



COMPLIANCE REVIEW REPORT

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

Compliance Review Unit
State Personnel Board
January 21, 2021

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INTRODUCTION

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

Pursuant to Government Code section 18661, the SPB's Compliance Review Unit (CRU) conducts compliance reviews of appointing 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.

Pursuant to Government Code section 18502, subdivision (c), the SPB and the California Department of Human Resources (CalHR) may "delegate, share, or transfer between them responsibilities for programs within their respective jurisdictions pursuant to an agreement." SPB and CalHR, 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.

It should be noted that this report only contains findings from this hiring authority's compliance review. Other issues found in SPB appeals and special investigations as well as audit and review findings by other agencies such as the CalHR and the California State Auditor are reported elsewhere.

EXECUTIVE SUMMARY

The CRU conducted a routine compliance review of the California Department of Fish and Wildlife (CDFW) personnel practices in the areas of examinations, appointments, EEO, PSC's, mandated training, compensation and pay, leave, and policy and processes. The following table summarizes the compliance review 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 ¹
Appointments	Appointment Documentation Was Not Kept for the Appropriate Amount of Time
Appointments	Unlawful Appointment Investigations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Equal Employment Opportunity	Equal Employment Opportunity Program Complied With All Civil Service Laws and Board Rules
Personal Services Contracts	Unions Were Not Notified of Personal Services Contracts
Mandated Training	Ethics Training Was Not Provided for All Filers
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

¹ Repeat finding. July 21, 2016, the CDFW's Compliance Review Report identified 5 missing probationary reports in 4 of the 50 appointment files reviewed.

Area	Finding
Compensation and Pay	Hiring Above Minimum Requests 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/or 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	Incorrect Authorization of Out-of-Class Pay
Leave	Positive Paid Employees Exceeded the Nine Month Limitation in Any Twelve Consecutive Month Period
Leave	Administrative Time Off Was Not Properly Documented
Leave	Leave Auditing and Timekeeping Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	Service and Leave Transactions Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	Nepotism Policy Complied 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 Appraisals Were Not Provided to All Employees

A color-coded system is used to identify the severity of the violations as follows:

- Red = Very Serious
- Orange = Serious
- Yellow = Technical
- Green = In Compliance

BACKGROUND

The mission of the California Department of Fish and Wildlife (CDFW) is to manage California's diverse fish, wildlife, and plant resources, and the habitats upon which they depend for their ecological values and for their use and enjoyment by the public. This includes habitat protection and maintenance in a sufficient amount and quality to ensure

the survival of all species and natural communities. The CDFW is also responsible for the diversified use of fish and wildlife including recreational, commercial, scientific, and educational issues.

Throughout California, there are seven divisions, including administration, data and Technology, wildlife and fisheries, ecosystem conservation, law enforcement, regional operations, and office of spill prevention and response. As of 2019, the CDFW employed 2,207 employees including law enforcement officers, environmental scientists, managers, analysts, and clerical staff.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing the CDFW'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 CDFW'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.

A cross-section of the CDFW'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 CDFW provided, which included examination plans, examination bulletins, job analyses, and scoring results. The CRU also reviewed the CDFW's permanent withhold actions documentation, including Withhold Determination Worksheets, State applications (STD 678), class specifications, and withhold letters.

A cross-section of the CDFW'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 CDFW provided, which included Notice of Personnel Action (NOPA) forms, Request for Personnel Actions (RPA's), vacancy postings, certification lists, transfer movement worksheets, employment history records, correspondence, and probation reports. The CRU also reviewed the CDFW's policies and procedures concerning unlawful appointments to ensure departmental practices conform to state civil service laws and Board regulations.

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

The CDFW's appointments were also selected for review to ensure the CDFW applied salary regulations accurately and correctly processed employees' compensation and pay. The CRU examined the documentation that the CDFW 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, bilingual pay, monthly pay differentials, alternate range movements, and out-of-class assignments.

During the compliance review period, the CDFW did not issue or authorize red circle rate requests or arduous pay.

The review of the CDFW'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 CDFW's PSC's were also reviewed.³ It was beyond the scope of the compliance review to make conclusions as to whether the CDFW's justifications for the contracts were legally sufficient. The review was limited to whether the CDFW's practices, policies, and procedures relative to PSC's complied with procedural requirements.

The CDFW'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 sexual harassment prevention training within statutory timelines.

The CRU reviewed the CDFW's Leave Activity and Correction Certification forms to verify that the CDFW 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 CDFW'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 CDFW'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

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.

CRU reviewed a selection of the CDFW employees who used Administrative Time Off (ATO) in order to ensure that ATO was appropriately administered. Further, the CRU reviewed a selection of CDFW positive paid employees whose hours are tracked during the compliance review period in order to ensure that they adhered to procedural requirements.

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

The CDFW declined an exit conference to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed the CDFW's written response on December 7, 2020, 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, February 1, 2019, through July 31, 2019, the CDFW conducted 20 examinations. The CRU reviewed 11 of those examinations, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Apps
Career Executive Assignment (CEA) A, Regional Manager	CEA	Statement of Qualifications (SOQ) ⁴	Until Filled	3
CEA A, Water Branch	CEA	SOQ	2/11/19	4
CEA A, Watershed Restoration Grants Branch	CEA	SOQ	6/3/19	13
Fish and Game Captain	Promotional	Training and Experience (T&E) ⁵	7/31/19	201
Fish and Game Lieutenant (Supervisor)	Promotional	T&E	7/31/19	214
Fish and Game Warden Cadet	Open	Written ⁶	7/31/19	245
Fish and Wildlife Interpreter II	Open	Qualification Appraisal Panel ⁷	4/16/19	9
Fish and Wildlife Interpreter III	Open	QAP	3/26/19	11
Fish Hatchery Manager II	Open	QAP	6/21/19	2
Oil Spill Prevention Specialist	Open	T&E	1/12/19	25

⁴ In a Statement of Qualifications examination, applicants submit a written summary of their qualifications and experience related to a published list of desired qualifications. Raters, typically subject matter experts, evaluate the responses according to a predetermined rating scale designed to assess their ability to perform in a job classification, assign scores and rank the competitors in a list.

⁵ The Training and Experience 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 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.

⁷ The Qualification Appraisal Panel 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.

Classification	Exam Type	Exam Components	Final File Date	No. of Apps
Oil Spill Prevention Supervisor I	Open	T&E	1/12/19	21

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

The CRU reviewed three CEA, two departmental promotional, and six open examinations which the CDFW administered in order to create eligible lists from which to make appointments. The CDFW published and distributed examination bulletins containing the required information for all examinations. Applications received by the CDFW were accepted prior to the final filing date. Applicants 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 CDFW 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).) If a candidate for appointment is found not to satisfy the minimum qualifications, the appointing power shall provide written notice to the candidate, specifying which qualification(s) are not satisfied and the reason(s) why. The candidate shall have an opportunity to establish that s/he meets the qualifications. (Cal. Code Regs., tit. 2, § 249.4, subd. (b).) If the candidate fails to respond, or fails to establish that s/he meets the minimum qualification(s), the candidate’s name shall be removed from the eligibility list. (Cal. Code Regs., tit. 2, § 249.4, subd. (b)(1), (2)), (HR Manual, section 1105.) The appointing authority shall promptly notify the candidate in writing, and shall notify the candidate of his or her appeal rights. (*Ibid.*) A permanent withhold does not necessarily permanently restrict a candidate from retaking the examination for the same classification in the future; however, the appointing authority may place a withhold on the candidate’s subsequent eligibility record if the candidate still does not meet the minimum qualifications or continues to be unsuitable. (HR Manual, section 1105). State agency human resources offices are required to maintain specific withhold documentation for a period of five years. (*Ibid.*)

