



COMPLIANCE REVIEW REPORT

DELTA STEWARDSHIP COUNCIL

Compliance Review Unit
State Personnel Board
January 17, 2020

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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 comply 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 Delta Stewardship Council (Council)'s personnel practices in the areas of examinations, appointments, EEO, PSC's, mandated training, compensation and pay, leave, and policy and processes¹. The following table summarizes the compliance review findings.

Area	Finding
Examinations	Examinations Complied with Civil Service Laws and Board Rules
Appointments	Unlawful Appointments
Appointments	Probationary Evaluations Were Not Provided for All Appointments Reviewed
Appointments	Appointment Documentation Was Not Kept for the Appropriate Amount of Time
Appointments	Equal Employment Opportunity Questionnaires Were Not Separated from Applications
Equal Employment Opportunity	A Disability Advisory Committee Has Not Been Actively Maintained
Equal Employment Opportunity	Complainant Was Not Notified of the Reasons for Delays in a Decision Within the Prescribed Time Period
Personal Services Contracts	Written Justification Was Not Provided for All 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	Incorrect Application of Compensation Laws, Rules, and CalHR Policies and Guidelines

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

Area	Finding
Compensation and Pay	Alternate Range Movements Did Not Comply with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Compensation and Pay	Out-of-Class Pay Authorization Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Leave	Department Did Not Retain Employee Time and Attendance Records
Leave	Department Has Not Implemented a Monthly Internal Audit Process to Verify All Leave Input is Keyed Accurately and Timely
Leave	Leave Reduction Plans Were Not Provided to Employees Whose Leave Balances Exceeded Established Limits
Policy	Department Does Not Maintain a Current Written Nepotism Policy
Policy	Workers' Compensation Policy Was Not Provided to New Employees by the End of the First Pay Period
Policy	Injured Employee Did Not Receive Claim Form Within One Working Day of Notice or Knowledge of Injury
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 = Non-serious or Technical
- Green = In Compliance

BACKGROUND

The Delta Reform Act of 2009 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. The Council oversees a committee of agencies responsible for implementing the Delta Plan, which is 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 approximately 69 permanent positions and 1.5 temporary help positions.

SCOPE AND METHODOLOGY

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

On behalf of the Council, the California Department of Forestry and Fire Protection (CAL FIRE) administers all examinations. A cross-section of the Council'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 CAL FIRE provided, which included examination plans, examination bulletins, job analyses, and scoring results. During the compliance review period, the CAL FIRE did not conduct any permanent withhold actions on behalf of the Council.

The CAL FIRE processes all appointments on behalf of the Council (excluding classification and pay). A cross-section of the Council's appointments were selected to ensure that samples of various appointment types, classifications, and levels were reviewed. The CRU examined the documentation that the Council and the CAL FIRE provided, which generally included notice of personnel action (NOPA) forms, requests for personnel actions (RPAs), vacancy postings, certification lists, transfer movement worksheets, employment history records, correspondence, and probation reports. The Council did not conduct any unlawful appointment investigations during the compliance review period. Additionally, the Council did not make any additional appointments during the compliance review period.

The Council's appointments were also selected for review to ensure the Council and CAL FIRE applied salary regulations accurately and correctly processed employees' compensation and pay. The CRU examined the documentation that the Council and the CAL FIRE provided, which included employees' employment and pay history and any other relevant documentation such as certifications, degrees, and/or appointees'

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

applications. Additionally, the CRU reviewed specific documentation for the following personnel functions related to compensation and pay: alternate range movement (within the same classification) and out-of-class pay. During the compliance review period, the Council did not issue or authorize hire above minimum (HAM) requests, red circle rates, bilingual pay, arduous pay, or any other monthly pay differential.

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

The Council'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 and managers were provided supervisory and sexual harassment prevention training within statutory timelines.

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

The CRU reviewed the timesheets and leave materials that the CAL FIRE maintains on behalf of the Council to verify that they created a monthly internal audit process to verify all leave input into any leave accounting system was keyed accurately and timely. The CRU selected the Council's only unit in order to ensure they maintained accurate and timely leave accounting records. The Council did not administer Administrative Time Off (ATO) or track any temporary intermittent employees by actual time worked during the compliance review period.

³ 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.

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

On October 29, 2019, an exit conference was held with the Council to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed the Council's written response on November 1, 2019, which is attached to this final compliance review report.

FINDINGS AND RECOMMENDATIONS

Examinations

Examinations to establish an eligible list must be competitive and of such character as fairly to test and determine the qualifications, fitness, and ability of competitors to perform the duties of the class of position for which he or she seeks appointment. (Gov. Code, § 18930.) Examinations may be assembled or unassembled, written or oral, or in the form of a demonstration of skills, or any combination of those tests. (*Ibid.*) The Board establishes minimum qualifications for determining the fitness and qualifications of employees for each class of position and for applicants for examinations. (Gov. Code, § 18931, subd. (a).) Within a reasonable time before the scheduled date for the examination, the designated appointing power shall announce or advertise the examination for the establishment of eligible lists. (Gov. Code, § 18933, subd. (a).) The advertisement shall contain such information as the date and place of the examination and the nature of the minimum qualifications. (*Ibid.*) Every applicant for examination shall file an application in the office of 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, 2016, to June 30, 2017, the CAL FIRE conducted two examinations on the behalf of the Council. The CRU reviewed both of those examinations, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Apps
Chief Deputy Executive Officer, Career Executive Assignment (CEA)	CEA	Statement of Qualifications (SOQ) ⁴	5/26/17	13
Deputy Director for Administration, CEA	CEA	SOQ	12/19/16	8

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

The CRU reviewed two CEA examinations, which the CAL FIRE administered on behalf of the Council, in order to create eligible lists from which to make appointments. The CAL FIRE published and distributed examination bulletins containing the required information for all examinations. Applications received by the CAL FIRE 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. During the compliance review period, the CRU found no deficiencies in the examinations that the CAL FIRE conducted 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.) 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

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.

