflicts widely disseminated. There is no empirical data available to demonstrate the number of occurrences. Similarly, there is no data available to show whether accident victims have suffered additional injury as the result of these conflicts. The brunt of this paper will deal with slightly more than anecdotal information.

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Management System ("SEMS") regulations could be expanded to include requiring use of joint incident command<sup>6</sup> during "regular" emergencies. Problems inherent with this method are that the incentive behind SEMS is withholding state funds for emergencies that are not available for the day-to-day emergencies where these conflicts arise. Both of these options provide a mandatory scheme requiring cooperation, rather than inducement of cooperation. Additionally, because these options impose mandatory requirements on local governments, state funding may have to be provided.

On the other hand, there are several solutions that address the cause of the lack of cooperation without risking labeling as an unfunded mandate. Primarily because of this, these solutions offer a more practical approach.

First, leaving existing authorities intact, and proactive action by both agencies can generate improved interpersonal relations between the rank and file of each agency. Requiring or encouraging interaction between the agencies would lead to a more cooperative atmosphere during an emergency. Additionally, improving communication systems to allow for direct communication between on scene responders could help alleviate the conflicts. Another solution would be simply to monitor the solution without taking any immediate action.

Solving the conflict problem cannot be addressed simply by choosing one of the available solutions. A multi-prong approach is required. First, the concept of the SEMS unified command approach must be provided as a model, but not as a requirement, for agencies to use during day-to-day incidents. Second, personal relationships must be created between the rank and file of each agency through opportunities to interact outside of responses. Permitting use of fire stations by law enforcement during patrol activities best provides these interaction opportunities. Allowing opportunity for some degree of cross-training will also encourage improved relationships. Thirdly, improved monitoring of the conflicts will determine the success of the options, and provide information on other methods of addressing the problem. If there is to be a successful resolution to the conflict problem, portions of all options must be used.

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**Facts of the Incident**

On February 2, 2001, at 3:19 in the morning, a Rescue Unit and an Engine from Thornton Rural Fire Protection District ("TRFPD") were dispatched to a report of a vehicle rollover with persons trapped on northbound Interstate 5, north of Walnut Grove-Thornton Road.<sup>7</sup> According to the reports, it was raining, and the roadway was

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<sup>6</sup> Referred to by its official designation "unified command" throughout the remainder.

<sup>7</sup> Incident Record 27, TRFPD. (Feb. 2, 2001).

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wet, although no wind was observed.<sup>8</sup> Standard Dispatch procedure requires dispatching an ambulance to a vehicle accident. And one ambulance from American Medical Response ("AMR") was also dispatched to the accident.

Firefighter/EMTs<sup>9</sup> arrived on scene prior to CHP, and located a four-year-old male "lying on the side of the interstate with head trauma and blood coming from a laceration on the head."<sup>10</sup> According to San Joaquin County Emergency Protocols, a child in this condition requires dispatch of an air ambulance to the scene.<sup>11</sup> Upon assessing the infant victim's condition, the Chief requested an air ambulance response by Reach II, and ordered the Lieutenant to establish an LZ.<sup>12</sup>

After reviewing District maps and assessing the immediate area, the Lieutenant determined that the only safe area to land the helicopter would be on the northbound lanes of Interstate 5.<sup>13</sup> At this point, the helicopter was already nearby. The Lieutenant approached the Traffic Officer, requesting assistance in shutting down the freeway to permit a landing. The officer refused to close the roadway, indicating a "suitable landing area" nearby.<sup>14</sup> At this point, the Fire Chief entered into a relatively heated discussion with another CHP Officer concerning the feasibility of closing the roadway for no more than ten minutes to allow a "hot load."<sup>15</sup> Eventually, however, the helicopter was turned away and the victim was taken via ground ambulance.<sup>16</sup>

Subsequent review of the area failed to expose a usable landing site other than the roadway or the median strip.<sup>17</sup>

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<sup>8</sup> Id.

<sup>9</sup> An "EMT" is an "Emergency Medical Technician," a state certified level of training for emergency medical care.

<sup>10</sup> Incident Record 27, TRFPD. (Feb. 2, 2001).

<sup>11</sup> Per Fire Chief Chris McGranahan, TRFPD. (Various interviews 2/2001 - 6/2001).

[NOTE: this actually changes the issue somewhat to that of the local fire agency enforcing "county" ordinances, rather than policies of the fire agency]

<sup>12</sup> Incident Record 27, TRFPD. (Feb. 2, 2001). "LZ" indicates a "landing zone." Essentially, the Lieutenant was to establish a landing area close to the operation area.

<sup>13</sup> Fire Chief Chris McGranahan, TRFPD (Various interviews 2/2001 - 6/2001)(For safety reasons, one fire engine is usually dedicated to the landing zone for dust control and to suppress fire in the event the helicopter fails to properly land).

<sup>14</sup> Per Discussions with Lt. Susan Coots, CHP Commissioner's Office. (relating conversation between herself and the San Joaquin County CHP Area Commander). Lt. Coots stated that CHP policy permits the officer on scene to determine whether other sites exist, and to not close the freeway if they exist.

<sup>15</sup> A "hot load" is when a helicopter lands and does not shut down. Generally, the engine is shut down for safety reasons, such as blade contact or fire. However, sometimes the safety factor is outweighed by scene requirements.

<sup>16</sup> Incident Record 27, TRFPD. (Feb. 2, 2001).

<sup>17</sup> Subsequent discussions between the Fire Chief and the CHP Shift Commander caused the Chief to photograph the area. Photographs may be browsed at <[http://www.grundman.net/lz\\_index.html](http://www.grundman.net/lz_index.html)>.

## **Analysis of the Problem**

Was there really a problem with the incident described? Were an average person observing the incident, they likely would have found the scene to be competently managed – the victims went to the hospital,<sup>18</sup> the wreck was removed, and traffic remained flowing. Even the fact that the helicopter did not land could be explained, or at least overlooked, since helicopters are routinely turned away from accidents if injuries are not life threatening. A casual observer would have noticed no problems.

To fully appreciate the scope, one must understand that confrontations over authority periodically endanger vehicle accident victims, as well as the working relationships between emergency response agencies. Approximately six months prior, in roughly the same area, there was a similar occurrence. The dispute was essentially the same, roadway closure, however, this time refusal to close a lane forced firefighters to extricate the victim in a less than desirable manner.

In this incident, a multi-vehicle accident in the middle of the day blocked the number two lane of northbound Interstate 5. The driver of the rear vehicle was pinned under the steering column and the dash was depressed, partially crushing the driver. The Fire Chief requested that the officer on scene close the number one lane to permit extrication of the driver. The officer declined, stating that additional accidents would occur as a result of the closure, especially considering the amount of traffic already being routed through one lane. As a result, additional time was required to extricate the victim through the passenger side of the vehicle, and additional trauma was caused by having to remove the victim across the gearshift lever.<sup>19</sup> Here, there is no mistake that failure to temporarily close a road resulted in additional and unnecessary harm to an accident victim.

As evidenced by the above anecdotes, authorities overlap, and enforcement of one agency's authority dramatically impinges on the ability of other public safety agencies to complete their statutory obligations. Cooperation between members of each agency can only serve to improve the quality of service and provide greater health and safety benefits to all citizens of California.

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<sup>18</sup> Privacy concerns for the minor prohibited obtaining information on the patient's recovery, as well as whether the additional transport time of the ground ambulance aggravated injuries relative to transport by air ambulance.

<sup>19</sup> Fire Chief Chris McGranahan TRFPD (Various interviews 2/2001 – 6/2001).

## INTRODUCTION<sup>20</sup>

Because each Fire District in the State of California is operated uniquely, and because there is no general overarching authority over each individual district, the problem will be viewed at a snapshot of an average rural area fire district.

The root of the issue regarding this authority conflict arises out of several intertwined causes. No single source appears to be responsible for the conflicts, however, the combination of the factors have recently created an increase in authority dispute between responding agencies.

Regardless of the source, problems arising from these conflicts are limited to what are termed "day-to-day" incidents. Management of incidents requiring resources from other jurisdictional areas, large-scale emergencies, or disasters are accomplished through use of the Incident Command System,<sup>21</sup> and those large-scale incidents are not infected with the precise conflict issues described here.

The purpose of this paper is twofold. First, conflicts arising between law enforcement and fire agencies on emergency scenes need to be explained to provide the reader about the existence and to help understand the possible ramifications of the conflicts. Second, several proposals to minimize the conflicts will be presented, along with the drawbacks of each approach.

## FACTORS BEHIND THE CONFLICT

The dimensions of the on scene conflicts can best be appreciated by fully understanding the factors contributing to the problems. With background information, a more thorough policy can be created. Otherwise, attempts to correct the situation may merely address the symptom of a larger problem. Effective resolution of the conflict issue requires correction of the cause of the conflicts themselves.

