



# **COMPLIANCE REVIEW REPORT**

## **CALIFORNIA STATE LANDS COMMISSION**

Compliance Review Unit  
State Personnel Board  
April 21, 2017

# TABLE OF CONTENTS

Introduction .....	1
Executive Summary .....	1
Background .....	2
Scope and Methodology.....	3
Findings and Recommendations .....	3
Examinations .....	3
Appointments.....	5
Equal Employment Opportunity (EEO) .....	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 State Lands Commission (CSLC) personnel practices in the areas of examinations, appointments, EEO, and PSC's from February 1, 2016, through November 30, 2016, and mandated training from November 1, 2014, through November 30, 2016. The following table summarizes the compliance review findings.

Area	Finding	Severity
Examinations	Examinations Complied with Civil Service Laws and Board Rules	In Compliance
Appointments	Probationary Evaluations Were Not Provided for All Appointments Reviewed	Serious
Equal Employment Opportunity	Equal Employment Opportunity Program Complied with Civil Service Laws and Board Rules	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 staff of the CSLC serves the people of California by providing stewardship of the lands, waterways, and resources entrusted to its care through economic development, protection, preservation, and restoration. The CSLC has jurisdiction and management control over certain public lands that were transferred from the United States to the state. These lands are of two distinct types – sovereign and school lands.

When California became a state in 1850, it acquired approximately four million acres of land underlying the state’s navigable and tidal waterways. Known as sovereign lands, these lands include the beds of California’s navigable rivers, lakes, and streams, as well as the state’s tide and submerged lands along the state’s more than 1,100 miles of coastline and offshore islands from the mean high tide line to three nautical miles offshore. In addition, the state retains fee ownership of approximately 470,000 acres of school lands and retains the mineral rights to an additional 790,000 acres.

In order to properly manage these lands, waterways, and resources, the CSLC has a staff of approximately 220 professional engineers, land managers, scientists, attorneys, surveyors, marine safety personnel, and administrative staff located in five areas throughout the state. These employees work in one of seven divisions, which include two leasing divisions (Land Management and Mineral Resources Management), the Marine Facilities Division, the External Affairs/Granted Lands Division and support divisions including Environmental Planning, Legal, and Administration and Information Services.

## **SCOPE AND METHODOLOGY**

The scope of the compliance review was limited to reviewing CSLC's examinations, appointments, EEO program, and PSC's from February 1, 2016, through November 30, 2016, and mandated training from November 1, 2014, through November 30, 2016. The primary objective of the review was to determine if CSLC's 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 CSLC's examinations and appointments were selected to ensure that various samples of examinations and appointment types, classifications, and levels were reviewed. The CRU examined the documentation that the CSLC provided, which included examination plans, examination bulletins, job analyses, 511b's, 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 CSLC'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 CSLC did not execute any PSC's subject to Department of General Services (DGS) approval during the compliance review period.

In addition, the CSLC'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.

On April 5, 2017, an exit conference was held with the CSLC to explain and discuss the CRU's initial findings and recommendations. On April 13, 2017, the CRU received and carefully reviewed the response, which is attached to this final compliance report.

## **FINDINGS AND RECOMMENDATIONS**

### **Examinations**

Examinations to establish an eligible list must be competitive and of such character as to fairly test and determine the qualifications, fitness, and ability of competitors to

perform the duties of the class of position for which he or she seeks appointment. (Gov. Code, § 18930.) Examinations may be assembled or unassembled, written or oral, or in the form of a demonstration of skills, or any combination of those tests. (*Ibid.*) The Board establishes minimum qualifications for determining the fitness and qualifications of employees for each class of position and for applicants for examinations. (Gov. Code, § 18931.) Within a reasonable time before the scheduled date of the examination, the designated appointing power shall announce or advertise the examination for the establishment of eligible lists. (Gov. Code, § 18933, subd. (a).) The advertisement shall contain such information as the date and place of the examination and the nature of the minimum qualifications. (*Ibid.*) Every applicant for examination shall file an application in the office of the department or a designated appointing power as directed in the examination announcement. (Gov. Code, § 18934.) Generally, the final earned rating of each person competing in any examination is to be determined by the weighted average of the earned ratings on all phases of the examination. (Gov. Code, § 18936.) Each competitor shall be notified in writing of the results of the examination when the employment list resulting from the examination is established. (Gov. Code, § 18938.5.)