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, 2016, to June 30, 2017, the Council made 26 appointments. The CRU reviewed 18 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts
Assistant Information Systems Analyst	Certification List	Permanent	Full Time	1
Associate Government Program Analyst	Certification List	Permanent	Full Time	1
Attorney	Certification List	Limited Term	Full Time	1
Attorney IV	Certification List	Permanent	Full Time	1
Coastal Program Analyst III	Certification List	Permanent	Full Time	1
Environmental Scientist	Certification List	Permanent	Full Time	1
Executive Assistant	Certification List	Permanent	Full Time	1
Information Officer I	Certification List	Permanent	Full Time	1
Program Manager II, California Bay-Delta Authority	Certification List	Permanent	Full Time	2
Program Manager III, 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	2
Staff Information Systems Analyst	Certification List	Permanent	Full Time	1
Associate Personnel Analyst	Transfer	Permanent	Part Time	1
Senior Accounting Officer (Specialist)	Transfer	Permanent	Full Time	1
Senior Environmental Scientist (Specialist)	Transfer	Permanent	Full Time	1

For each of the 15 list appointments reviewed, the Council ordered a certification list of candidates ranked competitively. After properly clearing the certification lists including State Restriction of Appointment (SROA) eligibles, the selected candidates were appointed based on eligibility attained by being reachable within the first three ranks of the certification lists. However, the Council failed to verify that three of the candidates hired met the minimum qualifications for the classifications as described below:

Classification	Appointment Effective Date
Program Manager II, California Bay Delta Authority	05/15/17
Program Manager II, California Bay Delta Authority	06/12/17
Program Manager III, California Bay Delta Authority	12/12/16

FINDING NO. 2 – Unlawful Appointments

Summary: The Council made three appointments from certification lists for the Program Manager II and III, California Bay Delta Authority classifications. The hired candidates did not possess the minimum qualifications for appointment to their respective classifications.

The CRU referred these unlawful appointments to the CalHR Personnel Management Division (PMD). The PMD informed the Council of the findings with instructions to investigate and take corrective action. The CRU and the PMD found the three hires to be unlawful appointments, as did the Council.

Criteria: Government Code section 18931, subdivision (a), provides that the Board shall establish minimum qualifications for determining the fitness and qualifications of employees for each class of position. In accordance with California Code of Regulations, title 2, section 249.4, appointing powers shall verify that the candidate satisfies the minimum qualifications of the classification before the candidate is appointed.

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 that 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 be subject to disciplinary action. In this case, the appointments will stand as more than one year has elapsed and the candidates accepted the job offers in good faith.

Cause: The Council states that minimum qualification reviews were completed by the CAL FIRE and that the three unlawful appointments were due to CAL FIRE staff incorrectly interpreting the minimum qualifications.

Action: The CRU referred these unlawful appointments to PMD. The PMD worked with the Council on the findings with instructions to investigate and take corrective action. Within 60 days of the SPB Executive Officer’s approval of these findings and recommendations, the Council must submit to the CRU a written corrective action response that addresses the corrections the department will implement to ensure conformity with California Code of Regulations, title 2, section 249.4. Copies of any relevant documentation should be included with the response.

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

Summary: The Council did not provide 15 probationary reports of performance for 8 of the 18 appointments reviewed by the CRU, as reflected in the table below:

Classification	Appointment Type	Number of Appointments	Total Number of Missing Probation Reports
Assistant Information Systems Analyst	Certification List	1	3
Associate Governmental Program Analyst	Certification List	1	2
Associate Personnel Analyst	Transfer	1	3
Coastal Program Analyst III	Certification List	1	1
Information Officer I	Certification List	1	1
Senior Accounting Officer Specialist	Transfer	1	1

Classification	Appointment Type	Number of Appointments	Total Number of Missing Probation Reports
Senior Engineer Water Resources	Certification List	1	1
Staff Information Systems Analyst	Certification List	1	3
Total		8	15

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 Council maintains a manual system for the process of notification and tracking of probationary reports. This manual

process caused a failure to obtain completed probationary reports for 8 of the 18 appointments reviewed.

Action: It is recommended that within 60 days of the SPB Executive Officer's approval of these findings and recommendations, the Council submit to the CRU a written corrective action response that addresses the corrections the department will implement to ensure conformity with the probationary requirements of Government Code section 19172. Copies of any relevant documentation should be included with the response.

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

Summary: The Council failed to retain personnel records as required. Of the 18 appointments reviewed, the Council did not retain two employment applications.

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 5 years from the date the record is created. These records are required to be readily accessible and retained in an orderly and systematic manner. (Cal. Code Reg., tit. 2, § 26.)

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

Cause: The Council acknowledges that it did not have proper controls in place and as a result it did not retain two employment applications.

Action: It is recommended that within 60 days of the SPB Executive Officer's approval of these findings and recommendations, the Council submit to the CRU a written corrective action response that addresses the corrections the department will implement to ensure conformity with the record retention requirements of California Code of Regulations, title 2, section 26. Copies of any relevant documentation should be included with the response.

FINDING NO. 5 – Equal Employment Opportunity Questionnaires Were Not Separated from Applications

Summary: Out of 18 appointments reviewed, three appointment files included applications where EEO questionnaires were not separated from the STD. 678 employment application. Specifically, 9 of the 246 applications reviewed included EEO questionnaires that were not separated from the STD. 678 employment application.

Criteria: Government Code section 19704 makes it unlawful for a hiring department to require or permit any notation or entry to be made on any application indicating or in any way suggesting or pertaining to any protected category listed in Government Code section 12940, subdivision (a) (e.g., a person’s race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status). Applicants for employment in state civil service are asked to voluntarily provide ethnic data about themselves where such data is determined by the CalHR to be necessary to an assessment of the ethnic and sex fairness of the selection process and to the planning and monitoring of affirmative action efforts. (Gov. Code, § 19705.) The EEO questionnaire of the state application form (STD. 678) states, “This questionnaire will be separated from the application prior to the examination and will not be used in any employment decisions.”

Severity: Very Serious. The applicants’ protected classes were visible, subjecting the agency to potential liability.

Cause: The Council states that the EEO questionnaires were not removed from the employment applications as a result of an oversight.

Action: It is recommended that within 60 days of the SPB Executive Officer’s approval of these findings and recommendations, the Council submit to the CRU a written corrective action response that the department will implement to ensure that future EEO questionnaires are separated from all applications. Copies of any relevant documentation should be included with the response.

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).)

The Council had the appropriate policies necessary for compliance with the EEO program's role and responsibilities according to statutory and regulatory guidelines. While the Council's EEO program provided employees with information and guidance on the EEO process including instructions on how to file discrimination claims, the CRU's review found that the Council did not respond to one discrimination complaint within the regulatory timeframe. Additionally, the Council has not actively maintained a DAC as required by statute.

FINDING NO. 6 – A Disability Advisory Committee Has Not Been Actively Maintained

Summary: The Council does not have an active DAC.

