



# **COMPLIANCE REVIEW REPORT**

## **SIERRA NEVADA CONSERVANCY**

Compliance Review Unit  
State Personnel Board  
October 21, 2019

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## INTRODUCTION

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

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

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

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

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

The SPB conducts these reviews on a three-year cycle.

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

### **EXECUTIVE SUMMARY**

The CRU conducted a routine compliance review of the Sierra Nevada Conservancy (SNC)'s personnel practices in the areas of examinations, appointments, EEO, PSC's, mandated training, compensation and pay, leave, and policy and processes<sup>1</sup>. The following table summarizes the compliance review findings.

Area	Finding
Appointments	Appointments Complied with Civil Service Laws and Board Rules
Equal Employment Opportunity	Equal Employment Opportunity Program Complied with Civil Service Laws and Board Rules
Personal Services Contracts	Personal Services Contracts Complied with Procedural Requirements
Mandated Training	Sexual Harassment Prevention Training Was Not Provided For All Supervisors
Mandated Training	Ethics Training Was Not Provided for All Filers in the Required Timeframe
Compensation and Pay	Hire Above Minimum Request Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Compensation and Pay	Out of Class Pay Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Leave	Positive Paid Employees Tracked Hours Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	Administrative Time Off Authorizations Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	Leave Auditing and Timekeeping Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	Leave Reduction Plans Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines

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

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

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

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

### **BACKGROUND**

The SNC is a California state agency created by bi-partisan legislation (AB 2600) and signed into law in 2004. The SNC was created with the understanding that the environmental, economic, and social well-being of the Sierra Nevada and its communities are closely linked and that the Region and the State of California would benefit from an organization providing a strategic direction. The SNC has awarded over \$68 million in grants for projects to protect and enhance the health of California's primary watersheds by improving forest health, remediating mercury contamination from abandoned mines, protecting critical natural resources, and reducing the risk of catastrophic wildfire. Funding for these projects have come from Proposition 84 passed by voters in 2006, Proposition 1 passed by voters in 2014, and Proposition 68 passed by voters in 2018.

With over 40 dedicated and passionate employees, the SNC makes all efforts to bridge the gap between the Sierra Nevada and its communities by staying accessible to the public. The SNC Region, made up of all or part of 22 counties covering over 25 million acres, is one of the most significant natural and biologically diverse regions in the world. The Sierra Nevada constitutes about 25 percent of California's land area and is the state's principal watershed, supplying more than 60 percent of the developed water supply to residents, agriculture, and other businesses and industries across the state.

## SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing the SNC's examinations, appointments, EEO program, PSC's, mandated training, compensation and pay, leave, and policy and processes<sup>2</sup>. The primary objective of the review was to determine if the SNC'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.

The SNC did not conduct any examinations or permanent withhold actions during the compliance review period.

A cross-section of the SNC's appointments were selected for review to ensure that samples of various appointment types, classifications, and levels were reviewed. The CRU examined the documentation that the SNC provided, which included Notice of Personnel Action (NOPA) forms, Request for Personnel Actions (RPA's), vacancy postings, certification lists, transfer movement worksheets, employment history records, correspondence, and probation reports.

The SNC did not conduct any unlawful appointment investigations and did not make any additional appointments during the compliance review period.

The SNC's appointments were also selected for review to ensure the SNC applied salary regulations accurately and correctly processed employees' compensation and pay. The CRU examined the documentation that the SNC provided, which included employees' employment and pay history and any other relevant documentation such as certifications, degrees, and/or the appointee's application. Additionally, the CRU reviewed specific documentation for the following personnel functions related to compensation and pay: hire above minimum (HAM) requests, and out-of-class assignments.

During the compliance review period, the SNC did not issue or authorize any red circle rate requests, arduous pay, bilingual pay, or monthly pay differentials.

The review of the SNC's EEO program included examining written EEO policies and procedures; the EEO Officer's role, duties, and reporting relationship; the internal

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

discrimination complaint process; the reasonable accommodation program; the discrimination complaint process; and the Disability Advisory Committee (DAC).

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

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

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

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

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

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<sup>3</sup>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.

