



COMPLIANCE REVIEW REPORT

CALIFORNIA NATURAL RESOURCES AGENCY

Compliance Review Unit
State Personnel Board
March 17, 2017

TABLE OF CONTENTS

Introduction	1
Executive Summary	1
Background	2
Scope and Methodology.....	2
Findings and Recommendations.....	3
Appointments.....	3
Equal Employment Opportunity	8
Personal Services Contracts.....	9
Mandated Training.....	10
Departmental Response.....	12
SPB Reply.....	12

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 Natural Resources Agency (CNRA) personnel practices in the areas of appointments, EEO, and PSC's from September 1, 2015, through August 31, 2016, and mandated training from August 31, 2014, through August 31, 2016. The CNRA did not conduct any examinations during the compliance review period. The following table summarizes the compliance review findings.

Area	Finding	Severity
Appointments	Equal Employment Opportunity Questionnaires Were Not Separated from Applications	Very Serious
Appointments	Probationary Evaluations Were Not Provided for all Appointments Reviewed	Serious

Area	Finding	Severity
Equal Employment Opportunity	Equal Employment Opportunity Program Complied with Civil Service Laws and Board Rules	In Compliance
Personal Services Contract	Personal Services Contract Complied with Procedural Requirements	In Compliance
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 mission of the CNRA is to restore, protect, and manage the state’s natural, historical, and cultural resources for current and future generations using creative approaches and solutions based on science, collaboration, and respect for all involved communities. The Secretary for Natural Resources, a member of the Governor’s Cabinet, sets the policies and coordinates the environmental preservation and restoration activities of 26 various departments, boards, commissions, and conservancies. The Secretary also directly administers the Sea Grant Program, Ocean Protection Council, California Environmental Quality Act, Environmental Enhancement Mitigation Program, River Parkways, Urban Greening, and California Cultural and Historical Endowment grant programs.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing CNRA appointments, EEO program, and PSC’s from September 1, 2015, through August 31, 2016, and mandated training from August 31, 2014, through August 31, 2016. The primary objective of the review was to determine if CNRA 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 CNRA appointments were selected to ensure that samples of various appointment types, classifications, and levels were reviewed. The CRU examined the documentation that the CNRA provided, which included notice of personnel action forms, vacancy postings, application screening criteria, hiring interview rating criteria, certification lists, transfer movement worksheets, employment history records, correspondence, and probation reports.

The CNRA did not conduct any examinations during the compliance review period.

The review of the CNRA 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).

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

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

On February 27, 2017, an exit conference was held with the CNRA to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed the CNRA written response on March 9, 2017, which is attached to this final compliance review report.

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,

¹If 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.

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 CNRA made 14 appointments. The CRU reviewed nine of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Administrative Assistant I	Certification List	Permanent	Full Time	1
Attorney III	Certification List	Limited Term	Full Time	1
Staff Services Manager I	Certification List	Permanent	Full Time	2
Staff Services Manager III	Certification List	Permanent	Full Time	1
Associate Park and Recreation Specialist	Mandatory Reinstatement	Permanent	Full Time	1
Environmental Program Manager II	Retired Annuitant	Temporary	Limited Term	1
Student Assistant	TAU	Temporary	Intermittent	1
Associate Park and Recreation Specialist	Transfer	Permanent	Full Time	1

For each of the five certification list appointments, the CNRA properly advertised the job vacancies, sent out contact letters, screened applications, interviewed candidates, and cleared the certification lists for SROA and reemployment, and conducted background and reference checks as appropriate.

The CNRA made one appointment via mandatory reinstatement. A state agency is required to reinstate an employee to his or her former position if the employee is (1) terminated from a temporary or limited-term appointment by either the employee or the appointing power; (2) rejected during probation; or (3) demoted from a managerial position. (Gov. Code, § 19140.5.) The following conditions, however, must apply: the employee accepted the appointment without a break in continuity of service and the reinstatement is requested within ten working days after the effective date of the

termination. (*Ibid.*) The CNRA complied with the rules and laws governing mandatory reinstatements.

The CRU reviewed one retired annuitant appointment. The individuals submitted their applications and were eligible to be hired as retired annuitants, not to exceed 960 hours in a fiscal year.

The CRU reviewed one TAU appointment. When there is no employment list from which a position maybe filled, the appointing power, with the consent of the department, may fill the position by temporary appointment. (Gov. Code, §19058.) No person may serve in one or more positions under temporary appointment longer than nine months in a 12 consecutive month period. The CNRA complied with the rules and laws governing TAU appointments.

The CRU reviewed one transfer appointment. A transfer of an employee from a position under one appointing power to a position under another appointing power may be made if the transfer is to a position in the same class or in another class with substantially the same salary range and designated as appropriate by the executive officer. (Cal. Code Reg., tit. 2, § 425.) The CNRA verified the eligibility of each candidate to his/her appointed class.