During the period under review, February 1, 2019, through July 31, 2019, the CDFW conducted 13 permanent withhold actions. The CRU reviewed ten 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
Associate Governmental Program Analyst	714	1/15/19	1/15/19	Failed to Meet Minimum Qualifications
Fish and Game Warden Cadet	16690	3/8/19	3/8/23	For Cause
Fish and Game Warden Cadet	16690	3/8/19	3/8/23	For Cause
Fish and Game Warden Cadet	16690	3/8/19	3/8/23	For Cause
Fish and Game Warden Cadet	16990	3/8/19	3/8/23	For Cause
Fish and Game Warden Cadet	16690	3/8/19	3/8/23	For Cause
Senior Environmental Scientist (Specialist)	10717	12/31/18	12/31/20	Failed to Meet Minimum Qualifications
Senior Environmental Scientist (Supervisory)	10748	4/19/19	4/19/20	Failed to Meet Minimum Qualifications
Senior Environmental Scientist (Supervisory)	10748	10/29/18	10/29/19	Failed to Meet Minimum Qualifications
Wildlife Habitat Assistant	16726	4/25/19	4/25/20	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, subd. (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, subd. (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, subd. (e).)

During the period under review, February 1, 2019, through July 31, 2019, the CDFW made 299 appointments. The CRU reviewed 58 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Accountant Trainee	Certification List	Permanent	Full Time	1
Accounting Administrator I (Supervisor)	Certification List	Permanent	Full Time	1
Accounting Officer (Specialist)	Certification List	Permanent	Full Time	1
CEA, Regional Manager	Certification List	Permanent	Full Time	1
CEA, Water Branch Chief	Certification List	Permanent	Full Time	1
Environmental Scientist	Certification List	Permanent	Full Time	3
Fish & Wildlife Interpreter III	Certification List	Permanent	Full Time	1
Fish & Wildlife Scientific Aid	Certification List	Temporary	Intermittent	12
Information Technology Specialist I	Certification List	Permanent	Full Time	1
Maintenance Aide (Seasonal)	Certification List	Temporary	Intermittent	4
Senior Environmental Scientist (Specialist)	Certification List	Permanent	Full Time	4

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Senior Wildlife Forensic Specialist	Certification List	Permanent	Full Time	1
Veterinarian Specialist (General)	Certification List	Permanent	Full Time	1
Wildlife Habitat Assistant	Certification List	Permanent	Full Time	1
Wildlife Forensic Specialist	Certification List	Permanent	Full Time	1
Assistant Industrial Hygienist	Transfer	Permanent	Full Time	1
Assistant Information Officer	Transfer	Permanent	Full Time	1
Associate Accounting Analyst	Transfer	Permanent	Full Time	1
Business Services Assistant (Specialist)	Transfer	Permanent	Full Time	1
Environmental Scientist	Transfer	Permanent	Full Time	4
Fish & Game Lieutenant (Specialist)	Transfer	Permanent	Full Time	1
Fish & Wildlife Scientific Aid	Transfer	Temporary	Intermittent	2
Fish and Game Assistant Chief	Transfer	Permanent	Full Time	1
Management Services Technician	Transfer	Permanent	Full Time	3
Personnel Specialist	Transfer	Permanent	Full Time	1
Scientific Aid	Transfer	Temporary	Intermittent	1
Seasonal Clerk	Transfer	Temporary	Intermittent	1
Senior Environmental Scientist (Specialist)	Transfer	Permanent	Full Time	4
Staff Services Analyst (General)	Transfer	Permanent	Full Time	2

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

Summary: The CDFW did not prepare, complete, and/or retain 5 probationary reports of performance for 4 of the 58 appointments reviewed by the CRU, as reflected in the table below.

Classification	Appointment Type	No. of Appointments Missing Probation Reports	No. of Uncompleted Probation Reports
Wildlife Forensic Specialist	Certification List	1	2
Fish and Game Assistant Chief	Transfer	1	1
Senior Environmental Scientist (Specialist)	Transfer	2	2
Total		4	5

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 CDFW acknowledges that not all supervisors and managers consistently meet this requirement. The CDFW states that good faith efforts are made to inform management of the requirements for probationary evaluations.

Corrective Action: Within 90 days of the date of this report, the CDFW must submit to the SPB a written corrective action response which addresses the corrections the department will implement to demonstrate conformity with the probationary requirements of Government Code section 19172 and California Code of Regulations, title 2, section 599.795. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

FINDING NO. 4 – Appointment Documentation Was Not Kept for the Appropriate Amount of Time

Summary: The CDFW failed to retain personnel records such as NOPA's, duty statements, job announcements/bulletins, and applications. Of the 58 appointments reviewed, the CDFW did not retain 12 NOPAs.

Criteria: As specified in section 26 of the Board's Regulations, appointing powers are required to retain records related to affirmative action, equal employment opportunity, examinations, merit, selection, and appointments for a minimum period of five years from the date the record is created. These records are required to be readily accessible and retained in an orderly and systematic manner. (Cal. Code Regs., tit. 2, § 26.)

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

Cause: The CDFW acknowledges that some employee records were not properly retained. The CDFW states that the NOPA documents were not retained due to staff not following established retention procedures.

Corrective Action: Within 90 days of the date of this report, the CDFW must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with

the record retention requirements of California Code of Regulations, title 2, section 26. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

Unlawful Appointment Investigations

Departments that entered into an Unlawful Appointment Investigation Delegation Agreement between their executive management and the CalHR have the authority to manage their own unlawful appointment investigations. The Delegation Agreement defines the reporting requirements, responsibilities, obligations, and expectations of the department in this process. The delegation agreement mandates that departments maintain up-to-date records on each unlawful appointment investigation including, at a minimum: the specific facts surrounding the appointment in question, a description of the circumstances which may have resulted in the unlawful appointment, copies of relevant appointment documents, and any documentation which may demonstrate that the agency and employee acted in good faith when the appointment was offered and accepted. Departments must also maintain a tracking system to monitor its unlawful appointments.

During the period under review, February 1, 2019, through July 31, 2019, the CDFW conducted one unlawful appointment investigation. The CRU reviewed this unlawful appointment investigation, which is listed below:

Classification	Date Investigation Initiated	Date Investigation Concluded
Staff Services Manager III	5/20/19	8/20/19

FINDING NO. 5 – Unlawful Appointment Investigations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines

The CDFW’s unlawful appointment investigations were found to comply with the rules set forth in the signed Delegation Agreement with the CalHR.

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. 6 – 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 CDFW EEO program provided employees with information and guidance on the EEO process including instructions on how to file discrimination claims. Furthermore, the EEO program outlines the roles and responsibilities of the EEO Officer, as well as supervisors and managers. The EEO Officer, who is at a managerial level, reports directly to the Executive Director of the CDFW. The CDFW also provided evidence of its efforts to promote EEO in its hiring and employment practices and to increase its hiring of persons with a disability.

