

COMPLIANCE REVIEW REPORT AND
SPECIAL INVESTIGATION
DEPARTMENT OF WATER RESOURCES

Compliance Review Unit
State Personnel Board
October 25, 2019

TABLE OF CONTENTS

Introduction	1
Executive Summary	2
Background	4
Scope and Methodology.....	4
Findings and Recommendations.....	7
Examinations	7
Permanent Withhold Actions.....	9
Appointments.....	10
Equal Employment Opportunity	14
Personal Services Contracts.....	15
Compensation and Pay.....	21
Leave	32
Policy and Processes.....	45
Departmental Response.....	52
SPB Reply	52

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 authorities' 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.

Effective July 1, 2012, the Governor's Reorganization Plan Number One (GRP1) of 2011 consolidated all of the functions of the Department of Personnel Administration and the merit-related operational functions of the State Personnel Board (SPB) into the California Department of Human Resources (CalHR).

Pursuant to Government Code section 18502, subdivision (c), CalHR and SPB may "delegate, share, or transfer between them responsibilities for programs within their respective jurisdictions pursuant to an agreement." CalHR and SPB, by mutual agreement, expanded the scope of program areas to be audited to include more operational practices that have been delegated to departments and for which CalHR provides policy direction. Many of these delegated practices are cost drivers to the state and were not being monitored on a statewide basis.

As such, SPB also conducts compliance reviews of appointing authorities' personnel practices to ensure that state departments are appropriately managing the following non-merit-related personnel functions: compensation and pay, leave, and policy and processes. These reviews will help to avoid and prevent potential costly litigation related to improper personnel practices, and deter waste, fraud, and abuse.

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 the Department of Water Resources (DWR)'s personnel practices in the areas of examinations, appointments, EEO, PSC's, mandated training, compensation and pay, leave, and policy and processes¹. Additionally, the CRU conducted a special investigation into allegations that the personnel practices of the DWR's San Joaquin Field Division (SJFD) included improper hiring practices. The following table summarizes the compliance review and special investigation findings.

Area	Finding
Examinations	Examinations Complied with Civil Service Laws and Board Rules
Examinations	Permanent Withhold Actions Complied with Civil Service Laws and Board Rules
Appointments	Probationary Evaluations Were Not Provided for All Appointments Reviewed
Equal Employment Opportunity	Equal Employment Opportunity Program Complied with Civil Service Laws and Board Rules
Personal Services Contracts	Personal Services Contracts Complied with Procedural Requirements
Mandated Training	Ethics Training Was Not Provided for All Filers
Mandated Training	Supervisory Training Was Not Provided for All Supervisors
Mandated Training	Sexual Harassment Prevention Training Was Not Provided for All Supervisors
Compensation and Pay	Salary Determinations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Compensation and Pay	Alternate Range Movements Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Compensation and Pay	Hiring Above Minimum Requests Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

¹ Timeframes of the compliance review varied depending on the area of review. Please refer to each section for specific compliance review timeframes.

Area	Finding
Compensation and Pay	Arduous Pay Authorization Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Compensation and Pay	Bilingual Pay Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Compensation and Pay	Pay Differential Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Compensation and Pay	Out of Class Pay Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Leave	Positive Paid Employee Exceeded Nine Months in a Twelve Consecutive Month Period
Leave	Department Did Not Account for All ATW Hours Worked on Timesheets
Leave	Administrative Time Off Authorizations (ATO) Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	Leave Auditing and Timekeeping Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	Leave Reduction Plans Were Not Provided for All Employees Whose Leave Balances Exceeded Established Limits
Leave	Service and Leave Transactions Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	Nepotism Policy Failed to Comply with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	Performance Appraisal Policy and Processes Complied with Civil Service Laws and Regulations and CalHR Policies and Guidelines
Special Investigation	San Joaquin Field Division – Unlawful Appointment

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 Department of Water Resources (DWR) was established in 1956 by the California State Legislature to protect, conserve, develop, and manage much of California's water supply. The DWR sustainably manages the water resources of California, in cooperation with other agencies, to benefit the state's people and protect, restore, and enhance the natural and human environments. This includes the State Water Project (SWP), the nation's largest state-build water conveyance program.

The SWP supplies water to almost 27 million Californians and 750,000 acres of farmland, spanning more than 700 miles from Northern California to Southern California and includes 34 storage facilities, 20 pumping plants, five hydroelectric power plants, four pumping-generating plants, and approximately 700 miles of canals, tunnels, and pipelines. The SWP also provides flood control, hydroelectric power generation, recreational opportunities, and ecosystem enhancements to protect fish and wildlife habitat.

The DWR employs approximately 3400 employees statewide with major responsibilities such as: overseeing the statewide process of developing and updating the California Water Plan; planning, designing, constructing, and maintaining the SWP; protecting and restoring the Sacramento-San Joaquin Delta; regulating dams, providing flood protection, and assisting in emergency management; working to preserve the natural environment and wildlife; educating the public about the importance of water, water conservation, and water safety; providing grants and technical assistance to service local water needs; and collecting, analyzing, and reporting data in support of our mission to manage and protect California's water resources.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing the DWR's examinations, appointments, EEO program, PSC's, mandated training, compensation and pay, leave, and policy and processes². The primary objective of the review was to determine if the DWR's personnel practices, policies, and procedures complied with state civil service laws and Board regulations, Bargaining Unit Agreements, CalHR policies and guidelines, CalHR Delegation Agreements, and to recommend corrective action where deficiencies were identified.

² Timeframes of the compliance review varied depending on the area of review. Please refer to each section for specific compliance review timeframes.

A cross-section of the DWR's examinations were selected for review to ensure that samples of various examination types, classifications, and levels were reviewed. The CRU examined the documentation that the DWR provided, which included examination plans, examination bulletins, job analyses, and scoring results. The CRU also reviewed the DWR's Permanent Withhold Actions documentation, including Withhold Determination Worksheets, State applications (STD. 678), class specifications, and Withhold letters.

A cross-section of the DWR's 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 DWR provided, which included Notice of Personnel Action (NOPA) forms, Request for Personnel Actions (RPA's), vacancy postings, application screening criteria, hiring interview rating criteria, certification lists, transfer movement worksheets, employment history records, correspondence, and probation reports. The DWR did not conduct any unlawful appointment investigations during the compliance review period. Additionally, the DWR did not make any additional appointments during the compliance review period.

The DWR's appointments were also selected for review to ensure the DWR applied salary regulations accurately and correctly processed employees' compensation and pay. The CRU examined the documentation that the DWR provided, which included employees' employment and pay history and any other relevant documentation such as certifications, degrees, and/or the appointee's application. Additionally, the CRU reviewed specific documentation for the following personnel functions related to compensation and pay: hiring above minimum (HAM) requests, arduous pay, bilingual pay, monthly pay differentials, and out-of-class assignments. During the compliance review period, the DWR did not issue or authorize any red circle rate requests.

The review of the DWR's EEO program included examining written EEO policies and procedures; the EEO Officer's role, duties, and reporting relationship; the internal discrimination complaint process; the reasonable accommodation program; the discrimination complaint process; and the Disability Advisory Committee (DAC).

The DWR's PSC's were also reviewed.³ It was beyond the scope of the compliance review to make conclusions as to whether the DWR's justifications for the contracts were

³If 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 the DWR's practices, policies, and procedures relative to PSC's complied with procedural requirements.

The DWR's mandated training program was reviewed to ensure all employees required to file statements of economic interest were provided ethics training, and that all supervisors were provided supervisory training and sexual harassment prevention training within statutory timelines.

The CRU also identified the DWR's employees whose current annual leave, or vacation leave credits, exceeded established limits. The CRU reviewed a cross-section of these identified employees to ensure that employees who have significant "over-the-cap" leave balances have a leave reduction plan in place. Additionally, the CRU asked the DWR to provide a copy of their leave reduction policy.

The CRU reviewed the DWR's Leave Activity and Correction certification forms to verify that the DWR created a monthly internal audit process to verify all leave input into any leave accounting system was keyed accurately and timely. The CRU selected a small cross-section of the DWR's units in order to ensure they maintained accurate and timely leave accounting records. Part of this review also examined a cross-section of the DWR's employees' employment and pay history, state service records, and leave accrual histories to ensure employees with non-qualifying pay periods did not receive vacation/sick leave and/or annual leave accruals or state service credit. Additionally, the CRU reviewed a selection of the DWR employees who used Administrative Time Off (ATO) in order to ensure that ATO was appropriately administered. Additionally, the CRU reviewed a selection of the DWR's positive paid employees whose hours were tracked during the compliance review period in order to ensure that they adhered to procedural requirements.

Moreover, the CRU reviewed the DWR's policies and processes concerning nepotism, workers' compensation, and performance appraisals. The review was limited to whether the DWR's policies and processes adhered to procedural requirements.

On May 2, 2019, an exit conference was held with the DWR to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed the DWR's written response on May 10, 2019, 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 for determining the fitness and qualifications of employees for each class of position and for applicants for examinations. (Gov. Code, § 18931, subd. (a).) Within a reasonable time before the scheduled date for 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 with the department or a designated appointing power as directed by the examination announcement. (Gov. Code, § 18934, subd. (a)(1).) 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, November 1, 2017 through April 30, 2018, the DWR conducted 41 examinations. The CRU reviewed nine of those examinations, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Apps
Career Executive Assignment B, Chief, Division of Flood Management	Open	Statement of Qualifications (SOQ) ⁴	2/13/19	3
Career Executive Assignment B, Deputy Director, Delta Conveyance	Open	SOQ	1/31/18	5

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.

Classification	Exam Type	Exam Components	Final File Date	No. of Apps
Construction Supervisor II (Water Resources)	Open	Supplemental Application	1/5/18	7
Electrical Engineering Technician II	Open	Training and Experience (T&E) ⁵	11/9/17	9
Guide I, Historical Moments	Open	Qualification Appraisal Panel ⁶	2/20/18	29
Junior Engineering Technician	Open	Written ⁷	Continuous	21
Mechanical Engineering Technician II	Open	Education and Experience ⁸	10/20/17	4
Senior Photographer	Open	QAP	1/26/18	32
Supervising Hydroelectrical Power Utility Engineer	Open	QAP	1/26/18	32

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

The CRU reviewed nine open examinations which the DWR administered in order to create eligible lists from which to make appointments. The DWR published and distributed examination bulletins containing the required information for all examinations. Applications received by the DWR were accepted prior to the final filing date. Applicants

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.

⁶ 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.

