



COMPLIANCE REVIEW REPORT

CALIFORNIA TAHOE CONSERVANCY

Compliance Review Unit
State Personnel Board
May 8, 2017

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INTRODUCTION

Established by the California Constitution, the State Personnel Board (the SPB or Board) is charged with enforcing and administering the civil service statutes, prescribing probationary periods and classifications, adopting regulations, and reviewing disciplinary actions and merit-related appeals. The SPB oversees the merit-based recruitment and selection process for the hiring of over 200,000 state employees. These employees provide critical services to the people of California, including but not limited to, protecting life and property, managing emergency operations, providing education, promoting the public health, and preserving the environment. The SPB provides direction to departments through the Board's decisions, rules, policies, and consultation.

Pursuant to Government Code section 18661, the SPB's Compliance Review Unit (CRU) conducts compliance reviews of appointing authority's personnel practices in five areas: examinations, appointments, equal employment opportunity (EEO), personal services contracts (PSC's), and mandated training to ensure compliance with civil service laws and board regulations. The purpose of these reviews is to ensure state agencies are in compliance with merit-related laws, rules, and policies and to identify and share best practices identified during the reviews. The SPB conducts these reviews on a three-year cycle.

The CRU may also conduct special investigations in response to a specific request or when the SPB obtains information suggesting a potential merit-related violation.

EXECUTIVE SUMMARY

The CRU conducted a routine compliance review of California Tahoe Conservancy (Conservancy) personnel practices in the areas of appointments, EEO, and PSC's from January 1, 2016, through January 31, 2017, and mandated training from January 1, 2015, through January 31, 2017. The following table summarizes the compliance review findings.

| Area | Finding | Severity |
|------------------------------|---|---------------|
| Appointments | Appointments Complied with Civil Service Laws and Board Rules | In Compliance |
| Equal Employment Opportunity | Equal Employment Opportunity Program Complied with Civil Service Laws and Board Rules | In Compliance |
| Personal Services Contracts | Personal Services Contracts Complied with Procedural Requirements | In Compliance |

| Area | Finding | Severity |
|-------------------|--|---------------|
| Mandated Training | Mandated Training Complied with Statutory Requirements | In Compliance |

A color-coded system is used to identify the severity of the violations as follows:

- Red = Very Serious
- Orange = Serious
- Yellow = Non-serious or Technical
- Green = In Compliance

BACKGROUND

The Conservancy is a state agency within the Natural Resources Agency of the state of California. State law established the Conservancy in its present form in 1984 for the purposes of protecting and restoring Lake Tahoe’s natural environment, including water quality, air quality, and wildlife habitat; acquiring, restoring, and managing lands; preserving the scenic beauty and recreational opportunities of the region; and providing public access. The Conservancy’s jurisdiction spans the California side of the Basin and covers approximately 236 square miles. This service area includes the City of South Lake Tahoe and portions of El Dorado County and Placer County.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing Conservancy appointments, EEO program, and PSC’s from January 1, 2016, through January 31, 2017, and mandated training from January 1, 2015, through January 31, 2017. The primary objective of the review was to determine if Conservancy personnel practices, policies, and procedures complied with state civil service laws and board regulations, and to recommend corrective action for those deficiencies identified.

A cross-section of the Conservancy’s appointments were selected to ensure that various samples of appointment types, classifications, and levels were reviewed. The CRU examined the documentation that the Conservancy provided, which included scoring results, notice of personnel action (NOPA) forms, vacancy postings, application screening criteria, hiring interview rating criteria, certification lists, transfer movement worksheets, employment history records, correspondence, and probation reports.

The review of the Conservancy’s EEO program included examining written EEO policies and procedures; the EEO officer’s role, duties, and reporting relationship; the internal

discrimination complaint process; the upward mobility program; the reasonable accommodation program; the discrimination complaint process; and the Disability Advisory Committee (DAC).

The Conservancy's PSC's were also reviewed.¹ It was beyond the scope of the compliance review to make conclusions as to whether the Conservancy's justifications for the contracts were legally sufficient. The review was limited to whether the Conservancy's practices, policies, and procedures relative to PSC's complied with procedural requirements.

In addition, the Conservancy's mandated training was reviewed to ensure all employees required to file statements of economic interest were provided ethics training and that all supervisors were provided basic supervisory and sexual harassment prevention training within statutory timelines.

The Conservancy declined to have an exit conference. The Conservancy was found to be in compliance in all areas reviewed during the compliance review period. Therefore, no departmental response is required.

FINDINGS AND RECOMMENDATIONS

Appointments

In all cases not excepted or exempted by Article VII of the California Constitution, the appointing power must fill positions by appointment, including cases of transfers, reinstatements, promotions, and demotions in strict accordance with the Civil Service Act and Board rules. (Gov. Code, § 19050.) Appointments made from eligible lists, by way of transfer, or by way of reinstatement, must be made on the basis of merit and fitness, which requires consideration of each individual's job-related qualifications for a position, including his or her knowledge, skills, abilities, experience, and physical and mental fitness. (Cal. Code Regs., tit. 2, § 250, subd. (a).)