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, February 1, 2019, through July 31, 2019, the CDFW had 130 PSC's that were in effect. The CRU reviewed 20 of those, which are listed below:

Vendor	Services	Contract Dates	Contract Amount	Justification Identified?	Union Notified?
A & J Rental Portables, LLC.	Portable Toilet Rental Services	9/23/19 - 6/30/21	\$1,200	Yes	No
Aerial Information Systems	Vegetation Mapping and Accuracy Assessment	4/1/19 - 3/31/21	\$1,341,486	Yes	No
Air Shasta Rotor & Wing, Inc.	Helicopter Rental	7/1/19 - 6/30/20	\$249,999	Yes	No
Air Shasta Rotor & Wing, Inc.	Air Services Maintenance Redding Area	7/1/19 - 6/30/22	\$675,000	Yes	Yes
All CAL Services	Giwa Portable Toilets	8/1/19 - 7/31/21	\$75,000	Yes	No
B & B Portable Toilets	Portable Toilets for Fay Slough WLA	7/5/19 - 5/31/21	\$3,600	Yes	No
Ben Toilet Rentals, Inc.	Portable Toilet Rental and Servicing	7/1/19 - 6/30/22	\$135,000	Yes	No
Big Valley Sanitation, Inc.	Portable Toilets for Junction City Weir Salmonid Monitoring	6/1/19 - 12/31/19	\$1,820	Yes	No
D & M Pumping, LLC	Portable Toilet Rental, Mendota WLA	7/1/19 - 6/30/22	\$57,000	Yes	No

Vendor	Services	Contract Dates	Contract Amount	Justification Identified?	Union Notified?
Elavon/Nova Information Systems	Electronic Payment Acceptance Services	6/1/19 - 5/31/21	\$253,058	Yes	No
Hubbs Sea World Research Institute	Ocean Resources Enhancement and Hatchery Program	7/1/19 - 9/30/21	\$253,902.80	Yes	Yes
Mammoth Disposal Company	Portable Toilet Rental Services	6/28/19 - 6/30/19	\$591.87	Yes	No
Merced County Mosquito Abatement District	Mosquito Abatement Services	7/1/19 - 6/30/22	\$195,000	Yes	Yes
National Security Industries	Unarmed Security Guard Services	7/1/19 - 2/28/22	\$186,630.60	Yes	No
National Security Industries	Unarmed Security Guard Services	7/1/19 - 6/30/20	\$145,074.70	Yes	No
Point Reyes Bird Observatory DBA Point Blue Conservation	Landowner Incentive Program	4/1/19 - 3/31/20	\$190,302	Yes	No
Regents of the University of California, Davis	B Zone Deer Project	1/1/19 - 12/31/21	\$215,244	Yes	Yes
Regents of the University of California, Santa Cruz	Aerial Surveys	7/1/19 - 6/30/22	\$240,000	Yes	No
Regents of the University of California, Davis	Statewide Fish Disease Research Program	7/1/19 - 6/30/22	\$224,999	Yes	No
Wind Dancer Moving Company	Moving and Modular Furniture Systems Statewide Contract	7/1/19 - 6/30/21	\$150,000	Yes	No

FINDING NO. 7 – Unions Were Not Notified of Personal Services Contract

- Summary:** The CDFW did not notify unions prior to entering into 16 of the 20 PSC's.
- Criteria:** The contract shall not be executed until the state agency proposing to execute the contract has notified all organizations that represent state employees who perform the type of work to be contracted. (Gov. Code, § 19132, subd. (b)(1).)
- Severity:** Serious. Unions must be notified of impending personal services contracts in order to ensure they are aware contracts are being proposed for the type of work that their members could perform.
- Cause:** The CDFW states that the California Constitution has an implied civil service mandate limiting the state's authority to contract with private entities to perform services that the state has historically or customarily performed. The CDFW states that they did not contact unions in the noted instances because CDFW staff has not historically or customarily performed the services.
- Corrective Action:** It is the contracting department's responsibility to identify and notify any unions whose members could potentially perform the type of work to be contracted prior to executing the PSC. The PSC's reviewed during this compliance review involved, amongst other things, unarmed security guard services and research; functions which various rank-and-file civil service classifications perform. Within 90 days of the date of this report, the CDFW must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with the requirements of Government Code section 19132. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

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.)

Additionally, new supervisors must be provided sexual harassment prevention training within six months of appointment. Thereafter, each department must provide its supervisors two hours of sexual harassment prevention training every two years. (Gov. Code, § 12950.1, subds. (a) and (b); Gov. Code § 19995.4.)

The Board may conduct reviews of any appointing power’s personnel practices to ensure compliance with civil service laws and Board regulations. (Gov. Code, § 18661, subd. (a).) In particular, the Board may audit personnel practices related to such matters as selection and examination procedures, appointments, promotions, the management of probationary periods, and any other area related to the operation of the merit principle in state civil service. (*Ibid.*) Accordingly, the CRU reviews documents and records related to training that appointing powers are required by the afore-cited laws to provide its employees.

The CRU reviewed the CDFW’s mandated training program that was in effect during the compliance review period, February 1, 2019, to July 31, 2019.

FINDING NO. 8 – Ethics Training Was Not Provided for All Filers

Summary: The CDFW did not provide ethics training to 95 of 1505 existing filers. In addition, the CDFW did not provide ethics training to 81 of 339 new filers within six months of their appointment.

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 CDFW acknowledges that not all filers completed ethics training within the prescribed timeframe. The CDFW states that an annual email is sent to CDFW employees to inform them of the ethics training requirement. Additionally, the CDFW sends multiple reminders to those who have not completed the training within the prescribed timeframe. The CDFW states that it is incumbent upon the employee and supervisor to comply with the mandated training. The failure to comply has been an ongoing concern for CDFW.

Corrective Action: Within 90 days of this report, the CDFW must submit to the SPB a written correction action response which addresses the corrections the department will implement to demonstrate conformity with Government Code section 11146.3. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

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

Summary: The CDFW did not provide sexual harassment prevention training to 78 of 140 new supervisors within six months of their appointment. In addition, the CDFW did not provide sexual harassment prevention training to 304 of 345 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 that all new and existing 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 CDFW acknowledges that all supervisory staff did not complete sexual harassment prevention training in a timely manner. The CDFW states that it previously provided the two-hour training to newly hired supervisors twice a year through its new hire orientation program, and every two years provided training to existing supervisors through an outside service provider. The CDFW has since strengthened its internal tracking procedures to ensure that all supervisors receive the mandated training immediately upon hire. The CDFW states that its current tracking procedures will also ensure that existing supervisors promptly receive the mandated training every two years.

Corrective Action: The CDFW indicates it has taken preliminary steps to ensure supervisors receive sexual harassment prevention training in a timely manner. However, within 90 days of the date of this report, the CDFW must submit to the SPB a written corrective action response which addresses the corrections the department has implemented to ensure that all supervisors are provided sexual harassment prevention training in accordance with Government Code section 12950.1. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

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 rate⁸ 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.

⁸ "Rate" is any one of the salary rates in the resolution by CalHR which establishes the salary ranges and steps of the Pay Plan (Cal. Code Regs., tit. 2, section 599.666).

