



COMPLIANCE REVIEW REPORT

DELTA STEWARDSHIP COUNCIL

Compliance Review Unit
State Personnel Board
June 24, 2015

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INTRODUCTION

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

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

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

EXECUTIVE SUMMARY

The CRU conducted a routine compliance review of Delta Stewardship Council (Council) personnel practices in the areas of appointments, EEO, and PSC's from July 1, 2013, through March 31, 2014. The following table summarizes the compliance review findings.

Area	Finding	Severity
Appointments	Unlawful Appointment	Very Serious
Equal Employment Opportunity	Equal Employment Opportunity Program Complied With All Civil Service Laws and Board Rules	In Compliance
Personal Services Contracts	Personal Services Contracts Complied with Procedural Requirements	In Compliance

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

- Red = Very Serious
- Orange = Serious
- Yellow = Non-serious or Technical
- Green = In Compliance

BACKGROUND

The Delta Reform Act (Cal. Water Code, § 85000 et. seq.) created the Council with its planning, coordination, regulatory, and science programs to succeed the prior California Bay-Delta Authority/CALFED Bay-Delta Program. The Council’s primary responsibility is the development and implementation of a comprehensive, legally enforceable, long-term management plan for the Sacramento-San Joaquin Delta and the Suisun Marsh—the Delta Plan—that achieves coequal goals (Cal. Water Code, § 85054). The Council oversees a committee of agencies responsible for implementing the Delta Plan, which known as the Delta Plan Interagency Implementation Committee. The Council’s work is also supported by an independent board of nationally and internationally prominent scientists, which is known as the Independent Science Board. The Council consists of 66 permanent positions and 1.5 temporary help positions.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing Council appointments, EEO program, and PSC’s from July 1, 2013, through March 31, 2014. The primary objective of the review was to determine if Council personnel practices, policies, and procedures complied with state civil service laws and board regulations, and to recommend corrective action where deficiencies were identified.

The Council did not conduct any examinations during the compliance review period. A cross-section of the Council’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 Council provided, which included notice of personnel action forms, vacancy postings, application screening criteria, hiring interview rating criteria, certification lists, transfer movement worksheets, employment history records, correspondence, and probation reports.

The review of the Council EEO program included examining written EEO policies and procedures; the EEO officer's role, duties, and reporting relationship; the internal discrimination complaint process; the upward mobility program; the reasonable accommodation program; the discrimination complaint process; and the Disability Advisory Committee (DAC). The CRU also interviewed appropriate Council staff.

Council PSC's were also reviewed.¹ It was beyond the scope of the compliance review to make conclusions as to whether Council justifications for the contracts were legally sufficient. The review was limited to whether Council practices, policies, and procedures relative to PSC's complied with procedural requirements.

On June 3, 2015, an exit conference was held with the Council to explain and discuss the CRU's initial findings and recommendations. The Council was given until June 12, 2015 to submit a written response to the CRU's draft report. On June 12, 2015, the CRU received and carefully reviewed the response, which is attached to this final compliance report.

FINDINGS AND RECOMMENDATIONS

Examinations

Examinations to establish an eligible list must be competitive and of such character as 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.) 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 in the office of the department or a designated appointing power as directed in the

¹If 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.

examination announcement. (Gov. Code, § 18934.) Generally, the final earned rating of each person competing in any examination is to be determined by the weighted average of the earned ratings on all phases of the examination. (Gov. Code, § 18936.) Each competitor shall be notified in writing of the results of the examination when the employment list resulting from the examination is established. (Gov. Code, § 18938.5.)

On behalf of the Council, the California Department of Forestry and Fire Protection (CAL FIRE), handles all examinations and appointments (excluding the classification and pay portion). During the compliance review period, CAL FIRE did not conduct any examinations on behalf of the Council.

Appointments

In all cases not excepted or exempted by Article VII of the California Constitution, the appointing power must fill positions by appointment, including cases of transfers, reinstatements, promotions, and demotions in strict accordance with the Civil Service Act and Board rules. (Gov. Code, § 19050.) Appointments made from eligible lists, by way of transfer, or by way of reinstatement, must be made on the basis of merit and fitness, which requires consideration of each individual’s job-related qualifications for a position, including his or her knowledge, skills, abilities, experience, and physical and mental fitness. (Cal. Code Regs., tit. 2, § 250, subd. (a).)

