



COMPLIANCE REVIEW REPORT

STATE WATER RESOURCES CONTROL BOARD

Compliance Review Unit
State Personnel Board
July 12, 2016

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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 State Water Resources Control Board (SWRCB) personnel practices in the areas of examinations, appointments, EEO, and PSC's from May 1, 2015, through February 29, 2016, and mandated training from February 28, 2014, through February 29, 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
Appointments	Appointment Documentation Was Not Kept for the Appropriate Amount of Time	Serious
Appointments	Applications Were Not Date Stamped and/or Accepted After the Final File Date	Non-Serious or Technical

Area	Finding	Severity
Equal Employment Opportunity	Complainants Were Not Notified of the Reasons for Delays in Decisions Within the Prescribed Time Period	Very Serious
Equal Employment Opportunity	A Written Upward Mobility Plan Has Not Been Established	Very Serious
Personal Services Contracts	Personal Services Contracts Complied with Procedural Requirements	In Compliance
Mandated Training	Supervisory Training Was Not Provided for All Supervisors	Very Serious
Mandated Training	Sexual Harassment Training Was Not Provided for All Supervisors	Very Serious

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 SWRCB was created by the Legislature in 1967. The SWRCB’s mission is to preserve, enhance, and restore the quality of California’s water resources and drinking water for the protection of the environment, public health, all beneficial uses, and to ensure proper water resource allocation and efficient use for the benefit of present and future generations. The joint authority of water allocation and water quality protection enables the SWRCB to provide comprehensive protection for California's waters.

The SWRCB consists of five full-time salaried members, each filling a different specialty position. Each board member is appointed to a four-year term by the Governor and confirmed by the Senate.

There are nine Regional Water Quality Control Boards (Regional Boards). The mission of the Regional Boards is to develop and enforce water quality objectives and implementation plans that will best protect the beneficial uses of the state’s waters, recognizing local differences in climate, topography, geology, and hydrology.

There is 2,202 state and regional board staff, spread throughout 17 different state locations including the regional board offices, with the majority of staff located in the Sacramento area. The SWRCB staff consists of engineers, geologists, scientists, information technology professionals, and administrative support.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing SWRCB examinations, appointments, EEO program, and PSC's from May 1, 2015, through February 29, 2016, and mandated training from February 28, 2014, through February 29, 2016. The primary objective of the review was to determine if the SWRCB 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 SWRCB 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 SWRCB 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 SWRCB 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 SWRCB's PSC's were also reviewed.¹ It was beyond the scope of the compliance review to make conclusions as to whether SWRCB justifications for the contracts were

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.

legally sufficient. The review was limited to whether SWRCB practices, policies, and procedures relative to PSC's complied with procedural requirements.

In addition, the SWRCB'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 June 23, 2016, an exit conference was held with the SWRCB to explain and discuss the CRU's initial findings and recommendations. On July 1, 2016, 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 SWRCB conducted 115 examinations. The CRU reviewed 25 of those examinations, which are listed below:

Classification	Examination Type	Exam Components	Final File Date	No. of Applications
Assistant Chief Counsel	Departmental Promo	QAP	10/21/2015	7
Associate Budget Analyst	Departmental Promo	Qualification Appraisal Panel (QAP) ²	10/27/2015	4
Associate Sanitary Engineer	Departmental Promo	Education and Experience ³	9/30/2015	1
CEA A, Director, Office of Research Planning & Performance	Open	Statement Of Qualifications (SOQ) ⁴	12/23/2015	21
CEA B, Chief Deputy Director	Open	SOQ	10/30/2015	18
CEA B, Deputy Director, Division of Water Quality	Open	SOQ	12/23/2015	12
Engineering Geologist	Open	Training and Experience (T&E) ⁵	7/31/2015	9

² 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.

³ In an education and experience (E&E) examination, one or more raters reviews the applicants' Standard 678 application forms, and scores and ranks them according to a predetermined rating scale that may include years of relevant higher education, professional licenses or certifications, and/or years of relevant work experience.

⁴ 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.

⁵ The training and experience (T&E) examination is administered either online or in writing, and asks the applicant to answer multiple-choice questions about his or her level of training and/or experience performing certain tasks typically performed by those in this classification. Responses yield point values, which are totaled by the online system or a department exam analyst, and then assigned a percentage score.