Criteria: 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).)

Severity: Very Serious. The agency head does not have direct information on issues of concern to employees or other persons with disabilities and input to correct any underrepresentation. The lack of a DAC may limit an agency's ability to recruit and retain a qualified workforce, impact productivity, and subject the agency to liability.

Cause: The Council states that its DAC coordinator transferred to another agency and a replacement coordinator was not identified.

Action: The Council must take appropriate steps to ensure the establishment of a DAC, comprised of members who have disabilities or who have an interest in disability issues. The Council must submit to the CRU a written report of compliance, including the DAC roster, agenda, and meeting minutes, no later than 60 days from the date of the SPB Executive Officer's approval of these findings and recommendations.

FINDING NO. 7 – Complainant Was Not Notified of the Reasons for Delays in a Decision Within the Prescribed Time Period

Summary: The Council provided evidence that one discrimination complaint related to a disability, medical condition, or denial of reasonable accommodation was filed during the compliance review period. The complaint investigation exceeded 90 days and the Council failed to provide written communication to the complainant regarding the status of the complaint and/or the reasons it was unable to issue a decision within 90 days.

The Council counters that an August 4, 2017, e-mail correspondence satisfied the notification requirements. However, the August 4, 2017, correspondence does not inform the complainant that a decision would not be issued within 90 days of the complaint being filed, nor does it set forth the reasons why a decision could not be made within the prescribed time period. Thus, the requirements of California

Code of Regulations, title 2, section 64.4, subdivision (a), were not met.

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

Severity: Very Serious. An employee was not informed of the reasons for delays in a decision for a discrimination complaint. When this occurs, employees may feel their concerns are not being taken seriously, which can leave the agency open to liability and low employee morale.

Cause: The Council disputes this finding and does not provide a cause for the deficiency. However, it should be noted that the Council does not have a discrimination complaint tracking system in place.

Action: It is recommended that within 60 days of the SPB Executive Officer's approval of these findings and recommendations, the Council submit to the CRU a written corrective action response that addresses the corrections the department will implement to ensure conformity with the requirements of California Code of Regulations, title 2, section 64.4, subdivision (a). Copies of any relevant documentation should be included with the plan.

Personal Services Contracts

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

permissible. Subdivision (b) contracts include private contracts for a new state function, services that are not available within state service, services that are incidental to a contract for the purchase or lease of real or personal property, and services that are of an urgent, temporary, or occasional nature.

For cost-savings PSC's, a state agency is required to notify 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, 2016, to September 30, 2017, the Council had 63 PSC's that were in effect. The CRU reviewed nine of those, which are listed below:

Vendor	Services	Contract Dates	Contract Amount
Aquatic Science Center	Delta Landscape Scenario Planning	06/01/17-06/30/20	\$957,000
Bay Conservation and Development Commission	Climate Change Vulnerability Assessment and Adaption Plan	06/30/17-06/30/18	\$150,000
Frances P. Wilkerson Dugdale	2015 Drought Barrier Study	06/01/17-06/30/19	\$18,000
GEI Consultants Inc.	IT Services	06/30/17-06/30/18	\$59,487
Hans W. Paerl	Independent Science Panel Member	11/01/16-12/30/17	\$14,661
National Academy of Sciences	Study of Challenges and Opportunities in Environmental Engineering and Sciences	03/20/17-03/19/19	\$100,000
Resource Management Associates, Inc.	Water Quality and Hydrodynamic Model Review and Scoping Study	06/30/17-06/30/20	\$250,000
Roger Fujii Consulting	Consulting	05/01/17-06/30/18	\$30,000
Sara E. McClellan	Public Speaking Training	08/01/16-06/30/18	\$2,000

FINDING NO. 8 – Written Justification Was Not Provided for All Personal Services Contracts

Summary: The Council did not properly document the reasons why the following contract satisfied Government Code section 19130, subdivision (b).

Vendor	Services	Contract Dates	Contract Amount
Sara E. McClellan	Public Speaking Training	08/01/16-06/30/18	\$2,000

Criteria: Whenever an agency executes a personal services contract under Government Code section 19130, subdivision (b), the agency shall document, with specificity and detailed factual information, the reasons why the contract satisfies one or more of the conditions specified in Government Code section 19130, subdivision (b). (Cal. Code Reg., tit. 2, § 547.60, subd. (a).) The agency shall maintain the written justification for the duration of the contract and any extensions of the contract or in accordance with the record retention requirements of section 26, whichever is longer. (Cal. Code Reg., tit. 2, § 547.60, subd. (b).)

Severity: Serious. Without specific written justification detailing why a PSC satisfies one or more conditions specified in Government Code section 19130, the CRU could not determine whether the department’s PSC’s complied with current procedural requirements.

Cause: The Council acknowledges that one PSC had an insufficient justification due to error.

Action: The Council will submit to the CRU a written corrective action response that ensures conformity with the requirements of the Government Code section 19130 no later than 60 days from the date of the SPB Executive Officer’s approval of these findings and recommendations.

Mandated Training

Each member, officer, or designated employee of a state agency who is required to file a statement of economic interest (referred to as “filers”) because of the position he or she holds with the agency is required to take an orientation course on the relevant ethics statutes and regulations that govern the official conduct of state officials. (Gov. Code, §§

11146 & 11146.1.) State agencies are required to offer filers the orientation course on a semi-annual basis. (Gov. Code, § 11146.1.) New filers must be trained within six months of appointment and at least once during each consecutive period of two calendar years, commencing on the first odd-numbered year thereafter. (Gov. Code, § 11146.3.)

Upon the initial appointment of any employee designated in a supervisory position, the employee shall be provided a minimum of 80 hours of training, as prescribed by the CalHR. (Gov. Code, § 19995.4, subd. (b).) The training addresses such topics as the role of the supervisor, techniques of supervision, performance standards, and sexual harassment and abusive conduct prevention. (Gov. Code, §§ 12950.1, subds. (a), (b), & 19995.4, subd. (b).)

Additionally, the training must be successfully completed within the term of the employee's probationary period or within six months of the initial appointment, unless it is demonstrated that to do so creates additional costs or that the training cannot be completed during this time period due to limited availability of supervisory training courses. (Gov. Code, § 19995.4, subd. (c).) As to the sexual harassment and abusive-conduct prevention component, the training must thereafter be provided to supervisors once every two years. (Gov. Code, § 12950.1.)