During the compliance review period, the CAL FIRE, on behalf of the Council, made 17 appointments. The CRU reviewed 10 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Environmental Scientist	Certification List	Limited Term	Full Time	1
Environmental Scientist	Certification List	Permanent	Full Time	1
Program Manager II, California Bay-Delta Authority	Certification List	Permanent	Full Time	1
Senior Engineer, Water Resources	Certification List	Permanent	Full Time	1
Senior Environmental Scientist (Specialist)	Certification List	Permanent	Full Time	1
Staff Information Systems Analyst (Specialist)	Certification List	Permanent	Full Time	1

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Supervising Engineer, Water Resources	Certification List	Permanent	Full Time	1
Accounting Officer (Specialist)	Reinstatement	Limited Term	Part Time	1
Associate Planner	Reinstatement	Permanent	Full Time	1
Staff Information Systems Analyst (Specialist)	Transfer	Permanent	Full Time	1

FINDING NO. 1 – Unlawful Appointment

Summary: Specifically, the Council made one appointment on February 2, 2014 by way of permissive reinstatement to the Accounting Officer (Specialist) classification in which the appointee’s prior appointed classifications do not involve substantially the same level of duties, responsibility, and salary as required by Rule 430. More than one year has elapsed, and the candidate accepted the offer in good faith.

Criteria: Government Code section 19140 (f) states reinstatement shall be made to any of the following vacant positions:

- (1) The class vacated or from which separated.
- (2) A lower class in the same series.
- (3) Another class to which the employee could transfer or demote pursuant to rule.

California Code of Regulations, title 2, section 430 (Rule 430) provides that classes meeting the criteria established by this article shall be considered to involve substantially the same level of duties, responsibility, and salary for the purposes of Government Code section 19050.4; provided that the Board or the Executive Officer may prohibit transfer between such classes based on a specific finding that they are in a promotional relationship.

Severity: Very Serious. An unlawful appointment provides the employee with an unfair and unearned appointment advantage over other

employees whose appointments have been processed in compliance with the requirements of civil service law. Unlawful appointments which are not corrected also create appointment inconsistencies that jeopardize the equitable administration of the civil service merit system.

When an unlawful appointment is voided, the employee loses any tenure in the position, as well as seniority credits, eligibility to take promotional examinations, and compensation at the voided appointment level. If “bad faith” is determined on the part of the appointing power, civil or criminal action may be initiated. Disciplinary action may also be pursued against any officer or employee in a position of authority who directs any officer or employee to take action in violation of the appointment laws. If bad faith is determined on the part of the employee, the employee may be required to reimburse all compensation resulting from the unlawful appointment and may also be subject to disciplinary action. The CRU finds that the appointment was made in good faith, was not the fault of the appointed employee, and did not merit being voided since it has been over one year since the unlawful appointment occurred.

Cause: The Council contracts out for some of its HR services through an agreement with CAL FIRE. Since the Council does not have access to employment history, it was assumed that CAL FIRE verified the appointee’s last A01 appointment.

Action: More than one year has elapsed, and the candidate accepted the offer in good faith. Therefore, no further action is required at this time for this appointment. It is recommended that within 60 days of the Executive Officer’s approval of these findings and recommendations, the Council submit to the CRU a written corrective action plan that addresses the corrections the department will implement to ensure the department will improve its hiring practices. Copies of any relevant documentation should be included with the plan.

Equal Employment Opportunity

Each state agency is responsible for an effective EEO program. (Gov. Code, § 19790.) The appointing power for each state agency has the major responsibility for monitoring the effectiveness of its EEO program. (Gov. Code, § 19794.) To that end, the appointing power must issue a policy statement committed to equal employment opportunity; issue procedures for filing, processing, and resolving discrimination complaints; issue procedures for providing equal upward mobility and promotional opportunities; and cooperate with the California Department of Human Resources by providing access to all required files, documents and data. (*Ibid.*) In addition, the appointing power must appoint, at the managerial level, an EEO officer, who shall report directly to, and be under the supervision of, the director of the department to develop, implement, coordinate, and monitor the department's EEO program. (Gov. Code, § 19795.) In a state agency with less than 500 employees, like the Council, the EEO officer may be the personnel officer. (*Ibid.*)

Because the EEO Officer investigates and ensures proper handling of discrimination, sexual harassment and other employee complaints, the position requires separation from the regular chain of command, as well as regular and unencumbered access to the head of the organization.

Each state agency must establish a separate committee of employees who are individuals with a disability, or who have an interest in disability issues, to advise the head of the agency on issues of concern to employees with disabilities. (Gov. Code, § 19795, subd. (b)(1).) The department must invite all employees to serve on the committee and take appropriate steps to ensure that the final committee is comprised of members who have disabilities or who have an interest in disability issues. (Gov. Code, § 19795, subd. (b)(2).)

The CRU reviewed the Council's EEO program that was in effect during the compliance review period. In addition, the CRU interviewed appropriate Council staff.

FINDING NO. 2 – Equal Employment Opportunity Program Complied with 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 Council'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, and is the personnel officer and reports directly to the Executive Officer of the Council. In addition, the Council has an established DAC, that reports to the Executive Officer on issues affecting persons with a disability. The Council also provided evidence of its efforts to promote EEO in its hiring and employment practices, to increase its hiring of persons with a disability, and to offer upward mobility opportunities to its entry-level staff.