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<sup>20</sup> In 1996, after confirmation by the San Joaquin County Board of Supervisors, the author began serving as a Director of the Thornton Rural Fire Protection District ("TRFPD").

As an initial point of inquiry, the author admits to having a sympathetic bias toward the fire agencies. Having served as a volunteer firefighter for a decade, and having nearly completed his first term as an elected official overseeing the operation of the fire district, a modicum of favoritism is inherent. Having said that, however, this research exposes and explains an issue facing both law enforcement and fire agencies now and in the future.

<sup>21</sup> See SEMS regulations: Law Enforcement use LEICS, while fire agencies use ICS.

## Organizational Cultures

A great deal of insight into the root causes of the conflict may be found by looking at the different foundations underlying each agency.

The CHP was founded primarily to enforce traffic laws. Axiomatically, the initial intent in creation of this agency was to reduce accidents and ensure statewide application of state laws. Apparently, the primary goal of the agency has not changed from when the agency was initially created.

“The California Highway Patrol was created in 1929 to provide uniform traffic law enforcement throughout the state. Assuring the safe, convenient and efficient transportation of people and goods on our highway system is still our primary purpose.”<sup>22</sup>

The TRFPD was founded in 1951, with the sole emphasis at the time being fire suppression activities.<sup>23</sup> Prior to this, however, a strictly volunteer company offered fire protection as early as the 1920's.<sup>24</sup> Currently, however, the Department's mission has changed.

“The purpose of the Thornton Rural County Fire District is the protection of life and property in accordance with applicable sections of the Health and Safety Code of the State of California”<sup>25</sup>

Accordingly, the scope of services offered by the TRFPD has changed since its inception. Up until the late 1950's, Thornton had a fire warden, and the fire warden occasionally “arrested” lawbreakers and placed them in the town jail.<sup>26</sup> The fire warden often worked in conjunction with local law enforcement, and occasionally detained “speeders.” During this period, law enforcement and fire agencies were not subject to the conflicts experienced today.

## Historical Relationships

Prior to the 1950's, those comprising the ranks of law enforcement and fire agencies shared both professional and non-professional relationships. During this period, the population of the valley was more agrarian, with both the law enforcement officers and the firefighters often being from the same families within an area. After

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<sup>22</sup> Purpose Statement. See <<http://www.chp.ca.gov/html/history.html>>(last browsed 6/18/2001).

<sup>23</sup> Fire Chief Bruno Mori, Retired. TRFPD (interviews of 6/9/2001 & 6/18/2001).

<sup>24</sup> Id.

<sup>25</sup> TAC at 3.

<sup>26</sup> Id. (The town jail was made of wood and was burned down by arsonists).

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work, members of both agencies often dined together, and their families visited with one another.<sup>27</sup>

An additional factor was that during this period, the draft was in effect for World War II and the Korean Conflict, which meant that manpower was severely limited during this period. Often times, the Sheriff called upon the fire department for additional personnel during arrests in the area.<sup>28</sup> The shortage of personnel during this period may account for the stronger working relationships during this period.

Until the late 1980's, Interstate 5 did not exist within TRFPD's jurisdiction. Thornton Road served as the main north/south corridor through the area, with a constable enforcing laws until the township was dissolved. Interaction with the Highway Patrol was limited, with Officers arriving on scene after extrication for paperwork and arrest. Patrolling of the road was predominately made by the fire warden and Sheriff's Deputies. Accordingly, interaction between the CHP and TRFPD was minimal prior to completion of the interstate.

### **Current Relationships**

Over the past twenty years, the scope of services offered by fire agencies has changed. No longer is the primary goal that of fire suppression. Rather, increasing state mandates and community concerns have edged the purpose to include medical training and rescue skills.<sup>29</sup>

Additionally, completion of the interstate increased the vehicle traffic through the jurisdiction, leading to an increased rate of accidents, and greater injury due to the increased speed of the vehicles. As a result, the number of calls requiring interaction between the two agencies dramatically increased.

Currently, the Fire Chief considers working relationships between the two agencies very good overall. For example, traffic control, traditionally the realm of the CHP, is often done by firefighters.<sup>30</sup> This allows the officers to complete their investigations and reports rapidly. Additionally, prior to leaving a scene, a fire officer will inquire whether the officers will have additional need for apparatus. This gesture is apparently one of politeness, although pragmatic to a point - it eliminates the need to be called again to the same scene.

The only conflicts noted by the Fire Chief are those surrounding patient care during automobile accidents.

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<sup>27</sup> Id.

<sup>28</sup> Fire Chief Bruno Mori, Retired. TRFPD (interviews of 6/9/2001 & 6/18/2001)(This assistance may not have been officially sanctioned, however).

<sup>29</sup> Fire Chief Chris McGranahan, TRFPD (Various interviews 2/2001 - 6/2001).

<sup>30</sup> Id.

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To understand the reasons for the current disconnect between the agencies in this narrow field, exploration of the different mindsets is necessary. Each group has similar public-oriented goals, but each agency approaches the goal from a slightly different angle.

### **Distinctions between Paid and Volunteer Employees**

Perhaps a primary avenue of understanding is that the personnel employed by each department have different reasons for being on scene.

From at least the 1950's into the early 1990's, volunteers belonging to the TRFPD were comprised exclusively of farmers, industrial workers, and skilled local residents.<sup>31</sup> During this period, payment was limited to several dollars per call. These payments were intended as reimbursement to the volunteers, who were initially expected to supply their own turnouts and other firefighting gear. In actuality, volunteering required expending personal funds.

Currently, volunteers remain reimbursed. However, those comprising the volunteer roles have dramatically changed. Most young volunteers are pursuing a career as a paid firefighter, although many residents continue to volunteer for more philanthropic reasons. The purpose for volunteering is now more a requirement for career advancement.

Since the purpose of volunteering has changed, with expectations of future employment at a later date, perhaps the incentive to cooperate has also changed. Where fire agencies previously consisted of local residents responding to local incidents, there was likely a view of self-protection and community support. Currently, however, volunteers are no longer necessarily tied to the community, and often reside outside of the district in neighboring cities. There are no longer the community ties that existed earlier.

Combining the lack of ties to the community with the expectation of future full-time employment in the fire service seems to create an increased desire in the volunteers to establish their current agency employer as the best in the field. Effectively, "stovepipes" are erected around the fire department. Conflicts with neighboring jurisdictions have increased, both over jurisdictional boundaries and absorption of smaller districts. This increase in intra-departmental conflicts within the discipline appears to be directly related to the decrease in community involvement in a volunteer capacity. It appears that new volunteers are more inclined to create personal and departmental recognition for the purpose of career advancement.

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<sup>31</sup> Retired Fire Chief Bruno Mori, TRFPD (interviews of 6/9/2001 & 6/18/2001).

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This differs fundamentally from the recruitment policies of the CHP. At the current time, attrition rates for the CHP have increased as the result of retirement of the "baby boomer" generation. Many of those involved in military service are no longer present in the CHP, especially those having served in Vietnam.

Recruitment policies today have changed from that of recruiting veterans<sup>32</sup> to recruiting a representative sample of California's population. CHP prefers to recruit those in the age range of 24 to 34, especially those with undergraduate degrees and possessing some degree of life experience.<sup>33</sup>

Unlike fire department volunteers, CHP officers derive their primary employment from the agency. This further segregates the officers from the community, since they do not have the opportunity to associate with other employees not affiliated with the agency - such as if they were merely volunteering. Attempts to mitigate this barrier between officers and community have been addressed to varying degrees through implementation of various programs including "community cars."<sup>34</sup>

In the past, one agency employed full-time personnel, while the other used community volunteers. The relatively recent change in fire department volunteers to those seeking full-time employment seems to have removed a portion of cooperation from the picture. Where volunteers from the community recognized the need for law enforcement in the community during periods other than mutual responses, today's volunteers seem to be more oriented toward full time employment elsewhere, with a lessened perception of the need for long-term interaction between a particular agency and the community. In essence, many of today's fire volunteers are tied to a community only to the extent that they gain adequate experience to obtain full-time employment at another department elsewhere.

It appears that along with the changing makeup of the volunteers, fire agency authorities have also changed policies to address volunteer concerns, potentially to stabilize retention levels.<sup>35</sup>

### **Medical Training**

As mentioned earlier, the scope of service required of a fire agency has changed from that of fire suppression to that of primarily medical care. With this increased service load, appropriate training is required.

Statewide, there are several certified levels of emergency medical training. To be hired in most full-time positions, firefighters are required to be certified as an EMT. The

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<sup>32</sup> Veterans received additional points on entry exams, allowing veterans to outscore civilians.

<sup>33</sup> Anecdotal information indicates CHP prefers those with a stable family life, for example.

<sup>34</sup> Personnel may be paid a differential and other payment to reside within targeted communities.

<sup>35</sup> Accommodations are often made to facilitate retention of high quality volunteers.

