

BOARD RESOLUTION ADOPTING THE COMPLIANCE REVIEW REPORT AND FINDINGS BY THE SPB COMPLIANCE REVIEW DIVISION OF THE NATURAL RESOURCE AGENCY

WHEREAS, the State Personnel Board (SPB or Board) at its duly noticed meeting of October 10, 2013, carefully reviewed and considered the attached Compliance Review Report of the Natural Resource Agency submitted by SPB's Compliance Review Division.

WHEREAS, the Report was prepared following a baseline review of the Natural Resource Agency's personnel practices. It details the background, scope, and methodology of the review, and the findings and recommendations.

NOW, THEREFORE, BE IT RESOLVED, that the Board hereby adopts the Report, including all findings and recommendations contained therein. A true copy of the Report shall be attached to this Board Resolution and the adoption of the Board Resolution shall be reflected in the record of the meeting and the Board's minutes.

Suzanne M. Ambrose
SUZANNE M. AMBROSE
Executive Officer

COMPLIANCE REVIEW REPORT NATURAL RESOURCES AGENCY FINDINGS AND RECOMMENDATIONS OCTOBER 16, 2013

Examinations

During the time period under review, May 1, 2011 to October 30, 2012, the Natural Resources Agency (NRA) conducted one examination. The SPB reviewed the examination, which is listed below:

| Classification | Exam Type | Exam Components | No. of Eligibles |
|---|-----------|--|------------------|
| CEA I, Agency Geographic Information Officer | Open | Application, Resume, Statement of Qualifications | 4 |

FINDING NO. 1 – The NRA Properly Complied With Civil Service Laws and Board Rules When Administering the CEA Examination

Career executive assignment (CEA)s are appointments to a "high administrative and policy influencing position within the state civil service in which the incumbent's primary responsibility is the managing of a major function or the rendering of management advice to top-level administrative authority." (Gov. Code, § 18547.) Eligibility for such an appointment "shall be established as a result of competitive examination of persons with permanent status in the civil service who meet minimum qualifications" as specified. (Gov. Code, § 19889.3.) CEA examinations must not only be competitive but also of such "a character as fairly to test and determine the qualifications of candidates actually to perform the duties of the position to be filed." (Cal. Code Regs., tit. 2, § 548.40.) These examinations may include an assessment of character, education, experience, knowledge, skills, and ability. (*Ibid.*) The examination may be assembled or unassembled, written or oral or in the demonstration of skill, or any combination of those. (*Ibid.*)

As part of the CEA examination process, the NRA released the bulletin for 10 days, from August 9, 2011, with a final filing date of August 22, 2011. The bulletin stated that

the examination consisted of an application, resume, and statement of qualifications evaluation conducted by a three-member screening committee.

Prior to the final filing date, four candidates submitted application materials to the NRA. The NRA accepted all the applications. On September 6, 2011, the screening panel evaluated the competitors' applications, resumes, and statement of qualifications using benchmark rating criteria. After determining that each of the four candidates were competitive, the panel established a certification list by scoring and ranking the candidates. On September 8, 2011, applicants were notified of their examination results by mail. The selection process resulted in the appointment of the highest ranking competitor to the CEA I position.

The SPB found no deficiencies in the CEA I, Agency Geographic Information Officer examination. Accordingly, the NRA fulfilled its responsibilities to administer the examination in compliance with civil service laws and Board rules.

Appointments

During the compliance review period, the NRA made nine appointments. The SPB reviewed each of those appointments, which are listed below:

| Classification | Appointment Type | Tenure (Status) | Time Base |
|--|--------------------|-----------------|-----------|
| Associate Personnel Analyst | Transfer | Permanent | Full Time |
| Research Program Specialist | Transfer | Permanent | Full Time |
| Executive Assistant | Transfer | Permanent | Full Time |
| Senior Programmer Analyst | Certification List | Permanent | Full Time |
| Executive Assistant | Certification List | Permanent | Full Time |
| Associate Governmental Program Analyst | Certification List | Permanent | Full Time |
| Associate Governmental Program Analyst | Limited Term | Intermittent | Full Time |
| Student Assistant | TAU | Intermittent | Part Time |
| Student Assistant | TAU | Intermittent | Part Time |

FINDING NO. 2 - The NRA Properly Complied With Civil Service Laws And Board Rules For All Appointments Made During The Compliance Review Period

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.) Except as provided by law, appointments to vacant positions shall be made from employment lists. (*Ibid.*) Appointments made from eligible lists and by transfer 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).)

The NRA made appointments to Associate Personnel Analyst, Research Program Specialist, and Executive Assistant by transfer of employees from other agencies. The NRA complied with civil service laws and Board rules in making these appointments.

For the Senior Programmer Analyst, Executive Assistant, and Associate Governmental Program Analyst list appointments, the NRA ordered certification lists of candidates ranked competitively. After properly clearing the SROA¹ list, the selected candidates were appointed based on eligibility attained by being reachable within the first three ranks of the certification list. As to these appointments, the NRA complied with civil service laws and Board rules.

Regarding the TAU appointments, the NRA appointed two Student Assistants on a part time intermittent basis. The Student Assistant classification is a non-testing class which is a temporary appointment (TAU) class in which the appointment shall not exceed nine months in a 12-month period. As to these appointments, the NRA complied with civil service laws and Board rules.

¹ The State Restriction of Appointments (SROA) Program is intended to prevent the layoff and separation of skilled and experienced employees from State service. The SROA Program assists in placing affected employees by temporarily restricting the methods of appointment available to appointing powers. Employees on SROA lists are granted preferential consideration over all other types of appointments except appointments from reemployment lists and mandatory reinstatements.

Accordingly, the NRA made all appointments in compliance with civil service laws and Board rules during the compliance review period.