Within 12 months of the initial appointment of an employee to a management or career executive assignment (CEA) position, the employee shall be provided leadership training and development, as prescribed by CalHR. (Gov. Code, § 19995.4, subds. (d) & (e).) For management employees the training must be a minimum of 40 hours and for CEAs the training must be a minimum of 20 hours. (*Ibid.*) Thereafter, for both categories of appointment, the employee must be provided a minimum of 20 hours of leadership training on a biennial basis. (*Ibid.*)

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

The CRU reviewed all the training records for the Council's mandated training program that was in effect during the compliance review period of July 1, 2016, to June 30, 2017. The Council's supervisory training was found to be in compliance; while the Council's

ethics training and sexual harassment prevention training were found to be out of compliance.

FINDING NO. 9 – Ethics Training Was Not Provided for All Filers

Summary: The Council did not provide ethics training to 3 of 11 existing filers. In addition, the Council did not provide ethics training to two of four 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 Council states that the ethics training was not completed in a timely manner due to its manual tracking process and limited staff resources.

Action: The Council must take appropriate steps to ensure that filers are provided ethics training within the mandatory time periods in statute. It is therefore recommended that no later than 60 days after the SPB Executive Officer's approval of these findings and recommendations, the Council must establish a process to ensure compliance with ethics training mandates and submit to the SPB a corrective action response.

FINDING NO. 10 – Sexual Harassment Prevention Training Was Not Provided for All Supervisors

Summary: The Council did not provide sexual harassment prevention training to two of four new supervisors within six months of their appointment. In addition, the Council did not provide sexual harassment prevention training to 1 of 11 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 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 Council states that the sexual harassment prevention training was not completed in a timely manner due to their manual tracking process and limited staff resources.

Action: The Council must take appropriate steps to ensure that its supervisors are provided sexual harassment prevention training within the mandated time periods in statute. It is therefore recommended that no later than 60 days after the SPB Executive Officer's approval of these findings and recommendations, the Council must establish a process to ensure compliance with sexual harassment training mandates and submit to the SPB a 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 Reg., 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, and the employee's state employment 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

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).

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, 2016, to June 30, 2017, the Council made 26 appointments. The CRU reviewed 20 of those appointments to determine if the CAL FIRE, on behalf of the Council, applied salary regulations accurately and correctly processed employees' compensation transactions. These appointments are listed below:

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Assistant Information Systems Analyst	Certification List	Permanent	Full Time	\$3,247
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	\$4,600
Attorney	Certification List	Limited Term	Full Time	\$5,130
Attorney IV	Certification List	Permanent	Full Time	\$11,361
Coastal Program Analyst III	Certification List	Permanent	Full Time	\$6,350
Environmental Scientist	Certification List	Permanent	Full Time	\$5,372
Executive Assistant	Certification List	Permanent	Full Time	\$4,277
Information Officer I	Certification List	Permanent	Full Time	\$4,600
Program Manager II, California Bay-Delta Authority	Certification List	Permanent	Full Time	\$10,561
Program Manager II, California Bay-Delta Authority	Certification List	Permanent	Full Time	\$10,561
Program Manager III, California Bay-Delta Authority	Certification List	Permanent	Full Time	\$11,221
Senior Engineer Water Resources	Certification List	Permanent	Full Time	\$9,829
Senior Environmental Scientist (Specialist)	Certification List	Permanent	Full Time	\$5,888
Senior Environmental Scientist (Specialist)	Certification List	Permanent	Full Time	\$5,923
Staff Information Systems Analyst	Certification List	Permanent	Full Time	\$5,295

Associate Governmental Program Analyst (AGPA)	Mandatory Reinstatement	Permanent	Part Time	\$5,591
Office Technician (Typing) - Limited Examination and Appointment Program	Mandatory Reinstatement	TAU	Full Time	\$2,809
Associate Personnel Analyst	Transfer	Permanent	Part Time	\$5,758
Senior Accounting Officer (Specialist)	Transfer	Permanent	Full Time	\$5,758
Senior Environmental Scientist (Specialist)	Transfer	Permanent	Full Time	\$7,200

The CRU found 2 deficiencies out of the 20 salary determinations that the CAL FIRE made, on behalf of the Council, during the compliance review period. The CAL FIRE appropriately calculated and processed the salaries for 18 appointments and correctly determined employees' anniversary dates ensuring that subsequent merit salary adjustments will satisfy civil service laws, Board rules and CalHR policies and guidelines.

However, the CAL FIRE incorrectly applied compensation laws, rules and CalHR policies and guidelines for two salary determinations reviewed.

FINDING NO. 11 – Incorrect Application of Compensation Laws, Rules, and CalHR Policies and Guidelines

Summary: The CRU found the following errors in the CAL FIRE's determination of the Council's employee compensation:

Classification	Description of Finding(s)	Criteria
AGPA (2 positions)	An employee's anniversary date was incorrectly determined when keying employee's merit salary adjustment resulting in the employee receiving a merit salary adjustment one month late.	California Code of Regulations, title 2, section 599.683, subd. (a)

Criteria: Departments are required to calculate and apply salary rules for each appointed employee accurately based on the pay plan for the state

civil service. All civil service classes have salary ranges with minimum and maximum rates. (Cal. Code Regs., tit. 2, § 599.666.)

Severity: Very Serious.

The Council failed to comply, in two instances, with the state civil service pay plan. Incorrectly applying compensation laws and rules in accordance with CalHR's policies and guidelines results in civil service employees receiving incorrect and/or inappropriate pay amounts.

Cause: The Council states the incorrect determination of two employees' anniversary dates was caused by human error.

Action: The Council must take appropriate steps to ensure that all employees are compensated correctly and timely. It is therefore recommended that no later than 60 days after the SPB Executive Officer's approval of these findings and recommendations, the Council must submit a written plan that addresses the audit and correction system the department will implement to ensure compliance with the state civil service pay policies and procedures. In addition, the Council must provide any relevant documentation showing the corrections that were made for the underpayments.

Alternate Range Movement (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 Reg., tit. 2, § 599.681). However, in many instances, CalHR provides salary rules departments must use when employees move between alternate ranges. These rules are described in the alternate range criteria (California State Civil Service 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, April 1, 2016, to March 31, 2017, two Council employees made two alternate range movements within a classification. The CRU reviewed both of those alternate range movements to determine if the CAL FIRE, on behalf of the Council, applied salary regulations accurately and correctly processed each employee's compensation, which are listed below:

Classification	Prior Range	Current Range	Time Base	Salary
Attorney IV	No Range	Range A	Full Time	\$11,362
Environmental Scientist	Range B	Range C	Full Time	\$5,116

FINDING NO. 12 – Alternate Range Movements Did Not Comply with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines

Summary: The CRU found the following error in the Council’s determination of employee compensation.