⁷ A written examination is a testing procedure in which candidates' job-related knowledge and skills are assessed through the use of a variety of item formats. Written examinations are either objectively scored or subjectively scored.

⁸ In an education and experience 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.

were 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. The CRU found no deficiencies in the examinations that the DWR conducted during the compliance review period.

Permanent Withhold Actions

Departments are granted statutory authority to permit withhold of eligibles from lists based on specified criteria. (Gov. Code, § 18935.) Permanent appointments and promotions within the state civil service system shall be merit-based, ascertained by a competitive examination process. (Cal. Const., art. VII, § 1, subd. (b).) Once a candidate has obtained list eligibility, a department may discover information pertaining to that eligible which raises concerns regarding his/her eligibility or suitability for employment with the state. (CalHR Withhold Manual, p. 3.) A permanent withhold action is valid for the duration of the eligible's list eligibility. (*Ibid.*) Departments are required to maintain a separate file for each withhold action and the file should include a copy of the withhold notification letter sent to the eligible, as well as all supporting documentation which form the basis of the withhold action. (CalHR Withhold Manual, p. 2.)

During the review period, the DWR conducted three permanent withhold actions. The CRU reviewed all of these permanent withhold actions, which are listed below:

Exam Title	Exam ID	Date List Eligibility Began	Date List Eligibility Ended	Reason Employee Placed on Withhold
Mechanical Engineer	5WRAD	9/27/17	9/27/19	Failed to Meet Minimum Qualifications
Senior Hydraulic Power Utility Engineer (Specialist)	7WR28-01	8/18/17	8/18/19	Failed to Meet Minimum Qualifications
Senior Hydraulic Power Utility Engineer (Specialist)	7WR28-02	8/18/17	8/18/19	Failed to Meet Minimum Qualifications

FINDING NO. 2 – Permanent Withhold Actions Complied with Civil Service Laws and Board Rules

The CRU found no deficiencies in the permanent withhold actions undertaken by the department during the compliance review period.

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.) The hiring process for eligible candidates chosen for job interviews shall be competitive and be designed and administered to hire candidates who will be successful. (Cal. Code Regs., tit. 2, § 250 (b).) Interviews shall be conducted using job-related criteria. (Ibid.) Persons selected for appointment shall satisfy the minimum qualifications of the classification to which he or she is appointed or have previously passed probation and achieved permanent status in that same classification. (Cal. Code Regs., tit. 2, § 250 (d).) While persons selected for appointment may meet some or most of the preferred or desirable qualifications, they are not required to meet all the preferred or desirable qualifications. (Ibid.) This section does not apply to intra-agency job reassignments. (Cal. Code Regs., tit. 2, § 250 (e).)

For the purposes of temporary appointments, an employment list is considered not to exist where there is an open eligible list that has three or fewer names of persons willing to accept appointment and no other employment list for the classification is available. (Cal. Code Regs., tit. 2, § 265.) In such a situation, an appointing power may make a temporary appointment in accordance with section 265.1 (Ibid.) A Temporary Authorization Utilization (TAU) appointment shall not exceed nine months in a 12-month period. (Cal. Const., art. VII, § 5.) In addition, when a temporary appointment is made to a permanent position, an appropriate employment list shall be established for each class to which a temporary appointment is made before the expiration of the appointment. (Gov. Code, § 19058.)

During the period under review, November 1, 2017 through April 30, 2018, the DWR made 421 appointments. The CRU reviewed 30 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	1
Attorney IV	Certification List	Permanent	Full Time	1
Electrical Engineer	Certification List	Permanent	Full Time	1
Environmental Program Manager II	Certification List	Permanent	Full Time	1
Hydroelectric Plant electrical Supervisor	Certification List	Permanent	Full Time	1
Hydroelectric Plant electrician I	Certification List	Permanent	Full Time	1
Hydroelectric Plant Mechanic - Apprentice	Certification List	Permanent	Full Time	1
Hydroelectric Plant Mechanic I	Certification List	Permanent	Full Time	1
Hydroelectric Plant Technician II	Certification List	Permanent	Full Time	1
Materials and Stores Specialist	Certification List	Permanent	Full Time	1
Office Assistant (Typing)	Certification List	Permanent	Intermittent	1
Senior Engineer, Water Resources	Certification List	Permanent	Full Time	1
Senior Environmentalist Scientist (Specialist)	Certification List	Permanent	Full Time	1
Staff Services Analyst	Certification List	Permanent	Full Time	1
Supervising Hydroelectric Power Utility Engineer	Certification List	Permanent	Full Time	1
Utility Craftsworker Apprentice, Water Resources	Certification List	Permanent	Full Time	1
Water Services Supervisor	Certification List	Permanent	Full Time	1
Student Assistant – Engineering and Architectural	Temporary	Temporary	Intermittent	2
Administrative Officer II, Resources Agency	Transfer	Limited Term	Full Time	1
Career Executive Assignment	Transfer	Limited Term	Full Time	1
Electrical Engineer	Transfer	Limited Term	Full Time	1
Engineer, Water Resources	Transfer	Permanent	Part Time	1

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Hydroelectric Plant Operations Superintendent	Transfer	Permanent	Full Time	1
Hydroelectric Plant Operator	Transfer	Permanent	Full Time	1
Mechanical Engineer	Transfer	Limited Term	Full Time	1
Office Technician (Typing)	Transfer	Permanent	Intermittent	1
Senior Hydroelectric Plant Operator	Transfer	Permanent	Full Time	1
Staff Services Manager II (Supervisory)	Transfer	Limited Term	Full Time	1
Supervising Hydroelectric Power Utility Engineer	Transfer	Limited Term	Full Time	1
Water Resources Technician II	Transfer	Permanent	Full Time	1

The DWR measured each applicant's ability to perform the duties of the job by conducting hiring interviews and selecting the best-suited candidates. For each of the 19 list appointments reviewed, the DWR ordered a certification list of candidates ranked competitively. After properly clearing the certification lists including SROA, the selected candidates were appointed based on eligibility attained by being reachable within the first three ranks of the certification lists.

The CRU reviewed 11 DWR appointments made via transfer. A transfer of an employee from a position under one appointing power to a position under another appointing power may be made if the transfer is to a position in the same class or in another class with substantially the same salary range and designated as appropriate by the executive officer. (Cal. Code Regs., tit. 2, § 425.) The DWR verified the eligibility of each candidate to their appointed class.

Of the two student assistant positions reviewed, DWR demonstrated that they were currently enrolled in an undergraduate college curriculum and the duration of work performed was no longer than 9 months in a 12-month period (Human Resources Manual Section 1201.)

The CRU found no deficiencies in the appointments that the DWR initiated during the compliance review period. Accordingly, the CRU found that the DWR's appointments

processes and procedures utilized during the compliance review period satisfied civil service laws and Board rules.

However, in reviewing the DWR's probationary evaluations for appointments that were made during the compliance review period, the CRU determined the following:

FINDING NO. 3 – Probationary Evaluations Were Not Provided for All Appointments Reviewed

Summary: The DWR did not provide three probationary reports of performance for two of the 30 appointments reviewed by the CRU, as reflected in the table below:

Classification	Appointment Type	Number of Appointments	Total Number of Missing Probation Reports
Office Assistant (Typing)	Certification List	1	2
Supervising Hydroelectric Power Utility Engineer	Certification List	1	1
Total		2	3

Criteria: The service of a probationary period is required when an employee enters or is promoted in the state civil service by permanent appointment from an employment list; upon reinstatement after a break in continuity of service resulting from a permanent separation; or after any other type of appointment situation not specifically excepted from the probationary period. (Gov. Code, § 19171.) During the probationary period, the appointing power shall evaluate the work and efficiency of a probationer in the manner and at such periods as the department rules may require. (Gov. Code, § 19172.) A report of the probationer's performance shall be made to the employee at sufficiently frequent intervals to keep the employee adequately informed of progress on the job. (Cal. Code Regs., tit. 2, § 599.795.) A written appraisal of performance shall be made to the Department within 10 days after the end of each one-third portion of the probationary period. (*Ibid.*) The Board's record retention rules require that appointing powers retain all probationary reports for five years

from the date the record is created. (Cal. Code Regs., tit. 2, § 26, subd. (a)(3).)

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 DWR states it agrees that the probation report is important to the success of the employee and the department. The DWR agrees that two probationary reports were not prepared timely. The probation reports were untimely because the supervisors or managers overlooked them. The DWR will reiterate the importance of the probation report's timeliness to the supervisors/managers.

Action: It is recommended that, within 60 days of the Executive Officer's approval of these findings and recommendations, the DWR 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 California Code of Regulations, title 2, section 599.795.

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; and cooperate with the CalHR, in accordance with Civil Code section 1798.24, subdivisions (o) and (p), by providing access to all required files, documents and data necessary to carry out these mandates. (*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).)

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).)

FINDING NO. 4 – Equal Employment Opportunity Program Complied With All 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 DWR 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 DWR. In addition, the DWR has an established DAC, which reports to the Director on issues affecting persons with disabilities. The DWR also provided evidence of its efforts to promote EEO in its hiring and employment practices, and to increase its hiring of persons with disabilities. Accordingly, the DWR EEO program complied with civil service laws and Board rules.