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training required for an EMT varies from county to county. Some counties have reciprocal agreements, while others do not. The requirements for EMT certification are set by county protocols, which are drafted by a board consisting of doctors and other health care personnel within the county.

Currently, San Joaquin County requirements consist of numerous skill and written tests, along with documented practical experience. One portion of the training that seems to aggravate the conflict between the CHP and fire agencies is the "duty" segment of the training.

Failure to provide adequate care to a patient is grounds for sanctions up to and including revocation of EMT certification. EMTs are taught: "...duty to a patient requires that you provide proper care, and not abandon a patient."<sup>36</sup> "Abandonment occurs when you fail to turn over care of a patient to a higher trained medical person."<sup>37</sup> In effect, EMTs view failure to provide proper care as abandonment, and this potentially occurs if they are not permitted to properly extricate or transport a patient. EMTs view the failure to close a road to land a helicopter as a threat to their certification, and consequently, a serious threat to their career. This goes a long way towards explaining the animosity between the two agencies.

Over a decade ago, the California Highway Patrol Academy instituted the requirement that graduates would also have to be certified to EMT level.<sup>38</sup> Recently, due to high attrition levels, expense, and re-certification issues, this requirement has been reduced.<sup>39</sup> The reason for providing the training was the view that the CHP is often the first vehicle on the scene, and that lives could be saved through CPR and other rescue methods. This requirement eventually was questioned, since this ability could interfere with enforcement obligations, and the fact that medical assistance could rapidly be provided through other agencies.

At any rate, there is a group of officers that are able to correctly assess victim conditions. In the few instances where TRFPD has interacted on a scene with these officers, there has been no conflict.<sup>40</sup> Perhaps cross-training to some degree could offer a partial solution to the problem.

### **Traffic Training**

Quite simply, the CHP is the only agency with any degree of training in traffic flow patterns, and the likelihood of additional accidents caused by road closures. The

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<sup>36</sup> Fire Chief Chief McGranahan, TRFPD (Various interviews 2/2001 - 6/2001).

<sup>37</sup> Duty Officer Frankie Lopez, TRFPD (Interview 6/2001).

<sup>38</sup> Captain Barrie Lightfoot, Retired, CHP (former Area Commander)(Interview 6/2001).

<sup>39</sup> Currently, Academy Graduates receive training to the Emergency Aid Responder ("EAR") level.

<sup>40</sup> Fire Chief Chris McGranahan, TRFPD (Various interviews 2/2001 - 6/2001).

practical degree of traffic training by TRFPD is limited to periodic training in traffic control measures, namely flare patterns and safety of personnel.

This is not to mean the CHP is infallible in traffic direction. Approximately four years ago, “[CHP] directed the entire northbound traffic, including trucks, across the white bridges, which have a five ton limit. They had trucks parked across the entire length!”<sup>41</sup> Although no accident resulted from that mistake, it is obvious that better communication between the two agencies could improve the safety of travelers.

### Agency Traditions

Historically, each agency had little interaction with each other, and resulting few conflicts from authority overlap or cooperative breakdowns. Although each agency always acted on behalf of the community’s interest, each also had a self-interest in preserving their autonomy.

The general public perceives each agency differently. Fire departments have traditionally been viewed as the protectors of life and property, expected to put out fires and rescue persons trapped inside burning buildings. The evil fought by the fire agencies was nature itself in an extremely raw form.

This differs from law enforcement. Law enforcement does not fight a mutual enemy of everyone in the community. Although generally the purpose is to protect society against lawbreakers, almost everyone has had a negative encounter to some degree with law enforcement.<sup>42</sup> Law enforcement officers are often referred to by negative terms such as “pig,” “cop,” “fuzz,” etc. No similar derogatory slang terms exist referring to firefighters.

As a result, these community views on the two agencies naturally color the personalities of the members of each agency. Most likely, the negative view decreases the ability for recruitment of some people, and the positive views enhance the recruitment abilities of the other.<sup>43</sup>

Over the past decade or so, the statutory and political requirements of both agencies have changed to some degree. Specialization in each field, such as expansion into medical treatment or specialized investigation teams, has evolved. These factors also attribute to the conflict issue by occasionally putting mission goals of each agency against the other.

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<sup>41</sup> Fire Chief Chris McGranahan, TRFPD (Various interviews 2/2001 – 6/2001).

<sup>42</sup> It would be difficult for someone to argue that receiving a speeding or parking ticket is a positive experience. Generally no one states: “Wow, I’m glad that cruiser is following me.”

<sup>43</sup> There is no shortage of applicants to paid fire departments. The same is not true for law enforcement.

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Training requirements have also changed. Both agencies now require extensive training. This has resulted in the CHP Academy being recognized as having the premier para-military training in the world.

The scope of services required by both agencies has changed over time, and this has resulted in driving each agency into a somewhat competitive mindset. These factors, however, merely provide slight insight into what could be a basis for some of the conflicts. History cannot be altered. However, this insight can provide information into what areas cause the conflict, and how they can be addressed.

### **OFFICIAL POLICIES**

Each agency derives its specific authority from statute. The fire agencies throughout California enjoy broad authority in both their mission purpose and the leeway they are provided to meet that goal.

A fire district may provide fire protection services, rescue services, emergency medical services, hazardous material services, ambulance services and "any other services relating to the protection of lives and property."<sup>44</sup> Further, statute grants the district "...all rights and powers, expressed or implied, necessary to carry out the purposes and intent... [of the enumerated services.]"<sup>45</sup>

The TRFPD's Administrative Code reflects this authority, and places efficiency based restrictions on this authority in its own policy statement:

"These Rules and Regulations are created to promote the orderly coordination among the members of the Thornton Rural County Fire District in the discharge of their duties during routine and emergency conditions and to promote the orderly administration of the District both internally and in its dealings with the public at large. The efficiency of the District depends on the degree of cooperation given to the District by the public in emergency situations, this cooperation is nurtured and heightened by the professional and disciplined behavior of the members when interacting with the public at large."<sup>46</sup>

As explained earlier, the policy of the TRFPD is to close roadways whenever necessary to preserve lives and property, providing the closure also complies with the agency's administrative code.<sup>47</sup>

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<sup>44</sup> Cal. Health & Safety Code § 13862.

<sup>45</sup> Cal. Health & Safety Code § 13861.

<sup>46</sup> TAC, Forward at 1.

<sup>47</sup> Per Fire Chief Chris McGranahan. (Various interviews 2/2001 - 6/2001).

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Internal policies dealing with road closure issues must consider that each agency essentially has the same authorities when dealing with a road closure or similar authority conflict. The legislature saw fit to provide each agency with the discretion to determine the best course of action during an incident. As a result, cooperation between members of the agencies is essential.

## POLICY FORMULATION

The CHP is a state agency, with authority throughout the state. Their authority is specifically recognized by statute.<sup>54</sup> Policies are generally created at the Commissioner level and delegated downward to the Division and Area levels.<sup>55</sup> At each subsequent level, officers in charge may interpret policy for the particular region, however, the policy must remain in compliance with those generated at the Commissioner level.<sup>56</sup>

Fire agencies generally view their obligation specifically to immediate victims. Unlike the CHP, TRFPD has specifically delegated statutory authority to the Fire Chief:

“The Chief has all the duties, powers, and functions that are provided by the codes and ordinances which the District is governed under and by order of the District Board of Directors” TAC at 6 n. 4.

Under certain circumstances, the authority to create policy is transferred to volunteer firefighters, the approximate equivalents of a CHP Traffic Officer:

“If the Fire Chief is unavailable to perform his duties, the duties and responsibilities may be assumed by the duty officer or the senior officer, respectively.” TAC at 7 n. 12.

The fundamental difference between the two agencies is the extent of control over geographic areas. The Commissioner must approve policies created by the CHP, regardless of where they originate. Policy generation varies from fire district to fire district, however, TRFPD has delegated the authority for policymaking not only to the Fire Chief, but potentially even to the rank & file firefighters.<sup>57</sup>

One agency offers statewide uniformity, while the other offers expediency and flexibility. Both approaches provide unique benefits and difficulties, but both are equally likely to be fully enforced within the scope of that agency's jurisdiction. There

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<sup>54</sup> Cal. Vehicle Code §§ 2250 et seq.

<sup>55</sup> Captain Barrie Lightfoot, Retired, CHP (former Area Commander)(Interview 6/2001).

<sup>56</sup> Id.

<sup>57</sup> Technically, these policies would be of limited effect unless SOP requirements were met. On scene policies would be in effect immediately, however.

is currently no mechanism to ensure conflict will not occur between the policies of each agency.

## POLICY SOURCES

To fully understand the causes of existing conflicts and why they have only recently surfaced, background into the varying conditions and other factors contributing to current policies is necessary. Follows are some of the methods and conditions that account for the creation of today's existing conflicts.