The SNC declined to have an exit conference. The CRU received and carefully reviewed the SNC’s written response on October 17, 2019, which is attached to this final compliance review report.

## **FINDINGS AND RECOMMENDATIONS**

### **Appointments**

In all cases not excepted or exempted by Article VII of the California Constitution, the appointing power must fill positions by appointment, including cases of transfers, reinstatements, promotions, and demotions in strict accordance with the Civil Service Act and Board rules. (Gov. Code, § 19050.) The hiring process for eligible candidates chosen for job interviews shall be competitive and be designed and administered to hire candidates who will be successful. (Cal. Code Regs., tit. 2, § 250 (b).) Interviews shall be conducted using job-related criteria. (Ibid.) Persons selected for appointment shall satisfy the minimum qualifications of the classification to which he or she is appointed or have previously passed probation and achieved permanent status in that same classification. (Cal. Code Regs., tit. 2, § 250 (d).) While persons selected for appointment may meet some or most of the preferred or desirable qualifications, they are not required to meet all the preferred or desirable qualifications. (Ibid.) This section does not apply to intra-agency job reassignments. (Cal. Code Regs., tit. 2, § 250 (e).)

During the period under review, November 1, 2017 through October 18, 2018, the SNC made eight appointments. The CRU reviewed six of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Staff Services Analyst	Certification List	Permanent	Full Time	1
Staff Services Manager I	Certification List	Permanent	Full Time	1
Staff Services Manager II	Certification List	Permanent	Full Time	2
Administrative Officer II, Resource Agency	Transfer	Permanent	Full Time	1
Conservancy Project Development Analyst II	Transfer	Permanent	Full Time	1



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

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

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

The CRU found no deficiencies in the appointments that the SNC initiated during the compliance review period. Accordingly, the CRU found that the SNC's appointments processes and procedures utilized during the compliance review period satisfied civil service laws and Board rules.

**Equal Employment Opportunity**

Each state agency is responsible for an effective EEO program. (Gov. Code, § 19790.) The appointing power for each state agency has the major responsibility for monitoring the effectiveness of its EEO program. (Gov. Code, § 19794.) To that end, the appointing power must issue a policy statement committed to EEO; issue procedures for filing, processing, and resolving discrimination complaints; and cooperate with the CalHR, in accordance with Civil Code section 1798.24, subdivisions (o) and (p), by providing access to all required files, documents and data necessary to carry out these mandates. (*Ibid.*) In addition, the appointing power must appoint, at the managerial level, an EEO Officer, who shall report directly to, and be under the supervision of, the director of the department to develop, implement, coordinate, and monitor the department's EEO program. (Gov. Code, § 19795, subd. (a).)

Each state agency must establish a separate committee of employees who are individuals with a disability, or who have an interest in disability issues, to advise the head of the agency on issues of concern to employees with disabilities. (Gov. Code, § 19795, subd.

(b)(1).) The department must invite all employees to serve on the committee and take appropriate steps to ensure that the final committee is comprised of members who have disabilities or who have an interest in disability issues. (Gov. Code, § 19795, subd. (b)(2).)

**FINDING NO. 2 – Equal Employment Opportunity Program Complied With All Civil Service Laws and Board Rules**

After reviewing the policies, procedures, and programs necessary for compliance with the EEO program’s role and responsibilities according to statutory and regulatory guidelines, the CRU determined that the SNC’s EEO program provided employees with information and guidance on the EEO process including instructions on how to file discrimination claims. Furthermore, the EEO program outlines the roles and responsibilities of the EEO Officer, as well as supervisors and managers. The EEO Officer, who is at a managerial level, reports directly to the Director of the SNC. In addition, the SNC has an established DAC, which reports to the Director on issues affecting persons with disabilities. The SNC also provided evidence of its efforts to promote EEO in its hiring and employment practices, and to increase its hiring of persons with disabilities. Accordingly, the SNC’s EEO program complied with civil service laws and Board rules.