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 Regs., 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 but are not limited to 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 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 period under review, November 1, 2017 through April 30, 2018, the DWR had 80 PSC's that were in effect. The CRU reviewed 19 of those, which are listed below:

Vendor	Services	Contract Dates	Contract Amount	Justification Identified?
Aramark Uniform Services	Laundry Services	2/12/18 - 2/11/20	\$4,000.00	Yes
Bishop Pack Outfitters	Park Guide Services	4/1/18 - 3/31/21	\$28,320.00	Yes
Carlson, Calladine & Peterson LLP	Legal Services	3/5/18 - 3/4/20	\$5,000,000.00	Yes
CMD	Advertising Services	2/25/18 - 2/24/21	\$149,000.00	Yes
Daniel J. Edelman, Inc.	Communication Services	3/31/17 - 12/31/19	\$3,816,864.00	Yes
Delta Habitat LLC	Sediment and Vegetation Removal Services	1/2/18 - 12/31/18	\$525,080.00	Yes
Eaton Interpreting Services, Inc.	Sign Language Interpretation Services	4/1/18 - 6/30/19	\$25,000.00	Yes
e-Scribers LLC	Transcription Services	6/1/18 - 5/31/20	\$50,000.00	Yes
Exponent, Inc.	Expert Witness	10/1/10 - 7/30/20	\$3,000,000.00	Yes
Hermocillo-Azevedo Strategic Communications LLC	Communication Services	3/15/18 - 3/14/21	\$3,000,000.00	Yes
High Sierra Pack Station	Pack Guide Services	4/1/18 - 3/31/21	\$27,000.00	Yes
Inter-Con Security Systems, Inc.	Unarmed Security Guard Services	12/5/17 - 1/31/19	\$180,724.90	Yes
Inter-Con Security Systems, Inc.	Unarmed Security Guard Services	3/1/16 - 1/31/19	\$4,500,000.00	Yes
KJ 2 Productions aka KJ 2 Entertainment	Installation Services	5/1/17 - 5/31/19	\$30,000.00	Yes
Magellan Health Services of California, Inc.	Employee Assistance Program	4/15/18 - 6/30/20	\$75,000.00	Yes
Maids For You	Janitorial Services	5/1/18 - 4/30/21	\$90,000.00	Yes
Southside Unlimited	Trash Removal Services	11/1/15 - 10/31/20	\$5,145.00	Yes

Vendor	Services	Contract Dates	Contract Amount	Justification Identified?
The American Society of Mechanical Engineers	Training Services	12/1/17 - 11/30/20	\$120,000.00	Yes
Vavrinek, Trine, Day & Co., LLP	Auditing Services	7/1/18 - 6/30/21	\$219,000.00	Yes

FINDING NO. 5 – Personal Services Contracts Complied with Procedural Requirements

The total dollar amount of all the PSC's reviewed was \$20,845,133.90. It was beyond the scope of the review to make conclusions as to whether DWR justifications for the contract were legally sufficient. For all PSC's reviewed, the DWR 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 19130, subdivision (b). Additionally, DWR complied with proper notification to all organizations that represent state employees who perform the type or work contracted. Accordingly, the DWR PSC's complied with civil service laws and board rules.

Mandated Training

Each member, officer, or designated employee of a state agency who is required to file a statement of economic interest (referred to as "filers") because of the position he or she holds with the agency is required to take an orientation course on the relevant ethics statutes and regulations that govern the official conduct of state officials. (Gov. Code, §§ 11146 & 11146.1.) State agencies are required to offer filers the orientation course on a semi-annual basis. (Gov. Code, § 11146.1.) New filers must be trained within six months of appointment and at least once during each consecutive period of two calendar years, commencing on the first odd-numbered year thereafter. (Gov. Code, § 11146.3.)

Upon the initial appointment of any employee designated in a supervisory position, the employee shall be provided a minimum of 80 hours of training, as prescribed by the 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).)

Additionally, 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.

In reviewing a sample selection of the DWR's mandated training program that was in effect during the compliance review period, the CRU determined the following:

FINDING NO. 6 – Ethics Training Was Not Provided for All Filers

Summary: The DWR did not provide ethics training to four of 40 new filers within six months of their appointment. In addition, the DWR did not provide ethics training to 18 of 45 existing filers.

Criteria: New filers must be provided ethics training within six months of appointment. Existing filers must be trained at least once during each consecutive period of two calendar years commencing on the first odd-numbered year thereafter. (Gov. Code, § 11146.3, subd. (b).)

Severity: Very Serious. The department does not ensure that its filers are aware of prohibitions related to their official position and influence.

Cause: The DWR states that it agrees that a small percentage of filers did not complete required training. The failure was due to insufficient internal tracking and notification processes.

Action: The DWR has made changes to its internal processes to help ensure filers take training as required. Specifically, the DWR now utilizes an email notification system that automatically notifies new and existing filers of the requirement to complete ethics training, and their recently implemented enterprise training system notifies the filers when training is due within one year of required completion. Additionally, the DWR commits to reviewing its current process to streamline the submission of required completion documents.

It is therefore recommended that, no later than 60 days after the SPB Executive Officer's approval of these findings and recommendations, the DWR submit copies of relevant documentation of compliance with Gov. Code, § 11146.3, subd. (b).

FINDING NO. 7 – Supervisory Training Was Not Provided for All Supervisors

Summary: The DWR did not provide basic supervisory training to 11 of the 60 new supervisors reviewed within twelve months of appointment.

Criteria: Each department must provide its new supervisors a minimum of 80 hours of supervisory training within the probationary period. Upon completion of the initial training, supervisory employees shall receive a minimum 20 hours of leadership training biannually. (Gov. Code, § 19995.4, subds. (b) and (c).)

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

Cause: The DWR states that it agrees that a small percentage of new supervisors did not complete required training timely due to a lack of oversight. The DWR's recently implemented enterprise training system will help ensure training is received. Upon initial appointment, New supervisors will be notified to enroll in CalHR's 80-hour supervisory training course. New supervisors will receive monthly

reminders if the training is not completed within six months of their initial appointment. Additionally, the Training Office will conduct monthly reporting of completed supervisory training to provide oversight.

Action: The DWR 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 Executive Officer's approval of these findings and recommendations, the DWR submit to CRU copies of relevant documentation of compliance with Gov. Code, § 19995.4, subd. (d).

FINDING NO. 8 – Sexual Harassment Prevention Training Was Not Provided for All Supervisors

Summary: The DWR did not provide sexual harassment prevention training to 26 of 47 new supervisors within six months of their appointment. However, the DWR did provide sexual harassment prevention training to its existing supervisors every two years.

Criteria: Each department must provide its supervisors two hours of sexual harassment prevention 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 DWR states that it agrees that training new supervisors on sexual harassment prevention is critical. Although the 26 new supervisors noted were not trained within the prescribed timeframe, they did all complete training in this subject matter. With the implementation of a new enterprise training system, DWR will be able to track and assign classes to new supervisors in a more

centralized fashion. The DWR's Training Office is in the process of tracking all managers and supervisors in need of the new supervisor's sexual harassment prevention training to ensure they are trained within the appropriate timeframe going forward.

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

It is therefore recommended that, no later than 60 days after the SPB Executive Officer's approval of these findings and recommendations, the DWR submit to CRU copies of relevant documentation of compliance with Gov. Code, § 12950.1, subd. (a).

Compensation and Pay

Salary Determination

The pay plan for state civil service consists of salary ranges and steps established by CalHR. (Cal. Code Regs., tit. 2, § 599.666.) Several salary rules dictate how departments calculate and determine an employee's salary rate⁹ upon appointment depending on the appointment type, the employee's state employment and pay history, and tenure.

Typically, agencies appoint employees to the minimum rate of the salary range for the class. Special provisions for appointments above the minimum exist to meet special recruitment needs and to accommodate employees who transfer into a class from another civil service class and are already receiving salaries above the minimum.

During the period under review, November 1, 2017 through April 30, 2018, the DWR made 421 appointments. The CRU reviewed 12 of those appointments to determine if the DWR applied salary regulations accurately and correctly processed employees' compensation, which are listed below:

⁹ "Rate" is any one of the salary rates in the resolution by CalHR which establishes the salary ranges and steps of the Pay Plan (CA CCR Section 599.666).

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Hydroelectric Plant Electrician I	Certification List	Permanent	Full Time	\$6,857
Hydroelectric Plant Mechanic	Certification List	Permanent	Full Time	\$3,771
Hydroelectric Plant Technician II	Certification List	Permanent	Full Time	\$8,924
Hydroelectric Plant Electrical Supervisor	Certification List	Permanent	Full Time	\$9,812
Senior Hydroelectric Power Utility Engineer (Specialist)	Certification List	Permanent	Full Time	\$11,809
Staff Services Analyst	Certification List	Permanent	Full Time	\$3,977
Student Assistant – Engineering and Architectural	Certification List	Permanent	Full Time	\$2,339
Student Assistant – Engineering and Architectural	Certification List	Permanent	Full Time	\$2,616
Utility Craftsworker Apprentice, Water Resources	Certification List	Permanent	Full Time	\$3,676
Hydroelectric Plant Operator	Transfer	Permanent	Full Time	\$7,326
Mechanical Engineer	Transfer	Permanent	Full Time	\$5,353
Staff Services Manager II (Supervisory)	Transfer	Permanent	Full Time	\$6,753

FINDING NO. 9 – Salary Determinations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines

The CRU found no deficiencies in the salary determinations that were reviewed. The DWR appropriately calculated and keyed the salaries for each appointment and correctly determined employees' anniversary dates ensuring that subsequent merit salary adjustments will satisfy civil service laws, Board rules and CalHR policies and guidelines.

Alternate Range Movement Salary Determination (within same classification)

If an employee qualifies under established criteria and moves from one alternate range to another alternate range of a class, the employee shall receive an increase or a decrease equivalent to the total of the range differential between the maximum salary rates of the alternate ranges (Cal. Code Regs., tit. 2, § 599.681). However, in many instances, CalHR provides salary rules departments must use when employees move between alternate ranges. They are described in the alternate range criteria (CalHR Pay Scales). When no salary rule or method is cited in the alternate range criteria, departments must default to Rule 599.681.

During the period under review, October 1, 2017, through March 31, 2018, the DWR made 122 alternate range movements within a classification¹⁰. The CRU reviewed 17 of those alternate range movements to determine if the DWR applied salary regulations accurately and correctly processed employee's compensation, which are listed below:

Classification	Prior Range	Current Range	Time Base	Salary (Monthly Rate)
Attorney	Range C	Range D	Full Time	\$8,583
Business Service Assistant (Specialist)	Range B	Range C	Full Time	\$4,030
Engineer, Water Resources	Range B	Range C	Full Time	\$5,837
Environmental Scientist	Range A	Range B	Full Time	\$4,245
Hydroelectric Plant Electrician Apprentice	Range B	Range C	Full Time	\$4,114
Hydroelectric Plant Mechanic Apprentice	Range B	Range C	Full Time	\$4,114
Hydroelectric Plant Operator Apprentice	Range B	Range C	Full Time	\$2,374
Information Technology Specialist I	Range B	Range C	Full Time	\$7,616
Information Technology Specialist I	Range B	Range C	Full Time	\$7,616
Information Technology Specialist I	Range B	Range C	Full Time	\$7,616
Information Technology Specialist I	Range B	Range C	Full Time	\$7,616

¹⁰ 335 transactions.