### Fire Agencies

In the fire service, it appears that many policies are not spontaneously generated. Rather, officials seem content to implement other district's policies they deem effective, specifically those of neighboring jurisdictions sharing similar geographic qualities:

"Many of our policies are based on Delta's. In fact, our original bylaws were copied from Walnut Grove's. Our current Administrative Code remains based on Walnut Grove's with some portions from Woodbridge's and Mokelumne's." <sup>58</sup>

I posed the question of why he would use another's policies rather than create his own, and received a rather unexpected answer. A portion of his response was simply "... because the rules work, why would I want to reinvent the wheel?" However, the other reason was based on the legality of the rule. He stated that the other departments had larger budgets, and he assumed that they would not implement illegal policies. He further explained that many personnel policies were derived from those drafted by the Fire Chiefs Association, while others came from nearby industries.

Even though TRFPD is not a county agency, the Administrative Code was reviewed by County Counsel, and approved by the Board of Supervisors of San Joaquin County. However, internal and operating policies of the Department are not subject to the same scrutiny, and internal generation of policy appears to provide a lower comfort level for the fire authorities. As a result, many policies are copied from other jurisdictions.

Although this diffusion of policy from neighboring jurisdictions seems rather pragmatic, it brings with it several problems. First, wholesale appropriation of another district's policies also brings inherent political issues. Second, reliance on the legality of a policy may be improperly placed. Finally, implementation of "foreign" policies may create additional or new problems.

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<sup>58</sup> Fire Chief Chris McGranahan. (Various interviews 2/2001 - 6/2001).

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One facet of the conflict issue is that the fire agency has “no teeth,” nothing of value to bargain with CHP officers to close a roadway. Because of the subject of this paper, I was able to participate in a discussion on the matter between officials of two neighboring jurisdictions. After one related a short anecdote concerning a conflict, his solution on that scene was as follows:

“...[T]he Chief had a hand signal, [spinning raised arm overhead] that indicated to pack it up... and when they [CHP Officers] refused to close the road, the [Fire] Captain gave the signal... the Captain said [to the CHP officer], ‘fine, then, its your scene now, if you want us back, you have your superior call our Chief at the station...’ before they were back, a [CHP]Sergeant had called the [Fire] Chief and we were sent back out, they *did* close road...”<sup>59</sup>

This solution, of threatening to leave the scene, appears to be the ideal policy to adopt. It offers the “teeth” otherwise missing, as well as an apparently effective solution. The Chief indicated that sounded like a good solution, and that he or his officers would use it next time a conflict occurred. The story was later retold, and the officers were instructed to “pack it up” if a conflict occurred where failure to close the road would be a safety concern to the firefighters.<sup>60</sup>

A primary problem with this policy is simply that it may not work. To adopt an unwritten policy based purely on anecdotal information brings with it the spectre that there may be little truth in the story, and may actually be fanciful storytelling. At the least, threatening to leave an emergency scene if your policy is not implemented sounds a lot like the child threatening to take his toys home if they don’t get their way.

The “spin” on such an incident would likely determine its effectiveness, however. Under the correct circumstances, leaving a scene that would unnecessarily endanger firefighter lives could work to the advantage of the fire agency, and to the detriment of law enforcement. At any rate, however, each agency would likely cooperate to maintain silence on the issue, since it would expose each agency to some degree of liability.

Secondly, the “legality” of this policy is questionable at best. Although it appears that the liability of actually leaving a scene may be minimal,<sup>61</sup> there was likely no legal review into the process. The mere fact that a policy was derived from or created by a more affluent district does not make it any more legal. Additionally, a more affluent district may be more likely to expend resources to defend a questionable

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<sup>59</sup> Fire Captain wished to remain anonymous.

<sup>60</sup> Note, however, as of the date of this writing, this policy has not been placed in the SOP folder as required to officially bind this as a policy of the District. See TAC (Standard Operating Procedures).

<sup>61</sup> See e.g., *California v. Superior Ct.* (1984) 150 Cal. App. 3d 848.

policy that is effective for them. In this way, the policy itself may be a "bad" policy that the district can afford to defend, but a less affluent district may be unable to defend. Adoption of a policy based on its perceived legality should not occur, since there is no guarantee that it actually is legal or is just defensible.

Although not necessarily in the area of interdisciplinary conflicts, adoption of a "foreign" policy may bring additional problems. Policies used to address personnel issues in one department may create problems or even "loopholes" in another jurisdiction. Quite possibly, assuming the anecdote was accurate, the anecdote could have taken place in a jurisdiction where the CHP had veteran officers.<sup>62</sup>

### **Law Enforcement Agencies**

Statewide, the CHP can utilize a policy adapted at the Area or Divisional level. However, here the CHP can utilize several layers of review to eliminate the problems faced by the TRFPD.

First, unlike the Fire Agencies, the CHP's jurisdiction is statewide, allowing for a formal communication system between the different geographic areas. Although problems arising in a highly populated area may result in solutions unusable in remote areas, the policies do not diffuse in the same form as with the fire agencies - namely the form of the policy is written - the incident forming the basis is documented, and records follow the entire formulation process.

Here too, the interface with the public regarding policy input differs. Although I was unable to locate any policies strictly concerned with conflicts between CHP and fire agencies, the CHP is quite proficient at promulgating regulations.<sup>63</sup> Although the local fire agencies can promulgate ordinances, these are only of local impact, with no statewide enforcement ability. In fact, the fire agencies are held to firefighting standards (regulations) promulgated by the Office of Emergency Services ("OES"), the State Fire Marshal, California Department of Forestry, and to some extent, local government policies.<sup>64</sup>

The CHP has many formal methods to obtain public input, including specific forms for citizen complaints against officers, and formal procedures and hearings for those affected by CHP policies and operations. Local fire agencies, TRFPD specifically,

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<sup>62</sup> For a number of years, the CHP was requiring Traffic Officers to be cross-trained as EMTs. Perhaps the anecdote occurred in an area where one was in charge. The outcome could be different where the Officer in Charge was not medically trained, leading to a different outcome.

<sup>63</sup> For example, see Cal. Code Regs. Tit. 13, §§ 600 et seq.

<sup>64</sup> In San Joaquin County, the Bd. of Supv'rs mandates some County Fire Departments to respond to "unprotected" areas of the county. Similarly, city fire departments are subject to policies generated by the City Councils. The degree of autonomy a District possesses is limited by the degree of local government control.

have no formal mechanism for dealing with citizen complaints. The Administrative Code provided only two opportunities for appeals of any kind – one was for personnel dismissal, while the other was for reimbursement disputes.<sup>65</sup>

Unlike the fire agency, CHP Area Commanders do not adopt “foreign” policies based on the perceived legality of another jurisdiction’s rule. As a state agency, the Highway Patrol has access to legal review, and policies are generally reviewed prior to implementation.

## SOLUTIONS

### Legislative Options

Since the entire field of traffic control has been preempted by the state, any local regulation must be derived from an express delegation of authority from the Legislature.<sup>66</sup> Currently, there are three main organizations with authority to close a roadway during an accident scene, the CHP, The California Department of Transportation (“CalTrans”), and fire agencies.<sup>67</sup> Theoretically, changing the law to address the conflict issue seems relatively straightforward. Unfortunately, in practice, one agency will lose some authority, while another gains authority.<sup>68</sup>

There are several potential legislative options. Each addresses the conflict from a different angle, and each has its particular flaws. Each of these approaches directly addresses the conflict issue by either removing authority from one agency, or placing a mandate to require cooperation between the agencies. A remaining legislative option, mandating SEMS regulation usage during day-to-day incidents, is discussed separately.

The first option is to clarify existing legal authorities. Two options are available. First, the Health & Safety Code could be amended to place firefighters in charge of scenes involving medical emergencies. Second, full authority could be vested with the appropriate law enforcement agency.

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<sup>65</sup> Note that the informal method of approaching a Director or the Chief with a problem is a possibility, where it is not a practical one with the CHP. There is no formal methodology prepared for interfacing with the public, however.

<sup>66</sup> Cal. Vehicle Code § 21; 75 Ops. Cal. Atty. Gen. 80 (1992). See also *Legal Guidelines for Controlling Movement of People and Property During an Emergency*, Governor’s Office of Emergency Services (Ver. 082599-0900, 1999) at 28.

<sup>67</sup> CHP and Fire agency authority are discussed earlier. For CalTrans authority, see generally, California Streets and Highways Code § 124. (Authority to close highway for protection of roadway or public).

<sup>68</sup> This most likely poses the most insurmountable obstacle. Loss of authority will be viewed as a corresponding loss of ability to complete required tasks. For example, loss of road closure authority could hamper the CHP during a criminal investigation of an accident scene.

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As a practical matter, neither agency will be willing to cede any authority. Each agency views its mission as that of protecting citizens, and having to give up authority will roughly equate with sacrificing tools necessary to meet that goal.