During the period under review, February 1, 2019, through July 31, 2019, the CDFW made 299 appointments. The CRU reviewed 19 of those appointments to determine if the CDFW applied salary regulations accurately and correctly processed employees' compensation, which are listed below:

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Accounting Administrator I (Supervisor)	Certification List	Permanent	Full Time	\$6259
Accounting Officer (Specialist)	Certification List	Permanent	Full Time	\$4344
Accounting Trainee	Certification List	Permanent	Full Time	\$3665
Environmental Scientist	Certification List	Permanent	Full Time	\$6404
Senior Environmental Scientist (Specialist)	Certification List	Permanent	Full Time	\$6816
Senior Environmental Scientist (Specialist)	Certification List	Permanent	Full Time	\$6491
Wildlife Habitat Assistant	Certification List	Permanent	Full Time	\$3546
Associate Accounting Analyst	Transfer	Permanent	Full Time	\$5279
Associate Governmental Program Analyst	Transfer	Permanent	Full Time	\$5761
Assistant Industrial Hygienist	Transfer	Permanent	Full Time	\$5224
Assistant Information Officer	Transfer	Permanent	Full Time	\$5054
Environmental Scientist	Transfer	Permanent	Full Time	\$7013
Fish & Game Lieutenant (Specialist)	Transfer	Permanent	Full Time	\$7156
Office Technician	Transfer	Permanent	Full Time	\$3802
Senior Environmental Scientist (Specialist)	Transfer	Permanent	Full Time	\$7515
Senior Environmental Scientist (Specialist)	Transfer	Permanent	Full Time	\$8075
Senior Environmental Scientist (Specialist)	Transfer	Permanent	Full Time	\$8075
Staff Services Analyst (General)	Transfer	Permanent	Full Time	\$3350

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Staff Services Analyst (General)	Transfer	Permanent	Full Time	\$4192

FINDING NO. 10 – 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 CDFW 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, the CalHR provides salary rules departments must use when employees move between alternate ranges. These rules 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, February 1, 2019, through July 31, 2019, the CDFW employees made 29 alternate range movements within a classification. The CRU reviewed 17 of those alternate range movements to determine if the CDFW applied salary regulations accurately and correctly processed each employee’s compensation, which are listed below:

Classification	Prior Range	Current Range	Time Base	Salary (Monthly Rate)
Attorney	Range A	Range B	Full Time	\$5,882
Attorney	Range A	Range B	Full Time	\$5,882
Environmental Scientist	Range B	Range C	Full Time	\$5,641
Environmental Scientist	Range B	Range C	Full Time	\$5,641
Environmental Scientist	Range A	Range B	Full Time	\$4,457
Environmental Scientist	Range B	Range C	Full Time	\$5,641
Environmental Scientist	Range B	Range C	Full Time	\$5,641

Classification	Prior Range	Current Range	Time Base	Salary (Monthly Rate)
Attorney	Range A	Range B	Full Time	\$5,882
Environmental Scientist	Range A	Range B	Full Time	\$4,457
Environmental Scientist	Range A	Range B	Full Time	\$4,457
Environmental Scientist	Range B	Range C	Full Time	\$5,641
Fish & Wildlife Technician	Range A	Range B	Full Time	\$3,638
Fish & Wildlife Technician	Range A	Range B	Full Time	\$3,587
Personnel Specialist	Range A	Range B	Full Time	\$3,621
Personnel Specialist	Range B	Range C	Full Time	\$3,768
Staff Services Analyst (General)	Range B	Range C	Full Time	\$4,534
Staff Services Analyst (General)	Range B	Range C	Full Time	\$4,136
Staff Services Analyst (General)	Range B	Range C	Full Time	\$4,962

FINDING NO. 11 – Alternate Range Movements Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines

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

Hiring Above Minimum Requests

The 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.*)

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 previous 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.*) 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 Government Code section 3517.5, the memorandum of understanding shall be controlling without further legislative action.⁹ (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, February 1, 2019, through July 31, 2019, the CDFW authorized two HAM requests. The CRU reviewed those authorized HAM requests to determine if the CDFW correctly applied Government Code section 19836 and appropriately verified, approved and documented candidates' extraordinary qualifications which are listed below:

⁹ 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)
Attorney III	Certification List	Permanent	\$9,210 - \$11,815	\$11,815
Information Technology Specialist I	Certification List	Permanent	\$6,179 - \$8,580	\$7,300

FINDING NO. 12 – Hire Above Minimum Requests Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

The CRU found that the HAM requests the CDFW 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 10 percent or more of the total time worked. According to the Pay Differential 14, the 10 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, February 1, 2019, through July 31, 2019, the CDFW issued bilingual pay to one employee. The CRU reviewed the bilingual pay authorization to ensure compliance with applicable CalHR policies and guidelines. The bilingual pay authorized is listed below:

Classification	Bargaining Unit	Time Base
Information Officer	R01	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 one employee 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. (Classification and Pay Manual Section 230.)

California State Civil Service 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, February 1, 2019, through July 31, 2019, the CDFW issued pay differentials¹⁰ to 5,332 employees. The CRU reviewed 60 of these pay differentials to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

Classification	Pay Differential	Monthly Amount
Associate Toxicologist	434	\$157
Fish & Game Assistant Chief	243	\$175
Fish & Game Assistant Chief	243	\$175
Fish & Game Captain	243	\$175
Fish & Game Lieutenant (Specialist)	243	\$175
Fish & Game Lieutenant (Specialist)	243	\$175

¹⁰ For the purposes of CRU's review, only monthly pay differentials were selected for review at this time.

Classification	Pay Differential	Monthly Amount
Fish & Game Lieutenant (Specialist)	243	\$175
Fish & Game Lieutenant (Supervisor)	243	\$175
Fish & Game Lieutenant (Supervisor)	243	\$175
Fish & Game Lieutenant (Supervisor)	243	\$175
Fish & Game Lieutenant (Supervisor)	243	\$175
Fish & Game Warden	243	\$175
Fish & Game Warden	243	\$175
Fish & Game Warden	243	\$175
Fish & Game Warden	243	\$175
Fish & Game Warden	243	\$175
Fish & Game Warden	243	\$175
Fish & Game Warden	243	\$175
Fish & Game Warden	244	\$50
Fish & Game Warden	244	\$50
Fish & Game Warden	244	\$100
Fish & Game Warden	244	\$100
Fish & Game Warden	244	\$100
Fish & Game Warden	244	\$100
Fish & Game Warden	244	\$100
Fish & Game Warden	244	\$75
Fish & Game Warden	244	\$75
Fish & Game Warden	244	\$75
Fish & Game Warden	244	\$75
Fish & Game Warden	244	\$125
Fish & Game Warden	244	\$125
Fish & Game Warden	244	\$125
Fish & Game Warden	21	\$189
Fish & Game Warden	21	\$189
Fish & Game Warden	21	\$189
Fish & Game Warden	21	\$189
Fish & Game Warden	142	\$300
Fish & Game Warden	142	\$300
Fish & Game Warden	142	\$300
Fish & Game Warden	243	\$175
Fish & Game Warden	243	\$175
Fish & Game Warden	243	\$175
Fish & Game Warden (Supervisor)	244	\$100
Fish & Game Warden (Supervisor)	244	\$100

Classification	Pay Differential	Monthly Amount
Fish & Game Warden (Supervisor)	244	\$100
Fish & Game Warden Lieutenant (Specialist)	142	\$350
Fish & Game Warden Lieutenant (Supervisor)	244	\$100
Fish & Game Warden Lieutenant (Supervisor)	244	\$100
Fish & Game Warden Lieutenant (Supervisor)	244	\$75
Fish & Game Warden Lieutenant (Supervisor)	244	\$75
Fish & Game Warden Lieutenant (Supervisor)	244	\$125
Fish & Game Warden Lieutenant (Supervisor)	244	\$125
Fish & Game Warden Lieutenant (Supervisor)	142	\$350
Fish & Game Warden Lieutenant (Supervisor)	142	\$350
Fish & Game Warden Lieutenant (Supervisor)	243	\$175
Fish & Wildlife Technician	31	\$155
Fish Habitat Assistant	31	\$155
Research Scientist III (Microbiological Sciences)	434	\$260
Research Scientist III (Microbiological Sciences)	434	\$228
Tractor Operator	6	\$50
Veterinarian (General)	434	\$247