During the compliance review period, the Conservancy made seven appointments. The CRU reviewed three of those appointments, which are listed below:

¹ If an employee organization requests the SPB to review any personal services contract during the SPB compliance review period or prior to the completion of the final compliance review report, the SPB will not audit the contract. Instead, the SPB will review the contract pursuant to its statutory and regulatory process. In this instance, none of the reviewed PSC's were challenged.

| Classification | Appointment Type | Tenure | Time Base | No. of Appointments |
|--|--------------------|-----------|-----------|---------------------|
| Associate Governmental Program Analyst | Certification List | Permanent | Full Time | 1 |
| Associate Information Systems Analyst | Certification List | Permanent | Full Time | 1 |
| Senior Accounting Officer (Supervisor) | Certification List | Permanent | Full Time | 1 |

FINDING NO. 1 – Appointments Complied with Civil Service Laws and Board Rules

The Conservancy measured each applicant’s ability to perform the duties of the job by conducting hiring interviews and selecting the best-suited candidates. For each of the three list appointments reviewed, the Conservancy ordered a certification list of candidates ranked competitively. After properly clearing the certification lists including SROA, the selected candidates were appointed based on eligibility attained by being reachable within the first three ranks of the certification lists.

The CRU found no deficiencies in the appointments that the Conservancy conducted during the compliance review period. Accordingly, the CRU found that all the appointments the Conservancy made during the compliance review period satisfied civil service laws and board rules.

Equal Employment Opportunity (EEO)

Each state agency is responsible for an effective EEO program. (Gov. Code, § 19790.) The appointing power for each state agency has the major responsibility for monitoring the effectiveness of its EEO program. (Gov. Code, § 19794.) To that end, the appointing power must issue a policy statement committed to equal employment opportunity; issue procedures for filing, processing, and resolving discrimination complaints; issue procedures for providing equal upward mobility and promotional opportunities; and cooperate with the CalHR by providing access to all required files, documents and data. (*Ibid.*) In addition, the appointing power must appoint, at the managerial level, an EEO officer, who shall report directly to, and be under the supervision of, the director of the department to develop, implement, coordinate, and monitor the department’s EEO program. (Gov. Code, § 19795.) In a state agency with less than 500 employees, like the Conservancy, the EEO officer may be the personnel officer. (*Ibid.*)

Because the EEO Officer investigates and ensures proper handling of discrimination, sexual harassment and other employee complaints, the position requires separation from the regular chain of command, as well as regular and unencumbered access to the head of the organization.

Each state agency must establish a separate committee of employees who are individuals with a disability, or who have an interest in disability issues, to advise the head of the agency on issues of concern to employees with disabilities. (Gov. Code, § 19795, subd. (b)(1).) The department must invite all employees to serve on the committee and take appropriate steps to ensure that the final committee is comprised of members who have disabilities or who have an interest in disability issues. (Gov. Code, § 19795, subd. (b)(2).)

The CRU reviewed the Conservancy's EEO policies, procedures, and programs in effect during the compliance review period.

FINDING NO. 2 – Equal Employment Opportunity Program Complied with Civil Service Laws and Board Rules

After reviewing the policies, procedures, and programs necessary for compliance with the EEO program's role and responsibilities according to statutory and regulatory guidelines, the CRU determined that the Conservancy's EEO program provided employees with information and guidance on the EEO process including instructions on how to file discrimination claims. Furthermore, the EEO program outlines the roles and responsibilities of the EEO Officer, as well as supervisors and managers. The EEO Officer, who is at a managerial level, reports directly to the Executive Director of the Conservancy. In addition, the Conservancy has an established DAC that reports to the director on issues affecting persons with a disability. The Conservancy also provided evidence of its efforts to promote EEO in its hiring and employment practices, to increase its hiring of persons with a disability, and to offer upward mobility opportunities for its entry-level staff. Accordingly, the Conservancy's EEO program complied with civil service laws and board rules.

Personal Services Contracts

A PSC includes any contract, requisition, or purchase order under which labor or personal services is a significant, separately identifiable element, and the business or person performing the services is an independent contractor that does not have status as an employee of the State. (Cal. Code Reg., tit. 2, § 547.59.) The California Constitution has an implied civil service mandate limiting the state's authority to contract with private entities to perform services the state has historically or customarily performed. Government Code section 19130, subdivision (a), however, codifies exceptions to the civil service mandate where PSC's achieve cost savings for the state. PSC's that are of a type enumerated in subdivision (b) of Government Code section 19130 are also permissible. Subdivision (b) contracts include private contracts for a new state function, services that are not available within state service, services that are incidental to a contract for the purchase or lease of real or personal property, and services that are of an urgent, temporary, or occasional nature.