Classification	Examination Type	Exam Components	Final File Date	No. of Applications
Engineering Geologist	Open	T&E	8/31/2015	16
Environmental Program Manager I (Supervisor)	Departmental Promo	T&E	6/30/2015	2
Environmental Program Manager I (Supervisor)	Departmental Promo	T&E	8/31/2015	4
Environmental Program Manager I (Supervisor)	Departmental Promo	T&E	9/30/2015	3
Environmental Program Manager II	Departmental Promo	T&E	6/30/2015	2
Environmental Scientist	Open	T&E	7/31/2015	18
Environmental Scientist	Open	T&E	8/31/2015	13
Environmental Scientist	Departmental Promo	T&E	9/30/2015	14
Principal Engineer, DWP	Departmental Promo	T&E	1/28/2016	10
Senior Engineering Geologist	Open	T&E	6/30/2015	4
Senior Engineering Geologist	Open	T&E	7/31/2015	6
Senior Engineering Geologist	Open	T&E	9/30/2015	4
Senior Environmentalist Scientist (Specialist)	Open	T&E	7/31/2015	5
Senior Environmentalist Scientist (Specialist)	Open	T&E	8/31/2015	12

Classification	Examination Type	Exam Components	Final File Date	No. of Applications
Senior Environmentalist Scientist (Specialist)	Open	T&E	9/30/2015	6
Senior Environmentalist Scientist (Supervisor)	Open	T&E	8/31/2015	12
Senior Environmentalist Scientist (Supervisor)	Open	T&E	12/31/2015	10
Senior Water Resources Control Engineer	Open	T&E	7/31/2015	2

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

The SWRCB administered 19 open examinations and six departmental promotional examinations to create eligible lists from which to make appointments. For all of the examinations, the SWRCB published and distributed examination bulletins containing the required information. Applications received by the SWRCB were accepted prior to the final filing date and were thereafter properly assessed to determine whether applicants met the minimum qualifications (MQ's) for admittance to the examination. The SWRCB notified applicants as to whether they qualified to take the examination, and those applicants who met the MQ's 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 SWRCB conducted during the compliance review period. Accordingly, the SWRCB 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 SWRCB made 448 appointments. The CRU reviewed 131 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Associate Administrative Analyst (Accounting System)	Certification List	Permanent	Fulltime	2
Associate Budget Analyst	Certification List	Permanent	Fulltime	2
Attorney	Certification List	Permanent	Fulltime	6
Attorney III	Certification List	Limited Term	Fulltime	1
Attorney III	Certification List	Permanent	Fulltime	4
Attorney IV	Certification List	Permanent	Fulltime	5
Engineering Geologist	Certification List	Permanent	Fulltime	10
Environmental Program Manager I (Managerial)	Certification List	Permanent	Fulltime	1
Environmental Program Manager I (Supervisory)	Certification List	Permanent	Fulltime	3
Environmental Scientist	Certification List	Permanent	Fulltime	5

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Executive Assistant	Certification List	Permanent	Fulltime	2
Graduate Legal Assistant	Certification List	Permanent	Fulltime	2
Legal Secretary	Certification List	Permanent	Fulltime	2
Office Technician (Typing) – LEAP	Certification List	Permanent	Fulltime	1
Senior Engineering Geologist	Certification List	Permanent	Fulltime	10
Senior Environmental Scientist (Specialist)	Certification List	Permanent	Fulltime	5
Senior Environmental Scientist (Supervisory)	Certification List	Limited Term	Fulltime	2
Senior Environmental Scientist (Supervisory)	Certification List	Permanent	Fulltime	7
Senior Legal Analyst	Certification List	Permanent	Fulltime	1
Senior Personnel Specialist	Certification List	Permanent	Fulltime	2
Staff Services Manager I	Certification List	Permanent	Fulltime	2
Staff Services Manager III	Certification List	Permanent	Fulltime	2
Supervising Engineering Geologist	Certification List	Permanent	Fulltime	3
Water Resource Control Engineer	Certification List	Permanent	Fulltime	10
Administrative Assistant II	Mandatory Reinstatement	Permanent	Fulltime	1
Associate Accounting Analyst	Mandatory Reinstatement	Permanent	Fulltime	1
Supervising Engineering Geologist	Mandatory Reinstatement	Permanent	Fulltime	1
Attorney III	Permissive Reinstatement	Permanent	Fulltime	1

