



COMPLIANCE REVIEW REPORT

CALIFORNIA NATURAL RESOURCES AGENCY

Compliance Review Unit
State Personnel Board
March 29, 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 Natural Resources Agency's (CNRA's) 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
Appointments	Probationary Evaluations Were Not Provided for All Appointments Reviewed ¹
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 Contract
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	Incorrect Authorization of Pay Differentials
Leave	Positive Paid Employees' Tracked Hours Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	Department Has Not Implemented a Monthly Internal Audit Process to Verify All Leave Input Is Keyed Accurately and Timely
Policy	Department Does Not Maintain a Current Written Nepotism Policy

¹ Repeat finding. March 17, 2017, the CNRA's Compliance Review Report identified four missing probation reports in four of nine appointment files reviewed.

Area	Finding
Policy	Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	Performance Appraisal Policy and Processes Complied with Civil Service Laws and Regulations and CalHR Policies and Guidelines

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 CNRA oversees and supports more than 26 distinct departments, conservancies, and commissions. It leads efforts to steward California's natural environment and to advance Governor Newsom's key priorities.

Over 19,000 Californians work within CNRA all across the state to meet the mission to restore, protect and manage the state's natural, historical and cultural resources for current and future generations using creative approaches and solutions based on science, collaboration, and respect for all the communities and interests involved.

The California Department of Forestry and Fire Protection (CalFire) performs human resources operations for the CNRA.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing the CNRA'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 CNRA's personnel practices, policies, and procedures complied with state civil service laws and Board regulations, Bargaining Unit Agreements, CalHR policies and guidelines, CalHR Delegation Agreements, and to recommend corrective action where deficiencies were identified.

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

The CNRA's examination process was reviewed to ensure compliance with applicable rules and regulations. The CRU examined the documentation that the CNRA provided, which included examination plans, examination bulletins, job analyses, and scoring results.

The CNRA did not conduct any permanent withhold actions during the compliance review period.

A cross-section of the CNRA'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 CNRA 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 CNRA did not conduct any unlawful appointment investigations during the compliance review period.

Additionally, the CNRA did not make any additional appointments during the compliance review period.

The CNRA's appointments were also selected for review to ensure the CNRA applied salary regulations accurately and correctly processed employees' compensation and pay. The CRU examined the documentation that the CNRA 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 pertaining to the department's utilization of monthly pay differentials.

During the compliance review period, the CNRA did not issue or authorize hiring above minimum requests, red circle rate requests, arduous pay, bilingual pay, alternate range movements or out-of-class assignments.

The review of the CNRA'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.

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

The CNRA'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, managers, and CEAs were provided sexual harassment prevention training within statutory timelines

The CRU reviewed the CNRA's Leave Activity and Correction Certification forms to verify that the CNRA 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 CNRA's units in order to ensure they maintained accurate and timely leave accounting records. Additionally, the CRU reviewed a selection of CNRA's positive paid employees whose hours are tracked during the compliance review period in order to ensure that they adhered to procedural requirements.

During the compliance review period, the CNRA did not have any employees with non-qualifying pay period transactions.

The CNRA also did not authorize Administrative Time Off during the compliance review period.

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

On February 8, 2021, an exit conference was held with the CNRA to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed the CNRA's written response on February 12, 2021, which is attached to this final compliance review report.

If an employee organization requests the SPB to review any personal services contract during the SPB compliance review period or prior to the completion of the final compliance review report, the SPB will not audit the contract. Instead, the SPB will review the contract pursuant to its statutory and regulatory process. In this instance, none of the reviewed PSC's were challenged.

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, July 1, 2019, through June 30, 2020, the CNRA conducted one examination. The CRU reviewed that examination, which is listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Apps
Career Executive Assignment (CEA) B, Assistant Deputy Director, Bonds and Grants	CEA	Education and Experience ⁴	10/18/19	11

⁴ In an Education and Experience examination, one or more raters reviews the applicants' Standard 678 application forms, and scores and ranks them according to a predetermined rating scale that may include years of relevant higher education, professional licenses or certifications, and/or years of relevant work experience.

