

COMPLIANCE REVIEW REPORT

SIERRA NEVADA CONSERVANCY

Compliance Review Unit
State Personnel Board
June 10, 2016

TABLE OF CONTENTS

Introduction	1
Executive Summary	1
Background	2
Scope and Methodology.....	2
Findings and Recommendations	3
Examinations	3
Appointments	5
Equal Employment Opportunity	7
Mandated Training	8
Departmental Response.....	9
SPB Reply	9

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 Sierra Nevada Conservancy (SNC) personnel practices in the areas of examinations, appointments, EEO, and PSC's from October 1, 2014, through September 30, 2015, and mandated training from November 1, 2013, through October 31, 2015. The following table summarizes the compliance review findings.

Area	Finding	Severity
Examinations	Examination Complied with Civil Service Laws and Board Rules	In Compliance
Appointments	Probationary Evaluations Were Not Provided for All Appointments	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

Created in 2004, the SNC is a state agency whose mission is to improve the environmental, economic, and social well-being of the Sierra Nevada Region. The SNC has awarded over \$50 million in grants for projects to protect and enhance the health of California's primary watersheds by improving forest health, remediating mercury contamination from abandoned mines, protecting critical natural resources, and reducing the risk of catastrophic wildfire.

The Sierra Nevada Region spans 25 million acres, encompasses all or part of 22 counties, and runs from the Oregon border on the north to Kern County on the south. The Region is the origin of more than 60 percent of California's developed water supply.

As of July 1, 2015, the SNC employs approximately 26 full-time and 10 part-time staff. The majority of SNC employees work at the Auburn headquarters, with some located in three area offices maintained in Mariposa, Bishop, and Quincy.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing SNC examinations, appointments, EEO program, and PSC's from October 1, 2014, through September 30, 2015, and mandated training from November 1, 2013, through October 31, 2015. The primary objective of the review was to determine if SNC personnel practices, policies, and procedures complied with state civil service laws and board regulations, and to recommend corrective action where deficiencies were identified.

A cross-section of SNC examinations and appointments were selected for review to ensure that samples of various examinations and appointment types, classifications, and levels were reviewed. The CRU examined the documentation that the SNC provided, which included examination bulletins, 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 SNC 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 SNC had no PSC's that were subject to Department of General Services (DGS) approval and thus our procedural review.¹

In addition, the SNC'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 supervisory and sexual harassment training within statutory timelines.

The SNC declined to have an exit conference. The CRU received and carefully reviewed the SNC's written response on June 3, 2016, which is attached to this final compliance review report.

FINDINGS AND RECOMMENDATIONS

Examinations

Examinations to establish an eligible list must be competitive and of such character as fairly to 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 (MQ's) 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 for the examination, the designated appointing power shall announce or advertise

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.

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 MQ's. (*Ibid.*) Every applicant for examination shall file an application in the office of the department or a designated appointing power as directed by 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 SNC conducted one examination. The CRU reviewed this examination, which is listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Applications
Assistant Executive Officer	Career Executive Assignment (CEA)	Statement Of Qualifications (SOQ's) ²	2/4/2015	23

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

The SNC administered a CEA examination in order to create an information list from which to make appointments. The SNC published and distributed examination bulletins containing the required information for the examination. Applications received by the SNC 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. 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.

² 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.

The CRU found no deficiencies in the examination that the SNC conducted during the compliance review period. Accordingly, the SNC fulfilled its responsibilities to administer the examination 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 SNC made seven appointments. The CRU reviewed all of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	3
Conservancy Project Development Analyst II	Certification List	Permanent	Full Time	1
Staff Services Analyst	Certification List	Permanent	Full Time	1
Staff Services Manager I	Certification List	Permanent	Full Time	1
Assistant Executive Officer	Information List	CEA	Full Time	1

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

Summary: The SNC did not prepare, complete, and/or retain two required probationary reports of performance.

Classification	Appointment Type	No. of Appointments	No. of Uncompleted Prob. Reports
Conservancy Project Development Analyst II	Certification List	1	2

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 SNC acknowledges that due to recent turnover in management staff, probationary reports were not completed or not completed timely.

Action: It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the SNC submit to the CRU a written corrective action plan that addresses how the SNC will ensure full compliance from supervisory/managerial staff to meet with the probationary requirements of Government Code § 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 the California Department of Human Resources (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.)

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. In a state agency with less than 500 employees, like the SNC, the EEO Officer may be the Personnel Officer.

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 SNC EEO program that was 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 the SNC'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 Director of the SNC. In addition, the SNC has an established DAC. The SNC 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 SNC EEO program complied with civil service laws and board rules.

Mandated Training

Each state agency shall offer at least semiannually to each of its filers an orientation course on the relevant ethics statutes and regulations that govern the official conduct of state officials. New filers must be trained within six months of appointment. (Gov. Code, § 11146.3)

Each department must provide its new supervisors supervisory training within 12 months of appointment. (Gov. Code, § 19995.4, subd. (b) and (c).) The training must be a minimum of 80 hours, 40 of which must be structured and given by a qualified instructor. The other 40 hours may be done on the job by a higher-level supervisor or manager. (Gov. Code, § 19995.4, subd. (b).)

Additionally, each department must provide its supervisors two hours of sexual harassment training every two years. New supervisors must be provided supervisory training within six months of appointment. (Gov. Code, § 12950.1, subd. (a).)

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

FINDING NO. 4 – Mandated Training Complied with Statutory Requirements

The SNC provided semiannual ethics training to its 29 filers during the two-year calendar year period commencing in 2014, and ethics training to its one new filer within six months of appointment. The SNC also provided supervisory training to its one new supervisor within 12 months of appointment. In addition, the SNC provided sexual harassment training to its one new supervisor within six months of appointment, and sexual harassment training to its five existing supervisors every two years. Thus, the SNC complied with mandated training requirements within statutory timelines.

DEPARTMENTAL RESPONSE

The SNC's response is attached as Attachment 1.

SPB REPLY

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

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



AUBURN OFFICE
11521 Blocker Drive, Ste. 205
Auburn, CA 95603
p (530)823-4670 f (530)823-4665

TO: Diane Campbell
Compliance Review Manager
State Personnel Board

FROM: Amy Lussier 
Chief, Administrative Services Division

DATE: May 31, 2016

RE: RESPONSE TO COMPLIANCE REVIEW REPORT

Ms. Campbell, thank you for the opportunity to respond to the findings in our Compliance Review report. The Sierra Nevada Conservancy (SNC) has been cited for not providing probationary evaluations for all appointments.

During the review period, SNC had seven appointments. All appointments received the required probationary reports except one: a promotion-in-place (PIP) from the Conservancy Project Development Analyst (CPDA) I classification, to CPDA II, effective April 1, 2015.

This PIP to the CPDA II level was awarded to the incumbent after three years at the CPDA I level. The incumbent's exemplary work performed at that level is documented in the IDP reviews during that time.

Also effective April 1, 2015, the immediate supervisor over this position was promoted to the open CEA position, leaving the supervisor's position vacant. Other supervisors filled in temporarily until this supervisor position was filled August 3, 2015. The final probation report for the CPDA II was completed timely on October 1, 2015, giving the newly appointed supervisor two months to review the work.

The Management Team at SNC completely understands the requirements and need for thorough and timely reports during an employee's probation period. This was an unfortunate situation that resulted in the incumbent not receiving two of the required three probationary reports.

In the future, the Human Resources office at SNC will be more diligent in assigning appropriate supervisory staff to complete the necessary probation reports when unusual situations such as this occur.