**Personal Services Contracts**

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

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

During the period under review, March 1, 2018 through February 20, 2019, the SNC had 18 PSC's that were in effect. The CRU reviewed 13 of those, which are listed below:

Vendor	Services	Contract Dates	Contract Amount	Justification Identified?
eScribers	Other	12/20/17 - 1/31/18	\$600	Yes
eScribers	Other	3/12/18 - 5/12/18	\$600	Yes
Golden State Overnight	Other	7/1/18 - 11/27/21	\$2,575	Yes
Linkline Transit Inc.	Other	10/1/17 - 9/30/18	\$4,800	Yes
Melzak Media	Other	3/1/18 - 12/31/18	\$7,050	Yes
Metro Media Productions, Inc.	Other	09/6/17 - 09/7/17	\$2,054.75	Yes
Metro Media Productions, Inc.	Other	12/6/17 - 12/7/17	\$1,931.50	Yes
University Enterprises, Inc.	Other	6/1/16 - 5/31/19	\$80,000	Yes
US Forest Service (ENF)	Service/Maintenance	5/8/18 - 6/30/20	\$970,500	Yes
US Forest Service (LTBMU)	Service/Maintenance	5/17/18 - 6/30/20	\$154,692	Yes
US Forest Service (TNF)	Service/Maintenance	6/4/18 - 6/30/20	\$759,500	Yes
US Forest Service (TNF)	Service/Maintenance	6/4/18 - 6/30/20	\$280,000	Yes
USFS Tahoe NF	Service/Maintenance	3/16/18 - 6/30/20	\$997,000	Yes

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

The total dollar amount of all the PSC's reviewed was \$3,261,303.25. It was beyond the scope of the review to make conclusions as to whether the SNC's justifications for the contract were legally sufficient. For all PSC's reviewed, the SNC provided specific and detailed factual information in the written justifications as to how each of the contracts met at least one condition set forth in Government Code section 19130, subdivision (b). Additionally, the SNC complied with proper notification to all organizations that represent

state employees who perform the type of work contracted. Accordingly, the SNC PSC's complied with civil service laws and Board rules.

### **Mandated Training**

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

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

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

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

The Board may conduct reviews of any appointing power's personnel practices to ensure compliance with civil service laws and Board regulations. (Gov. Code, § 18661, subd. (a).) In particular, the Board may audit personnel practices related to such matters as

selection and examination procedures, appointments, promotions, the management of probationary periods, and any other area related to the operation of the merit principle in state civil service. (*Ibid.*) Accordingly, the CRU reviews documents and records related to training that appointing powers are required by the afore-cited laws to provide its employees.

The CRU reviewed all the records for the SNC's mandated training program that was in effect during the compliance review period. The SNC's supervisory training was found to be in compliance. However, the SNC's sexual harassment prevention and ethics training did not comply with statutory requirements.

**FINDING NO. 4 – Sexual Harassment Prevention Training Was Not Provided for All Supervisors**

**Summary:** The SNC provided sexual harassment prevention training to two of two new supervisors within six months of their appointments. However, the SNC did not provide sexual harassment prevention training to seven of nine existing supervisors every two years.

**Criteria:** Each department must provide its supervisors two hours of sexual harassment prevention training every two years. New supervisors must be provided sexual harassment prevention training within six months of appointment. (Gov. Code, § 12950.1, subd. (a).)

**Severity:** Very Serious. The department does not ensure that all new and existing supervisors are properly trained to respond to sexual harassment or unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature. This limits the department's ability to retain a quality workforce, impacts employee morale and productivity, and subjects the department to litigation.

**Cause:** The SNC states that it overlooked providing sexual harassment prevention training to all of its supervisors every two years. The SNC states that it will be diligent in ensuring that all employees receive this training every two years in the future. Currently, all managers are in the process of completing the training.

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

It is therefore recommended that no later than 60 days after the SPB Executive Officer's approval of these findings and recommendations, the SNC must establish a process to ensure compliance with sexual harassment training mandates and submit to the SPB a corrective action plan.

**FINDING NO. 5 – Ethics Training Was Not Provided for All Filers in the Required Timeframe**

**Summary:** The SNC provided ethics training to two of two existing filers. However, the SNC did not provide ethics training to 32 of 34 new filers within six months of their appointments.

**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 SNC acknowledges that ethics training was not provided to all new filers within the required timeframe due to the infrequency of formal board meetings. The SNC has provided online ethics training to the majority of its filers as of October 17, 2019.