Classification	Description of Finding	Criteria
Environmental Scientist	Incorrect calculation of the experience required for movement to the next alternate range. Employee was overcompensated.	Alternate Range Criteria 430

Criteria: Alternate ranges are designed to recognize increased competence in the performance of class duties based upon experience obtained while in the class. The employee gains status in the alternate range as though each range were a separate classification. (Classification and Pay Guide Section 220).

Departments are required to calculate and apply salary rules for each appointed employee accurately based on the pay plan for the state civil service. All civil service classes have salary ranges with minimum and maximum rates. (Cal. Code Reg., tit. 2, § 599.666.)

Severity: Very Serious. The CAL FIRE, on behalf of the Council, failed to comply with the state civil service pay plan by incorrectly applying compensation laws and rules not in accordance with CalHR’s policies and guidelines. This results in civil service employees receiving incorrect and/or inappropriate pay amounts.

Cause: The Council acknowledges that one employee did not meet the experience required for movement to the next alternate range as a result of miscalculation.

Action: The Council must take appropriate steps to ensure that employees are compensated correctly. It is therefore recommended that no later

than 60 days after the SPB Executive Officer’s approval of these findings and recommendations, the Council must submit a written plan that addresses the audit and correction system the department will implement to ensure compliance with the state civil service pay plan. In addition, the Council must provide any relevant documentation showing the corrections that were made and that accounts receivables were created to collect the overpayments.

Out-of-Class Assignments and Pay

For excluded⁶ 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, subd. (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 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 provision 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, April 1, 2016, to March 31, 2017, the Council issued out-of-class pay to one employee. The CRU reviewed the out-of-class assignment to ensure compliance with applicable CalHR policies and guidelines. This is listed below:

Classification	Collective Bargaining Identifier	Out-of-Class Classification	Time Frame
Attorney IV	R02	Chief Counsel	9/1/16-3/7/17

⁶ “Excluded employee” means an employee as defined in section 3572, 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.

FINDING NO. 13 – Out-of-Class Pay Authorization Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines

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

Leave

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 Reg., 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, 2017, to March 31, 2017, the Council reported 1 unit comprised of 64 active employees during the January 2017 pay period, 1 unit comprised of 68 active employees during the February 2017 pay period, and 1 unit comprised of 66 active employees during the March 2017 pay period. The pay periods and timesheets reviewed by the CRU are summarized as follows:

Timesheet Leave Period	Number of Units Reviewed	Number of Employees ⁷	Number of Timesheets Reviewed	Number of Missing Timesheets
January 2017	1	64	55	1
February 2017	1	68	59	2
March 2017	1	66	58	0

FINDING NO. 14 – Department Did Not Retain Employee Time and Attendance Records

Summary: The Council did not retain 1 of 55 timesheets from the January 2017 pay period and 2 of 59 timesheets from the February 2017 pay period.

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.) Such records shall be kept in the form and manner prescribed by the Department of Finance in connection with its powers to devise, install and supervise a modern and complete accounting system for state agencies. (*Ibid.*)

Severity: Serious. The Council failed to retain employee time and attendance records for each employee. Therefore, the department was unable to reconcile timesheets against their leave accounting system at the conclusion of the pay period, which could have affected employee leave accruals and compensation.

Cause: The Council acknowledges that they did not certify or submit all attendance documents for each Council employee as a result of an oversight.

Action: It is recommended that within 60 days of the SPB Executive Officer’s approval of these findings and recommendations, the Council submit to the CRU a written corrective action response that addresses the corrections the department will implement to ensure all timesheets

⁷ Total number of employees in the unit including exempt employees that were not required to complete a timesheet.

are accounted for and processed in conformity with California Code of Regulations, title 2, section 599.665.

FINDING NO. 15 – Department Has Not Implemented a Monthly Internal Audit Process to Verify All Leave Input is Keyed Accurately and Timely

Summary: The Council failed to provide Leave Activity and Certification forms for all three units reviewed during the January through March 2017 pay periods. As such, the Council was unable to demonstrate that they implemented a monthly internal audit process to verify all leave input was keyed accurately and timely for Council employees.

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, § section 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 department 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 Council states that its assigned HR analyst failed to implement the requirement to perform monthly audits of employee leave use to ensure errors were corrected timely.

Action: The Council must take appropriate steps to ensure that their monthly internal audit process was documented. It is recommended that, within 60 days of the SPB Executive Officer's approval of these findings and recommendations, the Council submit to the CRU a plan wherein the department will document and implement a monthly internal audit process to ensure that all leave input was keyed accurately and timely.

Leave Reduction Efforts

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

Applicable Memorandums of Understanding and the California Code of Regulations prescribe the maximum amount of vacation or annual leave permitted. "If a represented employee is not permitted to use all of the vacation to which he or she is entitled in a calendar year, the employee may accumulate the unused portion."⁸ (Cal. Code Regs., tit. 2, § 599.737.) If it appears an excluded employee will have a vacation or annual leave balance that will be above the maximum amount⁹ as of January 1 of each year, the appointing power shall require the supervisor to notify and meet with each employee so affected by the preceding July 1, to allow the employee to plan time off, consistent with operational needs, sufficient to reduce their balance to the amount permitted by the applicable regulation, prior to January 1. (Cal. Code Regs., tit. 2, § 599.742.1.)

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

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

⁸ For represented employees, the established limit for annual or vacation leave accruals is 640 hours, however for bargaining unit 6 there is no established limit and for bargaining unit 5 the established limit is 816 hours.

⁹ Excluded employees shall not accumulate more than 80 days.

Classification	Collective Bargaining Identifier	Total Hours Over Established Limit	Leave Reduction Plan Provided
Career Executive Assignment	M01	1,008	Yes
Career Executive Assignment	M01	62	Yes
Legislative and Policy Advisor, Delta Stewardship Council	E99	188.25	Yes
Program Manager II, California Bay-Delta Authority	M10	154	Yes
Program Manager III, California Bay-Delta Authority	M10	812	Yes
Staff Services Manager I	S01	367	No
Staff Services Manager I	S01	55	Yes
Supervising Engineer Water Resources	S09	61	No
Total Hours		2,707.25	

FINDING NO. 16 – Leave Reduction Plans Were Not Provided to Employees Whose Leave Balances Exceeded Established Limits

Summary: Although the Council made a reasonable effort to ensure that all employees over the maximum vacation or annual leave hours had leave reduction plans in place, the Council did not provide leave reduction plans for two of the eight employees reviewed whose leave balances significantly exceeded established limits.