Classification	Prior Range	Current Range	Time Base	Salary (Monthly Rate)
Junior Engineering Technician	Range A	Range B	Full Time	\$3,251
Office Assistant (Typing)	Range A	Range B	Full Time	\$2,569
Personnel Specialist	Range B	Range C	Full Time	\$3,621
Student Assistant – Engineering and Architectural	Range E	Range F	Full Time	\$2,826
Student Assistant – Engineering and Architectural	Range D	Range E	Full Time	\$2,854
Utility Craftswoker Apprentice, Water Resources	Range B	Range C	Full Time	\$3,959

FINDING NO. 10 – Alternate Range Movements Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines

The CRU determined that the alternate range movements the DWR made during the compliance review period, satisfied civil service laws, Board rules and CalHR policies and guidelines.

Hiring Above Minimum Requests

CalHR may authorize payment at any step above-the minimum limit to classes or positions to meet recruiting problems, or to obtain a person who has extraordinary qualifications. (Gov. Code § 19836.) For all employees new to state service, departments are delegated to approve HAMs for extraordinary qualifications. (Human Resources Manual Section 1707.) Appointing authorities may request HAMs for current state employees with extraordinary qualifications. (*Ibid.*) Delegated HAM authority does not apply to current state employees. (*Ibid.*)

Persons with extraordinary qualifications should contribute to the work of the department significantly beyond that which other applicants offer. (*Ibid.*) Extraordinary qualifications may provide expertise in a particular area of a department's program. (*Ibid.*) This expertise should be well beyond the minimum qualifications of the class. (*Ibid.*) Unique talent, ability or skill as demonstrated by pervious job experience may also constitute extraordinary qualifications. (*Ibid.*) The scope and depth of such experience should be more significant than its length. (*Ibid.*) The degree to which a candidate exceeds minimum qualifications should be a guiding factor, rather than a determining one. (*Ibid.*) When a

number of candidates offer considerably more qualifications than the minimum, it may not be necessary to pay above the minimum to acquire unusually well-qualified people. (*Ibid.*) The qualifications and hiring rates of state employees already in the same class should be carefully considered, since questions of salary equity may arise if new higher entry rates differ from previous ones. (*Ibid.*) Recruitment difficulty is a factor to the extent that a specific extraordinary skill should be difficult to recruit, even though some applicants are qualified in the general skills of the class. (*Ibid.*)

If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action.¹¹ (Gov. Code § 19836 subd. (b).)

Appointing authorities may request and approve HAMs for former legislative employees who are appointed to a civil service class and received eligibility for appointment pursuant to Government Code section 18990. (Human Resources Manual Section 1707.) The salary received upon appointment to civil service shall be in accordance with the salary rules specified in the California Code of Regulations. (*Ibid.*) A salary determination is completed comparing the maximum salary rate of the former legislative class and the maximum salary rate of the civil service class to determine applicable salary and anniversary regulation. (*Ibid.*) Typically, the legislative employees are compensated at a higher rate of pay; therefore, they will be allowed to retain the rate they last received, not to exceed the maximum of the civil service class. (*Ibid.*)

Appointing authorities may request/approve HAMs for former exempt employees appointed to a civil service class. (Human Resources Manual Section 1707.) The salary received upon appointment to civil service shall be competitive with the employee's salary in the exempt appointment. (*Ibid.*) For example, An employee appointed to a civil service class which is preceded by an exempt appointment may be appointed at a salary rate comparable to the exempt appointment up to the maximum of the salary range for the civil service class. (*Ibid.*)

During the period under review, October 1, 2017 through March 31, 2018, the DWR authorized 11 HAM requests. The CRU reviewed 11 of those authorized HAM requests to determine if the DWR correctly applied Government Code section 19836 and appropriately verified, approved and documented candidates' extraordinary qualifications, which are listed below:

¹¹ Except that if the provisions of the memorandum of understanding requires the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

Classification	Appointment Type	Status	Salary Range	Salary (Monthly Rate)
Associate Control Engineer	Certification List	New to State	\$8,293.00 - \$10,372.00	\$10,200
Engineer Water Resources	Certification List	New to State	\$7,631.00 - \$9,548.00	\$9,293
Engineer Water Resources	Certification List	New to State	\$6,751.00 - \$8,447.00	\$8,281
Engineer Water Resources	Certification List	New to State	\$6,751.00 - \$8,447.00	\$8,447
Engineer Water Resources	Certification List	New to State	\$7,631.00 - \$9,548.00	\$8,927
Environmental Scientist	Certification List	New to State	\$5,641.00 - \$7,013.00	\$6,136
Heavy Equipment Mechanic	Certification List	New to State	\$4,709.00 - \$5,428.00	\$5,244
Heavy Equipment Mechanic	Certification List	New to State	\$4,709.00 - \$5,428.00	\$5,244
Hydroelectric Plant Mechanic I	Certification List	New to State	\$6,857.00 - \$8,500.00	\$7,346
Information Officer	Certification List	New to State	\$6,187.00 - \$7,688.00	\$7,108
Senior Environmental Scientist (Specialist)	Certification List	New to State	\$6,491.00 - \$8,075.00	\$6,815

FINDING NO. 11 – Hire Above Minimum Requests Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines

The CRU found that the HAM requests the DWR made during the compliance review period, satisfied civil service laws, Board rules and CalHR policies and guidelines.

Arduous Pay

Effective July 1, 1994, appointing authorities were provided the discretion to provide additional compensation for employees exempt from the Fair Labor Standards Act (FLSA) who perform arduous work that exceeds the normal demands of state service employment. (CalHR's Manual Section 1702). The work must be extraordinarily

demanding, time consuming, and significantly exceed employees' normal workweek. The employee cannot be entitled to receive any other sort of compensation such as overtime. Eligible employees are FLSA-exempt employees who do not receive compensation in recognition of hours worked in excess of 40 hours per week. The duration of the arduous period must be at least two weeks or more (*Ibid.*).

Excluded and represented employees who are FLSA-exempt and assigned to Work Week Group E are eligible to receive up to four (4) months of pay per fiscal year, or per event for emergencies, if the following conditions are met¹²:

- There is a nonnegotiable deadline or extreme urgency;
- Work exceeds normal work hours and normal productivity;
- Work is unavoidable;
- Work involves extremely heavy workload;
- Employee is eligible for no other compensation, and
- The circumstances that support this pay differential are documented.

Departments have delegated authority to approve arduous pay for excluded employees who are FLSA-exempt, but CalHR approval is required for any arduous pay issued to represented employees.

Although departments have delegated authority to approve arduous pay¹³, they are required to fill out CalHR Form 777, documenting the circumstances, assessment and rationale behind all arduous pay approvals. A new Form 777 should be filled out for every employee receiving the pay differential, every time an employee is approved to receive a new pay differential, and every time an employee wants to extend their arduous pay. Extensions are only granted in rare circumstances. Departments must keep the Form 777 on file and retain the form for five years after the approval date (*Ibid.*).

During the period under review, October 1, 2017 through March 31, 2018, the DWR issued Arduous Pay to one employees. The CRU reviewed one arduous pay authorizations, listed below, to ensure compliance with applicable CalHR policies and guidelines:

¹² Applicable Memorandum of Understandings or Bargaining Unit Agreements detail other specific criteria.

¹³ Pay Letter 94-32 established Pay Differential 62 regarding arduous pay for Bargaining Units 1, 7, 9, 17, 19, and 21, and Excluded employees.

Classification	Collective Bargaining Identifier	Work Week Group	Time Base	Total Compensation	Number of Months Received
Supervising Architect	S09	E	Full Time	\$4,800	4 Months

FINDING NO. 12 – Arduous Pay Authorization Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

The CRU found that the one arduous pay authorization that the DWR made during the compliance review period, satisfied civil service laws, Board rules and CalHR policies and guidelines.

Bilingual Pay

A certified bilingual position is a position where the incumbent uses bilingual skills on a continuous basis and averages ten percent or more of the total time worked. According to the Pay Scales, specifically Pay Differential 14, the ten percent time standard is calculated based on the time spent conversing, interpreting, or transcribing in a second language and time spent on closely related activities performed directly in conjunction with the specific bilingual transactions.

Typically, the department must review the position Duty Statement to confirm the percentage of time performing bilingual skills and verify the monthly pay differential is granted to a certified bilingual employee in a designated bilingual position. The position, not the employee, receives the bilingual designation and the department must verify that the incumbent successfully participated in an Oral Fluency Examination prior to issuing the additional pay.

During the period under review, October 1, 2017 through March 31, 2018, the DWR issued Bilingual Pay to two employees. The CRU reviewed two of these bilingual pay authorizations to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

Classification	Collective Bargaining Identifier	Time Base
Information Officer II	S01	Full Time
Senior Right of Way Agent	S01	Full Time

FINDING NO. 13 – Bilingual Pay Authorization Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

The CRU found that the bilingual pay authorized to two employees during the compliance review period, satisfied civil service laws, Board rules and CalHR policies and guidelines.

Pay Differentials

A pay differential is special additional pay recognizing unusual competencies, circumstances, or working conditions applying to some or all incumbents in select classes. A pay differential may be appropriate in those instances when a subgroup of positions within the overall job class might have unusual circumstances, competencies, or working conditions that distinguish these positions from other positions in the same class. Typically, pay differentials are based on qualifying pay criteria such as: work locations or shift assignments; professional or educational certification; temporary responsibilities; special licenses, skills or training; performance-based pay; incentive-based pay; or, recruitment and retention (CalHR Classification and Pay Manual Section 230).

California State Civil Service Pay Scales (Pay Scales) Section 14 describes the qualifying pay criteria for the majority of pay differentials. However, some of the alternate range criteria in the pay scales function as pay differentials. Generally, departments issuing pay differentials should, in order to justify the additional pay, document the following: the effective date of the pay differential, the collective bargaining unit identifier, the classification applicable to the salary rate and conditions along with the specific criteria, and any relevant documentation to verify the employee meets the criteria.

During the period under review, October 1, 2017 through March 31, 2018, the DWR issued pay differentials¹⁴ to 589 employees. The CRU reviewed 19 of these pay differentials to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

Classification	Pay Differential	Monthly Amount
Chief Hydroelectric Plant Operator	189	5%

¹⁴ For the purposes of CRU's review, only monthly pay differentials were selected for review at this time.