**Action:** The SNC must take appropriate steps to ensure that filers are provided ethics training within the time periods prescribed.

It is therefore recommended that no later than 60 days after the SPB Executive Officer's approval of these findings and recommendations, the SNC must establish a process to ensure compliance with ethics training mandates and submit to the SPB a corrective action plan.

**Compensation and Pay**

## Salary Determination

The pay plan for state civil service consists of salary ranges and steps established by CalHR. (Cal. Code Regs., tit. 2, § 599.666). Several salary rules dictate how departments calculate and determine an employee's salary rate<sup>4</sup> upon appointment depending on the appointment type, the employee's state employment and pay history, and tenure.

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

During the period under review, November 1, 2017 through October 18, 2018, the SNC made eight appointments. The CRU reviewed two of those appointments to determine if the SNC applied salary regulations accurately and correctly processed employees' compensation, which are listed below:

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Conservancy Project Development Manager	Certification List	Permanent	Full Time	\$7719
Staff Services Manager III	Certification List	Permanent	Full Time	\$8575

### **FINDING NO. 6 – Salary Determinations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines**

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

## Hire Above Minimum Requests

The CalHR may authorize payment at any step above-the minimum limit to classes or positions to meet recruiting problems, or to obtain a person who has extraordinary qualifications. (Gov. Code § 19836.) For all employees new to state service, departments

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<sup>4</sup> "Rate" is any one of the salary rates in the resolution by CalHR, which establishes the salary ranges, and steps of the Pay Plan (CA CCR Section 599.666).

are delegated to approve HAMs for extraordinary qualifications. (Human Resources Manual Section 1707.) Appointing authorities may request HAMs for current state employees with extraordinary qualifications. (*Ibid.*) Delegated HAM authority does not apply to current state employees. (*Ibid.*)

Persons with extraordinary qualifications should contribute to the work of the department significantly beyond that which other applicants offer. (*Ibid.*) Extraordinary qualifications may provide expertise in a particular area of a department's program. (*Ibid.*) This expertise should be well beyond the minimum qualifications of the class. (*Ibid.*) Unique talent, ability or skill as demonstrated by previous job experience may also constitute extraordinary qualifications. (*Ibid.*) The scope and depth of such experience should be more significant than its length. (*Ibid.*) The degree to which a candidate exceeds minimum qualifications should be a guiding factor, rather than a determining one. (*Ibid.*) When a number of candidates offer considerably more qualifications than the minimum, it may not be necessary to pay above the minimum to acquire unusually well-qualified people. (*Ibid.*)

The qualifications and hiring rates of state employees already in the same class should be carefully considered, since questions of salary equity may arise if new higher entry rates differ from previous ones. (*Ibid.*) Recruitment difficulty is a factor to the extent that a specific extraordinary skill should be difficult to recruit, even though some applicants are qualified in the general skills of the class. (*Ibid.*)

If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action.<sup>5</sup> (Gov. Code § 19836 subd. (b).)

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

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<sup>5</sup> Except that if the provisions of the memorandum of understanding requires the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.



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

During the period under review, November 1, 2017 through October 18, 2018, the SNC authorized one HAM request. The CRU reviewed the one authorized HAM request to determine if the SNC correctly applied Government Code section 19836 and appropriately verified, approved and documented the candidate’s extraordinary qualifications, which is listed below:

Classification	Appointment Type	Status	Salary Range	Salary (Monthly Rate)
Research Analyst II	Certification List	New to the State	\$5,022 - \$6,290	\$5,887

**FINDING NO. 7 – Hire Above Minimum Request Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines**

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

Out-of-Class Assignments and Pay

For excluded<sup>6</sup> and most rank and file employees, out-of-class (OOC) work is defined as performing, more than 50 percent of the time, the full range of duties and responsibilities allocated to an existing class and not allocated to the class in which the person has a current, legal appointment. (Cal. Code Regs., tit. 2, § 599.810 (a)(2).) A higher classification is one with a salary range maximum that is any amount higher than the salary range maximum of the classification to which the employee is appointed. (Cal. Code Regs., tit. 2, § 599.810 (a)(3).)