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

Severity: Non-serious or Technical. California state employees have accumulated significant leave hours creating an unfunded liability for departmental budgets. The value of this liability increases with each

passing promotion and salary increase. Accordingly, leave balances exceeding established limits need to be addressed immediately.

Cause: The Council states that leave reduction information was distributed but not consistently adhered to.

Action: The Council must take appropriate steps to ensure employees who have significant “over-the-cap” leave balances implement a leave reduction plan and are actively reducing hours. It is therefore recommended that no later than 60 days after the SPB Executive Officer’s approval of these findings and recommendations, the Council must establish a policy and plan to address leave reduction efforts.

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 but are not limited to, association by blood, adoption, marriage and/or cohabitation. (*Ibid.*) In addition, there may be personal relationships beyond this general definition that could be subject to these policies. (*Ibid.*) All department nepotism policies should emphasize that nepotism is antithetical to a merit-based personnel system and that the department is committed to the state policy of recruiting, hiring and assigning employees on the basis of merit. (*Ibid.*)

FINDING NO. 17 – Department Does Not Maintain a Current Written Nepotism Policy

Summary: The Council 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. Given the lack of the Council's nepotism policy, it is evident these considerations were either inadvertently overlooked or purposely ignored. Accordingly, corrective action is warranted.

Cause: The Council states that its nepotism policy was in draft form at the time of the compliance review.

Action: It is recommended that within 60 days of the SPB Executive Officer's approval of these findings and recommendations, the Council submit to the CRU an updated nepotism policy that conforms with Human Resources Manual Section 1204.

Workers' Compensation

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

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

FINDING NO. 18 – Workers’ Compensation Policy Was Not Provided to New Employees by the End of First Pay Period

Summary: The Council does not provide specific notices to its employees to inform them of their rights and responsibilities under CA Workers’ Compensation law.

Criteria: Employers shall provide to every new employee 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.)

Severity: Very Serious. The department does not ensure that its employees are aware of policies and procedures concerning workers’ compensation. .

Cause: The Council acknowledges that its Workers’ Compensation Policy was not provided to new employees by the end of the first pay period. The Council states that it relied on CAL FIRE’s “New to State Orientation” processing to inform *new* state employees of the Guide to Workers Compensation. However, this did not extend to staff who were transferring to the Council from within the State.

Action: It is recommended that, within 60 days of the SPB Executive Officer’s approval of these findings and recommendations, the Council submit to the CRU a written plan that the Council will implement to ensure conformity with California Code of Regulations, title 8, section 9880.

Additionally, the CRU found the Council did not properly provide claim forms within one working day of notice or knowledge of injury for one occurrence.

FINDING NO. 19 – Injured Employee Did Not Receive Claim Forms Within One Working Day of Notice or Knowledge of Injury.

Summary: Of the two workers’ compensation claim forms reviewed by the CRU, one of them was not provided to the employee within one working day of notice or knowledge of injury.

Criteria: An employer shall provide a claim form and notice of potential eligibility for workers’ compensation benefits to their employee within

one working day of notice or knowledge that the employee has suffered a work related injury or illness. (Cal. Lab. Code, § 5401, subd. (a).)

Severity: Very Serious. An Injured employee was not provided the required form within the 24-hour time period. Providing the form within 24-hours of injury prevents any delay in treatment to which the employee is entitled. A work related injury can result in lost time beyond the employee's work shift at the time of injury and/or result in additional medical treatment beyond first aid.

Cause: The Council states that the employee had a pre-existing condition. The supervisor was unable to determine if there was a work-related injury/illness until further testing and investigation could be completed, which ultimately caused a delay in the employee receiving the claim form.

Action: It is recommended that within 60 days of the SPB Executive Officer's approval of these findings and recommendations, the Council submit to the CRU a written plan that the department will implement to ensure conformity with California Labor Code Section 5401, subdivision (a).

Performance Appraisals

According to Government Code section 19992.2, subdivision (a), appointing powers must "prepare performance reports." Additionally, 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 Council employees to ensure that the department was conducting performance appraisals on an annual basis in accordance with applicable laws, regulations, policies and guidelines.

FINDING NO. 20 – Performance Appraisals Were Not Provided to All Employees

Summary: The Council did not provide annual performance appraisals to 6 of the 11 employees reviewed after the completion of the employee's probationary period. These are listed in the table below:

Classification	Date Performance Appraisal(s) due
Associate Governmental Program Analyst	6/1/2017
Associate Governmental Program Analyst	6/1/2017
Senior Engineer Water Resources	7/29/2017
Senior Environmental Scientist (Specialist)	6/30/2017
Staff Information Systems Analyst (Specialist)	5/24/2017
Staff Information Systems Analyst (Supervisor)	8/17/2017

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 being apprised of work performance issues and/or goals in a systematic manner.

Cause: The Council states that despite reminders being sent, not all managers and supervisors completed the required performance appraisals due to work demands and competing priorities.

Action: It is recommended that, within 60 days of the SPB Executive Officer's approval of these findings and recommendations, the Council submit to the SPB a written plan that 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 any relevant documentation should be included with the plan.

DEPARTMENTAL RESPONSE

The Council's response is attached as Attachment 1.

SPB REPLY

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

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



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DELTA STEWARDSHIP COUNCIL

A California State Agency

November 1, 2019

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Ken Weinberg

Executive Officer
Jessica R. Pearson

The Delta Stewardship Council (DSC) would like to thank the State Personnel Board (SPB) for the review of the period of 7/1/16 – 6/30/17 and the opportunity to provide response to the SPB audit findings. The California Department of Forestry and Fire Protection (CAL FIRE) administers all examinations, processes all appointments, administers salary regulations and compensation and pay and maintains timesheets and leave materials on behalf of the DSC. DSC adopts policy, oversees EEO matters, executes personal services contracts and oversees training requirement compliance. DSC has reviewed the final draft report and in collaboration with CAL FIRE, has provided the following responses to the Compliance Review Unit (CRU) findings.

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

No response required.