However, the CNRA did not separate EEO questionnaires from the STD 678 employment applications for all appointments as described in finding two.

FINDING NO. 1 – Equal Employment Opportunity Questionnaires Were Not Separated from Applications

Summary: Out of nine appointments reviewed, one appointment file included applications where EEO questionnaires were not separated from the STD 678 employment application. Specifically, four of the 103 applications reviewed included EEO questionnaires that were not separated from the STD 678 employment application.

Criteria: Government Code section 19704 makes it unlawful for a hiring department to require or permit any notation or entry to be made on any application indicating or in any way suggesting or pertaining to any protected category listed in Government Code section 12940, subdivision (a) (e.g., a person's race, religious creed, color, national origin, age, or sexual orientation). Applicants for employment in state civil service are asked to provide voluntarily ethnic data about

themselves where such data is determined by the California Department of Human Resources (CalHR) to be necessary to an assessment of the ethnic and sex fairness of the selection process and to the planning and monitoring of affirmative action efforts. (Gov. Code, § 19705.) The EEO questionnaire of the state application form (STD 678) states, “This questionnaire will be separated from the application prior to the examination and will not be used in any employment decisions.”

Severity: Very Serious. The applicants’ protected classes were visible, subjecting the agency to potential liability.

Cause: The CNRA states that the EEO questionnaires were not removed due to the previous decentralization of the Human Resources Office, wherein applicants submitted the state applications directly to the hiring managers.

Action: It is recommended that within 60 days of the Executive Officer’s approval of these findings and recommendations, the CNRA submit to the CRU a written corrective action plan that the department will implement to ensure that EEO questionnaires are separated from all applications. Copies of any relevant documentation should be included with the plan.

FINDING NO. 2 – Probationary Evaluations Were Not Provided for All Appointments Reviewed

Summary: The CNRA did not prepare, complete, and/or retain required probationary reports of performance for four of the nine appointments reviewed by the CRU.

Classification	Appointment Type	No. of Appointments	No. of Uncompleted Prob. Reports
Administrative Assistant	Certification List	1	1
Staff Services Manager I	Certification List	2	2
Associate Park and Recreation Specialist	Transfer	1	1

Classification	Appointment Type	No. of Appointments	No. of Uncompleted Prob. Reports
Total		4	4

Criteria: A new probationary period is not required when an employee is appointed by reinstatement with a right of return. (Cal. Code Regs., tit. 2, § 322, subd. (d)(2).) However, the service of a probationary period is required when an employee enters state civil service by permanent appointment from an employment list. (Cal. Code Regs., tit. 2, § 322, subd. (a).) In addition, unless waived by the appointing power, a new probationary period is required when an employee is appointed to a position under the following circumstances: (1) without a break in service in the same class in which the employee has completed the probationary period, but under a different appointing power; and (2) without a break in service to a class with substantially the same or lower level of duties and responsibilities and salary range as a class in which the employee has completed the probationary period. (Cal. Code Regs., tit. 2, § 322, subd. (c)(1) & (2).)

During the probationary period, the appointing power is required to evaluate the work and efficiency of a probationer at sufficiently frequent intervals to keep the employee adequately informed of progress on the job. (Gov. Code, § 19172; Cal. Code Regs., tit. 2, § 599.795.) The appointing power must prepare a written appraisal of performance each one-third of the probationary period. (Cal. Code Regs., tit. 2, § 599.795.)

Severity: Serious. The probationary period is the final step in the selection process to ensure that the individual selected can successfully perform the full scope of their job duties. Failing to use the probationary period to assist an employee in improving his or her performance or terminating the appointment upon determination that the appointment is not a good job/person match is unfair to the employee and serves to erode the quality of state government.

Cause: The CNRA states that although the department makes good faith efforts to inform management of the requirements on probationary evaluations, more training is needed.

Action: It is recommended that within 60 days of the SPB's Executive Officer's approval of these findings and recommendations, the CNRA submit to the CRU a written corrective action plan that addresses the corrections the department will implement to ensure conformity with the probationary requirements of Government Code section 19172.

Equal Employment Opportunity

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 EEO; issue procedures for filing, processing, and resolving discrimination complaints; issue procedures for providing equal upward mobility and promotional opportunities; and cooperate with CalHR 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.)

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 CNRA EEO program that was in effect during the compliance review period.