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<sup>6</sup> “Excluded employee” means an employee as defined in section 3572(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.

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

During the period under review, November 1, 2017 through October 18, 2018, the SNC issued out-of-class pay<sup>7</sup> to one employee. The CRU reviewed the one out-of-class assignment to ensure compliance with applicable CalHR policies and guidelines, which is listed below:

Classification	Bargaining Unit	Out-of-Class Classification	Time Frame
Conservancy Project Development Analyst II	S01	Staff Services Manager I	8/15/18 – 12/14/18

**FINDING NO. 8 – Out of Class Pay Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines**

The CRU found no deficiencies in the OOC pay assignment that the SNC 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**

**Positive Paid Employees**

Actual Time Worked (ATW) is a method that can be used to keep track of a Temporary Authorization Utilization (TAU) employee’s time to ensure that the Constitutional limit of nine months in any 12 consecutive months is not exceeded. The ATW method of counting time is used in order to continue the employment status for an employee until the completion of an examination, for seasonal type work, while attending school, or for consulting services.

<sup>7</sup> Excluding bilingual and arduous pay.

An employee is appointed TAU-ATW when he/she is not expected to work all of the working days of a month. When counting 189 days, every day worked, including partial days<sup>8</sup> worked and paid absences,<sup>9</sup> is counted. (Cal. Code Regs., tit. 2, § 265.1, subd. (b).) The hours worked in one day is not limited by this rule. (*Ibid.*) The 12-consecutive month timeframe begins by counting the first pay period worked as the first month of the 12-consecutive month timeframe. (*Ibid.*) The employee shall serve no longer than 189 days in a 12 consecutive month period. (*Ibid.*) A new 189-days working limit in a 12-consecutive month timeframe may begin in the month immediately following the month that marks the end of the previous 12-consecutive month timeframe. (*Ibid.*)

It is an ATW appointment because the employee does not work each workday of the month, and it might become desirable or necessary for the employee to work beyond nine calendar months. The appointing power shall monitor and control the days worked to ensure the limitations set forth are not exceeded.<sup>10</sup> (Cal. Code Regs., tit. 2, § 265.1, subd. (f).)

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

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

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

At the time of the review, the SNC had 13 employees whose hours were tracked. The CRU reviewed ten of those positive paid appointments to ensure compliance with applicable laws, regulations, policies and guidelines, which are listed below:

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<sup>8</sup> For example, two hours or ten hours counts as one day.

<sup>9</sup> For example, vacation, sick leave, compensating time off, etc.

<sup>10</sup> "California Code of Regulation section 265.1 became effective July 1, 2017, and did not apply at the time of all of these appointments. The current regulation sets forth the method for counting time for temporary appointments. The cap under the current regulation is 189 days.

Classification	Time Base	Time Frame	Time Worked
Accounting Administrator I (Specialist)	Intermittent	7/1/17 – 6/30/18	935
Associate Personnel Analyst	Intermittent	1/1/18 – 12/31/18	1927.5
Attorney III	Intermittent	7/1/17 – 6/30/18	531
Conservancy Project Development Analyst II	Intermittent	1/1/18 – 12/31/18	1482.5
Conservancy Project Development Analyst II	Intermittent	1/1/18 – 12/31/18	1675
Conservancy Project Development Analyst II	Intermittent	1/1/18 – 12/31/18	1485
Conservancy Project Development Specialist	Intermittent	7/1/17 – 6/30/18	186.5
Management Services Technician	Intermittent	1/1/18 – 12/31/18	1434
Office Technician (Typing)	Intermittent	1/1/18 – 12/31/18	1499.5
Staff Services Analyst (General)	Intermittent	1/1/18 – 12/31/18	1645.25

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

The CRU found no deficiencies in the 10 employees whose hours were tracked during the compliance review period. The SNC provided sufficient justification and adhered to applicable laws, regulations and CalHR policy and guidelines for positive paid employees.