Classification	Pay Differential	Monthly Amount
Senior Hydroelectric Plant Operator	162	\$1.10/hr.
Transportation Surveyor (Caltrans)	10	\$253
Utility Craftsworker, Water Resources	233	\$100
Utility Craftsworker, Water Resources	6	\$50
Utility Craftsworker, Water Resources	297	\$250
Utility Craftsworker, Water Resources	297	\$200
Utility Craftsworker, Water Resources	6	\$50
Utility Craftsworker Supervisor, Water Resources	6	\$75
Water Resources Engineering Associate (Specialist)	31	\$155
Water Resources Technician, II	272	\$424
Water Resources Technician, II	272	\$241
Water Resources Technician, II	272	\$241
Water Resources Technician, II	272	\$636
Water Resources Technician, II	272	\$241
Water Resources Technician, II	272	\$424
Water Resources Technician, II	216	5%
Water Resources Technician, II	216	5%
Water Resources Technician, II	272	\$424

FINDING NO. 14 – Pay Differential Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines

The CRU found no deficiencies in the pay differentials that the DWR authorized during the compliance review period. Pay differentials were issued correctly in recognition of unusual competencies, circumstances, or working conditions in accordance with applicable rules and guidelines.

Out-of-Class Assignments (OOC) and Pay

For excluded¹⁵ and most rank and file employees, out-of-class (OOC) work is defined as performing, more than 50 percent of the time, the full range of duties and responsibilities allocated to an existing class and not allocated to the class in which the person has a current, legal appointment. (Cal. Code Regs., tit. 2, § 599.810 (a)(2).) A higher classification is one with a salary range maximum that is any amount higher than the salary range maximum of the classification to which the employee is appointed. (Cal. Code Regs., tit. 2, § 599.810 (a)(3).)

According to the Classification and Pay Guide, OOC assignments should only be used as a last resort to accommodate temporary staffing needs. All civil service alternatives should be explored first before using OOC assignments. However, certain MOU provisions and the California Code of Regulations, title 2, section 599.810 allow for short-term OOC assignments to meet temporary staffing needs. Should OOC work become necessary, the assignment would be made pursuant to the applicable MOU provisions or salary regulations. Before assigning the OOC work, the department should have a plan to correct the situation before the 120-day time period expires. (Classification and Pay Guide Section 375.)

During the period under review, October 1, 2017 to March 31, 2018, the DWR issued OOC pay to 102 employees. The CRU reviewed 15 of these OOC assignments to ensure compliance with applicable MOU provisions, salary regulations, and CalHR policies and guidelines. These are listed below:

Classification	Collective Bargaining Identifier	Out-of-Class Classification	Time Frame
Accounting Administrator I (Supervisor)	S01	Accounting Administrator II	12/1/17 – 12/29/17
Associate Governmental Program Analyst	R01	Administrative Officer II, RA	01/2/18 – 06/30/18
Associate Hydroelectric Power Utility Engineer	R09	Senior Hydroelectric Power Utility Engineer Supervisor	10/2/17 – 10/1/18
Engineer, Water Resources	R09	Senior Engineer	3/14/17 – 3/11/18

¹⁵ “Excluded employee” means an employee as defined in section 3527(b) of the Government Code (Ralph C. Dills Act) except those excluded employees who are designated managerial pursuant to section 18801.1 of the Government Code.

Hydroelectric Plant Mechanic I	R12	Hydroelectric Plant Mechanic II	9/19/17 – 9/17/18
Mechanical Engineer	R09	Senior Mechanical Engineer Hydraulic Structures	6/28/17 – 5/31/18
Office Technician (Typing)	R04	Executive Secretary I	3/12/18 – 5/10/18
Principal Engineer, Water Resources	M09	Career Executive Assignment	7/31/17 – 11/30/17
Senior Engineer, Water Resources	S09	Supervising Engineer, Water Resources	12/1/17 – 12/31/17
Staff Services Analyst (General)	R01	Associate Governmental Program Analyst	7/17/17 – 1/9/18
Staff Services Manager I	S01	Staff Services Manager II	8/2/17 – 11/30/17
Supervising Control Engineer	S09	Principal Engineer, Water Resources	5/2/17 – 5/1/18
Transportation Surveyor (Caltrans)	R09	Transportation Party Chief	2/1/18 – 1/31/9
Utility Craftsworker, Water Resources	R12	Utility Craftsworker Supervisor	3/15/18 – 9/30/18
Water Resources Technician II	R11	Water Services Supervisor	1/2/18 – 1/31/18

FINDING NO. 15 – Out of Class Pay Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines

The CRU found no deficiencies in the OOC pay assignments that the DWR authorized during the compliance review period. OOC pay was issued appropriately to employees performing, more than 50 percent of the time, the full range of duties and responsibilities allocated to an existing class and not allocated to the class in which the person has a current, legal appointment.

Leave

Positive Paid Employees

Actual Time Worked (ATW) is a method that can be used to keep track of a Temporary Authorization Utilization (TAU) employee's time to ensure that the Constitutional limit of nine months in any 12 consecutive months is not exceeded. The ATW method of counting

time is used in order to continue the employment status for an employee until the completion of an examination, for seasonal type work, while attending school, or for consulting services.

An employee is appointed TAU-ATW when he/she is not expected to work all of the working days of a month. When counting 189 days, every day worked, including partial days¹⁶ worked and paid absences,¹⁷ is counted. (Cal. Code Regs., tit. 2, § 265.1, subd. (b).) The hours worked in one day is not limited by this rule. (*Ibid.*) The 12-consecutive month timeframe begins by counting the first pay period worked as the first month of the 12-consecutive month timeframe. (*Ibid.*) The employee shall serve no longer than 189 days in a 12 consecutive month period. (*Ibid.*) A new 189-days working limit in a 12-consecutive month timeframe may begin in the month immediately following the month that marks the end of the previous 12-consecutive month timeframe. (*Ibid.*)

It is an ATW appointment because the employee does not work each workday of the month, and it might become desirable or necessary for the employee to work beyond nine calendar months. The appointing power shall monitor and control the days worked to ensure the limitations set forth are not exceeded.¹⁸ (Cal. Code Regs., tit. 2, § 265.1, subd. (f).)

For student assistants, graduate student assistants, youth aides, and seasonal classifications a maximum work-time limit of 1500 hours within 12 consecutive months may be used rather than the 189-day calculation. (Cal. Code Regs., tit. 2, § 265.1, subd. (d).)

Generally, permanent intermittent employees may work up to 1500 hours in any calendar year. (Applicable Bargaining Unit Agreements.) However, Bargaining Unit 6 employees may work up to 2000 hours in any calendar year.

Additionally, according to Government Code section 21224, retired annuitant appointments shall not exceed a maximum of 960 hours in any fiscal year (July-June) without reinstatement, loss or interruption of benefits for all state employers.

¹⁶ For example, two hours or ten hours counts as one day.

¹⁷ For example, vacation, sick leave, compensating time off, etc.

¹⁸ "California Code of Regulation section 265.1 became effective July 1, 2017, and did not apply at the time of all of these appointments. The current regulation sets forth the method for counting time for temporary appointments. The cap under the current regulation is 189 days.

At the time of the review, the DWR had 276 employees whose hours were tracked. The CRU reviewed 28 of those positive paid appointments to ensure compliance with applicable laws, regulations, policies and guidelines, which are listed below:

Classification	Time Base	Time Frame	Time Worked
Attorney III	Intermittent	7/1/17 – 6/30/18	949
Construction Supervisor I, Water Resources	Intermittent	1/1/17 - 12/31/17	1324.75
Engineering Geologist	Intermittent	1/1/17 - 12/31/17	2222.75
Engineering Geologist	Intermittent	1/1/17 - 12/31/17	2224.5
Engineering Geologist	Intermittent	1/1/17 - 12/31/17	899.5
Engineer, Water Resources	Intermittent	1/1/17 - 12/31/17	2037.5
Environmental Scientist	Intermittent	1/1/17 - 12/31/17	1325.5
Fish and Wildlife Scientific Aid	Intermittent	4/14/17 – 4/14/18	2161.5
Hydroelectric Plant Mechanic I	Intermittent	7/1/17- 6/30/18	1006
Hydroelectric Plant Mechanic I	Intermittent	7/1/17- 6/30/18	1116
Office Assistant (Typing)	Intermittent	1/1/17 - 12/31/17	1124.5
Office Technician (Typing)	Intermittent	1/1/17 - 12/31/17	2206
Snow Gauger	Intermittent	1/23/17 - 1/23/18	67
Snow Gauger	Intermittent	8/1/16 - 8/1/17	13
Snow Gauger	Intermittent	1/10/17 - 1/10/18	73
Snow Gauger	Intermittent	1/23/17 - 1/23/18	64
Student Assistant	Intermittent	4/22/17 – 4/22/18	1460

Classification	Time Base	Time Frame	Time Worked
Student Assistant – Engineering and Architectural Sciences	Intermittent	11/1/17 – 11/1/18	825
Student Assistant – Engineering and Architectural Sciences	Intermittent	9/5/16 – 9/5/17	1190.25
Student Assistant – Engineering and Architectural Sciences	Intermittent	6/1/17 – 6/1/18	1253.5
Student Assistant – Engineering and Architectural Sciences	Intermittent	11/22/16 – 11/22/17	593.5
Student Assistant – Engineering and Architectural Sciences	Intermittent	2/20/17 – 2/2018	1365.5
Student Assistant – Engineering and Architectural Sciences	Intermittent	7/3/17 – 7/3/18	1372.5
Student Assistant – Engineering and Architectural Sciences	Intermittent	7/17/17 – 7/17/18	1634
Student Assistant – Engineering and Architectural Sciences	Intermittent	8/14/17 – 8/14/18	1389
Student Assistant – Engineering and Architectural Sciences	Intermittent	8/1/17 – 8/1/18	1357.6
Youth Aid	Intermittent	8/1/16 – 8/1/17	1313.75
Youth Aid	Intermittent	10/23/17 – 10/23/18	701

In reviewing the DWR's positive paid policies and practices that were in effect during the compliance review period, the CRU determined the following:

FINDING NO. 16 – Positive Paid Employee Exceeded Nine Months in a Twelve Consecutive Month Period

Summary: The DWR did not consistently monitor the actual number of days and/or hours worked in order to ensure that the positive paid employee did not exceed the 189-day or 1,500-hour limitation in any

12-consecutive month period. Specifically, the one employee exceeded the 1,500-hour, or 189-day, limitation.

Criteria: Temporary employee means an employee holding a position under temporary appointment. Employees appointed under a temporary authorization (TAU) may be appointed on the basis of ATW. ATW is a method that can be used to keep track of a TAU employee's time to ensure that the Constitutional limit of nine months in any twelve consecutive months is not exceeded. (Cal. Const., art. VII, § 5.) Typically, the ATW is 194 working days, or 1500 hours, in any 12 consecutive months, regardless of the classification or the Department the temporary appointment was served under, unless they have had a three-month break in service.