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

The CRU reviewed one open examination which the CNRA administered in order to create eligible lists from which to make appointments. The CNRA published and distributed examination bulletins containing the required information for the examination. Applications received by the CNRA 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 examination that the CNRA conducted 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, July 1, 2019, through June 30, 2020, the CNRA made 20 appointments. The CRU reviewed eight of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	1
Associate Park and Recreation Specialist	Certification List	Permanent	Full Time	1

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Environmental Program Manager I (Managerial)	Certification List	Permanent	Full Time	1
Environmental Scientist	Certification List	Permanent	Full Time	1
Information Technology Specialist II	Certification List	Permanent	Full Time	1
Staff Services Manager I	Certification List	Permanent	Full Time	1
Staff Services Manager III	Certification List	Permanent	Full Time	1
CEA, Deputy Director for Administration and Finance	Transfer	CEA	Full Time	1

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

Summary: The CNRA did not provide two probationary reports of performance for one of the eight appointments reviewed by the CRU, as reflected in the table below. This is the second consecutive time this has been a finding for CNRA.

Classification	Appointment Type	Number of Appointments	Total Number of Missing Probation Reports
Environmental Program Manager I (Managerial)	Certification List	1	2

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 CNRA acknowledges the need to ensure that every employee received timely feedback on their performance during the probationary period. Miscommunication between the CNRA and its human resources office as to when probation reports were due resulted in one employee not receiving his probation reports timely. Additionally, a supervisor new to state service did not fully understand the mandatory probationary period requirements.

Corrective Action: The CNRA has identified remediations to achieve compliance in this area. However, within 90 days of the date of this report, the CNRA must submit to the SPB the written policies or procedures which demonstrates the corrections the department has implemented to ensure conformity with Government Code section 19172.

Equal Employment Opportunity

Each state agency is responsible for an effective EEO program. (Gov. Code, § 19790.) The appointing power for each state agency has the major responsibility for monitoring the effectiveness of its EEO program. (Gov. Code, § 19794.) To that end, the appointing power must issue a policy statement committed to EEO; issue procedures for filing, processing, and resolving discrimination complaints; 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. 3 – 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 CNRA’s EEO program provided employees with information and guidance on the EEO process including instructions on how to file discrimination claims. Furthermore, the EEO program outlines the roles and responsibilities of the EEO Officer, as well as supervisors and managers. The EEO Officer, who is at a managerial level, reports directly to the Executive Director of the CNRA. The CNRA 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, July 1, 2019, through June 30, 2020, the CNRA had one PSC that was in effect. The CRU reviewed that PSC, which is listed below:

Vendor	Services	Contract Date(s)	Contract Amount	Justification Identified?	Union Notification?
Linda Sheehan	Strategic Planning	8/14/19-12/31/19	\$4,999.00	Yes	No

FINDING NO. 4 – Unions Were Not Notified of Personal Services Contract

Summary: The CNRA did not notify unions prior to entering into one PSC.

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 work that their members could perform.

Cause: The CNRA believed the PSC contract was exempt from the requirement to notify unions based on its dollar amount.

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 consultation for strategic planning functions which various rank-and-file civil service classifications perform. The CNRA has indicated it has updated its policies and procedures to ensure union notification. Within 90 days of the date of this report, the CNRA must submit to the SPB the written policies and procedures which demonstrates the corrections the department has implemented to ensure conformity with the requirements of Government Code section 19132.

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 CNRA’s mandated training program that was in effect during the compliance review period, July 1, 2018, through June 30, 2020.

FINDING NO. 5 – Ethics Training Was Not Provided for All Filers

Summary: The CNRA did not provide ethics training to 9 of 12 existing filers. In addition, the CNRA did not provide ethics training to 6 of 43 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 CNRA understands the importance of practicing and promoting the highest standards of ethical behavior while working for the State. However, prior to 2020, the CNRA's certification and tracking system was partially developed and tracking logs did not include the ethics training requirement.