Finding No. 2 – Unlawful Appointments

Cause: DSC does not perform its own Minimum Qualification (MQ) reviews for successful candidates. This work is completed by the CAL FIRE Examination Unit. The error was due to CAL FIRE staff incorrectly interpreting the minimum qualifications. The unlawful appointment identified was initially assumed to have been a lawful appointment. DSC moved forward with the hire under the assumption that the applicant participated in the exam in a lawful manner and passed the application on to the hiring manager.

Action: DSC agrees with the findings and understands how serious and detrimental unlawful appointments can be to both the employee and the equitable administration of the civil service system. CalHR Personnel Management Division (PMD) informed DSC of the finding and instructed DSC to investigate and take corrective action. CAL FIRE conducted an investigation on behalf of DSC and found the three hires to be unlawful appointments. The investigation closed with the finding that the

"Coequal goals" means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place."

– CA Water Code §85054

offers were made and accepted in good faith. In addition, CAL FIRE is ensuring all employees conducting minimum qualification checks have attended the CalHR training for this HR function.

Finding No. 3 – Probationary Evaluations Were Not Provided for All Appointments Reviewed

Cause: DSC acknowledges that probation reports were not provided for 8 of the 18 appointments reviewed by CRU. DSC maintains a manual system for the process of notification and tracking requirements for the assessment and probationary reporting system.

Action: DSC has updated our tracking and notification procedures. DSC has revised and updated the tracking and notification system for all probationary reports, performance appraisals and Individual Development Plans (IDPs). Monthly notices, reminders, and status reports are being generated to assist supervisors and managers. DSC Executive Team will emphasize the importance of completing probation reports in management meetings. Additionally, DSC has initiated a proactive approach to correct this issue. A quarterly training to educate and update supervisors and managers on HR issues has been initiated. Subject matter includes: probationary reviews, performance appraisals and IDPs, hiring practices, and progressive discipline.

Finding No. 4 – Appointment Documentation Was Not Kept for the Appropriate Amount of Time

Cause: DSC understands the importance of preserving appointment materials in accordance with State laws and employment practices. The CRU findings indicate that the Council did not retain two employment applications.

Action: DSC and CAL FIRE have shifted to the online application process through the Examination and Certification Online System (ECOS), which in combination with proper controls, will ensure that all appointment documentation will be maintained for the appropriate amount of time.

Finding No. 5 – Equal Employment Opportunity Questionnaires Were Not Separated from Applications

Cause: Of the 20 appointments reviewed, 3 appointment files included applications where EEO questionnaires were not removed as a result of an oversight. DSC acknowledges the finding and understands the importance of protecting EEO information to ensure fairness in the selection and compliance with all civil service selection and hiring activities.

Action: DSC and CAL FIRE have shifted to the online application process through the Examination and Certification Online System (ECOS), which in combination with proper controls, ensures that equal employment opportunity (EEO) information is not disclosed to staff or management.

Finding No. 6 – A Disability Advisory Committee Has Not Been Actively Maintained

Cause: The DSC Coordinator transferred to another Agency and a replacement coordinator was not identified.

Action: DSC understands the importance of participating in DAC activities. DSC will reconstitute a Disability Advisory Committee and has reached out to the Statewide Disability Advisory Committee Chair for more information on meetings and participation and will attend the November DAC meeting.

Finding No. 7 – Complainants Were Not Notified of the Reasons for Delays in Decisions Within the Prescribed Time Period

Cause: DSC disputes this finding and requests that it be modified in the report. DSC has previously provided the CRU with correspondence that provides additional information and is summarized below.

California Code of Regulation 2 CCR 64.4 outlines notification requirements if investigations cannot be concluded, nor decision reached within a 90-day period. The requirements are to inform the complainant in writing and provide the reason the Agency is unable to issue its decision. The complainant did receive an email dated August 4, 2017, provided by Deputy Attorney General Flores advising complainant that outstanding questions directed to the complainant needed to be addressed by the complainant before the investigation could be closed. This satisfied 2 CCR 64.4.

Action: DSC concurs with the importance of responding to EEO complaints and looks forward to the roll out of the Discrimination Complaint Tracking System (DCTS) in January 2020. The EEO officer has attended the Discrimination Complaint Tracking System (DCTS) training and is confident that this system will provide a helpful tool to track and respond to any future EEO complaints.

Finding No. 8 – Written Justification Criteria Not Met

Cause: DSC acknowledges that one of the 63 PSCs in effect during the review offered an incorrect justification.

Action: DSC recognizes the requirement to document the reasons why the contract satisfies one or more of the conditions specified in Government Code section 19130, subdivision (b). The agency will continue to document appropriate written justification for all future contracts and maintain that documentation in accordance with the record retention requirements of section 26.

Finding No. 9 – Ethics Training Was Not Provided for All Filers in the Required Timeframe

Cause: DSC acknowledges this finding. DSC does not have an automated tracking system for training. Due to the manual process and limited staff resources during the audit period, the training was not scheduled/completed in a timely manner.

Action: DSC has updated our tracking and notification procedures. All employees have been notified of any overdue status and we have achieved an 87% compliance rate as of October 2019. Full compliance is expected by the end of 2019. DSC is researching the application of the Learning Management System (LMS) to consolidate reporting and tracking of all training and leadership courses.

Finding No. 10 – Sexual Harassment Prevention Training Was Not Provided for All Supervisors

Cause: DSC acknowledges this finding. DSC does not have an automated tracking system for training. Due to the manual process and limited staff resources during the audit period, the training was not scheduled/completed in a timely manner.

Action: DSC has updated our tracking and notification procedures. All employees have been notified of any overdue status and we have achieved a 96% compliance rate as of October 2019. Full compliance is expected by the end 2019. DSC is researching the application of the Learning Management System (LMS) to consolidate reporting and tracking of all training and leadership courses.

Finding No. 11 – Incorrect Application of Compensation Laws, Rules, and CalHR Policies and Guidelines

Cause: CAL FIRE acknowledges the incorrect determination of two anniversary dates. The cause was human error.

Action: CAL FIRE provided further training and implemented tools for its Personnel Specialist staff to use to prevent these types of errors from occurring.

Finding No. 12 – Alternate Range Movements Did Not Comply with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines

Cause: DSC acknowledges that one employee did not meet the experience required for movement to the next alternate range.

Action: DSC contracts with CAL FIRE to determine appointment eligibility including range changes and will work together to improve the documentation and eligibility verification of Alternate Range Changes.

Finding No. 13 – Out-of-Class Pay Authorization Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines.