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 CDFW 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 and Pay

For excluded¹¹ 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, subd. (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, February 1, 2019, through July 31, 2019, the CDFW issued OOC pay to 49 employees. The CRU reviewed 26 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
Associate Governmental Program Analyst	R01	Staff Services Manager I	4/22/19-5/24/19
Associate Personnel Analyst	R01	Staff Services Manager I	3/1/19-4/29/19
Attorney III	R02	Asst. Chief Counsel	6/10/19-7/12/19
Attorney III	R02	Asst. Chief Counsel	3/18/19-5/3/19
Environmental Program Manager I (Supervisory)	S10	CEA	11/30/2018-3/29/19

¹¹ "Excluded employee" means an employee as defined in section 3527, subd. (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.

Environmental Program Manager I (Supervisory)	S10	CEA, Regional Manager	2/11/19-3/15/19
Environmental Scientist	R10	Senior Environmental Scientist (Specialist)	5/22/19-7/20/19
Environmental Scientist	R10	Senior Environmental Scientist (Specialist)	5/19/19-8/16/19
Fish & Wildlife Technician	R11	Fish Hatchery Manager	5/1/19-8/28/19
Fish Hatchery Manager I	S11	Fish Hatchery Manager II	1/15/19-5/14/19
Research Data Analyst II	R01	Research Data Supervisor I	1/14/19-4/13/19
Senior Accounting Officer (Supervisor)	S01	Accounting Administrator I (Supervisor)	4/29/19-6/28/19
Senior Environmental Scientist (Specialist)	R10	Senior Environmental Scientist (Supervisor)	1/9/19-3/9/19
Senior Environmental Scientist (Specialist)	R10	Senior Environmental Scientist (Supervisor)	6/24/19-7/30/19
Senior Environmental Scientist (Specialist)	R10	Senior Environmental Scientist (Supervisor)	7/22/19-9/20/19
Senior Environmental Scientist (Specialist)	R10	CEA	5/12/19-8/9/19
Senior Environmental Scientist (Specialist)	R10	Senior Environmental Scientist (Supervisor)	5/6/19-5/30/19
Senior Environmental Scientist (Specialist)	R10	Senior Environmental Scientist (Supervisor)	5/31/19-6/21/19
Senior Environmental Scientist (Supervisor)	S10	Environmental Program Manager (Supervisory)	3/1/19-3/31/19
Senior Environmental Scientist (Supervisor)	S10	Environmental Program Manager (Managerial)	4/1/19-4/30/19

Senior Environmental Scientist (Supervisor)	S10	Environmental Program Manager I (Supervisory)	1/2/19-2/14/19
Senior Environmental Scientist (Supervisor)	S10	Environmental Program Manager I	1/7/19-4/5/19
Senior Fish & Wildlife Habitat Supervisor	S11	Senior Environmental Scientist (Supervisor)	4/1/19-4/30/19
Senior Hydraulic Engineer	R09	Supervising Hydraulic Engineer	5/31/19-7/15/19
Senior Hydraulic Engineer	R09	Supervising Hydraulic Engineer	12/4/18-2/28/19
Staff Services Manager I	S01	Staff Services Manager II (Supervisory)	2/19/19-6/18/19

FINDING NO. 15 – Incorrect Authorization of Out-of-Class Pay

Summary:

The CRU found one error in the CDFW’s authorization of OOC pay. An employee in an Environmental Program Manager I (Supervisory) classification was selected for an appointment to a CEA position. However, the CEA appointment would have resulted in a cut in pay for the employee.

In an effort to have the employee do the work while CDFW prepared a new CEA concept for CalHR’s approval, it used the OOC process, against the advice of CalHR, to circumvent salary rules. This action was in violation of Pay Differential 101.

Criteria:

Employees may be compensated for performing duties of a higher classification provided that: the assignment is made in advance in writing and the employee is given a copy of the assignment; and the duties performed by the employee are not described in a training and development assignment or by the specification for the class to which the excluded employee is appointed and, are fully consistent with the types of jobs described in the specification for the higher classification; and the employee does not perform such duties for more than 120 days in a fiscal year. (Cal. Code Regs., tit. 2, § 599.810, subd. (b)(1)(3)(4).)

Severity: Very Serious. The CDFW failed to comply with the state civil service pay plan by incorrectly applying compensation laws and rules in accordance with CalHR's policies and guidelines. This results in civil service employees receiving incorrect and/or inappropriate compensation.

Cause: The CDFW states that the errors can be attributed to a combination of inexperienced staff and/or human error.

SPB Reply: The CRU disagrees with CDFW's response. Documentation shows that the CDFW disregarded the advice of CalHR, which was to pursue another avenue to resolve the pay issue, and circumvented existing salary rules.

Corrective Action: Within 90 days of the date of this report, the CDFW must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with Gov. Code, § 599.810 and Pay Differential 101. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

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 9 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 days¹² worked and paid absences,¹³ 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

¹² For example, two hours or ten hours counts as one day.

¹³ For example, vacation, sick leave, compensating time off, etc.

days in a 12 consecutive month period. (*Ibid.*) A new 189-day 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. (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), regardless of the number of state employers, without reinstatement, loss or interruption of benefits.

At the time of the review, the CDFW had 714 positive paid employees whose hours were tracked. The CRU reviewed 49 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
Account Clerk II	Permanent	Intermittent	213
Associate Governmental Program Analyst	Retired Annuitant	Intermittent	1564.5
Associate Governmental Program Analyst	Retired Annuitant	Intermittent	355
Environmental Scientist	Temporary	Intermittent	1500
Environmental Scientist	Temporary	Intermittent	1609.75
Environmental Scientist	Temporary	Intermittent	1569.75
Environmental Scientist	Temporary	Intermittent	953

Classification	Time Base	Time Frame	Time Worked
Environmental Scientist	Permanent	Intermittent	1402
Environmental Scientist	Temporary	Intermittent	1500
Environmental Scientist	Permanent	Intermittent	1561
Environmental Scientist	Permanent	Intermittent	1185
Environmental Scientist	Temporary	Intermittent	520
Environmental Scientist	Permanent	Intermittent	1606
Environmental Scientist	Temporary	Intermittent	312
Environmental Scientist	Temporary	Intermittent	1748
Fish & Wildlife Scientific Aid	Temporary	Intermittent	1136
Fish & Wildlife Technician	Permanent	Intermittent	1668
Fish & Wildlife Technician	Temporary	Intermittent	2014
Fish & Wildlife Technician	Temporary	Intermittent	564.5
Fish & Wildlife Technician	Temporary	Intermittent	1312
Fish & Wildlife Technician	Temporary	Intermittent	1550
Fish & Wildlife Technician	Temporary	Intermittent	1099.5
Fish & Wildlife Interpreter I	Temporary	Intermittent	557.5
Fish & Wildlife Interpreter II	Temporary	Intermittent	1510
Fish & Wildlife Scientific Aid	Temporary	Intermittent	479.63
Fish & Wildlife Scientific Aid	Temporary	Intermittent	473.56
Fish & Wildlife Scientific Aid	Temporary	Intermittent	1311
Fish & Wildlife Technician	Permanent	Intermittent	1454
Fish & Wildlife Technician	Temporary	Intermittent	398.5
Fish & Wildlife Technician	Permanent	Intermittent	1059.25
Fish & Wildlife Technician	Temporary	Intermittent	2105.5
Fish & Wildlife Technician	Permanent	Intermittent	2069.5
Fish & Wildlife Technician	Temporary	Intermittent	621.5
Market Specialist, CMSI/DAA	Retired Annuitant	Intermittent	738
Office Assistant (T)	Temporary	Intermittent	167