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Engineering Geologist	Permissive Reinstatement	Permanent	Fulltime	1
Environmental Scientist	Permissive Reinstatement	Permanent	Fulltime	1
Environmental Scientist	Permissive Reinstatement	Limited Term	Fulltime	1
Senior Environmental Scientist (Specialist)	Permissive Reinstatement	Permanent	Fulltime	1
Principal Engineer, Drinking Water Program	Temporary Authorization Utilization	Permanent	Fulltime	1
Administrative Assistant II	Transfer	Permanent	Fulltime	1
Associate Sanitary Engineer	Transfer	Limited Term	Fulltime	3
Associate Sanitary Engineer	Transfer	Permanent	Fulltime	2
Data processing Manager II	Transfer	Permanent	Fulltime	1
Engineering Geologist	Transfer	Permanent	Fulltime	5
Environmental Program Manager II	Transfer	Permanent	Fulltime	1
Environmental Scientist	Transfer	Limited Term	Fulltime	1
Environmental Scientist	Transfer	Permanent	Fulltime	5
Research Program Specialist II (Geographic Information Systems)	Transfer	Permanent	Fulltime	1
Sanitary Engineer	Transfer	Permanent	Fulltime	1
Senior Engineering Geologist	Transfer	Permanent	Fulltime	3
Senior Environmental Scientist (Specialist)	Transfer	Limited Term	Fulltime	1

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Senior Environmental Scientist (Specialist)	Transfer	Permanent	Fulltime	2
Senior Information Systems Analyst (Specialist)	Transfer	Permanent	Fulltime	1
Senior Sanitary Engineer	Transfer	Permanent	Fulltime	1
Supervising Engineering Geologist	Transfer	Permanent	Fulltime	1
System Software Specialist II (Technical)	Transfer	Permanent	Fulltime	1
System Software Specialist III (Technical)	Transfer	Permanent	Fulltime	1

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

Summary: The SWRCB did not prepare, complete, and/or retain 20 required probationary reports of performance.

Classification	Appointment Type	No. of Appointments	No. of Uncompleted Prob. Reports
Associate Administrative Analyst (Accounting System)	List Appointment	1	3
Associate Sanitary Engineer	List Appointment	1	2
Attorney	List Appointment	2	3
Attorney IV	List Appointment	1	1
Engineering Geologist	List Appointment	1	1
Environmental Program Manager I (Managerial)	List Appointment	1	1

Classification	Appointment Type	No. of Appointments	No. of Uncompleted Prob. Reports
Environmental Program Manager I (Specialist)	List Appointment	2	3
Environmental Scientist	List Appointment	1	2
Executive Assistant	List Appointment	1	1
Senior Engineering Geologist	List Appointment	1	1
Senior Environmental Scientist (Specialist)	List Appointment	1	1
Water Resources Control Engineer	List Appointment	1	1
Total		14	20

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 SWRCB states that it is the responsibility of each supervisor to complete probationary reports timely and to ensure the reports are sent to the Human Resources Branch for placement in the employee's official personnel file. The SWRCB does not have a centralized process for tracking or reporting to ensure probationary evaluations are completed.

Action: It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the SWRCB 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.

FINDING NO. 3 – Appointment Documentation Was Not Kept for the Appropriate Amount of Time

Summary: The SWRCB failed to retain personnel records such as NOPA's, VPOS Bulletins, and applications. Specifically, of the 131 appointments reviewed, the SWRCB did not retain 10 VPOS Bulletins and 20 NOPAs. Additionally, two of the 131 appointment files reviewed were missing all applications for recruitment, except the appointee's, and two appointment files reviewed were missing all applications.

Criteria: As specified in California Code of Regulations, title 2, section 26 (Rule 26), 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.)

Severity: Serious. Without documentation, the CRU could not verify if the appointments were properly conducted.

Cause: The SWRCB states that that it has 28 offices statewide, has decentralized processes, and procedures have not always been followed.

Action: It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the SWRCB 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.

FINDING NO. 4 – Applications Were Not Date Stamped and/or Accepted After the Final File Date

Summary: The SWRCB processed 176 out of 1,861 applications that were not date stamped and 42 applications that were accepted after the final filing date.

