



# **COMPLIANCE REVIEW REPORT**

## **SACRAMENTO-SAN JOAQUIN DELTA CONSERVANCY**

Compliance Review Unit  
State Personnel Board  
November 1, 2017

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## **INTRODUCTION**

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

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

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

## **EXECUTIVE SUMMARY**

The CRU conducted a routine compliance review of Sacramento-San Joaquin Delta Conservancy (SSJDC) personnel practices in the areas of appointments, and EEO program from October 1, 2015 through September 30, 2016, and mandated training from October 1, 2014 through September 30, 2016. The following table summarizes the compliance review findings.

Area	Finding	Severity
Appointments	Appointments Documentation Was Not Kept for the Appropriate Amount of Time	Serious
Equal Employment Opportunity	A Disability Advisory Committee Has Not Been Established	Very Serious
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 SSJDC leads efforts that advance environmental protection in the Delta and the economic well-being of Delta residents. The SSJDC's goal is to implement projects that will result in integrated environmental, economic and social benefits. To reach that goal, the SSJDC works in collaboration with local communities, interested groups, and state and federal agencies to seek creative opportunities to address challenges and reach agreement for moving these efforts forward. The SSJDC strives to ensure that programs and projects are prioritized and funded in a balanced manner according to geography and their legislative responsibilities.

## **SCOPE AND METHODOLOGY**

The scope of the compliance review was limited to reviewing SSJDC appointments, and EEO program from October 1, 2015 through September 30, 2016, and mandated training from October 1, 2014 through September 30, 2016. The primary objective of the review was to determine if SSJDC personnel practices, policies, and procedures complied with state civil service laws and board regulations, and to recommend corrective action where deficiencies were identified.

The SSJDC did not conduct any examinations during the compliance review period. The SSJDC also did not execute any PSC's during the compliance review period subject to the Department of General Services approval and thus our procedural review.<sup>1</sup>

A cross-section of SSJDC appointments were selected for review to ensure that samples of various appointment types, classifications, and levels were reviewed. The CRU examined the documentation that the SSJDC provided, which included notice of

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<sup>1</sup> 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.

personnel action (NOPA) forms, certification lists, employment history records, correspondence, and probation reports.

The review of the SSJDC 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).

In addition, the SSJDC'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 prevention training within statutory timelines.

The SSJDC declined to have an exit conference. The CRU received and carefully reviewed the SSJDC's written response on July 19, 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, 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 SSJDC made ten appointments. The CRU reviewed all of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Environmental Scientist	Certification List	Permanent	Full Time	1
Environmental Scientist	Certification List	Permanent	Intermittent	1

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Health Program Specialist I	Certification List	Limited Term	Full Time	1
Program Manager I, California Bay-Delta Authority	Certification List	Permanent	Full Time	1
Senior Environmental Scientist (Specialist)	Certification List	Permanent	Full Time	1
Staff Services Manager I	Certification List	Permanent	Full Time	1
Office Technician (Typing)	Permissive Reinstatement	Permanent	Full Time	1
Environmental Program Manager II	Training and Development Assignment	Temporary	Full Time	1
Associate Governmental Program Analyst	Transfer	Permanent	Full Time	1
Office Technician (Typing)	Transfer	Permanent	Full Time	1

**FINDING NO. 1 – Appointment Documentation Was Not Kept for the Appropriate Amount of Time**

**Summary:** Specifically, of the ten appointments reviewed, the SSJDC did not retain five employment applications for an appointment made to the Staff Services Manager I position.

**Criteria:** As specified in section 26 of the Board’s regulations, appointing powers are required to retain records related to affirmative action, equal employment opportunity, examinations, merit, selection, and appointments for a minimum period of five years from the date the record is created. These records are required to be readily accessible and retained in an orderly and systematic manner. (Cal. Code Reg., tit. 2, § 26.) Section 174 of the Board’s regulations specifically applies to examination applications and requires a two year retention period.

**Severity:** Serious. Without documentation, the CRU could not verify if the appointment was properly conducted.

**Cause:** The SSJDC states that they were unable to locate a portion of the required supporting documentation, which was likely caused by turnover in key administrative staff. While it is their practice to maintain recruitment documents, this was not done for one recruitment.