During the period under review, the CSLC conducted eight examinations. The CRU reviewed five of those examinations, which are listed below:

Classification	Examination Type	Exam Components	Final File Date	No. of Applications
Career Executive Assignment C	CEA	Statement Of Qualifications (SOQ) <sup>1</sup>	4/8/16	10
Associate Boundary Determination Officer	Open	Qualification Appraisal Panel <sup>2</sup>	1/25/16	7
Marine Safety Operations Supervisor	Open	QAP	12/31/15	9
Mineral Resource Inspector II	Open	QAP	7/12/16	4

<sup>1</sup> In a statement of qualifications (SOQ's) examination, applicants submit a written summary of their qualifications and experience related to a published list of desired qualifications. Raters, typically subject matter experts, evaluate the responses according to a predetermined rating scale designed to assess their ability to perform in a job classification, assign scores and rank the competitors in a list.

<sup>2</sup> The qualification appraisal panel (QAP) interview is the oral component of an examination whereby competitors appear before a panel of two or more evaluators. Candidates are rated and ranked against one another based on an assessment of their ability to perform in a job classification.

Classification	Examination Type	Exam Components	Final File Date	No. of Applications
Senior Boundary Determination Officer (Specialist)	Open	QAP	1/25/16	3

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

The CSLC administered four open examinations and one CEA examination to create eligible lists from which to make appointments. The CSLC published and distributed examination bulletins containing the required information for all examinations. Applications received by the CSLC were accepted prior to the final filing date and were thereafter properly assessed to determine whether applicants met the minimum qualifications for admittance to the examination. The CSLC notified applicants as to whether they qualified to take the examination, and those applicants who met the minimum qualifications were also notified about the next phase of the examination process. After all phases of the examination process were completed, the score of each competitor was computed, and a list of eligible candidates was established. The examination results listed the names of all successful competitors arranged in order of the score received by rank. Competitors were then notified of their final scores.

The CRU found no deficiencies in the examinations that the CSLC conducted during the compliance review period. Accordingly, the CSLC fulfilled its responsibilities to administer those examinations in compliance with civil service laws and board rules.

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 CSLC made 32 appointments. The CRU reviewed 22 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Accountant Trainee	Certification List	Permanent	Full Time	1
Accounting Administrator I (Supervisor)	Certification List	Permanent	Full Time	1
Accounting Officer (Specialist)	Certification List	Permanent	Full Time	1
Associate Process Safety Engineer	Certification List	Permanent	Full Time	1
Associate Personnel Analyst	Certification List	Permanent	Full Time	1
Associate Systems Software Specialist (Technical)	Certification List	Permanent	Full Time	1
Attorney III	Certification List	Permanent	Full Time	1
Career Executive Assignment B	Certification List	Permanent	Full Time	1
Career Executive Assignment C	Certification List	Permanent	Full Time	1
Environmental Scientist	Certification List	Permanent	Full Time	1
Marine Safety Operations Supervisor	Certification List	Permanent	Full Time	1
Office Assistant (Typing)	Certification List	Limited Term	Full Time	1
Public Land Management	Certification List	Permanent	Full Time	3
Research Analyst I	Certification List	Permanent	Full Time	1
Senior Boundary Determination	Certification List	Permanent	Full Time	1
Staff Services Analyst (General)	Certification List	Limited Term	Full Time	1
Staff Services Analyst (General)	Certification List	Permanent	Full Time	1
Office Assistant (Typing)	Transfer	Permanent	Full Time	1
Staff Services Analyst (General)	Transfer	Permanent	Full Time	1



Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Boundary Determination Technician	Training & Development	Permanent	Full Time	1

For each of the 19 list appointments, the CSLC 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 CRU reviewed two CSLC appointments made via transfer. 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 CSLC verified the eligibility of the candidate to their appointed class.

Eligibility for training and development assignments are limited to employees who (1) have permanent status in their class, or (2) who have probationary status and who previously have had permanent status and who, since such permanent status, have had no break in service due to a permanent separation. The CRU reviewed one training and development appointment, and determined it to be in compliance with applicable civil service laws and board rules (Gov. Code, § 438, subd. (a)(b)).

However, the CSLC did not provide probation reports for all appointments as described in finding 2.