Corrective Action: The CNRA indicates it has updated its procedures to ensure that employees receive ethics training within proscribed timelines. Within 90 days of the date of this report, the CNRA must submit to the SPB the written policies and procedures which demonstrates the corrections the department has implemented to demonstrate conformity with Government Code section 11146.3.

FINDING NO. 6 – Sexual Harassment Prevention Training Was Not Provided for All Supervisors

Summary: The CNRA provided sexual harassment prevention training to all 15 new supervisors within 6 months of their appointment. However, the CNRA did not provide sexual harassment prevention training to 5 of 17 existing supervisors every 2 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, subds. (a) and (b); Gov. Code, § 19995.4.)

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 CNRA fully understands that ensuring a workplace free of discrimination and harassment, while maintaining compliance with State and Federal laws is critical. However, prior to 2018, the CNRA had not improved its tracking mechanism and internal controls over

sexual harassment prevention training which resulted in not all supervisors taking sexual harassment prevention training every two years as required.

Corrective Action: The CNRA indicates it has updated its procedures to ensure that employees receive sexual harassment prevention training within proscribed timelines. Within 90 days of the date of this report, the CNRA must submit to the SPB the written policies and procedures which demonstrates the corrections the department has implemented to ensure that 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 rate⁵ upon appointment depending on the appointment type, the employee's state employment and pay history, and tenure.

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

During the period under review, July 1, 2019 through June 30, 2020, the CNRA made 20 appointments. The CRU reviewed eight of those appointments to determine if the CNRA applied salary regulations accurately and correctly processed employees' compensation, which are listed below:

⁵ "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.)

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	\$5,149
Associate Park and Recreation Specialist	Certification List	Permanent	Full Time	\$6,259
Environmental Program Manager I (Managerial)	Certification List	Permanent	Full Time	\$11,851
Environmental Scientist	Certification List	Permanent	Full Time	\$5,923
Information Technology Specialist II	Certification List	Permanent	Full Time	\$7,014
Staff Services Manager I	Certification List	Permanent	Full Time	\$7,247
Staff Services Manager III	Certification List	Permanent	Full Time	\$8,173
CEA, Deputy Director for Administration and Finance	Transfer	CEA	Full Time	\$10,731

FINDING NO. 7 – 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 CNRA 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.

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, April 1, 2019, through March 31, 2020, the CNRA issued one pay differential⁶ to one employee. The CRU reviewed that pay differential to ensure compliance with applicable CalHR policies and guidelines. The pay differential is listed below:

Classification	Pay Differential	Monthly Amount
State Park Superintendent II	Recruitment and Retention	\$175

FINDING NO. 8 – Incorrect Authorization of Pay Differentials

Summary: The CRU found one error in the one pay differential reviewed:

Classification	Area	Description of Finding(s)	Criteria
State Park Superintendent II	Recruitment and Retention	Employee’s classification is not eligible to receive the recruitment and retention pay. Employee was overcompensated.	Pay Differential 243

Criteria: A pay differential may be appropriate 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. Pay differentials are based on qualifying pay criteria such as: work locations or shift assignments; professional or educational certification; temporary responsibilities; special licenses, skills or training; performance-based pay; incentive-based pay; or recruitment and retention. (CalHR Classification and Pay Manual Section 230.)

Severity: Very Serious. The CNRA failed to comply with the state civil service pay plan by incorrectly applying compensation laws and rules in

⁶ For the purposes of CRU’s review, only monthly pay differentials were selected for review at this time.

accordance with CalHR's policies and guidelines. This results in civil service employees receiving incorrect and/or inappropriate compensation.

Cause: The CNRA did not provide a cause for this finding.