Criteria: California Code Regulations, title 2, section 174 (Rule 174) requires timely filing of applications: All applications must be filed at the place, within the time, in the manner, and on the form specified in the examination announcement.

Filing an application 'within the time' shall mean postmarked by the postal service or date stamped at one of the department's offices (or appropriate office of the agency administering the examination) by the date specified.

An application that is not postmarked or date stamped by the specified date shall be accepted, if one of the following conditions as detailed in Rule 174 apply: (1) the application was delayed due to verified error; (2) the application was submitted in error to the wrong state agency and is either postmarked or date stamped on or before the specified date; (3) the employing agency verifies examination announcement distribution problems that prevented timely notification to an employee of a promotional examination; or (4) the employing agency verifies that the applicant failed to receive timely notice of promotional examination. (Cal. Code Reg., tit. 2, § 174, suds. (a), (b), (c), & (d).) The same final filing date procedures are applied to the selection process used to fill a job vacancy.

Severity: Non-Serious or Technical. Final filing dates are established to ensure all applicants are given the same amount of time in which to apply for a job vacancy and to set a deadline for the recruitment. Therefore, although the acceptance of applications after the final filing date may give some applicants more time to prepare their application than other applicants who meet the final filing date, the acceptance of late applications will not impact the results of the job vacancy selection.

Cause: The SWRCB states that it did not have a centralized process for ensuring all applications were date stamped and received by the final filing date.

Action: It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the SWRCB submit to the CRU a written corrective action plan that the department will implement to ensure conformity with Rule 174. 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 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 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.

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 SWRCB's EEO program that was in effect during the compliance review period.

FINDING NO. 5 – Complainants Were Not Notified of the Reasons for Delays in Decisions Within the Prescribed Time Period

Summary: The SWRCB provided no documentation demonstrating that discrimination complaints were tracked during the compliance review period. As such, the SWRCB could not provide a list of discrimination complaints, nor could they demonstrate how long it took to issue complainants a written decision after a complaint was filed.

Criteria: The appointing power must issue a written decision to the complainant within 90 days of the complaint being filed. (Cal. Code Regs., tit. 2, § 64.4, subd. (a).) If the appointing power is unable to issue its decision within the prescribed time period, the appointing power must inform the complainant in writing of the reasons for the delay. (*Ibid.*)

- Severity:** Very Serious. Employees were not informed of the reasons for delays in decisions for complaints. Employees may feel their concerns are not being taken seriously, which can leave the agency open to liability and low employee morale.
- Cause:** The SWRCB states that it did not have a centralized tracking tool or notification system to ensure responses were timely and that complainants were aware of delays.
- Action:** It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the SWRCB submit to the CRU a written corrective action plan that addresses the corrections the department will implement to ensure conformity with the requirements of California Code of Regulations, title 2, section 64.4, subdivision (a). Copies of any relevant documentation should be included with the plan.

FINDING NO. 6 – A Written Upward Mobility Plan Has Not Been Established

Summary: Although the department provided a draft of an Upward Mobility program policy and plan, there was no active Upward Mobility program in place at the time of the compliance review.

Criteria: Each appointing authority shall develop and maintain a written upward mobility plan as specified in the SPB "Guidelines for Administering Departmental Upward Mobility Employment Programs," revised July 25, 2000.

The plan shall include: (a) A policy statement regarding the appointing authority's commitment to providing equal upward mobility opportunity for its employees in low-paying occupations. (b) A description of the components of its program consistent with Government Code section 19401, how employees may access the program, and where information about the program may be obtained. (c) The roles and responsibilities of the employee, the employee's supervisor, the coordinator, the personnel office, the training office, and the equal employment opportunity office regarding the mobility program. (d) Criteria for selecting employees in low-paying occupations to participate in the upward mobility

efforts described in Government Code section 19401. (e) The number of employees in classifications in low-paying occupations used by the appointing authority; career ladders, bridging classes, and entry technical, professional, and administrative classes targeted for upward mobility; and planned upward mobility examinations. (Cal. Code Regs., tit. 2, § 599.983.)

Severity: Serious. The department did not have a plan to ensure it has an effective upward mobility program to develop and advance employees in low-paying occupations.

Cause: The SWRCB has an outdated upward mobility plan, which it is currently in the process of updating.

Action: It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the SWRCB submit to the CRU a written corrective action plan that addresses the corrections the department will implement to ensure conformity with the requirements of Government Code section 19401. Copies of any relevant documentation should be included with the plan.