A possibility would be to draft legislation requiring some degree of cross-training between the disciplines. For example, a statute could mandate that the CHP acquire the level of medical training necessary to recognize the immediacy of transport of a victim. This would leave the officer in a ridiculous position.

The officer would now, in addition to her law enforcement obligations, be required to assess the condition of a victim. This potentially removes this officer from patrolling and performing other necessary law enforcement functions during an incident, such as the investigation of the accident itself. This loss of time could result in lost evidence, suspects, or additional injuries resulting from lack of traffic control.

Although cross-training for the CHP sounds like a good idea, it would not be practical. Additionally, it is not likely that the political bodies representing officers would be inclined to support such a measure.

On the other hand, cross-training the firefighters in traffic flow and accident potential sounds like a more reasonable idea. The additional training would make sense, especially since the firefighters are often the first persons on scene.

There are several problems with this approach also. First, volunteers are already required to do an inordinate amount of training. For the true community volunteer, this task may become overly burdensome, leading to further attrition. If there are not enough career-oriented volunteers to fill the spots, eventually public safety will suffer, and potentially fire departments will be forced to go to a full time paid status, or shut their doors. Either approach diminishes public safety.

Further, mandated training could require that funding also be provided. Under the California Constitution, unfounded mandates on local governments must be paid by the state.<sup>69</sup> This would not lead favorably, especially since the training suggested already has an agency that is the expert in the field.

Finally, political groups representing firefighters and local governments would not be likely to support additional state requirements on local governments. The protection of local autonomy is viewed as paramount by many local governments.

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<sup>69</sup> Cal. Const. Art XII, § 24.

## Extend SEMS Regulations

The potential for misunderstandings, lack of communication, and conflicts of authority during major incidents and disasters were greatly diminished with the inception of the SEMS regulations.<sup>70</sup> The State of California developed SEMS for responding to and managing multi-agency and multi-jurisdictional emergencies and disasters.<sup>71</sup>

The SEMS regulations state that when an emergency occurs within multiple jurisdictions, a "unified command" is to be established.<sup>72</sup> This unified command concept consists of providing a framework for the officials in charge of each jurisdiction to work with each other to manage scarce emergency resources and to address conflicts between jurisdictional authorities. Generally, the unified command approach works extremely well, decreasing interagency conflicts and increasing availability and mobility of emergency resources.

SEMS and the unified command concept are utilized primarily when a jurisdiction requires assistance from other agencies through "mutual aid" agreements. This differs considerably from the day-day incident conflicts where adequate resources are available, and jurisdictional authorities merely overlap.

Unfortunately, the SEMS approach has two serious problems when applied to local incident conflicts. First, SEMS applies only during declared emergencies.<sup>73</sup> Neither situation would apply to what could be deemed "routine" emergencies. Second, the same issue requiring the state to reimburse unfunded mandates on local governments also applies.

Changing the definitions of when SEMS regulations apply would be the easiest method to mandate application of SEMS to day-to-day incidents. There are two main methods to require adherence of SEMS. One is to change the definition of what comprises an "emergency." The other method would be voluntary adoption of some of the principles of SEMS, specifically the unified command requirement.

Because SEMS regulations are promulgated by OES, and the scope of the enabling legislation describes the conditions that they apply, the agency cannot

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<sup>70</sup> Cal. Government Code § 8607; Cal. Regs., tit. 19, §§ 2400 et seq.

<sup>71</sup> See *Legal Guidelines for Controlling Movement of People and Property During an Emergency*, Governor's Office of Emergency Services (Ver. 082599-0900, 1999) at 28. "Emergencies" & "Disasters" refer to those proclaimed by local governments, the Governor, the Director of the Office of Emergency Services, or their representatives. See Cal. Government Code § 8558. As explained earlier, these requirements do not apply during day-to-day incidents.

<sup>72</sup> Note, however, that fire agencies and law enforcement agencies use slightly different Incident Command System ("ICS") forms. The use of the term "unified" is somewhat tenuous.

<sup>73</sup> See generally, Cal. Government Code § 8607.

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arbitrarily add additional requirements. Definitional changes must be made at the legislative level either to change the definition, or to empower the agency to make the changes necessary.

Here, the legislative option is distinctly different from the option presented earlier. Earlier, the option was posed to directly legislate what behavior should be required by public safety agencies on scene of day-to-day incidents. Here, the legislation would enable an agency with expertise in the field of emergency management to devise policy and protocols for use by public safety agencies.

Currently, those emergencies and disasters when SEMS applies are specifically stated in statute.<sup>74</sup> This statute provides a description of what is deemed an emergency, and provides examples of those emergencies. Additionally, in order for an incident to fall within these definitions, government officials must agree that it poses a severe threat to life and property within that area.<sup>75</sup>

The day-to-day incidents are not similar to the definitions currently existing. Simply changing the definitions materially alter many agreements within the state, as well as with other states and potentially countries.<sup>76</sup> Additionally, the SEMS regulations require a relatively strict form of organizational control that would be overly burdensome on day-to-day activities.<sup>77</sup>

Of course, each agency could voluntarily adopt only the unified command concept from the SEMS regulations. This concept, however, is not strict adoption of SEMS, and is discussed later in this paper.

Even assuming the definition differences can be overcome, however; the SEMS approach is not a mandate, other than on State agencies. The reason for this remains the same as under the legislative approach, the unfunded mandate issue.

Further, the only "teeth" requiring an agency to follow the SEMS regulations remains the reimbursement of extraordinary expenses incurred during an emergency. Under the "routine" emergency, there is no extraordinary expenses, the incidents are day-to-day occurrences, and are specifically budgeted by the agency. As a result, there are no appropriated funds to withhold, and consequently, no incentive for the local government (fire agency) to comply.

At a casual glance, SEMS appears to offer a complete solution to the issues of day-to-day conflicts. Upon further review, however, requiring SEMS to be applied to

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<sup>74</sup> Cal. Government Code § 8558.

<sup>75</sup> These government officials include Bd. of Supervisors, Governor, and other designated officials.

<sup>76</sup> For example, see Interstate Civil Defense and Disaster Compact. (describing when other states must aid California)(This compact theoretically applies to Canada and Mexico).

<sup>77</sup> Requiring additional personnel merely to complete required paperwork would not be efficient, either.

these conflicts poses creation of additional problems, and offers little more of a solution than use of the unified command concept.

### **Build Personal Relationships**

Slight modification of policies existing within each agency offers the possibility of significant improvement by addressing what is probably the major underlying cause of the conflicts. As discussed earlier, personality conflicts between members of both agencies are a major contributing factor. Just as this problem would likely not be completely solved through expansion of the SEMS unified command approach because of the interpersonal cooperation required, so too would improving the working relationships between employees of each agency would foster better relationships between the agencies during an incident.

Currently, those volunteer firefighters seeking EMT certification are required to participate in "ride-a-longs" with the servicing ambulance company. This has resulted, for the most part, in creating a high level of cooperation and recognition between the ambulance personnel and the firefighters.<sup>78</sup> This mutual experience provides a great deal of "cross-training" between the disciplines, and provides the ability for firefighter/EMTs to assist the ambulance crews during large incidents. Requiring firefighting personnel to experience the their counterpart's tasks greatly improves working relationships during an accident.

Consequently, both the CHP and the fire agencies should be able to address personality conflicts and lack of confidence between the agencies by either requiring or providing incentives for personnel to interact with other public safety agencies.

As discussed earlier, interaction between CHP officers and firefighters has diminished with the advent of vehicle-mounted computers, and the according lack of need for office space to fill out reports.

Utilizing fire stations as temporary offices by patrolling CHP officers should be re-instituted. This theory is supported by recent actions by TRFPD to foster relationships with law enforcement agencies. The concept of re-instituting CHP utilization of fire stations was recently aired in the media, with apparently favorable results.

TRFPD discussed creating a community service center providing office space where fire, sheriff, and CHP could be integrated. "That kind of arrangement would create 'a symbiotic relationship between [the fire

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<sup>78</sup> Many volunteers have prior or continuing employment with the ambulance company. Additionally, some volunteers are also certified instructors in medical training. Sometimes, the inevitable occurs and personality conflicts exist because of existing relationships. Overall, however, the inter-discipline participation has improved the working relationships.

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department] and law enforcement.' It would boost law enforcement's presence in town." Neither the San Joaquin County Sheriff nor the CHP spokesman was opposed to the idea. A CHP Lieutenant stated "...officers would use the office if they needed."<sup>79</sup>

Changes resulting in day-to-day interaction between law enforcement and fire agencies appear to be acceptable to all agencies concerned. Quite likely, mere policy modifications resulting in similar contact would be similarly accepted.

Historically, it appears that favorable working relationships between members of each agency reduces personality conflicts. Minimizing personality conflicts decreases a primary cause of the authority conflict during an emergency scene. Accordingly, any attempt to address the conflict issue through policy modifications should concentrate on improved non-emergency interaction between the disciplines.