Corrective Action: Within 90 days of the date of this report, the CNRA must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with Pay Differential 243 and ensure that employees are compensated correctly and that transactions are keyed accurately. 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 days⁷ worked and paid absences⁸, are counted. (Cal. Code Regs., tit. 2, § 265.1, subd. (b).) The hours worked in one day is not limited by this rule. (*Ibid.*) The 12-consecutive month timeframe begins by counting the first pay period worked as the first month of the 12-consecutive month timeframe. (*Ibid.*) The employee shall serve no longer than 189 days in a 12 consecutive month period. (*Ibid.*) A new 189-days working limit in a 12-consecutive month timeframe may begin in the month immediately following the month that marks the end of the previous 12-consecutive month timeframe. (*Ibid.*)

⁷ For example, two hours or ten hours counts as one day.

⁸ For example, vacation, sick leave, compensating time off, etc.

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 CNRA had 18 positive paid employees whose hours were tracked. The CRU reviewed six of those positive paid appointments to ensure compliance with applicable laws, regulations, policies and guidelines, which are listed below:

Classification	Tenure	Time Frame	Hours Worked
Associate Park and Recreation Specialist	Retired Annuitant	07/01/2019 – 06/30/2020	269 hours
Associate Park and Recreation Specialist	Retired Annuitant	7/1/2019 – 6/30/2020	763.5 hours
Environmental Scientist	Retired Annuitant	7/1/2019 – 6/30/2020	4.5 hours
Senior Environmental Scientist (Specialist)	Retired Annuitant	7/1/2019 – 6/30/2020	164 hours
Staff Services Manager III	Retired Annuitant	7/01/2019 – 6/30/2020	334 hours
Student Assistant	Temporary	6/3/2019 – 6/2/2020	981 hours

FINDING NO. 9 – Positive Paid Employees’ Tracked Hours Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

The CRU found no deficiencies in the positive paid employees reviewed during the compliance review period. The CNRA provided sufficient justification and adhered to applicable laws, regulations and CalHR policy and guidelines for positive paid employees.

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, January 1, 2020, through March 31, 2020, the CNRA reported 1 unit comprised of 64 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
January 2020	001	64	61	3
February 2020	001	64	62	2
March 2020	001	64	60	4

FINDING NO. 10 – Department Has Not Implemented a Monthly Internal Audit Process to Verify All Leave Input Is Keyed Accurately and Timely

Summary: The CNRA failed to implement a monthly internal audit process to verify all timesheets were keyed accurately and timely.

The CNRA failed to provide Leave Activity and Certification forms for the one unit reviewed during the January through March 2020 pay periods.

Criteria: Each appointing power shall keep complete and accurate time and attendance records for each employee and officer employed within the agency over which it has jurisdiction. (Cal. Code Regs., tit. 2, § 599.665.) Departments are directed to create an audit process to verify all leave input is keyed accurately and timely. (Human Resources Manual Section 2101.) Attendance records shall be corrected by the pay period following the pay period in which the error occurred. (*Ibid.*)

Severity: Serious. In order for departmental leave accounting reports to reflect accurate data, the review of the leave accounting records and corrections, if necessary, are to be completed by the pay period following the pay period in which the leave was keyed into the leave accounting system. This means corrections are to be made prior to the next monthly leave activity report being produced.

Cause: The CNRA did not provide a cause for this finding.

Corrective Action: Within 90 days of the date of this report, the CNRA must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure that their monthly internal audit process was documented and that all leave input is keyed accurately and timely. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

Policy and Processes

Nepotism

It is the policy of the State of California to recruit, hire and assign all employees on the basis of merit and fitness in accordance with civil service statutes, rules and regulations. (Human Resources Manual Section 1204.) Nepotism is expressly prohibited in the state workplace because it is antithetical to California's merit based civil service. (*Ibid.*) 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. 11 – Department Does Not Maintain a Current Written Nepotism Policy

Summary: The CNRA does not maintain a current written nepotism policy designed to prevent favoritism or bias in the recruiting, hiring, or assigning of employees.