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 the 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 SWRCB had 19 PSC's that were in effect and subject to Department of General Services (DGS) approval, and thus our procedural review. The CRU reviewed all 19 of those contracts, which are listed below:

Vendor	Services	Contract Dates	Contract Amount	Justification Identified
Aquatic Science Center	Maintenance	12/4/2015-8/31/2016	\$300,000.00	Yes
Aquatic Science Center	Maintenance	4/1/2016-6/30/2017	\$135,000.00	Yes
Basic Laboratory, Inc.	Maintenance	1/31/2016-1/31/2018	\$110,000.00	Yes
California State University, Long Beach Research Foundation	Maintenance	1/27/2016-6/30/2018	\$499,998.00	Yes
Crown Worldwide Moving and Storage, LLC	Maintenance	11/9/2015-9/30/2017	\$95,000.00	Yes
Eco Interactive, Inc.	IT Services	10/10/2013-9/30/2016	\$498,726.00	Yes
Moore Twining Associates, Inc.	Maintenance	1/31/2016-1/31/2018	\$130,000.00	Yes
Moore Twining Associates, Inc.	Maintenance	2/25/2016-3/1/2018	\$310,000.00	Yes
Office of Environmental Health Hazard Assessment	Maintenance	7/1/2015-6/30/2018	\$425,000.00	Yes

Vendor	Services	Contract Dates	Contract Amount	Justification Identified
Parcel Quest	Maintenance	12/15/2015-12/14/2017	\$52,458.00	Yes
Penn Credit Corporation	IT Services	1/1/2015-12/31/2016	\$650,000.00	Yes
San Jose State University Research Foundation	Maintenance	5/27/2015-6/30-2017	\$283,000.00	Yes
Southern California Coastal Water Research Project	Maintenance	10/1/2015-12/31/2017	\$250,000.00	Yes
Southern California Coastal Water Research Project	Maintenance	2/22/2016-3/31/2018	\$300,000.00	Yes
Southern California Coastal Water Research Project	Maintenance	1/26/2016-9/30/2017	\$150,000.00	Yes
Southern California Coastal Water Research Project	Maintenance	4/1/2016-6/30/2017	\$135,000.00	Yes
The Regents of the University of California, Davis	Maintenance	1/1/2016-3/31/2018	\$120,000.00	Yes
West Publishing Corporation	Maintenance	7/1/2015-6/30/2016	\$67,479.12	Yes
Wind Dancer Moving Company	Maintenance	5/4/2015-4/1/2017	\$130,000.00	Yes

FINDING NO. 7 – 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.)

The total amount of all the PSC's reviewed was \$4,641,661.12. It was beyond the scope of the review to make conclusions as to whether SWRCB justifications for the contract were legally sufficient. For all PSC's subject to DGS approval, the SWRCB provided specific and detailed factual information in the written justifications as to how each of the 19 contracts met at least one condition set forth in Government Code section 19131, subdivision (b). Accordingly, the SWRCB PSC's complied with procedural requirements.

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. (Gov. Code, § 1146.1) New filers must be trained within six months of appointment. (Gov. Code, § 11146.3)

Each department must provide its new supervisors supervisory training within twelve months of appointment. (Gov. Code, § 19995.4, subds. (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 SWRCB's mandated training program that was in effect during the compliance review period. The SWRCB's ethics training was found to be in compliance, while the SWRCB's supervisory training and sexual harassment prevention training were found to be out of compliance.

FINDING NO. 8 – Supervisory Training Was Not Provided for All Supervisors

Summary: The SWRCB did not provide basic supervisory training to 13 of 28 new supervisors within 12 months of appointment.

Criteria: 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).)

Severity: Very Serious. The department does not ensure its new managers are properly trained. Without proper training, new supervisory employees may not properly carry out their supervisory roles, including managing employees.

Cause: The SWRCB states that it does not have a centralized process for tracking completion of supervisory training. Each division and office is responsible for ensuring supervisors have completed required training. Additionally, there was difficulty enrolling supervisors in training due to contract issues during the review period.

Action: The SWRCB must take appropriate steps to ensure that new supervisors are provided supervisory training within the twelve months.