Both agencies should require or provide incentives for its personnel to interact with members of the other agency. Here are several suggestions, listed in increasing order of likelihood of acceptance:

- Require or encourage "cross-training" with the other agency.
- Require or encourage personnel to participate in "ride-a-long" programs or stay at the other's station during off-duty periods.
- Require use of fire stations for report writing.
- Encourage use of fire stations for report writing.
- Each agency invites and creates a mechanism for providing access to other agency employees.

The first option is the least likely to succeed for several reasons. First, members of each agency are required to expend an inordinate amount of time each year beyond their employment tasks. Over recent years, there has been an ever-increasing requirement to provide training in all areas of each discipline.

Simply based on time & budget constraints, adding large numbers of non-agency personnel to existing training courses would result in overcrowding of training courses. Personnel from other agencies would not be at the same level of training, and would essentially have to be treated as "rookies" of the discipline.

As a result, either a remedial course would be required to bring invitees up to the same level, or the current training level would have to be lowered to meet the level of

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<sup>79</sup>*Thornton seeks to centralize*, Stockton Record (Sept. 24, 2000, Neil Gonzalez).

<http://www.google.com/search?q=cache:www.recordnet.com/7dayarchive/09.24.00/news/81news092400.html> (last browsed 10/22/00)(cache expired – contact [ngonzale@recordnet.com](mailto:ngonzale@recordnet.com) for article).

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the invitees. Neither of these alternatives would be acceptable, and would likely result in diminished competency of agency personnel because of limited training resources.

Additionally, although cross-training would allow members of each agency to understand the requirements and tasks of the particular job, most of the information that would have to be absorbed would not be usable by the invitee during the course of their regular employment.

Not only would this option tax the resources of each agency, it would result in decreased training for their own members. Further, cross-training would require additional time, which would have to be derived either from duty hours, or from off-duty hours. This option would not be viewed with favor by administrators or by the rank & file.

Permitting members of each agency to participate on a "space available" basis might be acceptable. Some employees may determine that use of personal time to attend training. Policy changes to permit this might be acceptable, if it would neither impede training for those intended nor add increased cost to the agency. At best, however, this approach would likely not reach enough members of the agencies to mitigate the lack of interaction between the agencies.

Option two, participation in "ride-a-long" programs, might be slightly more acceptable. Currently, both agencies have these programs in effect, although the purpose is more for solicitation of future employees or volunteers.

Again, a mandate requiring participation in a "ride-a-long" program will have the same difficulties as the previous option. Requiring or even encouraging "ride-a-longs" on a large scale would simply tax the resources of both agencies. At best, simply permitting or notifying members of the other agency of this as an option might find a suitable midpoint.

Again, the number of personnel participating may be too low to effectively mitigate the lack of interaction. However, there would probably be an increased number of participants, and spending time with individuals from the other agency is the goal of adapting the policies to create better working relationships. This solution should at least be considered when drafting policy changes.

The third option, providing law enforcement access to fire stations for report writing is probably the best solution, as far as policy supplementation goes. This returns the non-emergency relationship status to that existing prior to widespread use of laptops by the CHP, and it realistically addresses practical concerns.

First, CHP officers patrol fixed areas and must write reports each time they are dispatched, make a stop, or make an arrest. Previously, it was not uncommon for

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officers to complete their paperwork at local fire stations. Second, fire stations are still frequented in rural areas, because of the lack of restroom facilities in undeveloped areas.<sup>80</sup>

On the other hand, a CHP office generally resides within only one or two districts within a particular county. It would be nonsensical to suggest firefighters utilize a CHP office. After each response, fire apparatus must return to its station for replenishment. There is nothing inherently unfair or one-sided by only addressing units that patrol by nature.

Encouraging use of fire stations would likely be a simple two-part implementation. The fire station would inform the local CHP office of the availability of workspace, and the CHP Area Commander would notify Traffic Officers that they are permitted to use workspace at the fire stations.<sup>81</sup>

This solution would have minimal impact on the resources of each agency. Fire departments generally have meeting rooms and training areas that could provide workspace. No additional cost would be incurred by patrolling officers. Additionally, having law enforcement vehicles parked at a fire station improves the appearance of law enforcement within the community.<sup>82</sup>

The fourth and final option, that of merely providing access to members of the other agency, is probably the least cost, but may provide only minimal results.

For reasons described earlier, members of either agency will be unlikely to use personal time to integrate with the other agencies. However, just as in the second option, there are probably enough personnel from each discipline to permit a modicum of interaction. By itself, this option probably will fail to address the personality conflicts because of the limited amount of interaction. However, this option will probably bolster the benefits derived from use of the third option, by allowing for voluntary interaction with the other agency. Potentially, this will expand the circle of interpersonal relationships between the agencies.

Because each agency has a significantly different structure, statewide implementation of the policies is easier through the CHP. The CHP has the statewide communication system in place, as well as the unified structure where all policy is generated through the Commissioner's Office.

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<sup>80</sup> Although lack of restrooms in rural areas may not seem an immediate issue, there are increasing numbers of female CHP officers, plus a restroom provides running water and other sanitary benefits.

<sup>81</sup> This is, of course, still an oversimplification. The policy must also be tailored to avoid abuse of the workspace as an excuse to not patrol. (One local fire station was referred to as "The Lilac Inn," based on its street address.)

<sup>82</sup> This is especially true, in light of the fact that CHP officers are often dispatched as "fill" vehicles when Sheriff or Police vehicles are tied up elsewhere.

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By deploying policy modifications through the CHP, statewide uniformity on at least the CHP side is assured. A central, model policy or agreement can be created using state resources, and provided to all districts, including the smaller, less affluent ones. Although this method does not ensure or require all fire districts to cooperate in these policy modifications, it at least provides the opportunity.

Since there are really few drawbacks to some of the suggested policy modifications, and since the improvement in quality of service to a community is improved there will likely be little resistance.

### **Improve Communication**

As discussed, the conflicts would be reduced through better working relationships between the representatives of each agency. It should come as no surprise that a major portion of relationships are developed and fostered through communication. Improved interaction between the agencies could be improved simply by providing a method to share radio communications between the agencies.

Over the past fifty years, communication methods have improved dramatically. Even as recently as five years ago, many CHP patrol cars were equipped with antiquated low-band VHF radios, with no other method to communicate with their dispatch.

With recent technological advances, patrol cars are equipped with extenders that allow the officer to be in constant contact, even when they are away from the vehicle. Additionally, it is not uncommon for patrol vehicles to also be equipped with GPS, scanners, cellular phones, data terminals, and other electronic communication devices. Redundant communication resources have now become standard.

The fire departments were even further lacking in communication resources. Before the advent of 911 services, reporting a fire or other incident required phoning the fire station directly. In turn, the station would dispatch the apparatus and the volunteers.

The method of dispatching would be beyond belief today. Those at the station would drive the apparatus to the scene, while a civil defense horn, audible for about eight miles, would be set off in a predetermined pattern. From this pattern other volunteers would interpret the direction and distance from the station, and would respond to the location. There were no radios at the station, in the vehicles, or with personnel. After responding, there was no simple method to request additional resources.

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Currently, most large fire agencies utilize available communication technologies. While possibly lagging the CHP somewhat in communication equipment, both agencies are well equipped with radios.

Unfortunately, there is no direct communication ability between CHP and the fire agencies. Transceivers are used to contact that agency's dispatch center, which relays the message or request to the other agency's dispatch center by landline. Direct radio communications between vehicles in the field are not possible. Currently, both agencies generally use different frequencies, and those radios are not compatible with one another.<sup>83</sup>

In some rural areas, the CHP has found a creative way to overcome this technological communication barrier. Unfortunately, there is no statewide policy on their solution, nor are fire agencies necessarily aware of the method.<sup>84</sup>

The solution is quite simple, and extremely cost effective. What some CHP Area Offices have done is installed "police scanners" in the patrol cars. Local fire agencies also installed scanners.<sup>85</sup> When an officer from one agency needs to communicate with the other agency, they merely talk on their assigned frequency. The scanner in the other agency's vehicle picks up this transmission, and the other agency "hears" the communication. If a response is necessary, they use the same method. Effectively, this acts as a crude "duplex" radio.<sup>86</sup>

Although this communication improvement could be considered a subset of "building personal relationships," this solution differs in that it fundamentally improves the quality of responses in addition to offering the opportunity for members of each agency to work with each other during incidents. As explained earlier, personality conflicts can be minimized when individuals are exposed to each other frequently. Accordingly, this option provides immediate improvement by potentially eliminating sources of conflict before agencies are even on scene.

Because of the similarity between this option and options to require or encourage interaction between members of the agencies, use of the CHP structure would also be

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<sup>83</sup> Although CHP also utilizes other technology, the majority of radio communications use low-band VHF. Fire agency radios vary greatly between dispatch centers. Fire agencies use VHF, UHF, as well as 800Mhz trunking radios. However, since statewide OES frequencies are VHF, all departments have VHF transceivers for use during mutual aid incidents. Low-band VHF radios are not compatible with VHF radios, however.