FINDING NO. 3 – Equal Employment Opportunity Program Complied With All Civil Service Laws and Board Regulations

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 CNRA 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 Secretary of the CNRA. In addition, the CNRA has an established DAC that reports to the Secretary on issues affecting persons with a disability. The CNRA also provided evidence of its efforts to promote EEO in its hiring and employment practices, to increase its hiring of persons with disabilities, and to offer upward mobility opportunities for its entry-level staff. Accordingly, the CNRA 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 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 CNRA had one PSC that was in effect and subject to the Department of General Services (DGS) approval. The CRU reviewed the PSC, which is listed below:

Vendor	Services	Contract Dates	Contract Amount	Justification Identified?
Duncan, Weinberg, Genzer & Pembroke, P.C.	Legal Services	8/2016 – 6/2018	\$500,000.00	Yes

FINDING NO. 4 – 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.)

It was beyond the scope of the review to make conclusions as to whether the CNRA justification for the contract was legally sufficient. For the PSC reviewed, the CNRA provided specific and detailed factual information in the written justification as to how the contract met at least one condition set forth in Government Code section 19131, subdivision (b). Accordingly, the CNRA PSC complied with civil service laws and board rules.

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 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 CNRA's mandated training program that was in effect during the compliance review period.

FINDING NO. 5 – Mandated Training Complied with Statutory Requirements

The CNRA provided ethics training to its 22 new filers within six months of appointment and semiannual ethics training to its 18 existing filers during two-year calendar year period commencing in 2014. The CNRA also provided supervisory training to its four new supervisors within 12 months of appointment. In addition, the CNRA provided sexual harassment prevention training to its four new supervisors within six months of appointment, and sexual harassment prevention training to its 15 existing supervisors every two years. Thus, the CNRA complied with mandated training requirements within statutory timelines.

DEPARTMENTAL RESPONSE

The CNRA response is attached as Attachment 1.

SPB REPLY

Based upon the CNRA's written response, the CNRA will comply with the CRU recommendations and findings and provide the CRU with a corrective action plan.

It is further recommended that the CNRA comply with the afore-stated recommendations within 60 days of the Executive Officer's approval and submit to the CRU a written report of compliance.

**DEPARTMENT OF FORESTRY AND FIRE PROTECTION**

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March 9, 2017

Ms. Nirmeth Paddi
Policy and Compliance Review Unit
State Personnel Board
801 Capitol Mall
Sacramento, California 95814

Dear Ms. Paddi:

The California Natural Resources Agency (CNRA) is submitting its corrective action plan (CAP) as requested in the State Personnel Board (SPB) Compliance Review Report provided to CNRA on February 14, 2017.

SPB Findings, CNRA CAP, and Report of Compliance

The CAP acknowledges the findings in the February 2017 SPB Compliance Review Report and serves to delineate the corrections CNRA has taken to address and correct any findings.

1. *Equal Employment Opportunity (EEO) Questionnaires Were Not Separated from Applications*

The California Department of Forestry and Fire Protection (CAL FIRE) processes personnel action requests on behalf of CNRA. The CAL FIRE Hiring Review Unit (HRU) within the Human Resources Office (HRO) became the central point of contact for all submitted Examination/Employment Applications (STD. 678s) in early 2016 with the implementation of the Exam Certification Online System (ECOS).

Prior to the changes within ECOS, STD. 678s were submitted by interested applicants directly to the hiring supervisor. With the decentralization, it was difficult for the HRO to ensure that all EEO questionnaires were removed. With the centralization of STD. 678 submissions, HRU will assist with ensuring that all EEO questionnaires are removed as appropriate.

2. *Probationary Evaluations Were Not Provided for all Appointments Reviewed*

CNRA acknowledges the importance of providing timely feedback to employees on their performance. The Department makes good faith efforts to inform management of

the requirements on probationary evaluations. Management is advised of the requirements in supervisory training modules and, upon hiring a candidate, are provided the forms and due dates for the probationary evaluations.

To correct the current probationary assessment shortcoming, over the next year, CNRA plans to provide training on "Best Hiring Practices" to educate managers and supervisors on the importance of completing probationary evaluations. This training will also include a tutorial on completing the evaluations.

3. *Equal Employment Opportunity Program Complied with All Civil Service Laws and Board Regulations*

No adverse findings were reported by SPB during this Compliance Review; therefore, no corrective action has been taken by CNRA regarding this finding.

4. *Personal Services Contracts Complied with Procedural Requirements*

No adverse findings were reported by SPB during this Compliance Review; therefore, no corrective action has been taken by CNRA regarding this finding.

5. *Mandated Training Complied with Statutory Requirements*

No adverse findings were reported by SPB during this Compliance Review; therefore, no corrective action has been taken by CNRA regarding this finding.

On behalf of CNRA, we appreciate the assistance and guidance offered during your review. If you have additional questions or concerns, please feel free to contact me at (916) 445-7867, or via email at trisha.addison@fire.ca.gov.

Sincerely,



TRISH D. ADDISON
Chief, Human Resources
Labor and Human Resource Management
CAL FIRE