Severity: Serious. The number of days or hours an individual may work in a temporary appointment is limited in the state civil service. TAU appointments are distinguished from other appointments as they can be made in the absence of an appropriate employment list.

Cause: The DWR states that it agrees that one positive paid employee exceeded three days over the limitation due to a lack of staff training. The DWR made changes to its internal process to hopefully avoid future errors.

Action: It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the DWR submit to the CRU a written corrective action plan that addresses the corrections the department will implement to ensure conformity with the requirements of Article VII, section 5 of the Constitution and California Code of Regulations section 265.1 subdivisions (b) and (d).

FINDING NO. 17 - Department Did Not Account for All Positive Paid Hours on Timesheets

Summary: The DWR failed to key the actual number of hours worked on employee's timesheets into the State Controller's system (Pay History). Therefore, the Leave Accounting System did not reflect the positive paid hours correctly. Specifically, two employees reported a certain amount of hours worked on their timesheets. However, when

the hours were keyed into the Pay History system the hours paid did not match the hours reported on the employee's timesheet. This error resulted in the employees being underpaid and the incorrect time being reported.

Criteria: In accordance with the California Code of Regulations, section 599.665, "each appointing power shall keep complete and accurate time and attendance records for each employee and officer employed within the agency over which it has jurisdiction". In accordance with California Government Code: section 19849, subdivision (a); "the department shall adopt rules governing hours of work and overtime compensation and the keeping of records related thereto, including time and attendance records." In accordance with California Government Code section 12475; each appointing power shall correctly and promptly certify to the Controller all changes, modifications, additions and deletions to the pay roll roster in compliance with all applicable civil service, fiscal, and other pertinent laws, rules, and regulations."

Severity: Serious. Discrepancies in timekeeping practices and procedures may result in payroll and leave accounting discrepancies.

Cause: The DWR states that it timely transmitted the actual number of hours worked to issue pay in the State Controller's Office (SCO) system (Pay History). Employees enter their time worked onto their electronic timesheet, which is then approved by their supervisor. Hourly time must be entered and approved by the end of the pay period. All hourly employees' hours are transmitted through an interface tape directly to SCO for processing pay. Employees' pay warrants are issued directly from the hours approved and reported to SCO through the tape. There are times when changes are made to an employee's timesheet after hourly pay day and the supervisor does not communicate those changes to the Personnel Specialist. The DWR commits to re-training staff when an employee's time is changed after the interface tape is transmitted to SCO.

Action: It is recommended that, within 60 days of the Executive Officer's approval of these findings and recommendations, the DWR submits 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 GC 599.665 and GC 19849 and 12475.

Administrative Time Off

ATO is a form of paid administrative leave status initiated by appointing authorities for a variety of reasons. (Human Resources Manual Section 2121.) Most often, ATO is used when an employee cannot come to work because of a pending investigation, fitness for duty evaluation, or when work facilities are unavailable. (*Ibid.*) ATO can also be granted when employees need time off for reasons such as blood or organ donation; extreme weather preventing safe travel to work; states of emergency; voting; and when employees need time off to attend special events. (*Ibid.*)

During the period under review, February 1, 2017 through January 31, the DWR placed 67 employees on ATO. The CRU reviewed 12 of these ATO appointments to ensure compliance with applicable laws, regulations, and CalHR policy and guidelines, which are listed below:

Classification	Time Frame	No. of Days on ATO
Associate Governmental Program Analyst	10/24/17 – 11/7/17	11
Engineer, Water Resources	6/13/17 – 7/3/17	15
Hydroelectric Plant Mechanic I	5/24/17 – 5/21/17	6
Hydroelectric Plant Operator	11/8/17 – 11/16/17	7
Information Officer I (Specialist)	1/29/18 – 1/30/18	2
Information Officer II	10/25/17 – 10/30/17	4
Junior Engineering Technician	4/14/17 – 4/18/17	3
Television Assistant	8/14/17 – 8/31/17	14
Utility Craftworker, Water Resources	2/3/17 – 3/3/17	21
Utility Craftworker, Water Resources	11/10/17 – 12/18/17	27
Utility Craftworker, Water Resources	8/2/17 – 8/4/17	3
Water Resources Technician II	5/8/17 – 6/30/17	40

FINDING NO. 18 – Administrative Time Off Authorizations Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

The CRU found no deficiencies in the ATO transactions reviewed during the compliance review period. The DWR provided the proper documentation justifying the use of ATO and adhered to applicable laws, regulations and CalHR policy and guidelines.

Leave Auditing and Timekeeping

Departments must keep complete and accurate time and attendance records for each employee and officer employed within the agency over which it has jurisdiction. (Cal. Code Regs., tit. 2, § 599.665.)

Departments are directed to create a monthly internal audit process to verify all leave input into any leave accounting system is keyed accurately and timely. (Human Resources Manual Section 2101.) If an employee's attendance record is determined to have errors or it is determined that the employee has insufficient balances for a leave type used, the attendance record must be amended. (*Ibid.*) Attendance records shall be corrected by the pay period following the pay period in which the error occurred. (*Ibid.*) Accurate and timely attendance reporting is required of all departments and is subject to audit. (*Ibid.*)

During the period under review, November 1, 2017 through January 30, 2018, the DWR reported nine units comprised of 249 active employees. The pay periods and timesheets reviewed by the CRU are summarized below:

Timesheet Leave Period	Unit Reviewed	Number of Employees	Number of Timesheets Reviewed	Number of Missing Timesheets
November 2017	130	59	59	0
November 2017	256	28	28	0
November 2017	320	18	18	0
November 2017	750	20	20	0
December 2017	650	30	30	0
December 2017	121	17	17	0
December 2017	450	32	32	0

Timesheet Leave Period	Unit Reviewed	Number of Employees	Number of Timesheets Reviewed	Number of Missing Timesheets
December 2017	610	19	19	0
December 2017	240	26	26	0

FINDING NO. 19 – Leave Auditing and Timekeeping Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

The CRU reviewed employee leave records from nine different leave periods to ensure compliance with applicable laws, regulations and CalHR policy and guidelines. Based on our review, the CRU found no deficiencies. The DWR kept complete and accurate time and attendance records for each employee and officer employed within the department and utilized a monthly internal audit process to verify all leave input into any leave accounting system was keyed accurately and timely.

Leave Reduction Efforts

Departments must create a leave reduction policy for their organization and monitor employees' leave to ensure compliance with the departmental leave policy; and ensure employees who have significant "over-the-cap" leave balances have a leave reduction plan in place. (Human Resources Manual Section 2124.)

Applicable Memorandums of Understanding and the California Code of Regulations prescribe the maximum amount of vacation or annual leave permitted. "If a represented employee is not permitted to use all of the vacation to which he or she is entitled in a calendar year, the employee may accumulate the unused portion."¹⁹ (Cal. Code Regs., tit. 2, § 599.737.) If it appears an excluded employee will have a vacation or annual leave balance that will be above the maximum amount²⁰ as of January 1 of each year, the appointing power shall require the supervisor to notify and meet with each employee so affected by the preceding July 1, to allow the employee to plan time off, consistent with operational needs, sufficient to reduce their balance to the amount permitted by the applicable regulation, prior to January 1. (Cal. Code Regs., tit. 2, § 599.742.1.)

¹⁹ For represented employees, the established limit for annual or vacation leave accruals is 640 hours, however for bargaining units 06 there is no established limit and for bargaining unit 05 the established limit is 816 hours.

²⁰ Excluded employees shall not accumulate more than 80 days.

“It is the intent of the state to allow employees to utilize credited vacation or annual leave each year for relaxation and recreation. (Cal. Code Regs., tit. 2, § 599.742.1.), ensuring employees maintain the capacity to optimally perform their jobs. For excluded employees, “the employee shall also be notified by July 1 that, if the employee fails to take off the required number of hours by January 1, the appointing power shall require the employee to take off the excess hours over the maximum permitted by the applicable regulation at the convenience of the agency during the following calendar year. (*Ibid.*) To both comply with existing civil service rules and adhere to contemporary human resources principles, state managers and supervisors must cultivate healthy work- life balance by granting reasonable employee vacation and annual leave requests when operationally feasible. (Human Resources Manual Section 2124.)

As of December 2017, 468 DWR employees exceeded the established limits of vacation or annual leave. The CRU reviewed 40 of those employees’ leave reduction plans to ensure compliance with applicable laws, regulations and CalHR policy and guidelines, which are listed below:

Classification	Collective Bargaining Identifier	Total Hours Over Established Limit	Leave Reduction Plan Provided
Assistant Chief Counsel	M02	629.7	Yes
Associate Hydroelectric Plant Utility Engineer	R09	768	Yes
Associate Safety Engineer	R09	682	No
Business Services Assistant (Specialist)	R01	700	Yes
Chief Executive Assignment	M01	1,378.55	Yes
Chief Executive Assignment	M01	890	Yes
Chief Field Division, Water Resources	M12	2,383.5	Yes
Chief Field Division, Water Resources	M12	1,335.5	Yes
Chief Field Division, Water Resources	M12	591	Yes
Chief of Utility Operations, Water Resources	M09	992.6	Yes
Data Processing Manager III	M01	1,201	Yes
Data Processing Manager IV	M01	544.5	Yes
Deputy Director, Water Resources	E99	1,384	Yes
Hydroelectric Plant Mechanic I	R12	1,138	Yes
Hydroelectric Plant Operator	R12	656.25	Yes

Classification	Collective Bargaining Identifier	Total Hours Over Established Limit	Leave Reduction Plan Provided
Hydroelectric Plant Technician III	R12	571.5	Yes
Office Technician (Typing)	R04	319	Yes
Principal Engineer Water Resources	E59	421	Yes
Principal Hydroelectric Power Utility Engineer	M09	1,404	Yes
Program Manager III, California Bay-Delta Authority	M10	1,192.5	Yes
Senior Engineer Water Resources	E48	928	Yes
Senior Environmental Scientist (Specialist)	R10	541.5	Yes
Senior HEP Utility Engineer (Specialist)	R09	1,490	No
Senior HEP Utility Engineer (Specialist)	R09	803	Yes
Supervising Control System Engineer	S09	704	No
Supervising Engineer, Water Resources	S09	1,328.5	No
Systems Software Specialist II (Technical)	R01	586.5	Yes
Systems Software Specialist II (Technical)	R01	599	Yes
Systems Software Specialist II (Technical)	R01	700.5	Yes
Systems Software Specialist III (Technical)	R01	685	Yes
Systems Software Specialist III (Technical)	R01	1,222	Yes
Utility Craftsworker, Water Resources	R12	1,343.5	Yes
Utility Craftsworker, Water Resources	R12	1,055.5	Yes
Utility Craftsworker, Water Resources	R12	657.5	Yes
Utility Craftsworker, Water Resources	R12	571	Yes
Utility Craftsworker, Water Resources	R12	505	Yes

Classification	Collective Bargaining Identifier	Total Hours Over Established Limit	Leave Reduction Plan Provided
Water Resources, Engineer Associate (Specialist)	R11	1,486	Yes
Water Resources Technician II	R11	1,790	No
Water Resources Technician II	R11	1,162	No
Water Resources Technician II	R11	544	Yes
Total		37,885.1	

In reviewing the DWR's leave reduction policies and practices that were in effect during the compliance review period, the CRU determined the following:

FINDING NO. 20 – Leave Reduction Plans Were Not Provided for All Employees Whose Leave Balances Exceeded Established Limits

Summary: Although the DWR made a reasonable effort to ensure that all employees over the maximum vacation or annual leave hours had leave reduction plans in place, the DWR did not provide (a) leave reduction plan(s) for six employees reviewed whose leave balances significantly exceeded established limits.