Equal Employment Opportunity

The SPB reviewed the NRA's EEO policies, procedures, and programs that were in effect during the compliance review period. In addition, the SPB communicated with appropriate NRA staff.

FINDING NO. 3 – The NRA's EEO Officer Does Not Monitor The Composition Of Oral Panels In Departmental Examinations

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 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, subd. (a).) The law requires EEO Officers to monitor the composition of oral panels in departmental examinations. (*Ibid.*)

The NRA's written EEO program provides employees with guidance on the EEO process, including instructions on how to file discrimination claims. The EEO Officer reports to the Director of the department. In addition, the EEO program outlines the roles and responsibilities of the EEO Officer, as well as supervisors and managers. The NRA provided evidence of its efforts to promote equal employment opportunity in its hiring and employment practices, to increase its hiring of disabled persons, and to offer upward mobility opportunities for its entry-level staff, which included an Administrative Assistant.

These components of the NRA's EEO program comply with applicable civil service laws and rules. Nonetheless, a deficiency was found in the EEO program. The NRA's EEO Officer does not monitor the composition of oral panels in examinations as required.

Accordingly, the NRA's EEO program fails to comply fully with the mandates of the civil service laws. The NRA must ensure that its EEO Officer monitors the composition of the agency's oral examination panels. No later than 60 days after the Board's Resolution adopting these findings and recommendations, NRA must implement a corrective action plan and submit the plan to the SPB.

FINDING NO. 4 – The NRA Does Not Have A Disability Advisory Committee (DAC)

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).)

NRA does not have an active DAC. Accordingly, NRA must invite all employees to serve on a DAC 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. No later than 30 days after the Board's Resolution adopting these findings and recommendations, NRA must invite all its employees to serve on the DAC, and no later than 60 days after the Board's Resolution adopting these findings and recommendations, NRA must establish the DAC and submit to the SPB a written report of compliance.

DEPARTMENTAL RESPONSE

The NRA was provided a copy of the initial report to review. A copy of the NRA's response is attached as Attachment 1.

SPB REPLY

The NRA provided no response to Finding Nos. 1 and 2, which both found the agency in compliance with civil service laws and Board rules.

As to Finding No. 3, the NRA does not dispute that its policy does not require the EEO Officer to monitor the composition of oral panels; however, the agency notes that it has not used an oral examination panel in several years. Nonetheless, to ensure

compliance with civil service laws and Board rules, the NRA proposes to update its policy to ensure that its EEO Officer reviews the composition of oral examination panels.

The SPB finds that updating the agency's policy as to the EEO Officer's duty to monitor oral examination panels is sufficient corrective action at this time. Accordingly, it is recommended that within 60 days of the Board's Resolution adopting these findings and recommendations the NRA submit to the Board a written report of compliance that includes a copy of the relevant portions of its revised policy.

Regarding Finding No. 4, NRA's Administrative Officer participates in the Department of Forestry and Fire Protection (CAL FIRE)'s DAC to ensure informational updates or issues facing persons with disabilities are communicated to agency staff. The NRA, however, supports the need for a separate NRA DAC. Therefore, the agency will promote and solicit annually for committee members and request participation of all new employees upon appointment.

The SPB finds that the NRA's plan to promote and solicit committee members annually and upon appointment for its own internal DAC is warranted and should be formalized in policy. As to NRA's current use of a shared DAC with CAL FIRE, the agency should invite its employees to serve on that DAC until it is able to form its own separate committee. The agency should also ensure that the DAC advises the head of NRA on issues of concern to employees with disabilities, not only agency staff. (Gov. Code, § 19795, subd. (b)(1).)

Accordingly, it is recommended that within 30 days of the Board's Resolution adopting these findings and recommendations NRA invite its employees to serve on the shared CAL FIRE DAC. It is also recommended that NRA implement policy to ensure that the DAC advises the head of NRA on issues of concern to employees with disabilities, not only agency staff. Additionally, it is recommended that NRA's plan to promote and solicit committee members for its own internal DAC should be formalized in policy. Within 60 days of the Board's Resolution adopting these findings and recommendations, the NRA must submit to the Board a written report of compliance that includes copies of any pertinent documents, including any relevant portions of the revised policy and invitations to employees to serve on the DAC.

The SPB appreciates the professionalism and cooperation of the NRA during this compliance review.



October 9, 2013

Jim Murray, Chief
Compliance Review Division
State Personnel Board
801 Capitol Mall
Sacramento, CA 95814

Dear Mr. Murray:

Thank you for providing the Agency with an opportunity to respond to the State Personnel Board's Compliance Review Report. My staff and I have reviewed your findings and have the following response:

Finding No. 3 – The NRA's EEO Officer Does Not Monitor the Composition of Oral Panels in Departmental Examinations.

For several years, including during the audit period, the Agency has not had a need to conduct a Departmental examination where an oral panel was the selection method. The Agency will update its policy, and should the need arise; assure the EEO Officer will review the composition of oral panels.

Finding No. 4 – The NRA Does Not Have A Disability Advisory Committee (DAC).

The Agency supports the need of a DAC and will continue to promote and solicit for participation on an on-going basis to meet the requirements. To help further participation, the Agency will solicit annually for committee members and request participation for all new employees upon appointment.

It should be noted that the Agency's Administrative Officer participates in the Department of Forestry and Fire Protection's DAC to insure informational updates or issues facing persons with disabilities are communicated to Agency staff.

In closing, I would like to acknowledge the efforts of the SPB team. They conducted the review in a professional and courteous manner that was appreciated by my staff.

Sincerely,


for John Laird, Secretary
Natural Resources Agency

1416 Ninth Street, Suite 1311, Sacramento, CA 95814 Ph. 916.653.5656 Fax 916.653.8102 <http://resources.ca.gov>