Classification	Time Base	Time Frame	Time Worked
Office Assistant (T)	Permanent	Intermittent	1167
Office Assistant (T)	Temporary	Intermittent	1404
Personnel Specialist	Temporary	Intermittent	142
Program Technician	Temporary	Intermittent	1064.5
Program Technician II	Temporary	Intermittent	725.5
Research Analyst I (GIS)	Permanent	Intermittent	1500
Seasonal Clerk	Temporary	Intermittent	1342
Senior Personnel Specialist	Retired Annuitant	Intermittent	368
Staff Services Manager I	Retired Annuitant	Intermittent	637
Student Assistant	Temporary	Intermittent	1269.45
Student Assistant	Temporary	Intermittent	1448
Student Assistant	Temporary	Intermittent	898.5
Student Assistant	Temporary	Intermittent	1271.5
Student Assistant	Temporary	Intermittent	826.25

FINDING NO. 16 – Positive Paid Employees Exceeded the Nine Month Limitation in Any Twelve Consecutive Month Period

Summary: The CDFW did not consistently monitor the actual number of days and/or hours worked in order to ensure that positive paid employee(s) did not exceed the 189-day or 1,500-hour limitation in any 12-consecutive month period. Specifically, the following employees exceeded the 1,500-hour, or 189-day, limitation:

Classification	Tenure	Time Frame	Time Worked	Time Worked Over Limit
Fish & Wildlife Technician	Temporary	Intermittent	2105.5	605.5
Fish & Wildlife Technician	Permanent	Intermittent	2069.5	569.5

Criteria: If any employee is appointed to an intermittent time base position on a TAU basis, there are two controlling time limitations that must be

considered. The first controlling factor is the constitutional limit of nine months in any 12 consecutive months for temporary appointments that cannot be extended for any reason. (Cal Const., art. VII, § 5.) Time worked shall be counted on a daily basis with every 21 days worked counting as one month or 189 days equaling nine months. (Cal. Code Regs., tit. 2, § 265.1, subd. (b).) Another controlling factor limits the maximum work time for student, youth, and seasonal classifications to 1,500 hours. (Cal. Code Regs., tit. 2, § 265.1, subd. (d).)

A permanent intermittent employee may work up to 1,500 hours in any calendar year. The number of hours and schedule of work shall be determined based upon the operational needs of each department. (Applicable Bargaining Unit Agreements.)

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. Intermittent appointments are not to be used to fill full-time or part-time positions. Such use would constitute illegal circumvention of these eligible lists

Cause: The CDFW states that they were waiting for CalHR updates to the HR Manual to reflect the new policies for tracking TAUs rolled out in July 2018. The CDFW states they were pending this information to update their procedures for the hourly staff. During this delay, the payroll staff were to follow the prior process, which resulted in the discrepancies. The CDFW states they have since trained their staff on the new process and a directive was sent out in November 2018.

SPB Reply: CRU does not agree that CDFW lacked appropriate guidance on counting time for both TAU and intermittent employees. HR Manual 1212 provides guidance on counting time for TAU appointments. This policy has been in effect since April 2018, and is based on statute and regulation.

Applicable Bargaining Unit contracts provide that intermittent employees may work up to 1500 hours in any calendar year.

Corrective Action: The CDFW has taken steps to update procedures related to hourly staff. However, within 90 days of the date of this report, the CDFW shall submit to the SPB a written corrective action response which addresses the corrections the department has implemented to consistently monitor positive paid employees in conformity with California Code of Regulations, title 2, section 265.1. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

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, May 1, 2018, through April 30, 2019, the CDFW placed 10 employees on ATO. The CRU reviewed 10 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
Accounting Administrator I (Supervisory)	4/10/19-6/6/19	58
Environmental Program Manager I (Supervisory)	10/8/18-12/31/18	85
Environmental Program Manager I (Supervisory)	6/25/18-7/5/18	11
Environmental Scientist	4/2/29-4/17/19	16
Fish and Game Warden	4/10/19-4/25/19	16
Fish and Game Warden	3/17/18-10/12/18	210
Fish and Game Warden Cadet	1/18/19-3/22/19	64
Fish Habitat Specialist	10/25/18-10/31/18	7

Classification	Time Frame	No. of Days on ATO
Fish Hatchery Manger II	4/26/19-7/31/19	97
Information Officer I (Specialist)	7/12/18-7/19/19	373
FINDING NO. 17 – Administrative Time Off Was Not Properly Documented		

Summary: The CDFW did not grant ATO in conformity with the established policies and procedures. Specifically, the CDFW did not obtain approval from CalHR prior to authorizing ATO in excess of 30 days for 3 out of 10 employees. The CDFW did not key two employees’ ATO hours correctly into the Leave Accounting System.

Criteria: Appointing authorities are authorized to approve ATO for up to five (5) working days. (Gov. Code, § 19991.10.) Furthermore, they “have delegated authority to approve up to 30 calendar days.” (Human Resources Manual Section 2121.) Any ATO in excess of 30 calendar days must be approved in advance by the CalHR. (*Ibid.*) In most cases, if approved, the extension will be for an additional 30 calendar days. (*Ibid.*) The appointing authority is responsible for submitting ATO extension requests to CalHR at least 5 working days prior to the expiration date of the approved leave. (*Ibid.*)

When requesting an ATO extension, the appointing authority must provide a justification establishing good cause for maintaining the employee on ATO for the additional period of time. (*Ibid.*) ATO may not be used and will not be granted for an indefinite period. (*Ibid.*) If CalHR denies a request to extend ATO, or the appointing authority fails to request approval from CalHR to extend the ATO, the employee must be returned to work in some capacity. (*Ibid.*)

Regardless of the length of ATO, appointing authorities must maintain thorough documentation demonstrating the justification for the ATO, the length of the ATO, and the approval of the ATO. (*Ibid.*)

Severity: Serious. Because an employee on ATO is being paid while not working, a failure to closely monitor ATO usage could result in costly abuse. The use of ATO is subject to audit and review by CalHR and other control agencies to ensure policy compliance. Findings of non-compliance may result in the revocation of delegated privileges.

Cause: The CDFW states that the errors can be attributed to a combination of inexperienced staff and/or human error. The CDFW further states that they have since ensured staff are trained on the ATO process and reviewed by management staff.