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

**Summary:** The CSLC did not prepare, complete, and/or retain three required probationary reports of performance.

Classification	Appointment Type	No. of Appointments	No. of Uncompleted Prob. Reports
Associate Process Safety Engineer	List Appointment	1	1

Classification	Appointment Type	No. of Appointments	No. of Uncompleted Prob. Reports
Attorney III	List Appointment	1	1
Senior Boundary Determination Officer (Specialist)	List Appointment	1	1
<b>Total</b>		<b>3</b>	<b>3</b>

**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 CSLC states that the completion of probationary reports is a decentralized process involving not only the HR office, which is responsible for setting up the structure of the overall process, but dozens of managers and supervisors who are responsible for the actual completion of reports. This process will be updated in the future to ensure greater compliance.

**Action:** It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the CSLC 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 (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 CSLC, 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 CSLC's EEO policies, procedures, and programs in effect during the compliance review period.

**FINDING NO. 3 – 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 CSLC'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 CSLC. In addition, the CSLC has an established DAC that reports to the director on issues affecting persons with a disability. The CSLC 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 CSLC's EEO program 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 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 CSLC's mandated training program that was in effect during the compliance review period.

#### **FINDING NO. 4 – Mandated Training Complied with Statutory Requirements**

The CSLC provided ethics training to its 13 new filers within six months of appointment and semiannual ethics training to its 146 existing filers during two-year calendar year period commencing in 2014. The CSLC also provided supervisory training to its six new supervisors within 12 months of appointment. In addition, the CSLC provided sexual harassment prevention training to its six new supervisors within six months of appointment, and sexual harassment prevention training to its 32 existing supervisors every two years. Thus, the CSLC complied with mandated training requirements within statutory timelines.

## **DEPARTMENTAL RESPONSE**

The CSLC's response is attached as Attachment 1.

### **SPB REPLY**

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

It is further recommended that the CSLC 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.

## MEMORANDUM

To: State Personnel Board  
Attn: Suzanne Ambrose  
801 Capitol Mall  
Sacramento, CA 95814

Date: April 13, 2017  
File: SPB 2017 Audit Response

From: Jennifer Lucchesi  
Executive Officer  
100 Howe Avenue, Suite 100-South,  
Sacramento, CA 95825-8202

**Subject: Response to SPB Compliance Review Report**

The State Lands Commission (Commission) staff appreciates the opportunity to respond to the State Personnel Board's (SPB) Compliance Review Report. The Commission regards the audit process with a high degree of respect and views this process as a productive collaborative effort with the SPB to ensure the Commission and its Human Resources (HR) office obtains its goal of full compliance with established requirements and best practices.

The Commission's HR office has instituted a number of changes in response to the prior SPB audits and is pleased to note that we have had no recurring findings. This year's review yielded one finding of concern regarding the completion of probationary reports.

The following is the Commission's response to the specific deficiency noted in the Compliance Review Report.

### Finding Number 2

Of the 22 appointments reviewed by the SPB, 3 of those appointments were missing a probationary report. As the SPB is aware, completion of probationary reports is a decentralized process involving not only the HR office, which is responsible for setting up the structure of the overall process, but dozens of managers and supervisors who are responsible for the actual completion of the reports.

The Commission recognizes the importance of the probationary report as the final step in the examination process and is initiating changes to our existing process in order to gain greater compliance with this requirement. The Commission currently sends probationary reports to managers/supervisors approximately one month in advance of the due date requiring that the report be submitted to the HR office by the due date. In an effort to increase compliance, beginning in April 2017, the HR office will issue a

reminder to the manager/supervisor with a "cc" copy to the 2<sup>nd</sup> line manager two weeks prior to the due date. In cases where a manager/supervisor is still non-compliant, the HR office will issue a monthly report of non-compliance to our Executive Office for their action. The HR office will monitor the compliance rates and consult with the Executive Office to determine whether or not further changes in process are required.

### Summary

We appreciated the opportunity to discuss the findings in this report with your staff on April 5, 2017 and to discuss our proposed process changes for increasing compliance. We are hopeful that the proposed changes will positively impact outcomes.

Please let me know if we can provide you with any additional information. I can be reached at (916) 574-1800 or Jennifer.Lucchesi@slc.ca.gov.