Criteria: “It is the policy of the state to foster and maintain a workforce that has the capacity to effectively produce quality services expected by both internal customers and the citizens of California. (Human Resources Manual Section 2124.) Therefore, appointing authorities and state managers and supervisors must create a leave reduction policy for the organization and monitor employees’ leave to ensure compliance with the departmental leave policy; and; ensure employees who have significant “over-the-cap” leave balances have a leave reduction plan in place and are actively reducing hours.” (*Ibid.*)

Severity: Technical. California state employees have accumulated significant leave hours creating an unfunded liability for departmental budgets. The value of this liability increases with each passing promotion and salary increase. Accordingly, leave balances exceeding established limits need to be addressed immediately.

Cause: The DWR states that it agrees that six employees did not file the leave reduction plans timely. The DWR had an ineffective process in place for monitoring employees' leave. The DWR commits to reviewing its current process to streamline the submission and monitoring of the employees' leave to ensure compliance.

Action: The DWR must take appropriate steps to ensure employees who have significant "over-the-cap" leave balances have a leave reduction plan in place and are actively reducing hours.

It is therefore recommended that, no later than 60 days after the SPB Executive Officer's approval of these findings and recommendations, the DWR must establish a policy and plan to address leave reduction efforts.

State Service

The state recognizes two different types of absences while an employee is on pay status; paid or unpaid. The unpaid absences can affect whether a pay period is considered to be a qualifying or non-qualifying pay period for state service and leave accruals.

An employee who has 11 or more working days of service in a monthly pay period shall be considered to have a complete month, a month of service, or continuous service.²¹ (Cal. Code Regs., tit. 2, § 599.608.) Full time and fractional employees who work less than 11 working days in a pay period will have a non-qualifying month and will not receive state service or leave accruals for that month.

Hourly or daily rate employees working at a department in which the full-time workweek is 40 hours who earn the equivalent of 160 hours of service in a monthly pay period or accumulated pay periods shall be considered to have a complete month, a month of service, or continuous service. (Cal. Code Regs., tit. 2, § 599.609.)

For each qualifying monthly pay period, the employee shall be allowed credit for vacation with pay on the first day of the following monthly pay period. (Cal. Code Regs. tit. 2, § 599.608.) When computing months of total state service to determine a change in the monthly credit for vacation with pay, only qualifying monthly pay periods of service before

²¹ Except as provided in sections 599.609 and 599.776.1(b) of these regulations, in the application of Government Code sections 19143, 19849.9, 19856.1, 19858.1, 19859, 19861, 19863.1, 19997.4 and sections 599.682, 599.683, 599.685, 599.687, 599.737, 599.738, 599.739, 599.740, 599.746, 599.747, 599.787, 599.791, 599.840 and 599.843 of these regulations.

and after breaks in service shall be counted. (Cal. Code Regs. tit. 2, § 599.739.) Portions of non-qualifying monthly pay periods of service shall not be counted nor accumulated. (*Ibid.*) On the first day following a qualifying monthly pay period, excluded employees²² shall be allowed credit for annual leave with pay. (Cal. Code Regs., tit. 2, § 599.752.)

Permanent intermittent employees also earn leave credits on the pay period following the accumulated accrual of 160 hours worked. Hours worked in excess of 160 hours in a monthly pay period, are not counted or accumulated towards leave credits.

During the period under review, October 1, 2017 through March 31, 2018, the DWR had eight employees with non-qualifying pay period transactions. The CRU reviewed five transactions to ensure compliance with applicable laws, regulations and CalHR policy and guidelines, which are listed below:

Type of 715 Transaction	Time base	Number Reviewed
Non-Qualifying Pay Period	Full Time	4
Qualifying Pay Period	Full Time	1

FINDING NO.21 – Service and Leave Transactions Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

The CRU determined that the DWR ensured employees with non-qualifying pay periods did not receive vacation/sick leave, annual leave, and/or state service accruals. The CRU found no deficiencies in this area.

Policy and Processes

Nepotism

It is the policy of the State of California to recruit, hire and assign all employees on the basis of merit and fitness in accordance with civil service statutes, rules and regulations. (Human Resources Manual Section 1204.) Nepotism is expressly prohibited in the state workplace because it is antithetical to California's merit based civil service. (*Ibid.*)

²² As identified in Government Code sections 19858.3(a), 19858.3(b), or 19858.3(c) or as it applies to employees excluded from the definition of state employee under Government Code section 3513(c) or California Code of Regulations section 599.752 subdivision (a), and appointees of the Governor as designated by the Department and not subject to section 599.752.1.

Nepotism is defined as the practice of an employee using his or her influence or power to aid or hinder another in the employment setting because of a personal relationship. (*Ibid.*) Personal relationships for this purpose include but are not limited to, association by blood, adoption, marriage and/or cohabitation. (*Ibid.*) In addition, there may be personal relationships beyond this general definition that could be subject to these policies. (*Ibid.*) All department nepotism policies should emphasize that nepotism is antithetical to a merit-based personnel system and that the department is committed to the state policy of recruiting, hiring and assigning employees on the basis of merit. (*Ibid.*)

FINDING NO. 22 – Nepotism Policy Failed to Comply with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

Summary: Although the DWR does maintain a written nepotism policy designed to prevent favoritism, the DWR’s nepotism policy is not consistent with the current statewide policy. The 2015 PML is clear that all department policies should emphasize that nepotism is antithetical to a merit-based personnel system. The DWR’s nepotism policy does not make this important statement. The PML also provides that a department’s nepotism policy should state that the department is committed to the state’s policy of recruiting, hiring, and assigning employees based on merit. Given the brevity of the DWR’s nepotism policy, it is evident these considerations were overlooked. Therefore, corrective action is warranted.

Criteria: CalHR Manual Section 1204 states “it is the policy of the State of California to recruit, hire and assign all employees on the basis of merit and fitness in accordance with civil service statutes, rules and regulations.” The policy further asserts that “nepotism is expressly prohibited in the state workplace because it is antithetical to California’s merit based civil service.” CalHR’s policy also offers guidance to departments in regards to factors that should be considered when drafting an effective nepotism policy. Departments have the discretion, based on organizational structure and size, to develop nepotism policies as they see fit (PML, “Statewide Guidance on Nepotism Policies,” 2015-14).

Severity: Very Serious. Departments must take proactive steps to ensure that the recruitment, hiring, and assigning of all employees is done on the basis of merit and fitness in accordance with civil service statutes.

The maintaining of a current written nepotism policy, and its dissemination to all staff, is the basis for achieving these ends.

Cause: The DWR disagrees with the CRU's assessment that the DWR's nepotism policy, "...failed to comply with Civil Service Laws, Board Rules and/or CalHR Policies." The DWR states that it takes proactive steps to ensure that the recruitment, hiring, and assigning of all employees is done on the basis of merit and fitness in accordance with civil service statutes. The DWR states that its nepotism policy is written to help the DWR achieve merit-based hiring. The DWR states its policy is prohibitive in nature and clearly articulates DWR's position on nepotism which is antithetical to State policy. The DWR states that, although their nepotism policy does not claim it is antithetical, it does not render their policy ineffective. Additionally, it believes the governing guidelines provide the DWR the latitude to define its existing policy. The DWR states that, while it believes the current policy is effective and in accordance with guidelines, the DWR will take steps to include this statement and emphasize that nepotism is antithetical to a merit-based personnel system in the nepotism policy.

Action: It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the DWR submit to the CRU a written corrective action plan that the department will implement to ensure conformity with the requirements of the CalHR Manual Section 1204.

Workers' Compensation

Employers shall provide to every new employee, either at the time of hire or by the end of the first pay period, written notice concerning the rights, benefits, and obligations under workers' compensation law. (Cal. Code Regs., tit. 8, § 9880 subd. (a).) This notice shall include the right to predesignate their personal physician or medical group; a form that the employee may use as an optional method for notifying the employer of the name of employee's "personal physician," as defined by Labor Code Section 4600. (Cal. Code Regs., tit. 8, § 9880 subd. (c)(7)(8).) Additionally, within one working day of receiving notice or knowledge that the employee has suffered a work related injury or illness, employers shall provide a claim form and notice of potential eligibility for benefits to the injured employee. (Labor Code, § 5401 subd. (a).)

Public employers may choose to extend workers' compensation coverage to volunteers that perform services for the organization. (Human Resources Manual Section 1415.) Workers' compensation coverage is not mandatory for volunteers as it is for employees. (*Ibid.*) This is specific to the legally uninsured state departments participating in the Master Agreement. (*Ibid.*) Departments with an insurance policy for workers' compensation coverage should contact their State Compensation Insurance Fund (State Fund) office to discuss the status of volunteers. (*Ibid.*)

FINDING NO. 23 – Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

The CRU verified that the DWR provides notice to their employees to inform them of their rights and responsibilities under CA Workers' Compensation Law. Furthermore, the CRU verified that when the DWR received worker's compensation claims, they properly provided claim forms within one working day of notice or knowledge of injury.

Performance Appraisals

According to Government Code section 19992.2, departments must "prepare performance reports." Furthermore, California Code of Regulations, title 2, section 599.798, directs supervisors to conduct written performance appraisals and discuss overall work performance with permanent employees at least once in each twelve calendar months after the completion of the employee's probationary period.