Corrective Action: The CDFW indicates it has taken steps to provide training to staff and implement a review process. Nonetheless, within 90 days of the date of this report, the CDFW must submit to the SPB a written corrective action response which addresses the corrections the department has implemented to ensure continued conformity with Government Code section 19991.10 and Human Resources Manual Section 2121. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

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.) Departments shall create an audit process to review and correct leave input errors on a monthly basis. The review of leave accounting records shall be completed by the pay period following the pay period in which the leave was keyed into the leave accounting system. (*Ibid.*) 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, February 1, 2019, through April 30, 2019, the CDFW reported 84 units comprised of 3024 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
February 2019	565-141	129	129	0
March 2019	565-772	211	211	0

FINDING NO. 18 – Leave Auditing and Timekeeping Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

The CRU reviewed employee leave records from two 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 CDFW 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.

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.

Generally, 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.¹⁴ (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, §

¹⁴ Government Code sections 19143, 19849.9, 19856.1, 19858.1, 19859, 19861, 19863.1, 19997.4 and California Code of Regulations, title 2, sections 599.609, 599.682, 599.683, 599.685, 599.687, 599.737, 599.738, 599.739, 599.740, 599.746, 599.747, 599.776.1, 599.787, 599.791, 599.840 and 599.843 provide further clarification for calculating state time.

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 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 employees¹⁵ 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, February 1, 2019, through July 31, 2019, the CDFW had five employees with non-qualifying pay period transactions. The CRU reviewed nine transactions to ensure compliance with applicable laws, regulations and CalHR policy and guidelines, which are listed below:

Type of Transaction	Time base	Number Reviewed
Non-Qualifying Pay Period	Full Time	8
Qualifying Pay Period	Full Time	1

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

The CRU determined that the CDFW 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.

¹⁵ As identified in Government Code sections 19858.3, subdivision (a), 19858.3, subdivision (b), or 19858.3, subdivision (c), or as it applies to employees excluded from the definition of state employee under Government Code section 3513, subdivision (c), or California Code of Regulations, title 2, section 599.752, subdivision (a), and appointees of the Governor as designated by the Department and not subject to section 599.752.1.

(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.*) 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 association by blood, adoption, marriage and/or cohabitation. (*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. 20 – Nepotism Policy Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

The CRU verified that the policy was disseminated to all staff and emphasized the CDFW’s commitment to the state policy of recruiting, hiring and assigning employees on the basis of merit. Additionally, the CDFW’s nepotism policy was comprised of specific and sufficient components intended to prevent favoritism, or bias, based on a personal relationship from unduly influencing employment decisions.

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.*)

In this case, the CDFW did not employ volunteers during the compliance review period.

FINDING NO. 21 – Workers’ Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

The CRU verified that the CDFW 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 CDFW 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, subdivision (a), appointing powers 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 104 permanent CDFW employees to ensure that the department was conducting performance appraisals on an annual basis in accordance with applicable laws, regulations, policies and guidelines. These are listed below:

Classification	Date Performance Appraisals Due
Administrative Officer III, Resources Agency	11/1/2017
Associate Accounting Analyst	9/30/2017
Associate Governmental Program Analyst	5/22/2017
Associate Governmental Program Analyst	11/1/2018
Associate Governmental Program Analyst	9/12/2018
Associate Governmental Program Analyst	4/4/2017
Associate Governmental Program Analyst	11/30/2017
Associate Governmental Program Analyst	2/2/2018
Attorney	10/2/2018
Environmental Program Manager I (Supervisory)	11/16/2018
Environmental Program Manager I (Supervisory)	8/3/2018
Environmental Scientist	9/14/2017
Environmental Scientist	8/31/2017
Environmental Scientist	11/30/2018

Classification	Date Performance Appraisals Due
Environmental Scientist	9/14/2017
Environmental Scientist	11/9/2018
Environmental Scientist	10/16/2018
Environmental Scientist	4/22/2017
Environmental Scientist	9/6/2018
Environmental Scientist	10/31/2018
Environmental Scientist	3/1/2017
Environmental Scientist	11/22/2017
Environmental Scientist	5/19/2017
Environmental Scientist	7/10/2018
Executive Secretary I	2/24/2017
Fish and Game Captain	5/31/2017
Fish and Game Lieutenant (Specialist)	2/16/2017
Fish and Game Lieutenant (Supervisor)	12/31/2017
Fish and Game Lieutenant (Supervisor)	11/30/2018
Fish and Game Lieutenant (Supervisor)	5/31/2018
Fish and Game Lieutenant (Supervisor)	12/1/2017
Fish and Game Lieutenant (Supervisor)	5/31/2018
Fish and Game Lieutenant (Supervisor)	11/30/2018
Fish and Game Lieutenant (Supervisor)	10/31/2018
Fish and Game Warden, Department of Fish and Wildlife	8/12/2018
Fish and Game Warden, Department of Fish and Wildlife	8/12/2018
Fish and Game Warden, Department of Fish and Wildlife	8/13/2017
Fish and Game Warden, Department of Fish and Wildlife	8/13/2017
Fish and Game Warden, Department of Fish and Wildlife	8/13/2017
Fish and Game Warden, Department of Fish and Wildlife	8/13/2017
Fish and Game Warden, Department of Fish and Wildlife	5/21/2017
Fish and Game Warden, Department of Fish and Wildlife	8/13/2017
Fish and Game Warden, Department of Fish and Wildlife	8/12/2018
Fish and Game Warden, Department of Fish and Wildlife	8/13/2017
Fish and Game Warden, Department of Fish and Wildlife	8/12/2018
Fish and Game Warden, Department of Fish and Wildlife	8/13/2017
Fish and Game Warden, Department of Fish and Wildlife	8/13/2017

Classification	Date Performance Appraisals Due
Fish And Wildlife Technician	1/31/2018
Fish And Wildlife Technician	7/12/2017
Fish And Wildlife Technician	5/22/2018
Fish And Wildlife Technician	10/31/2017
Fish And Wildlife Technician	5/24/2017
Fish And Wildlife Technician	7/12/2018
Fish Habitat Assistant	12/29/2018
Graphic Designer III	7/17/2018
Management Services Technician	4/24/2018
Management Services Technician	5/2/2018
Office Technician (General)	5/1/2017
Office Technician (Typing)	10/31/2017
Office Technician (Typing)	12/11/2018
Office Technician (Typing)	11/14/2018
Office Technician (Typing)	1/31/2018
Office Technician (Typing)	3/1/2018
Office Technician (Typing)	5/15/2018
Oil Spill Prevention Supervisor I	9/30/2017
Research Data Analyst II	4/13/2017
Research Scientist III (Microbiological Sciences)	3/13/2017
Senior Environmental Scientist (Specialist)	6/21/2017
Senior Environmental Scientist (Specialist)	10/31/2018
Senior Environmental Scientist (Specialist)	5/18/2018
Senior Environmental Scientist (Specialist)	12/14/2017
Senior Environmental Scientist (Specialist)	11/6/2018
Senior Environmental Scientist (Specialist)	6/30/2018
Senior Environmental Scientist (Specialist)	12/1/2017
Senior Environmental Scientist (Specialist)	8/6/2017
Senior Environmental Scientist (Specialist)	9/18/2018
Senior Environmental Scientist (Specialist)	11/30/2018
Senior Environmental Scientist (Specialist)	3/31/2018
Senior Environmental Scientist (Specialist)	2/1/2017
Senior Environmental Scientist (Specialist)	2/15/2017
Senior Environmental Scientist (Specialist)	11/30/2018