For cost-savings PSC's a state agency is required to notify the SPB of its intent to execute such a contract. (Gov. Code, § 19131.) For subdivision (b) contracts, the SPB reviews the adequacy of the proposed or executed contract at the request of an employee organization representing state employees. (Gov. Code, § 19132.)

During the compliance review period, the Conservancy had one PSC that was in effect and subject to Department of General Services (DGS) approval, and thus our procedural review. The CRU reviewed one contract, which is listed below:

| Vendor | Services | Contract Dates | Contract Amount | Justification Identified |
|-----------------------------|------------------|------------------|-----------------|--------------------------|
| Economic & Planning Systems | Project Analysis | 6/1/16 – 7/31/16 | \$75,000.00 | Yes |

FINDING NO. 3 – Personal Services Contracts Complied with Procedural Requirements

When a state agency requests approval from the DGS for a subdivision (b) contract, the agency must include with its contract transmittal a written justification that includes *specific and detailed factual information* that demonstrates how the contract meets one or more conditions specified in Government Code section 19131, subdivision (b). (Cal. Code Reg., tit. 2, § 547.60.)

The total amount of all the PSC's reviewed was \$75,000.00. It was beyond the scope of the review to make conclusions as to whether the Conservancy justifications for the contract were legally sufficient. For all PSC's subject to DGS approval, the Conservancy provided specific and detailed factual information in the written justifications as to how the contract met at least one condition set forth in Government Code section 19131, subdivision (b). Accordingly, the Conservancy PSC's complied with procedural requirements.

Mandated Training

Each member, officer, or designated employee of a state agency who is required to file a statement of economic interest (referred to as "filers") because of the position he or she holds with the agency is required to take an orientation course on the relevant ethics statutes and regulations that govern the official conduct of state officials. (Gov. Code, §§ 11146 & 11146.1.) State agencies are required to offer filers the orientation course on a semi-annual basis. (Gov. Code, § 11146.1.) New filers must be trained within six months of appointment and at least once during each consecutive period of two calendar years, commencing on the first odd-numbered year thereafter. (Gov. Code, § 11146.3.)

Upon the initial appointment of any employee designated in a supervisory position, the employee shall be provided a minimum of 80 hours of training, as prescribed by the California Department of Human Resources (CalHR). (Gov. Code, § 19995.4, subd. (b).) The training addresses such topics as the role of the supervisor, techniques of supervision, performance standards, and sexual harassment and abusive conduct prevention. (Gov. Code, §§ 12950.1, subds. (a), (b), & (c), & 19995.4, subd. (b).) The training must be successfully completed within the term of the employee's probationary period or within six months of the initial appointment, unless it is demonstrated that to do so creates additional costs or that the training cannot be completed during this time period due to limited availability of supervisory training courses. (Gov. Code, § 19995.4, subd. (c).) As to the sexual harassment and abusive-conduct prevention component, the training must thereafter be provided to supervisors once every two years. (Gov. Code, § 12950.1.)

Within 12 months of the initial appointment of an employee to a management or career executive assignment (CEA) position, the employee shall be provided leadership training and development, as prescribed by CalHR. (Gov. Code, §§ 19995.4, subds. (d) & (e).) For management employees the training must be a minimum of 40 hours and for CEAs the training must be a minimum of 20 hours. (*Ibid.*) Thereafter, for both categories of appointment, the employee must be provided a minimum of 20 hours of leadership training on a biannual basis. (*Ibid.*)

The Board may conduct reviews of any appointing power's personnel practices to ensure compliance with civil service laws and Board regulations. (Gov. Code, § 18661, subd. (a).) In particular, the Board may audit personnel practices related to such matters as selection and examination procedures, appointments, promotions, the management of probationary periods, and any other area related to the operation of the merit principle in state civil service. (*Ibid.*) Accordingly, the CRU reviews documents and records related to training that appointing powers are required by the afore-cited laws to provide its employees.

The CRU reviewed the Conservancy's mandated training program that was in effect during the compliance review period.

FINDING NO. 4 – Mandated Training Complied with Statutory Requirements

The Conservancy provided ethics training to its three new filers within six months of appointment and semiannual ethics training to its six existing filers during two-year calendar year period commencing in 2015. The Conservancy also provided supervisory training to its two new supervisors within 12 months of appointment. In addition, the Conservancy provided sexual harassment prevention training to its three new supervisors within six months of appointment, and sexual harassment prevention training to its six existing supervisors every two years. Thus, the Conservancy complied with mandated training requirements within statutory timelines.

DEPARTMENTAL RESPONSE

No departmental response was required since all areas reviewed were in compliance.

SPB REPLY

The Conservancy was found to be in compliance in all areas reviewed during the compliance review period. Therefore, no further action is required.