It is therefore recommended that no later than 60 days after the SPB's Executive Officer's approval of these findings and recommendations, the SWRCB must establish a plan to ensure compliance with supervisory training mandates and submit to the SPB a written report of compliance.

FINDING NO. 9 – Sexual Harassment Training Was Not Provided for All Supervisors

Summary: The SWRCB did not provide sexual harassment prevention training to five of 94 new supervisors within six months of their appointment. In addition, the SWRCB did not provide sexual harassment prevention training to 25 of 360 existing supervisors every two years.

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

Severity: Very Serious. The department does not ensure its new supervisors are properly trained to respond to sexual harassment or unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature. This limits the department's ability to retain a quality workforce, impacts employee morale and productivity, and subjects the department to litigation.

Cause: The SWRCB states sexual harassment prevention training is mandatory and it notifies all supervisors of this requirement and provides training opportunities annually. Despite notification of the requirement, not all supervisors were able to attend the training for various reasons.

Action: The SWRCB must take appropriate steps to ensure that its supervisors are provided sexual harassment training within the time periods prescribed.

It is therefore recommended that no later than 60 days after the SPB's Executive Officer's approval of these findings and recommendations, the SWRCB must establish a plan to ensure compliance with sexual harassment training mandates and submit to the SPB a written report of compliance.

DEPARTMENTAL RESPONSE

The SWRCB's response is attached as Attachment 1.

SPB REPLY

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

It is further recommended that the SWRCB 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.



Attachment 1

EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY PCB
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

July 1, 2016

Suzanne M. Ambrose, Executive Officer
State Personnel Board
801 Capitol Mall
Sacramento, CA 95818

Dear Ms. Ambrose,

We have reviewed the Draft Compliance Review Report (Review Report) for the State Water Resources Control Board (Water Board), prepared by the State Personnel Board's Compliance Review Team. The draft report summarizes the Compliance Review Team's findings in the areas of examinations, appointments, Equal Employment Opportunity, and Personal Services Contracts from May 1, 2015, through February 29, 2016, and mandated training from February 28, 2014, through February 29, 2016.

In general we find the Review Report to be a thorough analysis and accurate characterization of the processes that existed during the time period reviewed. We are committed to correcting all deficiencies noted in the Review Report. The Water Board remains dedicated to compliance with all hiring requirements and best practices to ensure compliance with the merit system and State Personnel Board rules and regulations.

As requested by the Compliance Review Team attached are the Water Board's responses necessary to help complete the final report, including the causes of the noted deficiencies and actions we have already taken to address them. If you have any questions or would like to discuss this further please contact the Chief of our Human Resources Branch, Chris Fernandez at 916-341-5126.

Sincerely,


Thomas Howard
Executive Director

cc: John Russell, Deputy Director, Administrative Services
Bill Damian, Assistant Deputy Director, Administrative Services
Chris Fernandez, Chief, Human Resources Branch

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE DIRECTOR

1001 I Street, Sacramento, CA 95814 | Mailing Address: P.O. Box 100, Sacramento, Ca 95812-0100 | www.waterboards.ca.gov

Water Board Responses to Draft Findings

Portions of the Draft Review Report were intentionally left blank by the Compliance Review Team, with the information "To Be provided by the SWRCB". Information requested to complete the final report included the Water Board's understanding of the cause(s) of the deficiencies, as well as any specific responses the Water Board would like noted in the final report, such as steps we have already implemented to start correcting the noted deficiencies.

The following are our responses regarding the findings in the Review Report:

Finding No. 1 – Examinations Complied with Civil Service Laws and Board Rules

No response is necessary, as we were found to be in compliance in this area.

Finding No. 2 – Probationary Evaluations Were Not Provided for All Appointments Reviewed

Cause: It is the responsibility of each supervisor to complete probationary reports timely and to ensure the reports are sent to the Human Resources Branch for placement in the employee's Official Personnel File. The Water Board does not have a centralized process for tracking or reporting to ensure probationary evaluations are completed.

Response:

- As implemented in November 2015, the Human Resources Branch has been conducting Best Hiring Practices Training. Participation in this training is mandatory for all supervisors and managers. This training emphasizes the requirements of the California Code of Regulations pertaining to completion of probationary reports.
- Additionally, the Human Resources Branch is identifying and implementing appropriate procedural solutions to ensure probationary reports are completed and filed timely as required.