<sup>84</sup> This is not a new idea. Apparently this method has been used successfully with CalTrans for a number of years.

<sup>85</sup> Captain Barrie Lightfoot, Retired, CHP (former Area Commander)(Interview 6/2001) (Discussing Ukiah area office).

<sup>86</sup> Much like a cellular phone. On standard transceivers, the same frequency is used for both transmission and reception, allowing only one user at a time. Under this approach, radio traffic is not limited and simultaneous transmissions may occur.

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the best approach here. A mandate from the Commissioner's Office to install scanners statewide would provide the groundwork. Notification of the communication method and creation of radio protocols could then be cooperatively created between Area Offices and surrounding fire departments. This solution would likely be accepted by the rank & file of each agency, especially since simple communications would not have to be relayed through each dispatch center.<sup>87</sup>

The feasibility of this approach has already been proven by its use in some areas. As this is an easily implemented and low cost option, consideration of this option as an initial effort to partially solve the conflicts is encouraged.

### **Monitor the Problem**

At this point, further inquiry and some effort to monitor the conflict issue may be an adequate solution. It is not uncommon that attempts to correct problems often exacerbate the situation. Research to obtain solid data on the frequency of occurrences based on geographical regions may show that the problem exists in rural areas, but not in urban regions. Such information could be utilized to draft policies in a narrow manner.

Blanket approaches often result in uniform, but less efficient results. Simply leaving existing policies in place and doing nothing more than monitoring the problem is a feasible option. There is no great public outcry concerning the conflicts, and there is little to suggest that the public is even aware of the problem. Sometimes, doing nothing at all is an appropriate response. At the least, no action should occur until further data is available on the occurrences.

## **POLICY RECOMMENDATION**

Any reasonable attempt to rectify the existing conflict situation must satisfy several factors to have any realistic probability of occurring. Quite simply, minimizing these conflicts needs to occur as rapidly as possible to ensure that the health and safety of California's motorists remains at an acceptable level. Additionally, an ideal situation would garner support from the affected agencies, as well as the affected public. Finally, the solution should be as cost-effective as possible, to preserve valuable state resources.

There is not one simple solution to address the conflicts. Reducing the occurrences must be approached through several different options. Each option

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<sup>87</sup> Naturally, of course, there are negative implications of this solution. With increased use of scanners, members of each agency will monitor the other's frequencies and "self-dispatch" themselves to an incident. This occurs in varying degrees today, and can cause conflicts, especially when one agency formally cancelled the other when it was recognized that they were not needed. Still, the benefits probably outweigh the negative implications.

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addresses specific causes, and although a multi-pronged approach may be slightly more difficult, simply implementing one method would be far less effective than utilizing the available options. Follows is an explanation of the pros and cons of each approach, as well as individual recommendations for inclusion into an overall solution.

Because the conflicts are a relatively uncommon occurrence, legislation specifying explicit authority in an agency is unlikely. This problem is especially heightened since each incident is distinctly different. And depending on the particular situation, one agency may be better equipped to address instant issues. It would be impractical to create a "laundry list" of which agency would be in charge of which type of incident. For additional reasons discussed earlier, legislation is simply not a viable option in view of other available options.

Similarly, wholesale application of the SEMS regulations suffers from the same difficulties as pure legislative methods. Quite simply, mandated civility and cooperation would be less than effective, and would fail to reach the objective of reducing conflict occurrences. However, the theory of unified command should be presented as a model for use by rank and file of the agencies. This will provide a method of cooperative techniques to be used during the smaller day-to-day conflicts, without imposing the additional documentation and overhead that would otherwise be required by a mandatory requirement to use SEMS.

Personal relationships between the individual responders of each agency must also be addressed. Again, no mandatory requirements would be imposed. Here, each individual area could determine the best approach for that geographic region. Although a specific method of improving the relationships need not be mandatory, use of one of the methods must be. CHP and fire agencies can choose either an intensive approach of cross-training members of each agency, or simply providing them the opportunity to interface by allowing traffic officers to use fire stations for paperwork and as a stop on a patrol. Additionally, current "ride-along" programs should be extended to also allow members of other agencies to participate on a practical basis.

Communication between members of each agency must be improved. Through use of the scanner (pseudo-transceiver) method, each responding agency will have better knowledge of the difficulties facing the other agency, and will better understand why certain issues conflict. Additionally, the availability of direct communication will help address matters before they come to a head. This can only serve to encourage better cooperation between the agencies.

Finally, monitoring of policy effectiveness is required. Prior to implementing the prior policies, a short (one month or less) review of what areas have the largest conflict problems should be obtained. In this way, proper attention can be provided to the most deficient geographical areas - which is important with limited resources. Following this short review period, constant monitoring and feedback from field

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officers and firefighters is necessary. This will provide a method to gauge the effectiveness. Requiring ineffective options to remain implemented reduces overall effectiveness. If located, these must be eliminated. Oppositely, effective approaches need to be encouraged and promoted.

## IMPLEMENTATION ISSUES

The single largest obstacle to statewide implementation of these policy recommendations is the decentralized structure of fire districts within the state. Without an overarching authority, there is no guarantee of uniform implementation by fire districts throughout the state.

The potential lack of uniformity does not indicate, however, that legislation is necessary. What is required, however, is some mechanism to ensure that conflicts between CHP and fire agencies is minimized. Each option brings with it different difficulties and unique incentives.

As explained earlier, mandating legislative solutions is the least palatable method. Modifying the balance of power between responding agencies would have to be accomplished by specifically granting authority to each agency on a situational basis, requiring a lengthy list. Due to the nature of emergencies, this list would always have substantial gaps. The other apparent option, legislating general authorities to each agency would offer no improvement since that is more or less the current situation today.

Additionally, any state-mandated program requiring local jurisdictions to expend funds without providing reimbursement falls under the unfunded mandate problem. Simply legislating requirements on local governments requires providing adequate funding to implement the program.<sup>88</sup>

Extending the scope of the SEMS regulations, by applying the use of unified command to day-to-day incidents offers a solution to the symptom. Unfortunately, this approach also suffers from the same problem inherent in the legislative approach - the State will be required to provide additional funding to compensate the local governments.

Even so, implementation of the unified command approach would likely be far more palatable to both agencies, since there would be no immediate threat to the agency's authority, and similarly no restrictive limitations based on a statutory list of situations and incidents where authority would be limited. Although this approach

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<sup>88</sup> The expense to the local jurisdiction would at least create the requirement of additional training, documentation, or increase administrative expenses, even if nominal.

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does limit an agency's authority to the extent that concessions may occur during the unified command, both agencies currently use this approach during large-scale disasters and emergencies. Extending the unified command concept to lesser incidents would, accordingly, require little transition effort.

The difficulty is in determining the method for promulgating the regulatory changes. There are two main options. First, the enacting legislation could be amended to include day-to-day incidents.<sup>89</sup> Second, OES could create guidelines recommending use of the unified command in day-to-day incidents.<sup>90</sup> Alternately, each agency could create a policy that voluntarily adopts use of unified command for day-to-day incidents.

First, although amending the current legislation is obviously a legislative solution, it differs substantially from the "legislative option" described above. Currently, OES is the agency charged with administering the regulations. This removes, for the most part, the ability of either CHP or fire agencies from dramatically modifying the requirements in favor of one agency. This would likely negate any interest one agency might have in opposing the changes, since there would effectively be an impartial third party creating the requirement.

An additional factor that could pose an implementation problem, however, is that regulations promulgated by another agency are often viewed as being interpretable. Since neither CHP nor fire agencies would have control in drafting the modified regulations, each could take the position that definitions need to be interpreted for them to apply the requirement of unified command to all incidents, or specific incidents. This would lead to non-uniformity in practice; precisely the opposite of what this approach is designed to deliver.

Finally, modifying the basis for the SEMS requirements indirectly affects each agency. By modifying SEMS, the legislative mandate does not directly address the source of the conflicts, which is primarily lack of working relationships. The SEMS unified command approach relies primarily on cooperation between members of the affected agencies. Since there is already evidence of non-cooperation, the paternalistic approach of forcing them to cooperate may fail unless the underlying causes are first addressed.

As an alternative approach, OES could voluntarily draft guidelines in applying the SEMS unified command approach to day-to-day incidents. Although providing the guidelines would have no legal requirement to actually follow them, the guidelines would at least provide a framework for the agencies to work toward use of a unified command during day-to-day incidents.

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<sup>89</sup> See generally, Cal. Government Code § 8607.

<sup>90</sup> This would not be a mandatory situation, and would likely still fall under the unfunded mandate problem.