Classification	Date Performance Appraisals Due
Senior Environmental Scientist (Supervisory)	2/12/2018
Senior Environmental Scientist (Supervisory)	10/2/2018
Senior Environmental Scientist (Supervisory)	10/31/2018
Senior Environmental Scientist (Supervisory)	5/31/2018
Senior Environmental Scientist (Supervisory)	1/20/2018
Senior Environmental Scientist (Supervisory)	8/31/2018
Senior Environmental Scientist (Supervisory)	4/16/2017
Senior Environmental Scientist (Supervisory)	9/30/2017
Senior Hydraulic Engineer	9/1/2018
Staff Services Analyst (General)	1/31/2018
Staff Services Analyst (General)	11/15/2017
Staff Services Analyst (General)	7/12/2017
Staff Services Analyst (General)	5/15/2018
Staff Services Analyst (General)	12/31/2017
Staff Services Manager I	9/25/2018
Staff Services Manager I	4/10/2018
Staff Services Manager I	12/31/2017
Staff Services Manager I	5/1/2018
Tractor Operator-Laborer	4/30/2018
Tractor Operator-Laborer	1/4/2018
Wildlife Forensic Specialist	12/4/2018
Wildlife Habitat Supervisor II	6/12/2018

FINDING NO. 22 – Performance Appraisals Were Not Provided to All Employees

Summary: The CDFW did not provide performance appraisals to any of the 104 employees reviewed at least once in each twelve calendar months after the completion of the employee’s probationary period.

Criteria: “Appointing powers shall prepare performance reports and keep them on file as prescribed by department rule.” (Gov. Code, § 19992.2, subd. (a).) Each supervisor, as designated by the appointing power, shall make an appraisal in writing and shall discuss with the employee overall work performance at least once in

each twelve calendar months following the end of the employee's probationary period. (Cal. Code Regs., tit. 2, § 599.798.)

Severity: Serious. The department does not ensure that all of its employees are apprised of work performance issues and/or goals in a systematic manner.

Cause: The CDFW acknowledges that not all supervisors and managers consistently meet this requirement. The CDFW states that good faith efforts are made to inform management of the requirements for performance appraisals. Failure to comply has been an ongoing concern for CDFW which will be addressed in their corrective action response.

Corrective Action: Within 90 days of the date of this report, the CDFW must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with Government Code section 19992.2 and California Code of Regulations, title 2, section 599.798. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

DEPARTMENTAL RESPONSE

The CDFW's response is attached as Attachment 1.

SPB REPLY

Based upon the CDFW's written response, the CDFW will comply with the corrective actions specified in these report findings. Within 90 days of the date of this report, a written corrective action response including documentation demonstrating implementation of the corrective actions specified, must be submitted to the CRU.

**State of California
Department of Fish and Wildlife
M e m o r a n d u m**

Date: December 7, 2020

To: Suzanne Ambrose
Compliance Review Division
State Personnel Board

RE: Compliance Review Responses to Findings and Recommendations

Dear Ms. Ambrose:

The California Department of Fish and Wildlife (CDFW), Human Resources Branch (HRB) has reviewed the CDFW's draft Compliance Review Report. Generally, we find the report to be thorough and an accurate summary. We take our responsibilities seriously and are committed to correcting all deficiencies noted in the report.

Finding No. 1

Examinations Complied with Civil Service Laws and Board Rules

No issues found

Finding No. 2

Permanent Withhold Actions Complied with Civil Service Laws and Board Rules

No issues found

Finding No. 3

Probationary Evaluations were not provided for all appointments reviewed

The CDFW acknowledges that not all supervisors and managers consistently meet this requirement. HRB makes a good faith effort to inform management of the requirements on probationary evaluations. Management is informed during supervisory training modules and are provided the due dates of probationary evaluations for their employees. The failure to comply has been an ongoing concern for CDFW which will be addressed in the corrective action response.

Finding No. 4

Appointment Documentation was not kept for the appropriate amount of time

The CDFW acknowledges that some employee records were not properly retained. The Notice of Personnel Action (NOPA) documents were not retained due to staff not following established retention procedures. The failure to comply has been an ongoing concern for CDFW which will be addressed in the corrective action response.

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Finding No. 5

Unlawful Appointment Investigations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines

No issues found

Finding No. 6

Equal Employment Opportunity Program Complied with all Civil Service Laws and Board Rules

No issues found

Finding No. 7

Unions Were Not Notified of Personal Services Contracts

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. The CDFW did not contact the union in the noted instances, because CDFW staff has not historically or customarily performed the services.

Finding No. 8

Ethics training was not provided for all filers

The CDFW acknowledges that not all filers completed ethics training within the prescribed timeframe. An annual email is sent to CDFW employees of the Ethics training requirement. Additionally, the CDFW sends multiple reminders to those who have not completed the training within the prescribed timeframe. It is incumbent upon the employee and supervisor to comply with the mandated training. The failure to comply has been an ongoing concern for CDFW which will be addressed in the corrective action response.

Finding No. 9

Sexual Harassment Prevention Training Was Not Provided for All Supervisors

CDFW acknowledges that all supervisory staff did not complete sexual harassment prevention training in a timely manner. CDFW previously provided the 2-hour training to newly hired supervisors twice a year through our new hire orientation program, and every 2 years provided training to existing supervisors through an outside service provider. CDFW has since strengthened its internal tracking procedures to ensure that all supervisors receive the mandated training immediately upon hire. Our current tracking procedures will also ensure that existing supervisors promptly receive the mandated training every 2 years.

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Finding No. 10

Salary Determinations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines

No issues found

Finding No. 11

Alternate Range Movements Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

No issues found

Finding No. 12

Hiring Above Minimum Requests Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

No issues found

Finding No. 13

Bilingual Pay Authorizations Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

No issues found

Finding No. 14

Pay Differential Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines

No issues found

Finding No. 15

Incorrect Authorization of Out-of-Class Pay

The errors can be attributed to a combination of inexperienced staff and/or human error.

Finding No. 16

Positive Paid Employee(s) Exceeded the Nine Month Limitation in Any Twelve Consecutive Month Period

During this timeframe, CDFW was waiting for CalHR updates to their HR Manual to reflect the new policies for tracking TAUs rolled out in July 2018. We were pending this information to update our procedures for the hourly staff. During this delay, the payroll staff were to follow the prior process, which resulted in the discrepancies. We have since trained our staff on the new process and a directive was sent out in November 2019.

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Finding No. 17

Administrative Time Off Was Not Properly Documented

The errors can be attributed to a combination of inexperienced staff and/or human error. We have since ensured staff are trained on the ATO process and reviewed by management staff.

Finding No. 18

Leave Auditing and Timekeeping Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

No issues found

Finding No. 19

Service and Leave Transactions Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

No issues found

Finding No. 20

Nepotism Policy Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

No issues found

Finding No. 21

Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

No issues found

Finding No. 22

Performance Appraisals were not provided to all employees

The CDFW acknowledges that not all supervisors and managers consistently meet this requirement. HRB makes a good faith effort to inform management of the requirements on performance appraisals. Management is informed during supervisory training modules and an annual memorandum is sent to all managers and supervisors on their responsibilities in this area. The failure to comply has been an ongoing concern for CDFW which will be addressed in the corrective action response.

Ms. Suzanne Ambrose
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December 7, 2020

The CDFW would like to thank the SPB Compliance Review team and appreciate the opportunity to respond to the findings. CDFW will continue to educate and train our staff on best hiring practices and requirements to ensure compliance with the State's civil service merit system.

If you have any questions or additional information, please contact me at (916) 653-4745.

Sincerely,
DocuSigned by:

Samantha Procida

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Samantha Procida, Chief
Human Resources Branch