Administrative Time Off

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

During the period under review, December 1, 2017 through November 30, 2018, the SNC placed five employees on ATO. The CRU reviewed five of these ATO authorizations to

ensure compliance with applicable laws, regulations and CalHR policy and guidelines, which are listed below:

Classification	Time Frame	No. of Days on ATO
Conservancy Project Development Analyst I	7/18/17 – 7/21/17	4
Conservancy Project Development Analyst II	7/18/17 – 7/21/17	4
Conservancy Project Development Manager	7/18/17 – 1/21/17	4
Management Services Technician	7/18/17 – 7/18/17	1
Research Analyst II (GIS)	7/18/17 – 7/19/17	2

**FINDING NO. 10 – Administrative Time Off Authorizations Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines**

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

Leave Auditing and Timekeeping

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

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

During the period under review, February 1, 2018 through April 30, 2018, the SNC reported one unit comprised of 50 active employees. The pay periods and timesheets reviewed by the CRU are summarized as follows:

Timesheet Leave Period	Unit Reviewed	Number of Employees	Number of Timesheets Reviewed	Number of Missing Timesheets
February 2018	001	50	50	0

**FINDING NO. 11 – Leave Auditing and Timekeeping Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines**

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

Leave Reduction Efforts

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

Applicable Memorandums of Understanding and the California Code of Regulations prescribe the maximum amount of vacation or annual leave permitted. “If a represented employee is not permitted to use all of the vacation to which he or she is entitled in a calendar year, the employee may accumulate the unused portion.”<sup>11</sup> (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 amount<sup>12</sup> 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

<sup>11</sup> 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.

<sup>12</sup> Excluded employees shall not accumulate more than 80 days.

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

As of December 2017, the SNC did not have any employees who exceeded the established limits of vacation or annual leave. The CRU reviewed two employees’ leave reduction plans to ensure compliance with applicable laws, regulations and CalHR policy and guidelines, which are listed below:

Classification	Collective Bargaining Identifier	Total Hours Over Established Limit	Leave Reduction Plan Provided
Career Executive Assignment	M01	0	Yes
Executive Officer, SNC	E99	0	Yes
<b>Total</b>		0	

**FINDING NO. 12 – Leave Reduction Plans Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines**

The CRU reviewed the department’s leave reduction policy to verify its compliance with applicable rule and law, and to ensure its accessibility to employees. Based on our review, the CRU found no deficiencies in this area.

State Service

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

An employee who has 11 or more working days of service in a monthly pay period shall be considered to have a complete month, a month of service, or continuous service.<sup>13</sup> (Cal. Code Regs., tit. 2, § 599.608.) Full time and fractional employees who work less than 11 working days in a pay period will have a non-qualifying month and will not receive state service or leave accruals for that month.

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

For each qualifying monthly pay period, the employee shall be allowed credit for vacation with pay on the first day of the following monthly pay period. (Cal. Code Regs. tit. 2, § 599.608.) When computing months of total state service to determine a change in the monthly credit for vacation with pay, only qualifying monthly pay periods of service before and after breaks in service shall be counted. (Cal. Code Regs. tit. 2, § 599.739.) Portions of non-qualifying monthly pay periods of service shall not be counted nor accumulated. (*Ibid.*) On the first day following a qualifying monthly pay period, excluded employees<sup>14</sup> shall be allowed credit for annual leave with pay. (Cal. Code Regs., tit. 2, § 599.752.)

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

During the period under review, November 1, 2017 through October 18, 2018, the SNC had one employee with non-qualifying pay period transactions. The CRU reviewed the one transaction to ensure compliance with applicable laws, regulations and CalHR policy and guidelines, which is listed below:

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

<sup>13</sup> Except as provided in sections 599.609 and 599.776.1(b) of these regulations, in the application of Government Code sections 19143, 19849.9, 19856.1, 19858.1, 19859, 19861, 19863.1, 19997.4 and sections 599.682, 599.683, 599.685, 599.687, 599.737, 599.738, 599.739, 599.740, 599.746, 599.747, 599.787, 599.791, 599.840 and 599.843 of these regulations.

<sup>14</sup> As identified in Government Code sections 19858.3(a), 19858.3(b), or 19858.3(c) or as it applies to employees excluded from the definition of state employee under Government Code section 3513(c) or California Code of Regulations section 599.752 subdivision (a), and appointees of the Governor as designated by the Department and not subject to section 599.752.1.