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This approach would likely not occur, however. As a state agency, OES is primarily concerned with preparation and management of disasters and large-scale emergencies. The central task of this agency ensures that few "extra" resources would be available to draft those guidelines. More important, however, OES would likely not voluntarily create such guidelines as doing so would be somewhat out of its scope of authority. An agency would not likely intervene into a dispute that only marginally affects its interest.

As explained, it is unlikely that either agency will favor additional requirements imposed by a third party agency. Similarly, the likelihood that the CHP and fire agencies will apply what amount to be "suggestions" from an unrelated agency is also unlikely.

The final option for implementing a SEMS-like unified command approach to day-to-day incidents is for the CHP and fire agencies to voluntarily adopt and create their own agreements for using unified command.

Notwithstanding the paternal aspects of the forced cooperation approach of imposing unified command, there are several practical implementation difficulties inherent in the voluntary approach. First, because of the de-centralized nature of the fire districts, uniform implementation throughout the state could not be obtained through a voluntary approach. Second, communication of the concepts would likely be best addressed through CHP channels. There is no practical way to determine whether individual districts will perceive this suggestion. Finally, since implementation of the extended unified command would be voluntary and non-uniform, the problem would probably not be solved in areas throughout the state.

Implementation issues regarding the building of personal relationships are discussed earlier in the policy solution section. Generally, however, the single largest issue is that forcing interpersonal relationships between members of the agencies would be difficult and expensive. Available resources are limited, available hours are already accounted for in both tasks and training, and even providing the option of voluntary cross-training would possibly be a burdening expense.

Oppositely, however, permitting the use of fire stations as a patrol destination brings few implementation drawbacks. As mentioned in an earlier footnote, a primary implementation issue would be the drafting and monitoring of policies to prevent the abuse of the fire stations. Although it is unlikely that officers will abuse the fire station as a stopping point, there should be monitoring to determine whether patrol effectiveness is diminished as a result, and also whether there is a noticeable diminishment in crime or response time from being staged at a fixed location.

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Implementing radio communication improvements is relatively issue-free. The cost of implementing the policy would be minimal, especially since members of each agency already use personal scanners to some degree. The largest obstacle would be the determination of whether the agencies desire the additional communication ability, and creation of a protocol policy that ensures adequate bandwidth remains for existing uses. This communication method, as a policy<sup>91</sup> is proven through successful implementation in areas of the state.

Implementation of a monitoring policy to determine the extent and scope of the conflict is probably the easiest to implement. Of course, as a passive approach to policy, this also has the least likelihood of addressing the issue. Sole use of this approach, however, does nothing to immediately address the effects on the health and safety of California citizens.

### **ETHICAL CONSIDERATIONS**

Both the problem sought to be corrected and the solutions presented are steeped in ethical issues. Essentially, these conflicts place personal health and property at risk any time response techniques are delayed. Beyond the obvious effect from these conflicts, each agency has statutory obligations they are required to address during incidents. Any conflict solution must provide mechanisms to ensure the goals of each agency can be accomplished with little interference. Finally, the inner workings of each agency should address internal loyalties. A moral obligation exists between employer and employee to adequately support the rank and file when difficult decisions are required under time constraints.

#### **Public Safety**

The single largest policy consideration regarding solutions to the conflicts is the effect on the health and safety of the citizens. The underlying purpose of either agency during an incident is to preserve lives and property. From the examples provided, there is evidence that additional injury results from the conflicts. This should be minimized as quickly as possible.

Unfortunately, none of the solutions offer immediate results. Each solution brings with it a varying timeline including implementation time and adequate time for the policies to actually become effective with agency members responding to incidents. Accordingly, none of the options offer a particular advantage in expediency.

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<sup>91</sup> Based on the premise that CHP Areas can only "interpret" existing policies approved by the Commissioner's Office, this might be termed as an "interpreted policy." The author posits, however, that Areas create some policy decisions under this terminology.

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The option of merely monitoring the situation probably provides the least timely approach. Monitoring the occurrences does not directly address the conflicts, and provides the greatest opportunity for the existence of continuing or escalating conflicts. This likelihood of continuing conflicts should not be dispositive of the option, however. By monitoring and further researching the sources and factors aggravating the conflicts, the information obtained could provide a more thorough solution.

Adoption of a long-term plan, as opposed to one that is implemented as rapidly as possible could potentially save more lives and prevent additional injuries. The factors underlying each approach must be determined before choosing one method over another.

However, since lives are potentially at stake as a result of these conflicts, the policy recommended above (a multi-prong approach) should be utilized to address both current and future issues. Under the existing circumstances, balancing long-term benefits against short-term benefits in choosing a single approach is simply unacceptable. The only ethical possibility is to make every effort to protect all life, rather than considering some expendable to benefit long-term goals.

### **Statutory Obligations**

Each agency has statutory obligations imposed by the legislature. Concurrent with this obligation is the need for policy creation to follow the legislative mandates. An agreement between CHP and fire agencies that voluntarily cedes authority during an incident may make the incident flow smoother. However, there is a distinct moral issue raised when an agency grants its authority to another merely for means of civility.

For example, suppose the fire agency agreed that on vehicle accidents, all actions would be under the direction of the CHP officer on scene. Perhaps in a minor vehicle accident, no harm would flow. However, if this were a multiple casualty incident, allowing all decisions to be made by someone without specific knowledge and experience could be disastrous. The agency charged by the Legislature with patient care obligations cannot disregard the intent of the Legislature merely to make the job easier or more efficient.

A more obvious example would be where the CHP agreed the fire agency was to be in charge of vehicle accidents. Firefighters simply lack the experience and resources necessary to understand vehicle flow patterns and driver dynamics. Further, if the accident involved criminal activities, the fire agencies are neither trained nor experienced in evidence gathering. Because of the different goals of each agency, any policy to address the conflicts must also address the inherent differences in agency missions. Simply allowing the other agency to command a scene in all aspects would remove the conflict issue, but would seriously diminish the other agency's ability to carry out its legislatively mandated obligations.

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## **Judgment Calls**

As our State's public safety agencies currently exist, many on-scene decisions must be made at the field level through rank and file employees. As a practical matter, emergencies have too many variables to pre-plan for every contingency. Accordingly, many decisions must be made by personnel on scene, and in as rapid a fashion as possible.

Currently, representatives of both agencies make policy interpretations each day. Each interpretation brings with it the potential for intentional or unintentional mistake, and with every mistake comes the likelihood of death or injury. The decisions made do affect people in a very direct fashion. These decisions are crucial.

Any policy choice in addressing the conflict issue must consider the need for each agency to be autonomous in its decision-making process at the field level. Without a practical mechanism to eliminate the need for on scene judgment calls, members of each agency must remain free to make the decision necessary to protect lives, rather than having a major concern be policy adherence.

## **CONCLUSION**

Authority conflicts between emergency response agencies occur periodically during incidents, and often endanger the health and safety of victims. These conflicts arise based on different statutory and policy directives, such as different views on whether or not to close a roadway.

Although the conflicts are authority based, there is adequate discretion permitted with representatives of each agency to resolve these conflicts. Unfortunately, often times these same representatives choose instead to be uncooperative with the other agency. This lack of cooperation is the root cause of the conflicts.

The reason for the lack of cooperation is complex, arising from the differing backgrounds, training, and emphasis placed on particular tasks. Mandating cooperation would require removal of a great deal of discretion placed in the individuals of each agency. Additionally, mandating cooperation without addressing the cause of the lack of cooperation will fail.

What is necessary to resolve the lack of cooperation and the resulting on scene conflicts are improved personal relationships between responding individuals. By exposing members of each agency to the other agency's personnel and working requirements, an atmosphere conducive to a better understanding between the two agencies will result. Additionally, personal relationships should result by exposing the

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personnel to each other at times other than just emergency conditions. In this way, the people themselves have a working relationship established and can draw on common experiences acquired during the personal relationship building process.

Because of the differing structures between the two agencies, the CHP being centralized while the fire districts are de-centralized, implementation of policies to address this issue must be made through the CHP structure. The CHP structure offers the ability to promote policy statewide, while allowing custom tailoring at the Area level. The fire agencies, lacking an overarching authority, simply cannot approach the CHP on an area-by-area basis. As a result, regardless of which agency first chooses to address the conflicts, statewide uniformity requires CHP adoption of the methods.

Legislative and rulemaking methods offer little in short or long term benefits to either agency, and risk multiplying the conflict problem itself. Rather, an approach permitting members of each agency to interact should be utilized. Specifically, use of fire stations by patrol officers provides the opportunity for individuals to build better personal, and consequently, better working relationships.

Similarly, improving on-scene communication abilities by installing in-vehicle scanners offers a great potential for minimizing conflicts through better communication and understanding of the tasks required by each agency.

Monitoring of the conflict solution is required, regardless of whether any other option is implemented. At the very least, this paper should provide adequate explanation of the conflict issue, placing agency authorities and the general public on notice of the existence of the problem itself.

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