Personal Services Contracts

A personal services contract (PSC) includes any contract, requisition, or purchase order under which labor or personal services is a significant, separately identifiable element, and the business or person performing the services is an independent contractor that does not have status as an employee of the State. (Cal. Code Reg., tit. 2, § 547.59.) The California Constitution has an implied civil service mandate limiting the state's authority to contract with private entities to perform services the state has historically or customarily performed. Government Code section 19130, subdivision (a), however, codifies exceptions to the civil service mandate where PSC's achieve cost savings for the state. PSC's that are of a type enumerated in subdivision (b) of Government Code section 19130 are also permissible. Subdivision (b) contracts include private contracts for a new state function, services that are not available within state service, services that are incidental to a contract for the purchase or lease of real or personal property, and services that are of an urgent, temporary, or occasional nature.

For cost-savings PSC's, a state agency is required to notify SPB of its intent to execute such a contract. (Gov. Code, § 19131.) For subdivision (b) contracts, the SPB reviews the adequacy of the proposed or executed contract at the request of an employee organization representing state employees. (Gov. Code, § 19132.)

During the compliance review period, the Council had 49 PSC's that were in effect. Fifteen contracts were subject to Department of General Services (DGS) approval, and thus our procedural review, which are listed below:

Vendor	Services	Contract Dates	Contract Amount	Sufficient Justification
Elizabeth Canuel, Ph.D	Delta Independent Science Board Member	9/01/2010 - 8/31/2014	\$101,498	Yes
Tracy Collier, Ph.D	Delta Independent Science Board Member	9/01/2010 - 8/31/2014	\$110,240.00	Yes
Edward Houde, Ph.D	Delta Independent Science Board Member	9/01/2010 - 8/31/2014	\$104,711	Yes
Richard Norgaard, Ph.D	Delta Independent Science Board Member	9/01/2010 - 8/31/2014	\$154,082	Yes
Vincent Resh	Delta Independent Science Board Member	9/01/2010 - 8/31/2014	\$123,238	Yes
John Wiens	Delta Independent Science Board Member	9/01/2010 - 8/31/2014	\$121,826	Yes
ARCADIS, U.S., Inc.	Independent Bay Delta Conservation Plan (BDGP) Review	2/01/2011 - 6/30/2015	\$1,200,000	Yes
The Regents of the University of California, San Diego	Delta Science Fellows Program	2/01/2012 - 12/31/2015	\$1,777,774	Yes
Jay Lund, Ph.D	Delta Independent Science Board Member	11/01/2012-8/31/2014	\$63,000	Yes
Harinda Joseph Fernando, Ph.D	Delta Independent Science Board Member	10/01/2012 - 8/31/2014	\$70,000	Yes
Association of Bay Area Governments (ABAG)	Science Experts	7/01/2013 - 6/30/2015	\$400,000	Yes
Propoint Technology, Inc.	IT Consulting Services	7/01/2013 - 6/30/2014	\$87,000	Yes
Inland Empire Utilities Agency	Policy Advisor	7/01/2012 - 9/30/2014	\$140,000	Yes
Video Streaming Services	Webcasting Services	1/03/2012 - 6/30/2014	\$249,999	Yes

Vendor	Services	Contract Dates	Contract Amount	Sufficient Justification
Propoint Technology, Inc.	IT Consulting Services	6/24/2013 - 6/30/2017	\$210,000	Yes

FINDING NO. 3 – Personal Services Contracts Complied with Procedural Requirements

When a state agency requests approval from the Department of General Services for a subdivision (b) contract, the agency must include with its contract transmittal a written justification that includes *specific and detailed factual information* that demonstrates how the contract meets one or more conditions specified in Government Code section 19131, subdivision (b). (Cal. Code Reg., tit. 2, § 547.60.)

The total amount of all the PSCs reviewed was \$4,913,368. It was beyond the scope of the review to make conclusions as to whether Council justifications for the contract were legally sufficient. For all PSC’s reviewed, the Council provided specific and detailed factual information in the written justifications as to how each of the 15 contracts met at least one condition set forth in Government Code section 19131, subdivision (b). Accordingly, the Council’s PSC’s complied with procedural requirements.

DEPARTMENTAL RESPONSE

The appointee’s last A01 appointment was not verified by the Council because it was assumed that the contracted HR office (CAL FIRE) verified this information. Therefore, the Council erroneously used the appointee’s A02 appointment as a Staff Services Management Auditor as shown on the appointee’s state application to determine transferability instead of their last list appointment as Auditor I. This resulted in applying the transfer rules to the A02 class instead of the A01 class, thus an unlawful appointment occurred. The appointee was notified that this is considered a “good faith” appointment and that no further action would be taken since once year had passed since the appointment was made. Also, the appointee was told that they should go through the examination process before applying for jobs that are not within transfer range from their last list appointment as Auditor I.

Corrective Action: For future list or transfer appointments, the Council will obtain employment history from its contracted HR office (CAL FIRE) to determine if appointment is lawful or not.

SPB REPLY

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

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