No response required.

Finding No. 14 – Department Did Not Retain Employee Time and Attendance Records

Cause: DSC did not retain one of 55 timesheets from January 2017 and 2 of 59 timesheets from February of 2017. DSC Human Resources staff are responsible to ensure all attendance documents are submitted and received from each Council employee, and in turn, submit monthly attendance documents to the CAL FIRE Personnel Specialist for processing each month. CAL FIRE Human Resources provides copies of the State Controller's Office STD. 672 employee listing of all Council employees to DSC, so that DSC HR staff may account for all attendance records prior to submission to

CAL FIRE. Based on SPB's finding, DSC did not certify or submit all attendance documents for each Council employee.

Action: DSC acknowledges the importance of the accurate time and attendance records for all employees. DSC follows the time reporting calendar submitted to DSC by CAL FIRE. The DSC Personnel Analyst has been trained to confirm all employees listed on the STD. 672 have submitted attendance records prior to submission to CAL FIRE. A copy of these records is kept on file at DSC. Currently, timekeeping is a manual process. DSC is evaluating a move to an electronic system to reduce error and improve record keeping.

Finding No. 15 – Department Has not Implemented a Monthly Internal Audit Process to Verify All Leave Input is Keyed Accurately and Timely

Cause: CAL FIRE Human Resources is contracted with the Council for certain human resources duties, specifically payroll and attendance functions. CAL FIRE provides an annual Attendance Clerk training to all identified CAL FIRE, DSC, and CA Natural Resources Agency (CNRA) employees who are assigned attendance recording tasks. During the class, CAL FIRE provides all attendees with a list of their responsibilities and expectations regarding submission of monthly timesheets and employee leave use, and how to document and inform CAL FIRE PS of keying errors. In 2016, DSC requested their HR analyst to attend this training class. Based on SPB's findings, it appears the assigned DSC analyst failed to implement this requirement to perform monthly audits of employee leave use to ensure errors were corrected timely.

Action: CAL FIRE Human Resources is contracted with the Council for audit of attendance and updates of employee leave usage. DSC acknowledges CAL FIRE's training requirements with regard to attendance and leave monitoring. DSC will ensure staff assigned to oversee employee attendance and leave usage follow CAL FIRE's requirements and CalHR's expectations regarding timely leave accounting. DSC staff has attended CAL FIRE training in 2019.

Finding No. 16 – Leave Reduction Plans Were Not Provided to Employees Whose Leave Balances Exceeded Established Limits

Cause: Information was distributed, but not consistently adhered to.

Action: DSC has developed a procedure to ensure leave reduction plans are submitted to HR in a timely manner. Additionally, the executive team will emphasize the importance of submitting and adhering to leave reduction plans to reduce the liability to the Agency. All employees in excess of the maximum leave balances will receive a leave reduction plan annually. The Personnel Officer will meet with the employee and the Supervisor to ensure completion and submittal. Continuous follow-up will be monitored by the Personnel Officer.

Finding No. 17 – Department Does Not Maintain a Current Written Nepotism Policy

Cause: DSC acknowledges that a nepotism policy was not available at the time of the CRU audit. The policy was in draft form at that time and was never introduced to staff.

Action: The nepotism policy is currently in the process of revision to reflect current statewide policy. DSC is working with the Attorney General's office to complete a thorough review and revision of all HR policies.

Finding No. 18 – Worker's Compensation Policy Was Not Provided to New Employees by the End of the First Pay Period

Cause: DSC acknowledges that Worker's Compensation Policy was not provided to New Employees by the end of the first pay period. DSC relied on CAL FIRE's "New to State Orientation" processing to inform new state employees of the Guide to Workers Compensation. That is successfully being accomplished. However, that did not reach staff that were *transferring* to DSC from within the State.

Action: DSC has updated the DSC New Employee forms Checklist and Administrative Policies Acknowledgment (DSC 9524) which is completed by the employee within the first week of employment. Additionally, DSC will include Workers Compensation as an agenda topic for the Quarterly New Hire Orientation briefings.

Finding No. 19 – Injured Employee Did Not Receive Claim Form Within One Working Day of Notice or Knowledge of Injury

Cause: The employee had a pre-existing condition. The employee initially pursued a reasonable accommodation for that illness. The employee's supervisor was unable to determine if there were a work-related injury/illness until such time as further testing, investigation, medical reports and examinations could determine the cause of the employee's illness. Ultimately, the Worker's Compensation claim was denied.

Action: An employee safety policy is currently under revision. The requirement to provide a claim form and a notice of potential eligibility for benefits to the injured employee (Labor Code, § 5401 subd. (a)) will be included in the policy.

Finding No. 20 – Performance Appraisals Were Not Provided to All Employees

Cause: DSC acknowledges that during the audit period, not all supervisors and managers consistently provided employees with performance appraisals. The CRU found that six employees were not provided performance reviews at least once in each 12 calendar months after the completion of the employees' probationary period. Despite reminders being sent, not all managers and supervisors completed the required appraisals due to work demands and competing priorities.

Action: DSC agrees all employees should receive regular performance appraisal, to identify and improve performance deficiencies, and to recognize and acknowledge performance. DSC has initiated a proactive approach to correct this issue. A quarterly training to educate and update supervisors and managers on HR issues has been initiated. Subject matter includes: probationary reviews, performance appraisals and IDPs, and progressive discipline.

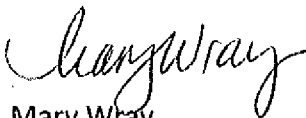
Additionally, DSC HR staff have revised and updated the tracking and notification system for all probationary reports, performance appraisals, and IDPs. Monthly notices, reminders, and status reports are being generated to assist supervisors and managers. In addition to notifying the direct supervisor of due dates for performance appraisals, the DSC HR unit will report delinquencies to executive staff biannually to ensure that all managers and supervisors are held accountable for providing timely performance evaluations.

CONCLUSION

DSC will continue to educate and train our divisions on the best hiring practices and requirements to ensure compliance with SPB's civil service merit system. DSC and CAL FIRE take the reported deficiencies very seriously and have implemented corrective actions to strengthen oversight and compliance in the sited areas as indicated in our responses above.

Thank you for the opportunity to discuss and respond to the draft compliance review report. If you have any questions, please contact me at (916)445-5325 or Mary.Wray@deltacouncil.ca.gov.

Sincerely,



Mary Wray
Deputy Executive Officer, Administration