**Action:** It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the SSJDC submit to the CRU a written corrective action plan that addresses the corrections the department will implement to ensure conformity with the record retention requirements of California Code of Regulations title 2, section 26. Copies of any relevant documentation should be included with the plan.

### 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 SSJDC, 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 SSJDC EEO program that was in effect during the compliance review period.

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 SSJDC'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 Officer of the SSJDC. The SSJDC 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.

However, the SSJDC does not have an established DAC, as described in finding two.

## **FINDING NO. 2 – A Disability Advisory Committee Has Not Been Established**

**Summary:** Although the SSJDC has invited employees to serve on a DAC, it has not formed its own DAC to advise the head of the agency on issues of concern specific to SSJDC employees with disabilities.

**Criteria:** 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).)

**Severity:** Very Serious. The agency head does not have direct information on issues of concern to employees or other persons with disabilities and input to correct any underrepresentation. The lack of a DAC may limit an agency's ability to recruit and retain a qualified workforce, impact productivity, and subject the agency to liability.

**Cause:** The SSJDC states that because of few staff, it participates on a DAC formed by several small departments in order to gain additional perspective.

**Action:** The SSJDC must continue to take appropriate steps to ensure the establishment of a DAC, comprised of members who have disabilities or who have an interest in disability issues. The SSJDC must submit to the CRU a written report of compliance, including the DAC roster, agenda, and meeting minutes, no later than 60 days from the date of the SPB Executive Officer's approval of these findings and recommendations.

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

### **FINDING NO. 3 – Mandated Training Complied with Statutory Requirements**

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

## **DEPARTMENTAL RESPONSE**

The SSJDC's response is attached as Attachment 1.

## **SPB REPLY**

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

It is further recommended that the SSJDC 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.



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*Delta Protection Commission*

Diana Campbell  
Compliance Review Manager  
State Personnel Board  
801 Capitol Mall  
Sacramento CA 95814

Dear Ms. Campbell:

The Compliance Review Unit (CRU) of the State Personnel Board conducted a routine compliance review of the Sacramento-San Joaquin Delta Conservancy's (SSJDC) personnel practices in the areas of appointments and EEO from October 1, 2015 through September 30, 2016 and mandated training during the same time period. The primary objective of the review was to determine if the SSJDC personnel practices, policies, and procedures complied with state civil service laws and board regulations, and to recommend corrective action where deficiencies were identified. The CRU identified two problem areas and the SSJDC provides the following information regarding the findings.

**FINDING NO. 1 – Appointment Documentation Was Not Kept for the Appropriate Amount of Time**

Summary: Of the ten appointments reviewed, the SSJDC did not retain five employment applications for an appointment made to the Staff Services Manager I position.

Cause: The SSJDC acknowledges and agrees with this finding. While it is the SSJDC's practice to maintain recruitment documents, this was not done for one recruitment. This is likely due to turnover in key administrative staff.

Corrective Action: The SSJDC will develop a recruitment checklist which will include retention of recruitment documents for five years.



## **FINDING NO. 2 – A Disability Advisory Committee (DAC) Has Not Been Established**

Summary: Although the SSJDC has invited employees to serve on a DAC, it has not formed its own DAC.

Cause: The SSJDC acknowledges and agrees with this finding. Because the SSJDC has few staff, the SSJDC participates on a Disability Advisory Committee formed by several small departments in order to gain additional perspective.

Corrective Action: In addition to participating on the inter-departmental DAC, executive staff will invite all staff to participate on a DAC specific to the SSJDC.

The third finding by the CRU was “in compliance”; therefore, no cause or response is required by the SSJDC.

The SSJDC will implement corrective action for the noted findings. The SSJDC thanks the SPB Compliance Review Unit’s for working collaboratively during this assessment of our personnel practices and looks forward to continued cooperation in strengthening our processes.

If you have questions or need additional information, please contact me at (916) 375-2086 or [debra.kustic@deltaconservancy.ca.gov](mailto:debra.kustic@deltaconservancy.ca.gov).

Sincerely,



Campbell Ingram  
Executive Officer