Criteria: It is the policy of the State of California to recruit, hire and assign all employees on the basis of fitness and merit in accordance with civil service statutes, rules and regulations. (Human Resources Manual Section 1204). All department 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.*)

Severity: Very Serious. Nepotism is expressly prohibited in the state workplace because it is antithetical to California's merit based civil service. Departments must take proactive steps to ensure that the recruitment, hiring, and assigning of all employees is done on the basis of merit and fitness in accordance with civil service statutes. Maintaining a current written nepotism policy, and its dissemination to all staff, is the cornerstone for achieving these outcomes.

Cause: The CNRA does not have its own written nepotism policy. They were using CalFire's until it could develop its own policy.

Corrective Action: Within 90 days of the date of this report, the CNRA must submit to the SPB a written corrective action response which includes an updated nepotism policy which contains requirements outlined in Human Resources Manual section 1204, and documentation demonstrating that it has been distributed to all staff.

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 CNRA did not employ volunteers during the compliance review period.

FINDING NO. 12 – Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

The CRU verified that the CNRA provides notice to their employees to inform them of their rights and responsibilities under California's Workers' Compensation Law. Furthermore, the CRU verified that when the CNRA received workers' 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 11 permanent CNRA 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 Assistant II	6/30/2019
Associate Governmental Program Analyst	9/11/2019
Associate Governmental Program Analyst	2/14/2019
Associate Park and Recreation Specialist	1/17/2019
Associate Park and Recreation Specialist	11/24/2019
Attorney III	6/30/2019
Deputy Secretary	1/16/2019
Environmental Scientist	1/16/2019
Environmental Scientist	11/30/2019
Senior Environmental Scientist (Supervisory)	12/11/2019
Staff Services Manager I	2/18/2019

FINDING NO. 13 – Performance Appraisal Policy and Processes Complied with Civil Service Laws and Regulations and CalHR Policies and Guidelines

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

DEPARTMENTAL RESPONSE

The CNRA's departmental response is attached as Attachment 1.

SPB REPLY

Based upon the CNRA written response, the CNRA 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.



February 12, 2021

Suzanne M. Ambrose, Executive Director
The State Personnel Board
801 Capitol Mall
Sacramento, California 95814

Dear Executive Director Ambrose,

The California Natural Resources Agency (CNRA) is grateful for the efforts and insight that came from the State Personnel Board's (SPB's) compliance review report. CNRA continues to be committed to regularly evaluating and updating all practices and procedures to ensure compliance with all applicable laws, rules, and regulations. SPB's compliance review report is an extremely valuable tool to assist us in this endeavor and we appreciate the opportunity to respond. CNRA contracts with the California Department of Forestry and Fire Protection (CAL FIRE) for most of CNRA's human resources (HR) and accounting responsibilities, and this will be referenced in the response, as applicable. The following information demonstrates the corrections CNRA has already taken, and plans to make, to improve our practices related to items identified in the SPB compliance review report.

Regarding probationary evaluations, CNRA acknowledges the need to ensure that every employee receives timely feedback on their performance. CNRA has put a system in place that tracks every new employee, the probation due date, and probation report completion. CNRA had discovered an error which caused some missing probation reports which was a result of communication issues with CAL FIRE HR of when the probation dates were due. CNRA new hires are now entered on the tracking sheet at onboarding and before the probation information is given to us from CAL FIRE HR to ensure that no one is missed, regardless of when the probation dates are communicated to CNRA after the employees are hired.

Another issue identified was regarding a new-to-state service supervisor who did not yet understand the requirement for probation reports for new employees.

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Executive Director Ambrose

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This has been remedied by the creation and distribution of a Supervisor Help Sheet with responsibilities and requirements for Supervisors, including probation evaluations and examples of how to complete the evaluations. In addition, CNRA's onboarding process has been updated to include probation evaluation directions and instruction for new supervisors.

Regarding personal services contracts, CNRA believed the contract was exempt due to the dollar amount. As of January 2021, CNRA has ensured the Policy and Procedure Manual (PPM) contains the required language to notify unions. The internal mandatory Procurement Checklist has been updated to include union notification for personal service contracts, with a requirement to maintain the email in the contract file. Both the PPM and Procurement Checklist have been posted to the intranet, along with email communication to procurement staff regarding the importance of compliance. Staff are encouraged to attend California Procurement and Contracting Academy trainings to ensure knowledge of the State's contracting process.