Finding No. 3 – Appointment Documentation Was Not Kept for the Appropriate Amount of Time

Cause: There are several causes for documentation not being kept as required. These include:

- VPOS bulletins and applications: Each hiring manager is responsible for creation, maintenance, and retention of hiring packages. The Water Board does not have a centralized process for retaining hiring packages.
- NOPAs: In some instances it appears Personnel Specialists are failing to follow procedures for receiving signatures, retaining, and filing NOPAs. Another contributing factor is that the Water Board has 28 offices statewide and individuals responsible for routing forms for signature are decentralized.

Response:

- As implemented in November 2015, the Human Resources Branch has been conducting Best Hiring Practices Training. Participation in this training is mandatory for all supervisors and managers. This training specifically identifies retention requirements for hiring packages.
- As implemented in January 2016, the Human Resources Branch retains all vacancy bulletins and applications in the Department of Human Resources' Examination and Certification Online System (ECOS).

- Effective July 2016, Human Resources Branch will be responsible for reviewing and retaining all hiring packages. Additionally, the Human Resources Branch will review internal and external processes and procedures to ensure NOPAs are signed, returned, and retained as required.

Finding No. 4 – Applications Were Not Date Stamped and/or Accepted After the Final File Date

Cause: The Water Board did not have a centralized process for ensuring all applications were date stamped and received by the final filing date.

Response:

- As implemented in November 2015, the Human Resources Branch has been conducting Best Hiring Practices Training. Participation in this training is mandatory for all supervisors and managers. This training specifically identifies the requirement that all applications be date stamped and/or postmarked by the final filing date.
- As implemented in January 2016, the Water Board utilizes ECOS to receive applications; ECOS will not allow applicants to apply after the final filing date and includes a virtual date stamp.
- Additionally, the Human Resources Branch will review internal processes and procedures to ensure hard copy applications received are date stamped and/or include a scanned postmark when uploaded to ECOS.

Finding No. 5 – Complainants Were Not Notified of the Reasons for Delays in Decisions Within the Prescribed Time Period

Cause: The Water Board did not have a centralized tracking tool or notification system to ensure responses were timely and complainants were aware of delays.

Response: As implemented in February 2016, the Equal Employment Opportunity Office utilizes a centralized tracking tool for all complaints. Procedures were also created to notify the complainant appropriately within the prescribed time period.

Finding No. 6 – A Written Upward Mobility Plan Has Not Been Established

Cause: The Water Board has an outdated upward mobility plan, which we are currently in the process of updating. While our robust training budget allows employees to participate in upward mobility as a normal business practice, the Water Board does not have a centralized tracking system to track participation.

Response: The Water Board is currently updating our upward mobility plan to make it compliant with current law. We are exploring long-term procedural solutions to ensure that we can track and document participation by our staff in the upward mobility program, including participating in available training opportunities. In the interim, the Equal Employment Opportunity Office has begun tracking staff participation in the upward mobility program, until such time as a permanent solution is implemented.

Finding No. 7 – Personal Services Contracts Complied with Procedural Requirements

No response is necessary, as we were found to be in compliance in this area.

Finding No. 8 – Supervisory Training Was Not Provided for All Supervisors

Cause: The Water Board does not have a centralized process for tracking completion of supervisory training. Each division and office is responsible for ensuring supervisors have completed required training and maintaining records of training completion. Additionally, due to training contract issues there was temporary difficulty enrolling supervisors during the review period (between June 2015 and January 2016).

Response: The Water Board now has a contract in place with several vendors to provide supervisory training. We are also exploring procedural solutions to ensure required supervisory training is completed by staff in a timely manner, and records of that training are maintained.

Finding No. 9 – Sexual Harassment Training Was Not Provided for All Supervisors

Cause: Sexual Harassment Prevention training is mandatory and the Water Board notifies all supervisors of this requirement and provides training opportunities annually. Despite notification of the requirement, not all supervisors were able to attend the training for a variety of reasons.

Response: The Water Board will explore procedural solutions to ensure required Sexual Harassment Prevention training is completed and training records are maintained. Additionally, we are looking into alternate methods of providing this training on a more frequent, or as needed, basis so new supervisory staff can be trained sooner. In the interim, the Equal Employment Opportunity Office has begun tracking Sexual Harassment Prevention training in an effort to ensure accuracy and compliance, until such time as a permanent solution is implemented.