**FINDING NO. 13 – Service and Leave Transactions Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines**

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

**Policy and Processes**

**Nepotism**

It is the policy of the State of California to recruit, hire and assign all employees on the basis of merit and fitness in accordance with civil service statutes, rules and regulations. (Human Resources Manual Section 1204.) Nepotism is expressly prohibited in the state workplace because it is antithetical to California’s merit based civil service. (*Ibid.*) 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. 14 – Nepotism Policy Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines**

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

**Workers’ Compensation**

Employers shall provide to every new employee, either at the time of hire or by the end of the first pay period, written notice concerning the rights, benefits, and obligations under workers’ compensation law. (Cal. Code Regs., tit. 8, § 9880 subd. (a).) This notice shall include the right to predesignate their personal physician or medical group; a form that

the employee may use as an optional method for notifying the employer of the name of employee’s “personal physician,” as defined by Labor Code Section 4600. (Cal. Code Regs., tit. 8, § 9880 subd. (c)(7)(8).) Additionally, within one working day of receiving notice or knowledge that the employee has suffered a work related injury or illness, employers shall provide a claim form and notice of potential eligibility for benefits to the injured employee. (Labor Code, § 5401 subd. (a).)

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

**FINDING NO. 15 – Workers’ Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines**

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

Performance Appraisals

According to Government Code section 19992.2 subsection (a), appointing powers must “prepare performance reports.” Furthermore, California Code of Regulations, title 2, section 599.798, directs supervisors to conduct written performance appraisals and discuss overall work performance with permanent employees at least once in each twelve calendar months after the completion of the employee’s probationary period.

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

Classification	Date Performance Appraisals Due
Administrative Assistant II	9/7/18
Associate Governmental Program Analyst	8/17/18

Classification	Date Performance Appraisals Due
Associate Governmental Program Analyst	10/1/18
Associate Governmental Program Analyst	5/31/18
Conservancy Project Development Analyst II	12/19/18
Conservancy Project Development Analyst II	4/10/18
Conservancy Project Development Analyst II	1/17/19
Conservancy Project Development Analyst II	12/18/18
Conservancy Project Development Analyst II	7/3/18

**FINDING NO. 16 – Performance Appraisal Policy and Processes Complied with Civil Service Laws and Regulations and CalHR Policies and Guidelines**

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

**DEPARTMENTAL RESPONSE**

The SNC’s response is attached as Attachment 1.

**SPB REPLY**

Based upon the SNC’s written response, the SNC will comply with the CRU recommendations and findings.

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



ATTACHMENT 1

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**TO:** Diana Campbell, Compliance Review Manager  
SPB Policy & Compliance Review Division

**FROM:** Amy Lussier, Chief Administrative Services Division 

**DATE:** October 17, 2019

**RE:** **RESPONSE TO SNC COMPLIANCE REVIEW DRAFT REPORT**

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Ms. Campbell, thank you for the opportunity to respond to the findings in our Compliance Review Draft Report. While the vast majority of findings for the Sierra Nevada Conservancy (SNC) were in compliance, there were two very serious findings.

Finding No. 4 - Sexual Harassment Prevention Training Was Not Provided for All Supervisors (Very Serious) "...the SNC did not provide sexual harassment prevention training to seven of nine existing supervisors every two years."

This finding is unfortunately true – We overlooked providing Sexual Harassment Prevention training to our supervisors every two years. All managers (and all employees) are completing the training now and we will be diligent in our record keeping that all employees receive this training every two years.

Finding No. 5 - Ethics Training Was Not Provided for All Filers in the Required Timeframe (Very Serious) "...the SNC did not provide ethics training to 32 of 34 new filers within six months of their appointments."

While this finding is also true, it is noteworthy that 21 of the out-of-compliant filers are Boardmembers who we see only four times a year. As of today, all SNC filers have completed the online Ethics training provided by the Department of Justice except for two of our Boardmembers. These two will be completed in the next two weeks. In the future, all filers will be provided Ethics training within six months of their appointments, and every two years after that.

The SNC Management Team is fully in support of these mandatory training requirements and will be more diligent in requiring all staff to complete the trainings in a timely manner.