The CRU selected 41 permanent DWR employees to ensure that the department was conducting performance appraisals on an annual basis in accordance with applicable laws, regulations and CalHR policy and guidelines. These are listed below:

Classification	Date Performance Appraisals Due
Accounting Administrator I (Supervisor)	11/8/17
Associate Governmental Program Analyst	1/5/18
Associate Hydroelectric Plant Utility Engineer	10/31/17
Hydroelectric Plant Electrician, Apprentice	11/28/17
Hydroelectric Plant Electrician II	11/6/17
Hydroelectric Plant Mechanic, Apprentice	2/2/18
Hydroelectric Plant Mechanic II	11/29/17
Hydroelectric Plant Mechanic II	11/7/17

Classification	Date Performance Appraisals Due
Hydroelectric Plant Mechanic (Supervisor)	11/28/17
Hydroelectric Plant Operator, Apprentice	2/1/18
Hydroelectric Plant Operator (Supervisor)	5/16/17
Hydroelectric Plant Technician II	12/8/17
Hydroelectric Plant Technician (Supervisor)	11/14/17
Information Technology Specialist II	11/14/17
Junior Engineer Technician	12/19/17
Labor Relations Specialist	11/28/17
Management Services Technician	8/30/17
Mobile Equipment Superintendent I	10/5/17
Office Assistant (Typing)	10/19/17
Office Technician (Typing)	10/31/17
Principal Hydroelectric Plant Utility Engineer	11/21/17
Research Program Specialist I (GIS)	11/7/17
Research Program Specialist II (Econ)	11/15/17
Senior Accounting Officer (Specialist)	11/3/17
Senior Cost Estimator, Water Resources	11/1/17
Senior Engineering Geologist (R&F)	11/14/17
Senior Engineering Geologist (Specialist)	10/27/17
Senior Engineer, Water Resources	11/3/17
Senior Environmental Scientist (Specialist)	11/21/17
Senior Hydroelectric Plant Operator	11/14/17
Senior Legal Typist	12/7/17
Senior Structural Engineer	11/27/17
Senior Water and Power Dispatcher (R&F)	11/16/17
Staff Services Analyst	12/5/17
Staff Services Analyst	10/30/17
Staff Services Manager (Manger)	10/26/17
Staff Services Manager (Supervisor)	11/29/17
Utility Craftsworker, Water Resources	9/27/17
Utility Craftsworker, Water Resources - BW	10/27/17
Utility Craftsworker, Supervisor, Water Resources	11/3/17
Water and Power Dispatcher	12/3/17

In reviewing the DWR performance appraisals policies and processes, the CRU determined the following:

FINDING NO. 24 – Performance Appraisal Policy and Processes Complied with Civil Service Laws and Regulations and CalHR Policies and Guidelines

The CRU found no deficiencies in the 41 performance appraisals selected for review. Accordingly, the DWR performance appraisal policy and processes satisfied civil service laws, Board rules and CalHR policies and guidelines.

SPECIAL INVESTIGATION FINDING – SJFD – Unlawful Appointment

In response to a complaint, the CRU conducted a special investigation into allegations of unfair hiring practices within the San Joaquin Field Division (SJFD). CRU's special investigation included reviewing DWR policies and procedures, recruitment and hiring documents, appointment files, examination files, employee history summaries, and other relevant material. The scope of the investigation included all hires within the SJFD from April 2016 through April 2018.

The CRU's investigation did not find merit to the allegations of unfair hiring practices. However, CRU found one appointment error out of 104 appointments that the DWR initiated during the special investigation review period.

Summary: The DWR made one appointment utilizing the certification list for the Hydroelectric Plant (HEP) Electrical Supervisor in December 2016. The hired candidate did not meet minimum qualifications for the classification at the time of appointment.

Criteria: California Code of Regulations, title 2, section 254 mandates that each vacancy for a class in which the certification of eligible is under Government Code sections 19057.1 and 19057.3, the department shall fill a vacancy by eligibles in the three highest ranks certified.

Severity: Very Serious. An unlawful appointment provides the employee with an unfair and unearned appointment advantage over other employees whose appointments have been processed in compliance with the requirements of civil service law. Unlawful appointments which are not corrected also create appointment

inconsistencies that jeopardize the equitable administration of the civil service merit system.

When an unlawful appointment is voided, the employee loses any tenure in the position, as well as seniority credits, eligibility to take promotional examinations, and compensation at the voided appointment level. If “bad faith” is determined on the part of the appointing power, civil or criminal action may be initiated. Disciplinary action may also be pursued against any officer or employee in a position of authority who directs any officer or employee to take action in violation of the appointment laws. If bad faith is determined on the part of the employee, the employee may be required to reimburse all compensation resulting from the unlawful appointment and may also be subject to disciplinary action. In this case, the candidate accepted the job offer in good faith.

Cause: The DWR acknowledges that its Selection Services incorrectly calculated the applicant’s work experience which did not support meeting the minimum qualifications for the HEP Electrical Supervisor classification. Subsequent to the candidate’s appointment to the class, Selection Services’ second review concluded the applicant did not meet the minimum qualifications and should not have been permitted into the HEP Electrical Supervisor examination.

Action: The DWR took corrective action to void the unlawful appointment on August 11, 2017 within one year after the appointment was made, and was therefore, timely. The employee was returned to a previously held classification of HEP Technician II.

While the special investigation uncovered no evidence of intentional manipulation of the hiring process, the DWR must review its current recruitment and hiring processes to ensure appointments are lawful.

Within 60 days of the Executive Officer’s approval of these findings and recommendations, the DWR must submit to the CRU a written corrective action plan that addresses the corrections the department will implement to ensure the department will correctly calculate experience in determining minimum qualifications. Copies of any relevant documentation should be included with the plan.

DEPARTMENTAL RESPONSE

The DWR's response is attached as Attachment 1.

SPB REPLY

Based upon the DWR's written response, the DWR will comply with the CRU recommendations and findings and provide the CRU with an action plan.

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

Memorandum

Date: May 10, 2019

To: Diana Campbell
Policy and Compliance Review Division
State Personnel Board
801 Capitol Mall
Sacramento, California 95814

From: Department of Water Resources

Subject: DWR Compliance Review Report Response

The Department of Water Resources reviewed the draft Compliance Review Report. Below are our responses to the particular findings.

FINDING NO. 3 – Probationary Evaluations

DWR agrees that the probation report is important to the success of the employee and the department. DWR agrees that two probationary reports were not prepared or completed timely. DWR will reiterate the importance of the probation report timeliness to the supervisors/managers.

FINDING NO. 6 – Ethics Training

DWR agrees that a small percentage of filers did not complete required training. DWR has made changes to its internal processes to help ensure filers take training as required. Specifically, DWR now utilizes an email notification system, DisclosureDocs, that automatically notifies new and existing filers of the requirement to complete ethics training and our recently implemented enterprise training system (DELTA) notifies the filers when training is due within one year of required completion. Additionally, DWR commits to reviewing its current process to streamline the submission of required completion documents.

FINDING NO. 7 - Supervisory Training

DWR agrees that a small percentage of new supervisors did not complete required training timely. DELTA will help ensure training is received. Upon initial appointment, DELTA will notify new supervisors to enroll in CalHR's 80-hour supervisory training course. New supervisors will receive monthly reminders if the training is not completed within six months of their initial appointment. Additionally, the Training Office will conduct monthly reporting of completed supervisory training to provide oversight.

FINDING NO. 8 – Sexual Harassment Prevention Training

The Department agrees that training new supervisors on sexual harassment prevention is critical. Although the 26 new supervisors noted were not trained within the prescribed timeframe, they did all complete training in this subject matter. With the implementation of

a new enterprise training system, DWR will be able to track and assign classes to new supervisors in a more centralized fashion. DWR's Training Office is in the process of tracking all managers and supervisors in need of the new supervisor's sexual harassment prevention training to ensure they are trained within the appropriate timeframe going forward.

FINDING NO. 16 – Actual Time Worked Maximum Hours/Days

DWR agrees that one actual time worked employee exceeded three days over the limitation. DWR made changes to its internal process to hopefully avoid future errors.

FINDING NO. 17 – Actual Time Worked

DWR timely transmitted the actual number of hours worked to issue pay in the State Controller's Office (SCO) system (Pay History). Employees enter their time worked onto their electronic timesheet, which is then approved by their supervisor. Hourly time must be entered and approved by the end of the pay period. All hourly employees' hours are transmitted through an interface tape directly to SCO for processing pay. Employees' pay warrants are issued directly from the hours approved and reported to SCO through the tape. There are times when changes are made to an employee's timesheet after hourly pay day and the supervisor does not communicate those changes to the Personnel Specialist. DWR commits to re-training staff when an employee's time is changed after the interface tape is transmitted to SCO.

FINDING NO. 20 – Leave Reduction Plans

The Department agrees that six employees did not file the leave reduction plans timely. DWR commits to reviewing its current process to streamline the submission and monitoring of the employees' leave to ensure compliance.

FINDING NO. 22 – Nepotism Policy

DWR disagrees with your assessment that our nepotism policy, "...failed to comply with Civil Service Laws, Board Rules and/or CalHR Policies." DWR takes proactive steps to ensure that the recruitment, hiring, and assigning of all employees is done on the basis of merit and fitness in civil service statutes. Our nepotism policy is written to help DWR achieve merit-based hiring. Our policy is prohibitive in nature and clearly articulates DWR's position on nepotism which is antithetical to State policy. Although our nepotism policy does not claim it is antithetical, it does not render our policy ineffective. Additionally, we believe the governing guidelines provide DWR the latitude to define our existing policy. While we believe current policy is effective and in accordance with guidelines, DWR will take steps to include this statement and emphasize that nepotism is antithetical to a merit-based personnel system in the nepotism policy.

Diana Campbell
May 10, 2019
Page 3

If you have any questions, or would like to discuss, please contact Jennifer Dong Kawate, Chief, Human Resources Office at (916) 651-0860.

A handwritten signature in blue ink, appearing to read "K. Kishaba", with a stylized flourish at the end.

Katherine S. Kishaba, Deputy Director
Business Operations

cc: Jennifer Dong Kawate, Chief, Human Resources Office
David Whitsell, Chief, Internal Audits Office
Jeanne Lee, Chief, Payroll and Benefits
Jose Beitia, Chief, Training Office
Stephanie Varrelman, Chief, Office of Workforce Equality