Regarding ethics training, CNRA understands the importance of practicing and promoting the highest standards of ethical behavior while working for the State. Currently, CNRA is up to date on ethics training for all new and existing employees. Prior to 2020, capacity was more limited for staffing, the ethics certification tracking system was partially developed, and though staff did their best, tracking was not as well developed as it is presently.

By 2020, CNRA's two filing officers had formal tracking methods to ensure compliance. The onboarding process for new employees includes email notification with a link to the mandated ethics training. Tracking logs have been updated to include the ethics training requirement, listing training completion date as well as ensuring follow up training is completed every two years as required. Certificates are currently printed out but CNRA is transitioning to electronic filing to make the process easier. Information on the importance of the training will be provided on the intranet. These new procedures ensure compliance of ethics training within 6 months of employment as well as ongoing every two years, utilizing chain of command when ethics trainings are not timely completed.

Regarding sexual harassment prevention training, CNRA understands and recognizes the importance and seriousness of every employee completing their required training within the first six months of appointment in order to ensure that harassing or discriminatory behavior, including perceived behavior, is identified, quickly reported, and corrected immediately. CNRA fully understands that ensuring a workplace free of discrimination and harassment, while maintaining compliance with State and Federal laws, is critical.

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Currently, all new employees at CNRA are up to date on sexual harassment prevention training. The SPB report shows CNRA complied for the follow-up sexual harassment prevention training required every two years for 2018-2019. The SPB report showed a deficiency in the 2016-2017 years, in which not all employees kept up the requirements for taking the sexual harassment prevention training every two years.

The oversight for the 2016-2017 years was due to sexual harassment prevention trainings not being properly tracked or followed-up on. CNRA had corrected this by 2018, as corroborated by the SPB compliance review report, with internal tracking and controls.

Currently, CNRA contracts with Department of Water Resources to use their Inspired Learning Management System (iLMS) for all mandated trainings, including the sexual harassment prevention training required every two years. CNRA uses the iLMS to track new employees to ensure compliance of training within the first month of employment. Every September CNRA pushes out mandated trainings for all employee; this includes the sexual harassment prevention training to employees who have not taken the training in two years. In addition, CNRA's HR Liaison closely tracks all trainings to ensure compliance, utilizing chain of command when trainings are not timely completed.

Finally, with regards to a nepotism policy, CNRA does not maintain a current written nepotism policy. As noted earlier, CNRA contracts with CAL FIRE for many of CNRA's HR needs. When asked for a nepotism policy in the past, CNRA would provide CAL FIRE's nepotism policy as its own policy, as CNRA uses CAL FIRE's policies to direct and guide their personnel services. CAL FIRE's nepotism policy is currently posted on CNRA's intranet site and provided to all new hires when onboarding.

To ensure complete compliance, CNRA is currently putting together its own nepotism policy based on CAL FIRE and the California Department of Human Resources' nepotism policies. Once completed, CNRA will immediately replace CAL FIRE's nepotism policy with the new CNRA nepotism policy on CNRA's intranet site, distribute to all current employees, and will be provided to all new hires when onboarding.

CNRA would like to express thanks and appreciation once again for the opportunity to review and respond to the findings of SPB's compliance review report. CNRA has gained invaluable insight and guidance to help CNRA continue to be committed to consistently complying with the State's laws, rules, and regulation regarding personnel practices.

Executive Director Ambrose

Friday, February 12, 2021

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Sincerely,

Bryan Cash

Bryan Cash

Assistant Secretary for Administration and Finance

cc: Anthony P. Favro, CAL FIRE Deputy Director for Management Services
Serena Ortega, CAL FIRE Deputy Director for Equal Employment
Opportunity
Trisha Addison, CAL FIRE Assistant Deputy Director, Human Resources
Windy C. Bouldin, CAL FIRE Deputy Director for the Office of Program
Accountability